

Judicial System in the Garo District : The Rules of 1953

Detailed provisions as to the judicial system of the Garo District are contained in the Rules called the Garo Hills Autonomous District (Administration of Justice) Rules, 1953 (hereinafter referred to as Rules) dealing with the administration of justice in that district. Topic-wise discussion of the position follows.

Constitution of Village Councils

In the Garo District, there is a Village Council for each village within the jurisdiction of the District Council. Each Village Council is to be composed of—

- (a) the *lasker*¹ of the village, to be recognised by the District Council.
- (b) elders, half of whom shall be nominated by the executive committee and the other half elected by the adult members of the village, the number of elders for each Village Council being determined by the District Council.²

There is a president and a vice-president of each Village Council. The president and the vice-president shall be elected by the members of the Council from amongst themselves, by a majority of votes.³

Every Village Council has a life of five years from the date of its first meeting, unless dissolved earlier by the District Council.⁴

Constitution of courts

There are three classes of courts (as specified below) in the areas

1. *Lasker* is an office-holder resembling the village headman.
2. Rule 4.
3. *Ibid.*
4. *Ibid.*

within the Garo Hills autonomous district, to be constituted by the District Council for the trial of suits and cases between the parties all of whom belong to a scheduled tribe or tribes within such areas, other than suits and cases to which the provisions of paragraph 5(1) of the Sixth Schedule to the Constitution apply. The three classes of courts comprise :

- (i) Village Courts,
- (ii) Subordinate District Council Courts, and
- (iii) District Council Court.⁵

Village Courts

Each Village Court in the Garo district ordinarily consists of—

- (a) the *lasker* of the village or (in the case of a non-*lasker* village) a member of the Village Council nominated by the District Council;
- (b) two members of the Village Council who shall be elected by the Council by a majority of votes.⁶

However, the District Court may, whenever it deems necessary, appoint three persons from amongst the members of the Village Council to sit as a Bench of the Village Court for the trial of any particular class or classes of suits and cases.

The *lasker* of the village and (in the case of a non-*lasker* village) the member nominated by the District Council, shall ordinarily be the ex-officio president of the Village Court.

However, in case of a *lasker* village the District Council may, whenever it deems necessary, nominate a person other than the *lasker* of the village, as the president of the Village Court and in such event the *lasker* shall not be a member of the Village Court.⁷

The jurisdiction of a Village Court extends to the hearing and trial of suits and cases arising within the territorial limits of the village.⁸

As regards the qualifications of members of Village Courts, these courts (as already stated) consist of the *lasker* (who is a person recognised as such by the District Council) and two members of the Village Council elected by the Village Council. Specific provisions as to their qualifications do not appear in the Rules. The Village Council itself has a tenure of five years (unless dissolved earlier). Presumably, this determines the tenure of the members sitting on the Village Courts also. For

5. Rule 5.

6. Rule 6.

7. *Ibid.*

8. *Ibid.*

obvious reasons, the Rules do not provide for the salary of the members of Village Courts.

As regards the appearance of legal practitioners before these courts, the Rules do not specifically impose a bar. However, it may be mentioned that the Rules require the Village Court to "try all suits and cases in accordance with the customary laws of the village."⁹ All in all, the Village Courts are supposed to be non-professional bodies which would decide cases in an informal atmosphere without procedural technicalities and formalities.

Subordinate District Council Court

The headquarters of the Subordinate District Council Court for the Garo Hills District are at Tura. Each such court is presided over by a judicial officer appointed by the District Council with the approval of the Governor. The judicial officer acts also as the Recorder of the Court.¹⁰

The jurisdiction of the Subordinate District Council Court at Tura extends to the hearing and trial of suits and cases arising within the Garo Hills autonomous district.¹¹ Limitations as to subject matter are separately provided for.

The chief executive member or a member of the executive committee or any other member of the District Council shall not be entitled to hold office as a judicial officer.¹²

The District Council may, whenever it deems necessary, direct two or more judicial officers to sit together as a Bench and may, by order, invest such Bench with any of the powers conferred or conferrable by or under the Rules on a judicial officer and direct it (the Bench) to exercise such powers for the trial of particular suits and cases or particular class or classes of suits and cases arising within the Garo Hills Autonomous District. In that case, all references to a judicial officer shall be construed as references to the said Bench.

