

DEPARTMENT OF ANTHROPOLOGY

B.A and B.SC SEMESTER II PAPER- 3

**TOPIC- ANTHROPOLOGY AND THE STUDY OF LAW,
CULTURAL BACKGROUND OF LAW (SUITABLE CASES).**

**STATE AND STATELESS SOCIETIES AND CONTRIBUTION OF
ANTHROPOLOGY**

Anthropology has noteworthy contribution to the study of traditional societies, the tribes or peasant communities. The ethnographic contributions of anthropologists have helped us understand different aspects of social and cultural life and political system of these communities. Studies of tribes in India, Africa or in Australia have recorded the fact that every society has definite norms, values and recognized rules of conduct. Individuals violating such norms or values or breaching rules of conduct are punished or subjected to various sanctions. Within a locally defined community, an individual who commit some act which goes against the norms of the community invites punishment by recognised coercive authority. Political community, whether or not it is organised in the form of state has its own territory (Mair, 1962). Protection of defined territory and its individuals, organising social activities like rituals and religious activities, and organising economic activities entail organised authority. The authority decides over the level of punishment for each defied activity which goes against the societal norms or values. Every society has certain authority, whether centralised, decentralised or lack of centralized authority. Lucy Mair makes the useful remark that ‘there is no society where rules are automatically obeyed’. Anthropologists like Gluckman and others have tried to show that in all primitive societies-ranging from small bands of hunters or

fishermen to kingdoms-there exists some basic mechanism of social control which regulates the affairs of the tribe and resolves conflicts arising among its component groups (Eisenstadt, 1959: 201).

The general assumption is that most of these social control mechanisms are in one way or another common to all types of traditional or preliterate societies-whether segmentary, centralised or some other (ibid.). According to Fortes and Evans-Pritchard (1940) the societies which have centralised authority, administrative machinery, and judicial institutions were labeled as 'primitive states'. Some groups like the Zulu, the Ngwato, the Bemba, the Banyankole and the Kede are regarded as "primitive states". They observed sharp differences in the distribution of wealth, status and privileges, corresponding to the distribution of power and authority in all 'primitive' states.

Stateless societies on the other hand, had no great distinctions between the rank, status, or wealth of their members (Haskell Fain, 1972). But they may not be egalitarian societies. Fortes and Evans-Pritchard (1940: 5) have defined that the societies which lack centralised authority, administrative machinery, and constituted judicial institutions-in short which lack government-and in which there are no sharp divisions of rank, status, or wealth are called stateless societies. They are the Logoli, the Tallensi and the Nuer in Africa. Examples of such tribes in India are some Andaman Islander tribes namely, Jarwa, Sentinelese, etc. Some other hunters and gatherer groups where there is no centralised political system can be included in the stateless societies. Historically speaking, many other tribes in India were stateless societies. But the evolution of political system from stateless to state has taken place subsequently.

Like state, in the stateless societies, the political activities are supported by group behaviour. In stateless societies, the community members select the leader who possesses dominant characters with strong personalities, well-built

physical feature, and may be with possession of wealth. In the study of the Nuer, Evans-Pritchard has reported the behaviour of the 'leopard skin chief' who is a dominant character selected from outside the clan group. However, this clan is not necessarily a dominant clan. He stands outside the lineage and tribal system. The leopard skin chief possesses bounty wealth in the form of cattle. He is offered cattle by community members or by the members of the guilty. Murder/killing of a fellow community member is often regarded as a serious offense to the community as a whole. Therefore, the leader takes appropriate action to compensate the kin of the deceased and the community he belongs to. Lucy Mair (1962) pointed out that in the absence of centralised political system if a man was wronged, his lineage supported him in seeking redress by force. When they got tired of fighting they invite an influential man to mediate between the two sides. However, collective action takes place in war or in maintenance of peace. The community members support the leaders in war and feud. This could be for protection of territory or could be for taking on revenge in case of murder of fellow members. While in more complex state societies, the guilty is punished by appropriate court of law or well developed judiciary system. In stateless societies there are no obvious political institutions like that in state. A leader is an institution in these societies. He also possesses ritual power. Appropriate quantum of punishment is decided by the leader. He maintains peace in the community. A leader resolves the disputes between community members both within and outside. In addition, the protection of territory or resolving territorial disputes is significant part of the decision making authority. Allocation and distribution of resources takes place with appropriate leadership. Both state and stateless societies protect social norms and values. Factors like religion, wealth and other socio-economic factors are closely interconnected with and determine political behaviour in stateless societies. In stateless societies, both kinship and politics are often diffused.

