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**ВЕСТНИК**

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## **THE ORDINARY LAW OF THE INDIGENOUS NORTHERN PEOPLES OF RUSSIA IN THE XVII – XIX CENTURIES: CONVERGENCE AND RECEPTION**

**Abstract.** This paper discusses the issues of the convergence process, which allows revealing the peculiarities of the interpenetration of customary law among some representatives of the Samoyed and Finno-Ugric peoples. The relevance of the study is due to the identification of the process of influence of customary legal views of the indigenous population of the Northern Russia on the formation of positive law.

**Objective:** to study the process of approximation of customary legal norms, that existed among some Finno-Ugric and Samoyedic peoples both among themselves and with the customary legal elements of ethnic groups living in the neighborhood not excluding the interception between the norms of positive law and customary legal norms of Komi, Nenets, Khanty and Mansi.

**Results and scientific novelty:** The work shows that the approximation of customary legal norms and institutions among these peoples occurred constantly both among themselves and with the customary legal elements of peoples living in territorial proximity with them.

Usually legal institutions, which started to be realized in the 17th century, are distinguished. However, by the 19th century an integral system of legal customs is being developed, that was applied among the studied peoples. Attention is drawn to the fact that starting from the 17th century the Russian legislator “protected” the northern peoples from illegal influence and arbitrariness on the part of the officials. By the first half of the 19th century the legislator even sanctioned the most important principles of state policy in the “Charter on the Management of Foreigners”, where normatively not only the traditional forms of using patrimonial lands for indigenous peoples were fixed, but also the possibility of codification of customary law.

The novelty of the study is seen in the fact that empirical material has been used to identify the process of interception of customary legal norms and institutions among the studied peoples.

**Key words:** customary law, positive law, custom, convergence, Komi, Khanty, Mansi, Nenets.

**Introduction.** In the context of the development of the constitutional state in Russia the relevance of the study of the usually legal aspects of various peoples, which have developed and existed over a long history is beyond doubt. A key aspect of this process is the study of customary law, which includes not only “legal customs” [1, p.96, 2, p.128, 3, p.32, 4, p.108], but also a huge variety of traditional, distinctive customary legal norms, institutions [5, p.100], legal relations, system of national values.

Among the Soviet and modern scholars who have made a certain contribution to the study of national legal practice in the historical past of the studied peoples are the following: E. V. Vershinin, G. P. Vizgalov, A. V. Golovnev, L. N. Zherebtsov, N. D. Konakov, F. V. Plesovsky and others. Despite the serious contribution of scientists aimed for the study of ethnographic and historical components, the study of social processes that took place during certain historical periods of the studied in this work ethnic groups, for the consideration of certain constituent elements of customary law, in these works usually legal imperatives and even more convergence processes in the law of Finnish Ugric Samoyedic peoples are virtually absent. In the presence of a large number of scientific works on the socio-normative culture the problems of convergence of the usual legal institutions, as well as their mutual receptions, remained

unexplored for a long time, and were not the subject of special scientific research. It should be noted that, despite a significant number of scientific works, the study of convergence in the common law of the peoples under consideration today is at the beginning of its path requiring close attention.

In this regard, the aim of this work will be to study the process of convergence of customary legal norms and institutions that existed among some Finno-Ugric (Komi, Mansi, Khanty) and Samoyed (Nenets) peoples both among themselves and with the usual legal elements of ethnic groups living in the neighborhood with them not excluding the convergence process between the norms of positive law of the Russian state and the usually legal norms of the peoples in question.

The genesis and formation of customary legal elements, as well as the duration of the convergence process, aimed at bringing the norms and institutions of customary law of different peoples closer, are determined by a fairly long historical development. However, this study presents a convergence process that has long existed in the common law of the peoples concerned in the chronological framework of the 17th-19th centuries, since the most objective analysis of customary legal norms and institutions is possible only if we study the empirical materials that have come down to us and the factology contained in historical - legal, ethnological, linguistic literature dating from designated centuries.