The District Council may, whenever it deems necessary, also nominate two or more local elders well conversant with the tribal usages and customary laws, to sit with the judicial officer of the court as a Bench and may, by order, invest such Bench with any of the powers conferred or conferrable by or under the Rules for the trial of suits and cases based on the tribal usages and the tribal customary laws only.

The executive committee of the District Council is to provide the subordinate court with such clerical staff as may be required to enable

9. Rule 39

10. Rule 7.

11. *Ibid.* As to subject matter, see Rules 21-22, *infra*.

12. *Ibid*

the court to keep all necessary records and registers and to issue summons in the name of the court.¹³

The District Council, with the previous approval of the Governor, may constitute, by Order notified in the Gazette, an Additional Subordinate District Council Court or Courts with such powers, jurisdiction and seat as may be specified in the Order, in respect of areas within the autonomous district and make consequential alteration in the jurisdiction of the courts established under the preceding Rule.¹⁴

District Council Court

There is to be one District Council Court for the Garo Hills autonomous district to be called "the Garo Hills District Council Court." It consists of such number of judicial officers as may be determined by the District Council with the previous approval of the Governor. This court ordinarily sits at Tura. The court may, however, sit at such other place or places as may be directed by general or special order by the District Council for the disposal of a particular case or cases or class or classes of cases specified in the order.¹⁵

The District Council is to appoint judicial officers of the District Council Court, subject to the approval of the Governor.

The District Council may direct any two or more judicial officers to sit together as a Bench, and may, by order, invest such Bench with any of the powers conferred or conferrable by or under these Rules on a judicial officer, and direct the Bench to exercise such powers in such class or classes of cases as the District Council thinks fit.¹⁶

The chief executive member or a member of the executive committee or any other member of the District Council is not entitled to hold office as judicial officer of the District Council Court.¹⁷

The conditions of service of the District Council Court are governed by the order made or issued, as the case may be, under Rule 15 of the Assam Autonomous Districts (constitution of District Council) Rules, 1951.

The conditions of service of the judicial officers of a Subordinate District Council Court or an Additional Subordinate District Council Court and of the staff appointed for these courts, are to be regulated by the rules made or orders issued under Rule 15 of the Assam Autonomous District (constitution of District Councils) Rules, 1951.¹⁸

The judicial officers (who preside over these courts) are appointed

13. *Ibid.*

14. Rule 8.

15. Rule 12.

16. Rule 10

17. Rule 11

18. Rule 9.

by, or with the approval of the Governor. The Rules as to administration of justice do not contain specific provisions as to their tenure and salary, or as to their full time or part time character.

But most of these matters will be regulated as rules or orders issued under Rule 15 of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951.

It may be of interest to note that there is (as already stated) a specific prohibition against a member of the executive council being appointed to these courts. To this extent, their independence is protected.

A legal practitioner can appear before these courts. But in cases where an accused is not arrested, the legal practitioner shall take the previous permission of the District Council Court for such appearance.¹⁹

Subject to certain exceptions and subject to the provisions of the Rules, the procedure of District Council Courts of all grades—

- (a) shall, in criminal cases, be “in the spirit of the Code of Criminal Procedure”, so far as it is applicable to the circumstances of the district,²⁰ and
- (b) shall, in civil cases, “be guided by the spirit but not bound by the letter” of the Code of Civil Procedure, 1908, in all matters not covered by recognised customary laws or usages of the district.²¹

Powers of courts

Village Courts

A Village Court in the Garo district shall try suits and cases of the following nature in which both the parties belong to a scheduled tribe or tribes resident within its jurisdiction :

- (a) Cases of a civil and miscellaneous nature falling within the purview of village or tribal laws and customs;
- (b) Criminal cases falling within the purview of tribal laws and customs and offences of petty nature, such as petty theft and pilfering, mischief and trespass of a petty nature, simple assault and hurt, affront and affray of whatever kind, drunken or disorderly brawling, public nuisance and simple cases of wrongful restraint.²²

The Village Court shall not be competent to try offences in respect of which the punishment of imprisonment is obligatory under the Indian Penal Code.²³

19. Rule 53.

20. Rule 44 (1).

21. Rule 48.

22. Rule 13.

23. Rule 14.

A Village Court shall not be competent to pass a sentence of imprisonment in any criminal case. It shall have power to impose a fine for any offence which it is competent to try, upto a limit of Rs. 50 It may also award payment in restitution or compensation to the aggrieved or injured party in accordance with the customary law.²⁴