CULTURAL BACKGROUND OF LAW (SUITABLE CASES)

CASE-1

The Polynesians of the Hawaiian Islands had an exceedingly complex political system based on hereditary rank and classes, and theocracy and divine right. Among Polynesians, there are three hereditary social classes-commoners, nobles, and inferiors. Agriculturists, fishermen and artisans are the commoners, work under the shadow of nobles. The nobles are warriors, priests and political officials. The hereditary ranking of nobles was based on descent from the gods, genealogically traced. Rank of individuals and segments was traced in terms of birth order. The highest rank traced through first born child. The islands were divided into chiefdoms ruled by a paramount chief. The paramount chief's rule was administered and maintained through a cluster of high ranking nobles who served as priests, counselors and military leaders. The districts of chiefdom were in turn ruled by local chiefs of high rank. The nobles were supported almost entirely by tribute extracted from commoners in local areas which in turn were administered by chosen chiefs and overseers of lower rank. Being of the highest rank and sacredness himself, the chief approached the status of the god who conveyed on him these divine rights. This system was stable and immutable. The paramount chief is however not permanent and is often unstable and flexible. The political fortunes of paramount chiefs coaxed and waned by with their success in holding their chiefdoms together in the face of insurrection and intrigue.

CASE-2

A Nuer tribe is the largest group whose members are duty bound to combine in raiding and defense. There is no overarching government. The Nuer maintains a measure of unity and orderly political relations between the territorial divisions.

Evans-Pritchard calls tribe to each territorial sub-division. A tribe is sub divided into segments. The relationship between segments is conceived in terms of hierarchies of patrilineal descent. There is fight between territorial divisions but when two neighbouring groups fight with third party both the neighbouring groups fight together against the third party. Disputes begin over many grievances such as damage to property, adultery, rights over resources, to name a few. The Nuers are prone to fighting and many disputes lead to bloodshed. Confrontation between members of different groups or villages can lead to use of spears and bloody war between men of each village. A leopard-skin chief is the mediator who resolves the disputes. Such a chief has ritual powers and a role as mediator and negotiator but he has no secular authority and no special privileges. His performance in peacemaking is possible because he stands outside the lineage and tribal system. The leopard skin chief was also a wealthy leader partly because of the cattle he received for his services as mediator who could mobilise the support of a substantial coalition of followers.

Contribution of Anthropologists

The contributions of anthropologists to the study of state and stateless societies. The contribution of anthropology to political thought has emerged from its apprehension with stateless societies. The growing interest in political anthropology has been observed in the early writings on primitive state and stateless societies by M. Fortes and Evans-Pritchard (1940), J. Middleton and David Tait (1958), David Easton (1959), L. Mair (1962) M.L. Perlman (1969), Balandier (1967) and recent studies by J. Vincent (1990) and E. Wolf (2001) amongst others. The series of works by Hegel and Karl Marx and their argument on “state” have also contributed substantially to the study in political anthropology.

Meyer Fortes and E. E. Evans-Pritchard are perhaps the first anthropologists who have classified the political systems of African communities as state and

stateless societies. The study on '*African Political System*' by Meyer Fortes and E.E. Evans-Pritchard (1940) is a monumental piece to theoretical contribution in political anthropology. In the beginning of the essay the authors have propounded that in any social system you will find the political institutions, the kinship organisation, the economic institutions and the ritual life which are interlinked and interdependent.

