

Early Judicial and Legal History of the Tribal Areas in Meghalaya

Territorial and political changes

The areas comprised within the present State of Meghalaya were part of the State of Assam, and a history of the legal and judicial institutions in these areas would have to deal with the legal history of Assam also.

Assam came under British rule after the treaty of Yandabu in the twenties of the last century. The Brahmaputra Valley was taken by the British under direct control and its management was entrusted in November, 1823, to David Scott who had been appointed as Agent to the Governor-General for the whole Eastern Frontier. In 1827, David Scott started construction of a road from Rai via Nongkhla to Surma Valley. During the course of the execution of this project there was a rising of the chiefs of the Khasi Hills. But gradually they were brought under control and on January 9, 1833, the leader of these chiefs, Tirof Singh, surrendered himself and the rising of the chiefs subsided. The chiefs were allowed to retain a large measure of independence. But they had to submit to the general control of a political Agent who was thenceforth stationed in the Hills and dealt with all serious cases of criminal nature.

By a proclamation dated August 14, 1832, Cachar was annexed to the British Kingdom. After annexation it was formed into a district with headquarters at Silchar. On March 15, 1835, the Jaintia Parganas were annexed to the British territory.

In 1832, Ahom king Purandar Singh was put in control of Upper Assam (except Motok and Sadiya) but in October, 1838 he was deposed and his territories placed under the direct administration of British officers¹ and formed into the districts of Sibsagar and Lakhimpur. The

1. Justice M.C. Pathak, "Introduction" *Gauhati High Court Commemoration Volume*, (1948-1973) 44-49.

formal proclamation on the subject was issued in 1839.²

The District of Naga Hills was gradually annexed to the British territory during the period from 1866 to 1889. The Garo Hills was brought under the British territory finally during the winter season of 1872-73. The whole area of Lushai Hills (now called Mizoram) was placed under the Assam Administration on April 1, 1898.

During the latter half of the 19th century, the different tribes of Arunachal Pradesh were brought under the British suzerainty.

In October, 1905, Assam was amalgamated with the districts of Dacca, Chittagong and Rajsahi to form a new province known as "Eastern Bengal and Assam" under a Lieutenant Governor. With effect from 1912, Assam again became a separate province (under a Lieutenant Governor). Later, it became a Chief Commissioner's Province.³ It was under the Government of India Act, 1919 that Assam became a Governor's Province.

The areas now comprised in Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh were brought under the suzerainty of the British during the second half of the 19th century.

During the entire period mentioned above, the Naga Hills District (now Nagaland) and Khasi and Jaintia Hills and the Garo Hills (now Meghalaya) and the Lushai Hills (now Mizoram) were all parts of Assam.⁴ In fact, they continued to be so till certain post-Independence developments re-drew the political map of the North-Eastern Region.

The State of Nagaland came into existence on December 1, 1965. The State of Meghalaya, comprising the erstwhile Assam districts of Khasi and Jaintia Hills and Garo Hills, came into existence on January 21, 1972. The Union Territory of Mizoram, which was the old Lushai Hills district of Assam, also came into existence on January 21, 1972. Most of the local laws, therefore, were, and are, common to Assam, Nagaland, Meghalaya and Mizoram.⁵

Position as to laws enacted from time to time

Most of the laws passed before 1919 that are in force in Assam are laws passed by—

- (a) the Governor General of India in Council,
- (b) the Chief Commissioners in Council (during the period when Assam was a Chief Commissioner's Province).
- (c) the Lieutenant Governor in Council (during the period when

2. Motok and Sadiya were added to Lakhimpur by proclamation in 1942.

3. Justice Baharul Islam, "Law and Justice in the Eastern Region", in *supra* note 1 at 22.

4. *Ibid.*

5. *Ibid.*

Assam was under a Lieutenant Governor), or
(d) the Governor-in-Council.

In 1837, a set of rules known as the Assam Code was drawn up for the regulation of procedure in civil and criminal cases. No special instructions were laid down for the conduct of revenue business. But local officers were directed to conform, as nearly as circumstances would permit, to the provisions of the Bengal Regulations.

By Act 5 of 1835 Cachar, like the Brahmaputra Valley, was placed under the jurisdiction of the High Court of Bengal in civil and criminal matters.

Extension of the Anglo-Indian codes

In 1860, the general codes of civil and criminal procedure were extended to the Brahmaputra Valley and in 1862, the Indian Penal Code came into force *proprio vigore*. These enactments superseded the special Assam Code which had been drafted in 1837 and revised ten years later. The inhabitants of the hilly tracts were, however, left out of the operation of the said codes, and it was provided by the Frontier Tracts Regulation 2 of 1880 that the operation of unsuitable laws might be barred in all the hill districts in North Cachar subdivision, the Mikir Hills tract in Nowgong and the Dibrugarh frontier tract in Lakhimpur.