In a civil case, a Village Court shall have power to award all costs, as also compensation to those against whom unfounded or vexatious suits and cases have been instituted before the court. The fines and payments imposed and ordered as above may be enforced by distraint of the property of the offender.²⁵

A Village Court has power to issue an order in writing for the attendance of the accused and the witnesses to be examined in the case and to impose a fine not exceeding Rs. 25 on any person wilfully failing to attend when so ordered.²⁶

If any person on whom a fine or any payment has been imposed by a Village Court fails to deposit the amount at once or within such time as the Village Court may allow, the court shall report the matter to the District Council for necessary action for realising the fine or dues in such manner as it may deem fit, unless the accused person gives notice of appeal against such decision.²⁷

Where a Village Court is of opinion that the sentence which it is competent to pass is insufficient in the circumstances of the case, it shall, without delay, refer the case to the competent court, and that court shall dispose of the case in accordance with these Rules.²⁸

An appeal shall lie to the District Council Court from any order or sentence passed by a Village Court in a criminal case, or from the decision of the Village Court in any other case. The appeal is to be preferred within sixty days of the conviction or sentence or decision of the Village Court. The District Council Court, while hearing the appeal, may either decide the appeal after perusal of the records of the case only or may try the case *de novo*.²⁹

Subordinate District Council Court

Save as otherwise provided in the Constitution and in the Rules, a Subordinate District Council Court shall exercise such powers (of criminal courts) defined in chapter 3 of the Code of Criminal Procedure, 1898, as it may be invested with by the executive committee of the District Council with the approval of the Governor.³⁰

24. Rule 15.

25. *Ibid.*

26. Rule 16.

27. Rule 17.

28. Rule 18.

29. Rule 19.

30. Rule 20.

A Subordinate District Council Court shall have original jurisdiction in all suits and cases in which both the parties fall not within the local jurisdiction of the same Village Court, but within the areas under the jurisdiction of the Subordinate District Council Court and also in cases and suits referred to it by a Village Court.³¹

A Subordinate District Council Court shall be competent to try all suits and cases in which both the parties belong to a scheduled tribe or tribes resident within the jurisdiction of the Subordinate District Council Court, other than the suits and cases excepted from its jurisdiction. The following suits and cases are excluded from the jurisdiction of a Subordinate District Council Court:—³²

(1) A Subordinate District Council Court shall not be competent to try suits and cases—

- (a) to which the provisions of paragraph 5 (1) of the Sixth Schedule to the Constitution apply, unless the court has been authorised by the Governor to exercise such powers for the trial of a particular class or classes of cases and suits specified in that behalf by the Governor as required under sub-paragraph (1) of paragraph 5 of the Sixth Schedule, or
- (b) in which one of the parties is a person not belonging to a scheduled tribe, or
- (c) in respect of offences—
 - (i) under sections 124-A, 147 and 153 of the Indian Penal Code,
 - (ii) under chapter X of the same Code in so far as they relate to the contempt of a lawful authority other than an authority constituted by the District Council, or
 - (iii) certain cases of giving or fabricating false evidence (section 193, I.P.C.).

(2) In certain cases, unless authorised by Governor by notification in the Gazette, a Subordinate District Council Court shall not be competent to exercise powers in—

- (a) cases relating to the security for keeping the peace and good behaviour similar to those contemplated under section 107 of the Code of Criminal Procedure, 1898;³³
- (b) cases relating to security for good behaviour from persons

31. Rule 21.

32. Rule 22.

33. References to provisions of the Code of Criminal Procedure, 1898 should now be read as references to the corresponding provision of the Code of Criminal Procedure 1973.

