

Siems and their Jurisdiction

Siemship under Khasi Siemships (Administration of Justice) Order, 1950— The general position

Mention has been made above of the Order of 1950 relating to *siemships* in Khasi Rules. The *siemship* had its origin in the tribal organisation of the Khasis. "Khasi States" were formed by the voluntary association of villages or groups of villages, with the *siem* as its head. His powers were circumscribed. According to custom, he had first to consult and obtain the approval of the *durbar* before performing any important act. The State *myntris* constituted this *durbar*. It was an executive council over which the *siem* presided. It also possessed judicial powers. The *siem* acted as a judge, while the *durbar* constituted the jury. The *siem* was appointed from the *siem* family, there being such a family in each of the fifteen Khasi States. The most important States were Khyrim, Myllem, Cherra, Nongstoin and Nongkhlaw. There were a few other petty states presided over by *lyngdohs* or *wahadadars*. The *siem's* principal source of income in the Khasi States was the toll (*khrong*), which he took from those who sold the markets within his territory.

When the British assumed rulership, these indigenous institutions were not done away with. Rather, the authority of the *siems* was recognised through *sanads* granted by the British rulers. The *siem* was, however, made subject to the orders and control of the Deputy Commissioner of the District of the Khasi and Jaintia Hills. Under the terms of a *sanad* of 1877, the Deputy Commissioner was competent to decide any dispute that arose between one chief and another and the *siem* was bound to obey lawful orders which the Deputy Commissioner, or other officer authorised on that behalf by the local Government, might issue to him. Under the same *sanad*,¹ the *siem* was empowered to adjudicate and decide all civil cases and criminal offences, except those punishable under

1. Clause 11, of the *sanad*.

the Indian Penal Code with death, transportation or imprisonment for five years and upwards.

Thus, the court of the *siem* is a court (originally) established under the customary law of the Khasis and recognised by the Governor.²

In regard to offences excepted from the jurisdiction of the *siems* and in regard to civil or criminal cases arising within the limits of their State in which persons other than their own Khasi subjects might be concerned, the *siems* were to report and refer these cases to the Deputy Commissioner for adjudication, or to any officer appointed by him for that purpose and to await his order.

The Khasi Siemships (Administration of Justice) Order, 1950 applied to areas of the United Khasi-Jaintia Hills District which were known as the Khasi States immediately before the commencement of the Constitution of India, excluding so much area of the District as is comprised in the municipality of Shillong. The precise extent to which this Order still survives after the passing of the Khasi and Jaintia Hills Rules, 1953, is a matter of obscurity, because of the drafting of the repeal clause in the subsequent Rules—a point to which reference has already been made³ while discussing the earlier Rules of 1937. On a fair construction of the statutory Instruments in issue, it is a very plausible view to take that the powers of *siems* and other village authorities are no longer governed by the Order of 1950, and one can at the present day justifiably focus one's attention on the Rules of 1953 in regard to the structure of the judiciary. However, whatever may be the true legal position, it appears that some of the matters dealt with in the Order of 1950 might furnish a useful background which might highlight the autonomous character of these authorities and their judicial status, even though the terminology in the Rule of 1953 is slightly different, inasmuch as these Rules represent an attempt to weave the pre-existing indigenous institutions recognised by the Order of 1950 into the general pattern of the judicial structure as dealt with by the Rules of 1953.

Civil justice

The *siem's* court was the lowest court in the hierarchy and exercised both civil and criminal jurisdiction. On the civil side, this court could adjudicate any civil case arising in its local jurisdiction in which the parties were Khasis and resided or held land within its jurisdiction.

The expression "Chief Village Authorities" which denoted the authorities invested with civil original jurisdiction under the Rules of 1937,⁴ has been held to include *wahadadars*,⁵ and this is the position also

2. *U Bestonjoy Roy v. U Kendro*, A.I.R. 1955 (Assam) N.U.C. 3309

3. Appendix 1, *supra*.

4. Rule 26.

5. *Supra* note 2.

under the Khasi Siemships Order.⁶ The court of *siemship* includes the *sardar*, *lyngdoh* or *wahadadar*. Thus *wahadudars* are expressly included in the courts charged with the administration of justice in Khasi and Jaintia Hills.

Criminal justice

On the criminal side, the *siem's* court could try any offence under the Indian Penal Code or under any other law for the time being in force within its territorial area, except offences punishable with death, transportation or imprisonment for five years or upwards. The parties should be Khasis and the cause of action should arise within the jurisdiction. In case of non-Khasis, the *siems* courts could exercise jurisdiction only if the parties invoke or submit to its jurisdiction.

The courts of the Assistants to the Deputy Commissioner could exercise such powers, not exceeding those of a magistrate of the first class as defined in the Code of Criminal Procedure, 1898, as they may be invested with by the Governor of Assam. Above them were the courts of Deputy Commissioner and Additional Deputy Commissioner. The Deputy Commissioner and Additional Deputy Commissioner were also courts of appeal from a conviction ordered by the Assistant to the Deputy Commissioner or by the *siem*.⁷ Rules of natural justice must be observed in disposing of the appeals.⁸ They also exercise revisional powers over subordinate criminal courts.

In a case where a dispute was decided by the court of the Myllem State, (*i.e.* the *siem* and his *durbar*) only on the basis of documents, the High Court held that the trial was defective, pointing out that oral evidence should have been considered and the "spirit" of the Code of Civil Procedure respected.⁹ Similarly, where the Deputy Commissioner, Khasi Hills decided an appeal¹⁰ *ex parte* without serving any notice on the respondents, the High Court held that it was a violation of the principles of natural justice and the case was sent back to the lower appellate court for re-hearing the appeal after notice to the parties concerned.

As already pointed out,¹¹ the Order of 1950 can no longer be regarded as surviving after the Rules of 1953.

6. Paragraph 16(1), Khasi Siemships (Administration of Justice) Order, 1950.

7. *Ibid.*

8. *U Ngenjorai v. U Suna*, 1 U.C. (Assam) 81 (1948-1953).

9. *U Jumstng Siem v. Mrs. Sherison Roy*, 1 U.C. (Assam) 54 (1948-1953).

10. *Supra* note 8.

11. See chapter 3, *supra* and *U Owing v. Nosibon*, A.I.R. 1956 Assam 129.