

Foreword

The laws and legal customs of the tribal people in India and the system of settling disputes amongst them have been a neglected area of study by the legal scholars in India. These people have their own ways of life and well entrenched customs, and are not drawn into the mainstream of the rest of the country, economically and socially. The constitution-makers recognised the necessity of a separate political and administrative structure for these areas by enacting the Sixth Schedule in the Constitution. In doing so they were guided by two major considerations—necessity to maintain their distinct culture and the necessity to prevent their economic and social exploitation by the non-tribals. These areas certainly have been a subject-matter of study by anthropologists but no study has been undertaken from a legal angle. The constitutional provisions are skeletal but seek to maintain the tribal customs and tribal councils and courts, and to ensure the autonomy of tribal districts which are inhabited by fairly homogenous groups of tribes. There is a lot more to know about the tribal people than simply the constitutional provisions. Such a study is important and fascinating from several points of view—comparative law, national integration by enabling us to understand our own countrymen living in those areas, the significance of customs as a source of law, and even to satisfy our intellectual curiosity about the people whose ways of life and culture are distinctly different from those in the plains. Further, to bring about any legal reform, and in no society law is static, it is essential to understand the legal mores and norms prevailing in the society, and from this point of view also such a study becomes valuable.

The Institute selected Meghalaya for study which has principally three tribes, namely, Khasis, Jaintias and Garos. Sitting from Delhi such a study created the problem of accessibility of materials and of finding a scholar who had some perspective of the people of the state for a proper understanding of their laws, customs and legal institutions. Fortunately, we could find such a person in Kusum who had spent her childhood in those areas. She had to go to Meghalaya at least twice to do field work

and to study the judicial and other records. The decisions of the District Council courts there and even most of the decisions of the High Court on the subject are unreported. The task of collecting and digesting those decisions was not an easy one. We also received considerable amount of material through correspondence. Thanks are particularly due to the Hon'ble D. Pathak, Chief Justice of the Gauhati High Court, who rendered ungrudgingly all possible help in spite of his extremely busy schedule. The scholar received considerable help from several local persons while she was there on field work. Thanks are due to Shri A.S. Khongphai, a very senior Khasi advocate, Shri Jangsan Sangma, then a lawyer in the Garo Hills and now District and Sessions Judge in Shillong, Shri L.G. Shullai, a member of the District Council, and Shri J.S. Marak, Assistant Librarian of the Gauhati High Court.

The study had a long gestation period and passed through several expert hands. In this regard mention may be made of Dr. S.K. Datta, former Chief Justice of Assam, and Hon'ble D. M. Sen, former Judge of the same High Court, and Dr. Upendra Baxi, now Vice Chancellor, South Gujarat University. We are grateful to them for their invaluable help in going through the study and making useful suggestions. But I must hasten to add that for any pitfalls in the study the responsibility is our own.

The draft of the study prepared by Kusum was given to Shri P.M. Bakshi, former Member-Secretary, Law Commission of India. He did considerable work on the study and gave it a final shape. We are thankful to both Kusum and Shri P.M. Bakshi for their meticulous care in completing the study.

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Director