The Central Acts were made applicable to Brahmaputra Valley and the districts of Cachar and Sylhet, which was then a district of Assam (now in Bangladesh). But most of them were not made applicable to the hill districts. Customary laws were holding the field in the hill districts of Assam, including the two districts of Mikir and North-Cachar Hills which are now in Assam.

As in these areas, namely, Nagaland, Meghalaya and Mizoram, as well as the Assam districts of Mikir Hills and North-Cachar Hills, life and social structures are simple, most of the Central laws, particularly those relating to property and the complicated procedural laws, such as the Codes of Criminal Procedure and Civil Procedure have not been made applicable. Only the Rules for the Administration of Justice and Police in the Autonomous Districts of Assam were, and are, made applicable to those areas.

Early judicial history of Assam

From the available historical accounts, it cannot be definitely said when and how the judiciary was first organised in Kamrup or ancient Assam. The historians assert that prior to Ahom rule the system of judicial administration in Kamrup or ancient Assam was on the pattern of Hindu administration of justice as ordained by the Shastras.

The Ahom King was the supreme head of the state. But he had to

act according to the advice of the three counsellors of state, the Bura Gohain, the Bar Gohain and the Barpatra Gohain.⁶

The Bar Barua was the head of the executive and the judiciary but he could not act independently of the three Gohains and any matter placed before the monarch by the Bar Barua would be considered in presence of the Gohains and, if it was one of great importance, the Phukans and Baruas would also be summoned to give their opinion. The Bar Phukan lived at Gauhati as the King's deputy and administered the territory from Koliabar to the western frontier of Assam.

The chief judicial authorities were the Bar Barua and the Bar Phukan in their respective provinces and trials were conducted before them or their subordinate, each in his own jurisdiction. An appeal lay to them from their subordinates and in the case of the Bar Barua and Bar Phukan, a second appeal could be made to the Sovereign. The president of each court was assisted by a number of assessors (Katakis, Daivajnas or Pandits) by whose opinion he was usually guided.⁷

Administration of justice before the British rule

Immediately before the introduction of the British rule in the Brahmaputra Valley and during the Ahom rule, the administration of justice is found to have been speedy, efficient and impartial.

In Sir Edward Gait's *History of Assam*, we find the following passages:⁸

Law and Justice—In civil matters the Hindu law, as expounded by the Brahmanas, seem to have been generally followed in later times; at an earlier period the judge decided according to the custom of the country and his own standard of right and wrong. In the first instance witnesses were examined and in evidence written documents were received. The monarch would authorise any person of consequence to take cognizance of particular cases in any part of the kingdom. The joint family system was in vogue, but amongst all except the highest classes, the family usually separated, if found convenient, on the death of the father, when the sons took equal shares to the exclusion of daughters.

The criminal law was characterised by the sternness and comparative harshness. In the case of offences against the person, the general principle was that of 'an eye for eye and a tooth for tooth', and the culprit was punished with precisely the same injury as that inflicted by him on the complainant. The penalty for rebellion was various

6. *Supra* note 1 at 17.

7. *Ibid.*

8. Sir Edward Gait, *History of Assam* 253, quoted by Justice M.C. Pathak at *ibid.*

forms of capital punishment, such as starvation, flaying alive, impaling and hanging. The death penalty was often inflicted not only on the rebel himself, but extended to the leading members of his family. No record was kept in major criminal trials, but in civil cases a summary of the proceedings was drawn out and given to the successful party.

Importance of custom and of traditional institutions

The administration of justice in Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh prior to the introduction of British administration was carried on according to local customs and laws as ordained by the kings or chiefs of different areas. During the early part of British administration in the Brahmaputra Valley, the ordinary criminal and civil duties were performed by councils of the local gentry, designated panchayats, of which there were some half a dozen. More heinous cases were tried, with the assistance of a panchayat, by the Commissioner's Assistants, who also disposed of appeals from the panchayats, and from whose decisions, both appellate and original, a further appeal lay to the Commissioner himself.⁹ Similarly, the administration of justice in the other areas of the Eastern Region after introduction of the British administration was carried on by the local panchayats in accordance with local customs. Gradually, the British system of law and administration of justice was introduced in the Brahmaputra Valley and in the districts of Cachar and Sylhet which were also a part of Assam prior to partition of India in 1947. The administration of other areas such as Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh was carried on by the Rules of Administration of Justice and Police passed by the British Government. After Independence also the administration of justice is being carried on in these areas substantially on the same line.

The legal position of the districts of Goalpara, Kamrup, Darrang and Nowgong was defined by Act 2 of 1835 which placed all functionaries employed in them under the control and superintendence of the Sadar Court in civil and criminal cases, and of the Bengal Board of Revenue in revenue matters. When the semi-independent tracts in Upper Assam were resumed a few years later, the provisions of this Act were extended to them also.

As regards judicial administration, in 1880 a Judicial Commissioner was appointed for Assam. In 1903, the post of judge-commissioner was split up and a separate officer was appointed as judge. Thus, there was a whole-time judge.

9. Gait, 345 *History of Assam* (3rd revised edition).