

Introduction

The State of Meghalaya

This study deals with the tribal law in the Hill State of Meghalaya. The system of law in the tribal areas in the State possesses certain important and interesting features, deserving of study not only from the anthropological point of view but also from the legal angle.

The State was created by the North-Eastern Areas (Reorganisation) Act, 1971, which gave it the status of a full-fledged State with effect from January 21, 1972. This development, it must be noted, came through stages. Prior to 1970, the areas now constituting the State of Meghalaya formed part of the State of Assam¹. On January 12, 1970, these areas were constituted as an autonomous State of Meghalaya within the State of Assam. In 1972, they became a full State². However, there is one common Governor and one common High Court (the High Court of Gauhati) for the States of Assam, Nagaland, Meghalaya, Manipur and Tripura. The State is bounded by Bangladesh in the South and West, Goalpara and Kamrup districts of Assam in the North and the United Mikir and North Cachar Hills District of Assam in the East. The capital of the State is Shillong, which is pleasantly situated on the cool heights of a plateau. There is no railway line connecting the capital with the rest of India, but there is an all-weather motorable road from Gauhati. The area of the State is 22,489 sq. kms. with a population of 10,011,699.³

The population of the State consists predominantly of the Khasi, Jaintia and Garo people. Apart from Shillong, with a population of 122,752, the other two major cities in the State are Tura and Jowai with a population of 15,489 and 8,929 respectively. The main districts of the State are the Khasi Hills, Jaintia Hills and Garo Hills with headquarters at Shillong, Jowai and Tura respectively.

1. The Assam Reorganisation (Meghalaya) Act, 1969.

2. For a fuller history of the constitutional position, see chapter 2, *infra*.

3. The Times of India, *Directory and Yearbook* 188 (1978).

Economy

Over 80 per cent of the population is engaged in agricultural pursuits. The principal crops of the region are potato, *tezpatta*, rice, cotton, oilseeds, areca-nut and tobacco. The hill tribes generally practise shifting cultivation (*jhum*), which creates an erosion problem. In some areas permanent irrigated terraces are found. The economy suffered a set-back owing to the partition of the country. The cash crop of these regions used to be exported to the areas now belonging to Bangladesh. At the same time, these regions used to obtain many of the consumer goods from markets in areas now forming part of Bangladesh. In the Khasi and Jaintia Hills fruits and vegetables are also grown and special programmes have been undertaken to develop horticulture. The State annually produces about 70,000 tonnes of pineapples, 30,000 tonnes of oranges and 35,000 tonnes of bananas.

There are 216 small industrial units in the State, out of which 143 are in Khasi Hills, 13 in Jaintia Hills and 60 in Garo Hills. There is also a cement factory at Cherrapunji. The State Government has set up an Industrial Development Corporation to promote, establish, undertake and implement industrial programmes. The cottage industries of the State are bee-keeping, carpentry, blacksmithy, sericulture and weaving. The State is rich in mineral resources. The districts forming the Khasi and Jaintia Hills produce coal, limestone and white clay. One-fifth of the State's output of coal is produced by this area. In the Garo Hills District, there are deposits of coal, limestone, fire-clay and light coloured sandstone which are virtually untapped. Plans to exploit them have not, as yet, met with much success, owing to difficulties of transport. Forests and forest-products are the chief resources of the State.

Education, literacy and language

The literacy rate in the State is 29.49%. Education is being encouraged by providing free schooling and other amenities. The number of educational institutions is quite large. There are, according to the latest available reports, 15 colleges, 1 post-graduate training college, 132 high schools, 341 middle/senior/basic schools, 1 polytechnic, 2 industrial training institutions and 2,852 lower primary schools.⁴ The language used for all official purposes at the State level is English. Khasi, Jaintia and Garo are the principal languages spoken by the people.

Religion

The main religion of the hill tribes of Meghalaya is Christianity. According to some observers,⁵ the tribal communities in the hills of North

4. *Id.* at 191.

5. See B.K. Roy Burman, "Integrated area approach to the problems of the hill tribes of North East India", in K. Suresh Singh (ed.), *Tribal Situation in India* 80 (1972).