- disseminating seditious matter similar to those contemplated under section 108 of the same Code;
- (c) cases relating to the security for good behaviour from vagrants and suspected persons similar to those contemplated under section 109 of the same Code;
 - (b) cases relating to the security for good behaviour from habitual offenders, similar to those contemplated under section 110 of the same Code;
 - (e) urgent cases of nuisance or apprehended danger similar to those contemplated under section 144 of the same Code;
 - (f) disputes as to immovable property of the nature similar to that contemplated under section 145 of the same Code;
 - (g) cases in which a public servant who is not removable from his office save by or with the sanction of the Government of Assam or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.³⁴

Suits and cases referred to above as excluded from the jurisdiction of the Subordinate District Council Court shall continue to be tried and dealt with by the "existing courts", until such time as the Governor deems fit to invest the Subordinate District Council Court with such powers by notification in the Gazette.³⁵

The "existing courts" in this context means the courts of the Deputy Commissioner and his Assistants.³⁶

Whenever (a) there is any likelihood of breach of peace or (b) whenever any person accused of any offence involving a breach of peace, or of abetting the same or any person accused of committing criminal intimidation is convicted of such offence by any court of the District Council and such court is of opinion that it is necessary to require such person to execute a bond for keeping the peace, the matter must be referred to the Deputy Commissioner, who shall take necessary action in accordance with law.³⁷

Whenever any court of the District Council is informed that—

- (a) any person is likely to commit a breach of the peace or disturb the public tranquillity, or do any wrongful act that may probably occasion a breach of the peace or disturb public tranquillity, or
- (b) there is within the limits of its jurisdiction any person who,

34. Rule 23.

35. Rule 24.

36. Rule 24 (2)

37. Rule 25

within or without such limits, either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate, or in anywise abets the dissemination of—

- (i) any seditious matter, that is to say, any matter the publication of which is punishable under section 124A or section 153A of the Indian Penal Code,
or
- (ii) any matter concerning a Judge which amounts to criminal intimidation or defamation under the Indian Penal Code,
or
- (c) any person is taking precautions to conceal his presence within the local limits of such court's jurisdiction, and there is reason to believe that such person is taking such precautions with a view to committing any offence,
or
there is any person within such limits who has no ostensible means of subsistence or who cannot give a satisfactory account of himself, or
- (d) any person within the local limits of the court's jurisdiction—
 - (i) is by habit a robber, house breaker, thief or forger, or
 - (ii) is by habit a reciver of stolen property knowing the same to have been stolen, or
 - (iii) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or
 - (iv) habitually commits, or attempts to commit or aids the commission of the offence of kidnapping, abducting, extortion, cheating or mischief or any offence punishable under chapter XII of the Indian Penal Code or under section 489A, section 489B, section 489C, or section 489D of that Code,
 - (v) habitually commits or attempts to commit or abets the commission of offences involving a breach of the peace, or
 - (vi) is so desperate and dangerous as to render his being at large without security hazardous to the community,

the court shall refer the matter to the chief executive member for reference to the Deputy Commissioner, who shall, on such a reference being made to him, deal with the case in accordance with law.³⁸

In cases where, in the opinion of the court of the District Council, there is sufficient ground for proceeding under section 144 of the Code of Criminal Procedure, 1898, and immediate prevention or speedy remedy

38. Rule 26.

is desirable, such court shall refer the matter to the chief executive member for making a reference to the Deputy Commissioner who shall, on such a reference being made to him, take such action as he considers necessary under the said section.³⁹

Whenever a court of the District Council is satisfied that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within the local limits of its jurisdiction, such court shall refer the matter to the Deputy Commissioner through the chief executive member and the Deputy Commissioner, whenever such a reference is made to him, shall take such action as he considers necessary under law.⁴⁰

In criminal cases the Subordinate District Council Court or Additional Subordinate District Council Court may, subject to the provisions of the Constitution and of these Rules, pass any sentence authorised by any law for the time being in force.⁴¹

An appeal shall lie to the District Council Court from the decision of a Subordinate District Council Court or an Additional Subordinate District Council Court in any case, civil or criminal.⁴²

Provided that such appeals are accompanied by a copy of the order appealed against and a clear statement of the grounds of appeal and are filed within sixty days of the date of the order, excluding the time required for obtaining a copy of the order appealed against.⁴³

District Council Court

Subject to the provisions of Rules 33 and 35 (summarised below,) the District Council Court shall be a court of appeal in respect of all suits and cases triably by Subordinate District Council Courts, Additional Subordinate District Council Courts and Village Courts.⁴⁴

The District Council Court may, subject to the provisions of these Rules, pass any order on appeal authorised by any law for the time being in force.⁴⁵

The District Council Court may call for and examine the record of any proceedings of a Subordinate District Council Court or an Additional Subordinate District Council Court or a Village Court and may enhance, reduce, cancel or modify any sentence or finding passed by such court or remand the case for retrial.⁴⁶