**Methods.** For a comprehensive review of the identified problems, scientific developments, publications in the legal press, factual data contained in the historical and legal, ethnological literature dating from the chronological framework of the XVII – XIX centuries were used.

The methodological basis of this study is a combination of various methods of cognition developed by modern humanities. The customary law of peoples is considered as an element of the legal space of the Russian state due to the systemic method. The historical and legal method allows you to highlight the influence of various trends in the historical development of the North of Russia on the content of the norms and institutions of customary law of the indigenous northern peoples. In addition, in carrying out the research, methods of logical analysis, synthesis, and others were used.

**Discussion and results.** The interpenetration and combination of customary legal norms and institutions among different peoples was determined by the need for their application in economic and economic circulation, which depended on the natural climatic conditions that dictated the appropriate way of doing business. The main sectors of the economy were hunting, fishing, and reindeer husbandry. An additional type of activity, for example, for the southern Komi was agriculture [6,7] and cattle breeding.

It should be noted that the territory of resettlement of Komi, Mansi, Khanty, Nenets is so large even today that it includes a part of the North-West and North-East of Europe, North-West of Siberia, a part of the Urals and other areas. This indicates the presence of various external contacts, the influence of neighbouring peoples and the possible mutual reception of various legal customs, norms and institutions. For example, the customary rules and institutions of the Nenets people could not be influenced by the norms applied by the Khanty, as it is not uncommon for the Nenets men to marry Khanty girls [8, p.103]. A similar example is the usually legal institution of polygamy used by the Nenets in marriage and family relations during the period under review, an analogue of which was used by Asian neighbours. Rare historical documents of the XVII century testify to the existence of polygamy: "... self-propelled zhonyr yasir ... to the family of Prince Sharuma ..." [9, p.34]. True, as noted by A. V. Golovnev, polygamy among the Nenets was not a common rule, but the privilege of rich men [10, p.44]. A similar position is shared by M. A. Zenko, mentioning the existence of the institution of "polygamy among the rich" [11, p.89] not only among the Nenets, but also among the Khanty.

Such a customary legal institution as kalym marriage, long known to Muslim law, was also widespread. Moreover, the usually legal imperatives regulated not only the conditions for paying kalym, but also its volume, which was determined by the bride's parents or her representatives. Kalym marriage was used among the Nenets, Khanty, Mansi, and Komi throughout the entire period under review. A description of this form of marriage is found in the works of researchers not only in the 18th century, but also in later works [12-14]. If the historical sources of the XVII century contain only jerky mentions of a marriage with a kalym, then by the XIX century more and more details of the conclusion of such a marriage are revealed. For example, a prenuptial agreement was concluded orally. At its conclusion, it was necessary to stipulate not only the size, type, form, but also the time of payment of the kalym. In various villages scientists noted ethnic special features of marriage [15, p.91]. K. A. Popov noted that the payment of halyards is a kind of payment "on the part of the groom in favor of the bride's family for the property

that she must bring with her as a dowry” [15, p.91]. But, F.V. Plesovsky, disagreeing with K. A. Popov, believed that “kalym is a payment for a girl” [16, p.192]. In turn, K. A. Popov specified: “the groom does not actually pay for the bride, but for the costs of wedding feasts and dowry” [15, p.91]. Moreover, according to A. V. Golovnev, kalym and dowry should have been proportionated [10, p.43]. It is important to note that these scientists are partially right, since kalym was not only payment for the bride, but also a kind of compensation by the groom's family for the dowry and expenses incurred at the wedding by the bride's family.

