



R N Prasad  
P Chakraborty

# Administration of Justice in Mizoram



A MITTAL PUBLICATION

Justice is dynamic/changing. It requires a just state of affairs. It aligns with morality and proper distribution of favours and losses. This is possible by a democratic social order. This book deals with two systems of justice viz., custom based justice and modern legal justice based on the rule of law, operating side by side, which create mess/hutch-putch. The custom based justice is uncodified. The modern legal justice is carried out by the state court as per the justice rules of 1937 framed by the colonial rulers. Crime had previously been almost absent in the Mizo Society. Presently, crimes of different nature, (criminal and civil) are increasing owing to the enlarging money economy, the loosening of social bonds, the emergence of classes of the neo-middle rich and the poor and the concentration of wealth at the top and poverty at the bottom of the social hierarchy. The book emphasises more thrust on legislation and trail of cases by the State Courts rather than the District Councils' Courts, trying cases by uncodified, customary laws and also suggests to streamline the existing judicial administration in order to have an uniform and impartial justice. The complete separation of executive and judiciary to achieve the objective of justice is suggested.

The book, which includes fourteen articles/research papers, deals, objectively with a theoretical concept of judicial administration, various issues challenges/problems and constraints pertaining to judicial administration and also provides policy insights for the future and will be highly useful and valuable. The study briefly is an invaluable guide/help to the further research on the subject.

Rs. 350

**R.N. PRASAD** is Professor at the Department of Public Administration, Mizoram University (Central), Aizawl. He is a former Head of the Department of Public Administration and the Dean, School of Social Sciences. He has been teaching Public Administration and Political Science for well over three decades.

He has participated in several local, regional, national and international seminars/conferences/workshops and contributed numerous scholarly and research papers.

He being a prolific writer and devoted researcher, has to his credit more than 35 research papers and book reviews published in academic and professional journals of national and international repute and edited volumes. He has also authored, co-authored, edited and co-edited a number of books.

He is a member of different academic bodies of several universities, research institutes/councils/Boards and also a life member of professional associations/bodies.

He is an Honorary Secretary of the Indian Institute of Public Administration, Mizoram Regional Branch and the editor of its annual journal—Administrative Review.

**PRITHWIPATI CHAKRABORTY** being an M.A. Economics and Law Graduate from Calcutta University is presently working as Secretary to the Government of Mizoram in charge of Law and Judicial, Parliamentary and District Council Affairs Departments.

He has contributed several papers/articles to journals of national repute for their publication and also to seminars, conferences, workshops. He also authored several books on Law such as Laws of Disqualification and Anti-Defection, and Fifth and Sixth Schedule to the Constitution of India.

He has to his credit a number of recognition in various fields from Government, Legislature, Rotary International and American Biographical Institute.

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# ADMINISTRATION OF JUSTICE IN MIZORAM

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## PREFACE

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To Legal Justice, the law represents the Will of State, which includes both the customary and statutory law. It is issued by a defined authority and is enforced and imposed by the Judicial Court. If it is violated, it is accompanied by a corresponding punishment. It is limited by the provisions of the Constitution or the convention. The Constitution is a supreme law which regulates the activities of the government and prescribes the rights and duties of the people. Briefly, Justice is dynamic/ changing in accordance with a fast change in the socio-politico and economic conditions of the people. It emphasises just treatment, fairness, or a moral standard or conduct of all men to one another, which requires them to perform their social, moral and legal obligations to each other, granting to each other all fairly. Thus, law is made to seek justice through courts comprising different legal functionaries.

In the state, there are two systems of justice, viz., custom based justice and modern legal justice based on the rule of law, operating side by side and thereby creating mess and hutch putch in the Judicial administration. The custom based justice is uncodified and carried out by the courts set up by the District Councils, a creation of the sixth schedule to the Constitution of India. The modern legal justice is enforced and imposed by the Deputy Commissioner's Court as per the Justice rule of 1937 framed by the colonial rulers, which represents the state. These colonial rules empower the Deputy Commissioner to combine two powers, executive and judicial in himself. As a result, the state till today does not have separation between judiciary and executive power at the district level which contradicts one of the provisions of the Directive Principles of State Policy. Previously, the crime has been almost absent in the Mizo Society. Presently, crimes of different nature (criminal and civil) have been increasing due to the enlarging money economy loosening of social bonds, stratification of the Mizo Society into the rich and the poor and the concentration of wealth

at the top and poverty at the bottom of social hierarchy. The uncodified/ununiformly interpreted customary law has been losing its relevance in the fast changing socio-economic context.

The book emphasises more thrust on legislation rather than codification to bring into existence a sort of uniformity in the traditional justice, as the customary laws vary from place to place. An imperative need of separating judiciary from executive to achieve the objective of judicial administration is suggested, which may provide quick, and fair/impartial justice. Various issues/challenges and constraints pertaining to judicial administration and also positive suggestions to streamline them have been suggested. The present book is a modest endeavor to provide some inputs on the subject. The study, briefly, is an invaluable help/guide to the future research on the subject.

We wish sincerely out thanks to our family members for the constant help in various forms and encouragement that we received from them without which it would have been quite a painstaking task for us.

