

The Rules of 1937

The general position as to the Rules of 1937

Mention has already been made of the Rules issued by the Governor of Assam in 1937 on the subject of the administration of justice and police in the Khasi and Jaintia Hills. These Rules were issued by virtue of the powers vested in the Governor by the Scheduled Districts Act, which was then in force.¹ The Rules for the Khasi areas applied to the whole of the British territory of Khasi and Jaintia Hills, but Part III of the Rules, relating to criminal justice, did not apply to the municipal and cantonment area of Shillong. The Rules applicable to civil matters extended to the whole District, without exception. Unfortunately, the precise extent to which the provisions of the Rules of 1937 still survive in law is a matter of some obscurity. The subsequent Rules of 1953 dealing with the administration of justice in the area in question do contain a repeal clause,² but the repeal clause is peculiarly worded.

The repeal clause in the Rules of 1953 does not repeal the Rules of 1937 *in toto*, but merely provides that they "shall stand repealed in so far as they relate to matters dealt with in the Rules of 1953." The repeal clause not being so specific as one would wish it to be, one is still faced with the question whether a particular Rule of 1937 "relates to a matter" dealt with in the 1953 Rules. If it does, then it stands repealed. If it does not, then it is to be regarded as still surviving. In the ensuing very brief summary of the Rules of 1937, matters which appear to have been definitely covered by the Rules of 1953 have been omitted. However, one cannot rule out the possibility that (i) on the one hand, some provisions of the 1937 Rules which have not been effectively repealed by the 1953 Rules might have been left out from the ensuing survey, and (ii) conversely, some provisions of the Rules of 1937 that have been effectively

1. Section 6, Scheduled Districts Act, 1874 (since repealed).

2. Rule 58.

repealed by the 1953 Rules might have nevertheless found a place in the ensuing survey. Perhaps, in future, when an opportunity arises for revising the Rules of 1953, it will be convenient if whatever survives of the 1937 Rules is incorporated in the 1953 Rules or all the Rules are consolidated into one single self-contained set of rules.

Until that is done, one has to take the Rules as they are and construe them to the best of one's ability. In the present position, all that can be said without much diffidence is that so far as the Khasi and Jaintia areas are concerned, the Rules of 1937 have been very largely superseded by those of 1953.

Position as to civil justice under the Rules of 1937

Under the 1937 Rules applicable to the Khasi and Jaintia areas, the administration of civil justice is entrusted to the Deputy Commissioner who is assisted by *sardars*, *dolois* and other chief village authorities. The *sardars*, *dolois* and other chief village authorities may be recognised by the Deputy Commissioner, by *sanad* under his signature, as competent to try suits without limit as to amount. But these authorities are not competent to try suits in which their close relatives are parties, nor can they try a suit in which a native of the plains or a native of the other *siemship* or *doloiship* are parties.³

It was held with reference to the above provision in the Rules of 1937 that the trial of a suit by the *durbar* is not vitiated simply because the plaintiff is one of the *durbaris*.⁴ The decision is to be pronounced after hearing both the parties and their witnesses. The proceedings are oral. A brief note of the proceedings is to be made if, at the trial before the village authorities, a person who can write can be found. Suits which other authorities cannot try are tried by the Deputy Commissioner or his Assistants.⁵

It is also provided that where the parties are indigenous inhabitants of the Hills, the Deputy Commissioner and his Assistants shall make an endeavour to induce them to submit their case to a panchayat.⁶ This provision has come up for construction judicially.

Thus, in one case,⁷ the Deputy Commissioner had passed an order without making any efforts to induce the parties to submit the case to a panchayat. The High Court, on appeal, held that where the parties are inhabitants of the district, it was obligatory on the Deputy Commissioner (or his Assistant) to make such efforts. The Rule summarised above imposed such an obligation on the Deputy Commissioner.

3. Chapter 4.

4. *Ka Syndur Laklang v. U Kistobin Rymbai*, 1 U.C. (Assam) 66 (1948-1953).

5. Rule 22, Khasi-Jaintia Rules, 1953 and Rule 24, Garo Rules, 1953.

6. Rule 31.

7. *Thajing Nokma v. Jangra Sangma*, 1 U.C. (Assam) 56 (1948-1953).

There were also contained in the Rules of 1937 certain provisions as to High Courts, but these are rendered obsolete by the Order of 1954, which deals exhaustively with the jurisdiction (appellate and revisional) of the High Court.

Position as to criminal justice under the Rules of 1937

Under the Rules of 1937, in Khasi areas, criminal justice shall ordinarily be administered by the Deputy Commissioner, his Assistants, the *sardars*, *dolois* and other chief village authorities. The Deputy Commissioner may empower any *doloi*, *sardar* or other chief village authorities to dispose of cases relating to offences involving damage to property not exceeding Rs. 50, house trespass, theft and injury to person not effecting life or limb. These village authorities are competent to impose a fine for any offence triable by them, upto the amount of Rs. 50. They may also award restitution or compensation to the extent of the injury sustained and enforce it by distraint of the property of the offender.⁸

Cases where the accused is not a native of the Khasi and Jaintia Hills or is not resident within their jurisdiction, or cases where the offence is one against the State, or the accused has caused death or danger to life, or has committed an act which amounts to robbery or concerns counterfeiting of coin or making of fraudulent documents, or the like, are not triable by the *sardars*, *dolois* or other village authorities.⁹ All cases in these courts are decided in open *darbar* in the presence of at least three witnesses, the complainant and the accused.

Appeal from their decision lies to the Assistant to the Deputy Commissioner and the Deputy Commissioner. Assistants to the Deputy Commissioner shall exercise such powers, not exceeding those of a magistrate of the first class defined in the Code of Criminal Procedure, as they may be invested with by the Governor.

The Deputy Commissioner is competent to pass a sentence of death, transportation or imprisonment upto the maximum amount provided for the offence, whipping or a fine upto any amount.¹⁰ However, all sentences of death, transportation or imprisonment of seven years and upwards shall be subject to confirmation by the High Court of Assam.

An appeal can be made to the High Court from any sentence passed by the Deputy Commissioner or Additional Deputy Commissioner, within thirty days of the order appealed against, excluding the time required for procuring a copy of the order. In case of a death sentence, the appeal must be preferred within seven days.

8. Chapter 3 of the Rules.

9. Rule 19.

10. Transportation should now be read as imprisonment. Reference to whipping should now be taken as deleted since whipping was abolished in 1955.

The Governor of the State may also direct an appeal to be made to the High Court from an original or appellate order of acquittal passed by any court other than the High Court. Such appeal has to be made within ninety days of the order of acquittal excluding, however, the time required for obtaining a copy of the order. The President or the Governor may, either upon or without conditions, suspend the execution of any sentence or remit any punishment, or commute any one of the following sentences for any other sentence mentioned after, *viz.*, death, confiscation, forfeiture of property, imprisonment, whipping and fine.