Another manifestation of the convergence process was legal property marks or patrimonial signs (“pass”, “tamga”, “stigma”, etc.). Such signs had, first of all, usually legal significance representing an original way of securing the rights of the owner in a traditional society. They were used both by the Komi, Khanty, Mansi, and the Nenets. In addition to defining and securing the individual's ownership of a certain thing, they were also an element of the national ornament, the basis of the alphabet (Komi has an embur), a magic sign, etc. Generic signs even signed applications, petitions and other documents of civil circulation which, for example, is testified by the Diploma of Pyotr Alekseevich to Pustozersky prison in 1707: “... But the Samoyadts were handed over to you petition for their hallmarks ...” [21].

Generic property marks were widely used in commercial relations, since each hunter, fisherman, or reindeer herder needed to distinguish his property from the property of others. Passes were usually applied to privately owned items.

For example, at the Nenets, at the time of the birth of the child, they gave them an “important deer or raw deer” depending on the sex of the child, and the ears of this animal were branded with a generic sign. The resulting “offspring from a gifted deer was considered the property of the child” [18].

The interception of customary legal institutions was also active in reindeer husbandry. It occupied important positions in the economy of the northern peoples, due to its high economic significance. Izhemtsy, Khanty, Mansi, Nenets, being closely associated with nature, were engaged in the conduct of an appropriating economy. In addition to fishing, hunting, reindeer husbandry was their traditional occupation. Izhemtsy began to breed deer from the middle of the XVII century, borrowing this type of farming from the Nenets. They introduced the “regular meridional roaming of the herd - from south to north ... Izhemtsy laid the foundation for breeding work in the tundra” [19, p.67].

Therefore, it is not surprising that in the common law of Izhemtsy and Nenets, which regulated reindeer husbandry relations, there were many similar customary legal norms and institutions that determined relations between owners of reindeer herds (usually Izhemtsy) and hired Nenets shepherds. Izhemtsy, “acquiring deer, entrusted their pasture to hired Nenets shepherds” [19, p.66], moreover, the most “experienced Samoyeds in this matter” [20, p.20]. If in the middle of the 17th century Izhemtsy were just beginning to get acquainted with the customary rules applicable in reindeer husbandry, then by the 19th century an integrated system of customary legal norms and institutions had been developed that was widely implemented in this area.

In the 17th century, mercenary and trade-exchange relations appeared between Samoyeds and Pustozersks. “The Pustozersk stone samoyad, their acquaintances and friends, and that Pustozersk samoyad from those trading people are named and their goods are taken out of the Stone ...” [17, p.12-13]; “... a messenger by self-will, hiring from a self-governing, and from Obdor to Pustoozer go Odory ostyaks on deer and on dogs, and from Pustoozer ...” [22, p.18]. This trend continued in subsequent periods. As noted by N. D. Konakov, who studied the works of I. I. Lepekhin (the 18th century), V.N. Latkina (the 19th century), there was a contractual relationship between the Nenets and Izhemtsy related to the “process of settling mutually acceptable norms of joint nature management in the tundra zone ...” [19, p.150].

Usually, the legal norms recognized by Izhemtsy and Nenets applied in reindeer husbandry relations were aimed at protecting deer from abduction or illegal capture. Customs also regulated the use of territories for grazing deer. The principle of rational use of reindeer pastures was applied [24, p.4-5], where there were uniform customary rules and rules of conduct.

It is important to note that the northern inhabitants of the Arctic regions of Russia diligently complied with these usually-legal imperatives, therefore, there were not many conflicts in the history of the development of reindeer husbandry.



Traditional fishing relations were governed by customary law. If at the beginning of the period under review, public fishing lands predominated, in the second half of the 19th century, despite the preservation of the previous form of ownership, lifelong inherited patrimonial lands were more and more distinguished.

The usual legal institutions, that existed among the northern peoples during the period under review had a certain specificity, which was determined, first of all, by the manifest mental and economic features.

Thus, for example, customary law created not only behavioral imperatives developed over the centuries-old application, but also fixed a system of national values that were important for all members of ethnic society. It guaranteed stable social development. Even after the gradual entry of the territories inhabited by Komi, Nenets, Mansi and Khanty into the Russian state, and the subsequent declaration of land as state property, the usual legal norms and institutions of the studied peoples did not undergo significant changes, continuing, as before, to regulate emerging social relations not covered by positive law.