39. Rule 27.

40. Rule 28.

41. Rule 29.

42. Rule 30.

43. *Ibid.*

44. Rule 31.

45. Rule 32.

46. Rule 32 (2).

The District Council Court has also certain powers of transfer. If it appears to the District Council Court—

- (a) that a fair and impartial inquiry or trial cannot be had in any Village Court or Subordinate District Council Court or an Additional Subordinate District Council Court, or
- (b) that some question of law, tribal or otherwise, of unusual difficulty is likely to arise;

it may order—

- (i) that any offence be inquired into or tried by another Village Court or Subordinate District Council Court or an Additional Subordinate District Council Court;
- (ii) that any particular case or class of cases be transferred from one Village Court to a Subordinate District Council Court or an Additional Subordinate District Council Court or from one Subordinate District Council Court or an Additional Subordinate District Council Court to another Subordinate District Council Court or an Additional Subordinate District Council Court; or
- (iii) that any particular case be transferred to and tried before itself.⁴⁷

When the District Council Court withdraws for trial before itself any case from any court other than the court of origin, it shall, in such trial, observe the same procedure as that court would have observed, if the case had not been so withdrawn.⁴⁸

The District Council Court may act either on the report of the lower court or on the application of a party interested or on its own initiative.⁴⁹

When any person is convicted of an offence which the District Council Court is competent to try under these Rules, and no previous conviction is proved against the offender, then, if it appears to that court, regard being had to the age, character and antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct,

47. Rule 33 (1).

48. Rule 33 (2).

49. Rule 33 (3).

and, in the meantime, to keep the peace and be of good behaviour:⁵⁰

Provided that, where any first offender is convicted by a Subordinate District Council Court and the court is of opinion that the powers conferred by this Rule should be exercised, it shall record its opinion to that effect, and submit the proceedings to the District Council Court, forwarding the accused or taking bail for his appearance before such court which shall dispose of the case in manner provided below.⁵¹

In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code punishable with not more than two years imprisonment and no previous conviction is proved against him, the District Council Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.⁵²

Where a person is convicted of such offence by a Subordinate District Council Court or Additional Subordinate District Council Court and no previous conviction is proved against him, and the court is of opinion that the powers conferred by this Rule should be exercised, it shall record its opinion to that effect and submit the proceedings to the District Council Court forwarding the accused to, or taking bail for his appearance before such court which shall dispose of the case in the manner provided by Rule 35.⁵³

Certain provisions of the Code of Criminal Procedure shall apply *mutatis mutandis* in the case of sureties offered in pursuance of the provisions of this Rule.⁵⁴

Where proceedings are submitted to the District Council Court under the above provision, such court may thereupon pass such sentence or make such orders as it might have passed or made if the case had originally been heard by it and, if it thinks further inquiry or additional evidence on any point to be necessary, it may make such inquiry or take such evidence itself or direct such inquiry or evidence to be made or taken.⁵⁵

If the court which convicted the offender, or a court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognisance, it may issue a warrant for his apprehension.⁵⁶

50. Rule 34 (1).

51. *Ibid.*

52. Rule 34 (2).

53. *Ibid.*

54. Rule 34 (3).

55. Rule 35.

56. Rule 36.

An offender when apprehended on any such warrant shall be brought before the court issuing the warrant as soon as may be within a period of twenty-four hours of apprehension excluding the time necessary for the journey from the place of apprehension to such court and such court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence. Such court may, after hearing the case, pass a sentence.⁵⁷

A warrant for the apprehension of an offender under above sub-rule shall ordinarily be directed to a police officer, but the court may, if its immediate execution is necessary direct it to any other person or persons, and such person or persons shall execute the same.⁵⁸

The court directing the release of an offender on probation shall be satisfied that the offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the court acts or in which the offender is likely to live during the period named for the observance of the conditions.⁵⁹

In a criminal case the District Council or the Governor may direct an appeal to be presented to the District Council Court from any order of acquittal passed by a Village Court or a Subordinate District Council Court or an Additional Subordinate District Council Court.⁶⁰

The appeal shall be presented within ninety days of the date of order appealed against, excluding the time needed for obtaining a copy of the order.⁶¹

57. Rule 36 (1).

58. Rule 36 (2).

59. Rule 37.

60. Rule 38 (1).

61. Rule 38 (2).