East India seem to have some amount of inhibition in the matter of adoption of Hinduism. One of the factors responsible for this is that Hinduism, in their eyes, is identified with the domination of the people of the plains. In the past, their relations with the people of the plains were not always happy and hence their inhibition in this matter is understandable.

State of research

General Study

The tribes under study here are the Khasis, the Jaintias and the Garos. Researches into the life of these communities have been mainly undertaken from the anthropological angle. The early works in these areas are in the form of handbooks, ethnographic glossaries and District Gazetteers. Mention may, in particular, be made of Robinson's *A Descriptive Account of Assam* (London 1841); Risley's *The Tribes and Castes in Bengal* (1891); E. T. Dalton's *Descriptive Ethnology of Bengal* (1872); Nevile and Bardoloi's *Notes on Certain Frontier Tribes; Census of India 1921, 8 Assam, Part 1, 1923*. Ehrenfel's *Mother Right in India*, 1941, though an anthropological work, deals with certain legal aspects also, and indeed contains a mine of information about the matrilineal system as in vogue in various parts of India. Hamlet Barch's *The History and Culture of the Khasi People* (1967) is a recent general study of the Khasis. Robins Burling's *Rengsanggri* (1963) is an interesting village study of a Garo tribe.⁶

Legal studies

However, these general studies can hardly be expected to deal in detail with legal issues. So far as the customary law of these communities is concerned, the literature worth mentioning is rather meagre. Gurdon's monograph—*The Khasis* (1914)—and Playfair's *The Garos* (1909) are still quoted by lawyers and judges. Since they were written long ago they have their own limitations. Keith Cantlie's *Notes on Khasi Law* (1934) is considered to be the only authority so far as Khasi law is concerned and still continues to be cited with respect in the Courts. However, since its writing, there has been a good deal of cultural inter-mingling, and there have also been some judicial pronouncements elucidating a few aspects of customary law. The time has come to take note of the extent to which such inter-mingling has affected customary law and how far these judicial pronouncements have added to what Cantlie and others have written. A.S. Khongphai, a veteran Khasi lawyer, has brought out a reprint of Cantlie's work. Khongphai himself has written a small book.

6. Rengsanggri is the name of a village a few miles away from Tura, the headquarters of Garo hills.

Principles of Khasi Law, but it is much less comprehensive than Cantlie's book. In short, the present position is that there is no recent comprehensive work dealing with various topics of the customary law applicable to Khasis.

As to Garos, booklets like Jangsan Sangma's *Principles of Garo Law*, K.S. Marak's *Principles of Garo Law* and C. D. Baldwin's *Garo Law*, are useful but there is need for a more detailed and systematic work in regard to the customary law of Garos also.

Importance of customary law and post-Independence studies

It may be pointed out that in pursuance of the constitutional commitment of the Government to ameliorate the conditions of the tribal communities, attempts have, since independence, been made to study their culture and way of life. A number of Tribal Research Institutes have been set up. The Anthropological Survey of India and the Census Organisation of the Government of India have also contributed to tribal research by publishing a number of valuable papers and articles on the tribal culture of different parts of India. However, as already mentioned above, legal studies relating to the tribal areas, dealing at length with their customary law, are scarce. It is needless to emphasise that the sanctity of customs amongst the tribal people is very great. This is particularly so in the case of those customs that have a bearing on their family life and kinship—such as inheritance, marriage, divorce, maintenance, adoption and guardianship. A study of the customary law dealing with these topics is now badly needed.

To be ignorant about the laws and customs of our own people is not a happy situation from any point of view. If we lack knowledge about them, we cannot understand the people of those areas. Such a situation not only acts as a hindrance in creating a sense of oneness, but also hampers the understanding by administrators of the problems and needs of the people and the taking of suitable action to deal with those problems and to meet those needs. Further, such a study may also help us in better understanding the laws and customs of the rest of the country and even in adopting correctives wherever needed.