Sources indicate that the Russian legislator in the XVII – XVIII centuries “protected” the northern peoples from unlawful influence and arbitrariness on the part of officials, creating conditions conducive to the preservation of their traditional way of life and customary law. Thus, for example, Pyotr Alekseevich at the beginning of the 18th century in the Charter, addressed to the governor Kushelev, indicated how it had been necessary to “know the Samoyadtsy”: “... and more than that, they couldn’t fix the tax and insult to them ...” [21].

In addition, in the first half of the 19th century the Russian legislator even adopted the “Charter on the Management of Foreigners” [25], which laid down the most important principles of state policy in relation to indigenous peoples. The charter sanctioned not only the traditional forms of use of patrimonial lands, but also provided the opportunity for foreigners to codify customary law.

The convergence process took place between the norms of positive law of the Russian state and customary law of the studied peoples. It is important to note the influence of customary legal views of the population on the formation of the norms of positive law, which, for example, is reflected in the practice of developing and creating “orders”. Peasants described in them the problems they faced, and often even formulated their own proposals aimed at improving the situation. These orders were addressed to the Russian legislator. Such problems were: insolvency, poverty, lack of land, etc. [26, p.44, 27, p.42-43].

Given a number of peasant demands the legislator enacted laws, which improved the situation of peasants. For example, in 1789 the legislator allowed state peasants to acquire land from landowners [28]; in 1797, measures were taken to combat the peasant “low income” [29]; in addition, the land spread [30], etc., was normatively fixed.

If in the XVII century among the considered peoples, the norms and institutions of customary law were widely used, then by the end of the study period, public relations were regulated not only by the norms that were used in customary legal practice, but also by the norms of positive law.

**Conclusion.** Summing up, it should be noted that the customary law that existed among the Komi, Khanty, Mansi and Nenets for many centuries, was subjected to a process of convergence and reciprocity, which contributed to the convergence of customary law and institutions both among themselves and customary elements of peoples living in territorial proximity with them.

If earlier sources that have reached us contain, as a rule, jerky references to various legal customs, then by the 19th century for the researcher the whole palette of customary legal relations has been opened up among the northern Finno-Ugric and Samoyed peoples.

Some customary legal norms and institutions were only beginning to enter into force in the 17th century. However, by the XIX century in relation to them a holistic system is gradually being developed.

Since the 17th century Russian lawmakers have been protecting northern peoples from unlawful influence and arbitrariness on the part of officials providing indigenous northern peoples with the opportunity to use ethnic norms of customary law. In the XVIII century this trend intensifies, as the legislator adopted a number of peasant demands expressed in “orders” and enacts laws that improve their situation. In the first half of the 19th century the legislator even sanctioned the most important principles of state policy in the “Charter on the management of foreigners”, which normatively enshrines not only the traditional forms of use of patrimonial lands for indigenous peoples, but also the possibility of codifying the customary law of foreigners.

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**XVII-XIX ҒАСЫРЛАРДАҒЫ РЕСЕЙДІҢ ФИН-УГОР ЖӘНЕ САМОДИЙ  
ХАЛЫҚТАРЫНЫҢ ДАҒДЫЛЫ ҚҰҚЫҒЫ: КОНВЕРГЕНЦИЯ ЖӘНЕ РЕЦЕПЦИЯ**

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**ОБЫЧНОЕ ПРАВО ФИННО-УГОРСКИХ И САМОДИЙСКИХ НАРОДОВ РОССИИ  
В XVII–XIX вв.: КОНВЕРГЕНЦИЯ И РЕЦЕПЦИЯ**

**Аннотация.** В настоящей работе рассматриваются вопросы конвергенционного процесса, позволяющего раскрыть особенности взаимопроникновения норм обычного права у некоторых представителей самодийских и финно-угорских народов. Актуальность исследования обусловлена выявлением процесса влияния обычно-правовых воззрений коренного населения севера России на формирование позитивного права.