One institution influences another. Both Fortes and Evans-Pritchard (1940) have emphasised that the definition of 'political' in anthropology has to be marked off clearly. The political institutions with its true meanings should be established to make it distinct from other features of social system. Thus the foundation to theoretical contribution in political anthropology was observed in their writing which was gradually facilitated the emergence of a separate discipline of Political Anthropology. Shepardson (1963) pointed out that in *African Political Systems*, Fortes and Pritchard have clearly defined the type of social structure through which political action takes place and revealed the distinctions of political behavior whether state or stateless society (kin based, segmentary and state societies). However, some anthropologists like David Easton and Balandier have raised the concern with uncertainties of political anthropology, which they believed had not marked off differently from other areas in anthropology or uncertainties found with definitions of state. For example, Balandier (1967, 1970) in his book *Political Anthropology* has pointed out that definitions of state or political institution are usually too wide and consequently non specific.

Paige (1974) supported the argument of anthropologists about understanding relationship between systems of kinship and forms of political organisation. He further emphasised that the organisation of kinship and the organisation of the polity are closely integrated in stateless societies. Kinship roles frequently determine patterns of group interests and solidarity and lines of political

cleavage and conflict. He derived the Gluckman's (1965) argument that the maintenance of political order in stateless societies depends on a network of cross cutting kinship ties. He has particularly cited Murphy (1957), Van Velzen and Vanwetering (1960) and Otterbein (1968) to argue that matrilineal and patrilineal residence rules produce different patterns of group ties and consequently, different pattern of political conflict. It has been assumed that both matrilineal and patrilineal descent rules should have similar effects on inter-group conflict. Swanson's original findings that patrilineal descent correlates with factional politics and matrilineal descent are consequence of the forms of political organisation has been contrasted by other anthropologists. Paige has, however, concluded that association between rules of descent and the organisation of the polity was a special case of a more general principle underlying patterns of group conflict and cleavage in all political systems.

Hegel and Karl Marx are pioneers in contributing to the study of state and political systems. Their thoughts still found to be very relevant and contemporary to the studies in political anthropology. Hegel starts from describing the state and makes man the subjective aspect of the state. He believed, democracy starts from man and makes the state into objectified man. People make the constitution. Democracy has relation with other forms of state. Democracy is the essence of all constitutions of the state and is considered to be Old Testament in relation to other political forms. Socialised man is the particular constitution of the state. All that exists, law, constitution, democracy and other political forms are for the benefits of man. But it is not that man is there for benefit of law or other political forms. Law has a human existence and in other political forms man has only a legal existence. That is the fundamental character of democracy (McLellan, 1971:215).

For Karl Marx state in many ways is a most characteristic institution of man's alienated condition. State is a negation of man, similar to religion, law and morality, and equally based on a particular mode of production. Meanwhile, he also talked about positive elements of state. The early work of Feuerbach's critique of Hegel's philosophy and his own experience as editor of the *Rheinische Zeitung* could help him in to elaborate his ideas on the state. He narrated his ideas in a manuscript as a critique of Hegel's political philosophy. Marx provides an idealistic form of government where the state and civil society are not separate, but directly correspond to the 'essence of socialised man'. He called this 'true democracy'. In a democracy the constitution, the law and the state itself are only a self determination of the people and a particular content of them in so far as it is a political constitution (KMSW: 29). He viewed state like religion, as a statement of man's ideal aims and also a compensation for their lack of realisation (McLellan, 1971). He differentiated between state and polity. He pointed out that the more political the state is and the more it constitutes separate sphere, the more incapable it is to solve the society's problems.

While in early writings, Marx emphasised on gap between the state and society in later part he focused on analysis of the function of the state in society. He later considered state as a part of society. He discussed about origin of the state and other social institutions. The state is a manifestation of interest of certain dominant class by which the individuals of a ruling class assert their common interests. Sometimes Marx says that the state need not be representative of the whole of a class but only a section of that class. State acts as intermediary among fully developed classes for benefit of one and other classes and sometimes it acts independently where the classes are not fully developed. The state acts as an intermediary in the formation of all communal institutions and gives them a political form. The state in turn modeled other social institutions.

Marx considered America as a modern state. He considered bureaucracy to be the most essential part of this modern state apparatus. His manuscript, Critique of Hegel's Philosophy of the State in 1843 with special focus on Prussia described how the bureaucracy had eventually become a caste which claimed to possess, through higher education, the monopoly of the interpretation of the state's interests. The real aim of the state thus appears to bureaucracy as an aim against the state.