There is yet another aspect—a juristic one. There is a crisis challenging the law as a defensive mechanism and as a protection against undesirable activities. An anthropological understanding of the working of the law in the special areas with which this study is concerned might help in understanding the problems and evolving solutions in a much wider area.⁷ Thus, the cause of advancing the science of jurisprudence

7. See Richard S. Canter, "Dispute Settlement in Zambia" in Nader and Todd (ed.) *The Dispute Settlement Process—Law in Ten Societies* 247-280 (1980).

may itself be promoted by a study of the tribal law, even though the geographical range of the study may be a narrow one.

Areas of study

Khasi Hills

The State of Meghalaya comprises two tribal areas, the Khasi and Jaintia Hills and the Garo Hills. The Khasi and Jaintia Hills tribal area is situated in the eastern part of the State with its headquarters at Shillong.⁸ It is bounded by Assam (on the East and the North), Bangladesh (on the South) and the Garo Hills District (on the West). This area previously constituted one district, but now comprises two districts. The area consists mostly of the hilly region and includes the Shillong plateau. The Khasis have a distinct culture. Khasis and Jaintias follow the matrilineal system.⁹ Succession to the tribal office runs through female lines (from the mother to the youngest daughter). However, office and management of property are in the hands of men (identified by these women). The Khasis speak a Mon-Khmer language of the Austro-Asiatic family. Elected councils enjoy a measure of political autonomy, subject to the control of district officers. The statutory and constitutional instruments applicable to the areas (which will come up for discussion in the present study)¹⁰ represent an attempt to strike a balance between the autonomy to be preserved for the tribal people and the control to be exercised by the State and its organs over them.

At one period of history, the whole country is said to have been united into one kingdom. In course of time, however, split brought the separate development of two independent kingdoms (Khasi and Jaintia). Each was subsequently divided into numerous political units.¹¹ Writing in 1971, one writer¹² stated that the Khasi hills division alone had 25 native "States". Each Khasi "State" is headed by a chief who is locally known as *Siem*. He is assisted by a Council of Ministers. Besides *Siems* there are other Village Chiefs in the Khasi and Jaintia Hills, bearing various other names.

Garo Hills

The other tribal area in the State—the Garo Hills District—is situated in the western part of the State, with its headquarters

8. The second district comprised in this Tribal Area, created subsequently, has its headquarters at Jowai. For a history of Jowai district, see *Edwingson v. State of Assam*, A. I. R. 1966 S. C. 1220.

9. For a discussion of the matrilineal system see chapter 10, *infra*.

10. Chapters 3, 4, 5 and 7, *infra*.

11. K. L. Bhowmik, *Tribal India: A Profile in Indian Ethnology* 143, (1971). See further, S. K. Gupta, "Traditional and Emerging Political Structures" in Dube (ed.), *The Tribal Heritage of India* 161-165 (1977).

12. K. L. Bhowmik, *ibid*.

at Tura. It is approximately co-extensive with the geographical area known as the "Garo Hills". It is bounded by Assam (on the North), Khasi and Jaintia Hills (on the East) and Bangladesh (on the South and West). It has extremely high rainfall and is heavily forested. Its clans also practise the matrilineal social system.

Each Garo village community is an autonomous political unit. It is headed by a *Nokma*. This post is hereditary and is transmitted through the "Nok". The office is the pivot of the village organisation, but carries no political authority.

The theme of autonomy

It will be found from the discussion of the constitutional position and other aspects relevant to the tribal areas (to be dealt with in the later chapters) that the autonomy of the tribes in question has received adequate attention. In fact, the theme of autonomy is a recurrent one in the literature on the tribal areas and tribal society—a theme sometimes articulated expressly and, at other times, taken as an implicit assumption. What the non-tribal scholars and public visualise as the "autonomy" of the tribes has been beautifully described by Kamla Devi Chattopadhyaya in these words :—

Members of the tribal society do not consciously feel that they belong to it. They accept it and its contours, as one accepts the landscape in which one grows up and which one naturally assimilates—not as an external framework in which one is to fit in. There is a throb of communal energy and sense of strength arising out of (one's) belonging to a great family.¹³

13. Kamla Devi Chattopadhyaya, *Tribalism in India* 3 (1978).