Целью работы является исследование процесса сближения обычно-правовых норм, существовавших у некоторых финно-угорских и самодийских народов как между собой, так и с обычно-правовыми элементами этносов, проживавших по соседству, не исключая взаиморецепцию между нормами позитивного права и обычно-правовыми нормами у коми, ненцев, хантов и манси.

Новизна исследования видится в том, что использован эмпирический материал, позволяющий выявить процесс взаиморецепции обычно-правовых норм и институтов у исследуемых народов.

При написании работы использованы научные разработки, публикации в юридической печати, фактологические данные, содержащиеся в историко-правовой, этнологической литературе, датируемые в хронологических рамках XVII – XIX веков.

Методологическую основу настоящего исследования составляет совокупность различных методов познания, выработанных современными гуманитарными науками. Обычное право народов рассматривается как элемент правового пространства российского государства благодаря системному методу. Историко-правовой метод позволяет выделить влияние различных тенденций исторического развития Севера России на содержание норм и институтов обычного права коренных северных народов. Кроме того, при осуществлении исследования применялись методы логического анализа, синтеза и др.

В данном исследовании показано, что сближение обычно-правовых норм и институтов у рассматриваемых народов происходило постоянно как между собой, так и с обычно-правовыми элементами народов, проживавших в территориальной близости с ними. Взаимопроникновение и сочетание обычно-правовых норм и институтов у различных народов обуславливалось необходимостью их применения в хозяйственно-экономическом обороте, который зависел от природных климатических условий, диктовавших соответствующий образ ведения хозяйства.

Обычно-правовым институтам, существовавшим у северных народов в рассматриваемый период, была присуща определенная специфика, которая обуславливалась, прежде всего, проявлявшимися ментальными и экономическими особенностями. Обычное право не только создавало поведенческие императивы, выработанные в течение многовекового применения, но и фиксировало систему национальных ценностей, которые были важны для всех членов этнического общества. Оно гарантировало стабильное общественное развитие. Даже после постепенного вхождения территорий, заселенных коми, ненцами, манси и хантами в состав Российского государства, и последующего объявления земли государственной собственностью, обычно-правовые нормы и институты рассматриваемых народов не подвергались значительным изменениям, продолжая, как и раньше регулировать возникавшие общественные отношения, не охваченные нормами позитивного права.

Если в более ранних источниках, дошедших до нас, содержатся, как правило, отрывистые упоминания о различных правовых обычаях, то к XIX в. для исследователя открывается вся палитра обычно-правовых отношений у северных финно-угорских и самодийских народов. Выделены обычно-правовые институты, которые в XVII веке только начинали реализовываться. Однако к XIX веку формируется целостная система правовых обычаев, применявшаяся у исследуемых народов.

Обращено внимание на то, что, начиная с XVII века, российский законодатель «оберегал» северные народы от незаконного воздействия и произвола со стороны чиновников, предоставляя коренным северным

народам возможность использовать этнические нормы обычного права. В XVIII веке данная тенденция усиливается, так как законодатель воспринял ряд крестьянских требований, выраженных в «наказах», и вводил в действие законы, улучшавшие их положение. К первой половине XIX века законодатель даже санкционировал важнейшие принципы государственной политики в «Уставе об управлении инородцев», где нормативно закрепил не только традиционные формы пользования родовыми угодьями для коренных народов, но и возможность кодификации обычного права.

Отмечено, если в XVII в. у рассматриваемых народов широко использовались нормы и институты обычного права, то к концу исследуемого периода общественные отношения регулировались не только нормами, применявшимися в обычно-правовой практике, но и нормами позитивного права.

**Ключевые слова:** обычное право, позитивное право, обычай, конвергенция, коми, ханты, манси, ненцы.

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