Lastly, our hearty thanks are also due to Ms. Rosalind V. Renthlei of the Department of Public Administration, Mizoram University, Aizawl, who processed the entire manuscript on computer with sincerity, passion and perfection.

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# ADMINISTRATION OF JUSTICE AND THE JUDICIAL ADMINISTRATION IN MIZORAM

H. THANSANGA

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*"True administration of justice is the first pillar of good governance"*

—George Washington

## Introduction

In the Indian democracy, the supreme power of the State is shared among its three principal organs as constitutional functionaries. They are the Legislature, the Executive and the Judiciary. Each of the functionaries is independent and supreme within its allotted sphere and none is superior to the other.

Judiciary has a vital role in the functioning of the State, more so, in a democracy based on 'Rule of Law'. Judiciary may well be said as the most prominent and outstanding wing of the constitutional system. It has to take up a positive and creative function in securing socio-economic justice to the people.

The role of the judiciary is to carry out the constitutional message. It is responsible to keep a vigilant watch over the functioning of democracy in accordance with the dictates, directives and imperative commands of the Constitution by checking excessive authority of other constitutional functionaries.

Justice has to be administered through the Courts and such administration would relate to social, economic and political aspects of justice as stipulated in the Preamble of the Constitution of India.

## Law and Justice

According to P.C. Manmauji, Law can be broadly classified into two—'Man-made law' and 'Nature-tailored-embroidered law'. The former is known as law, and the latter, justice. Law is private secret, and justice is open secret. Law is truth contained in books, and justice is truth scattered in open. Law is concerned with man-made legislations, rules, self-rules, books, reports, judicial and executive decisions. Justice is related to the rule of nature. Law is road or footpath, and justice is goal. Law may be dependent on nature, but nature is not dependent on law. Law is slave chained by so many visible and invisible considerations, but nature is absolutely independent and impartial.

In the light of the definition of and the distinction between law and justice in the preceding paragraph, let me quote a conversation between two related parties:

In Robert Bolt's Play, 'A Man for All Season', Thomas More was urged by his daughter Margaret and his son-in-law, Roper, to arrest a man they regarded as evil. Margaret said, 'Father, that man's bad'. More replied, 'There is no law against that'. And Roper said, 'There is God's law'. More then said, 'Then god can arrest him. I know what's legal, and not what's right. And I will stick to what's legal, I am not God. The currents and eddies or right and wrong, which you find such plain sailing I can't navigate. I am not a voyager. But in the thickness of law, Oh! there I'm a forester'. Roper would not be appeased, and he levelled the charge that More would give even the Devil the benefit of law. More said, "Yes, what would you do? Cut a great road through the law to get after the Devil". Roper retorted, "I would cut down every law in England to do that". This drew More to say, "Oh!...And when the last law was down and the Devil turned round on you, where would you hide, Roper, the laws from coast to coast—man's law, not God's—and if you cut them down...Do you really think you could stand upright in the winds that would blow then?" Yes, I'd give the Devil the benefit of law, for my own safety's sake".

## Rule of Law

The concept of 'Rule of Law' is the outcome of the legal and political experiences of the people. It embodies the hard-fought gains on the common law traditions of England. It is the culmination of a long and bitter struggle of the common lawyers against royal tyranny. Bracton, in the thirteenth century, maintained that even Kings were subject to law since law makes the King.

Three essential components of the concept of 'Rule of Law' are: (1) The law is supreme over the acts of both government and private persons; (2) The 'Rule of Law' requires for its operation the making of just laws which embody and give expression to the more general and somewhat amorphous normative principles of the 'Rule of Law'; (3) The exercise of public power must find its ultimate source in some legal rule, and the relationship between the State and the individual must be regulated only by law. This third principle is the bond that unites the Governors and the governed. If this obligation of the government is broken or if the government is seen as a habitual violator of the law, it would then be unrealistic to expect a voluntary and unilateral adherence to the law by the citizenry.

The doctrine of Rule of Law is that laws ought to be equal, general and known. It shall be administered by independent judges. No independent judiciary, no Rule of Law. The independence of Judiciary is essential in achieving the constitutional goals of securing of all citizens justice—social, economic and political. The live wire of the judicial system is the independence of Judiciary. Rule of Law envisages the pervasiveness of the spirit of law throughout the whole range of government. It is the operating instrument of justice in a civilized society.

The Indian Constitution rests on federalism, democracy, constitutionalism, the Rule of Law and respect for minority rights. These defining principles function in symbiosis or unision. No single principle can be defined in isolation from the others nor does any one principle trump the operation of any other. Decisions should be made by that application of known principles of law. That means any government action should be on the basis of predetermined rules. The most important element in the Rule of Law is good governance which means that all public power and public wealth are used only for public good.

### **Judicial Accountability and Transparency**

A judge has burdensome responsibilities to discharge. His decisions may well affect the interest of individuals and groups who are not present or represented in the court. If he is not careful, the judge may precipitate public agitation.

The faith and confidence of the common people in the judiciary will be maintained only if the highest possible standards are adhered to by judges. It is, therefore, imperative that the actions of judges are transparent and constitutionally sound. The judges must make themselves accountable for their performance and ensure that their

actions are transparent and are within the parameters set by the Constitution. The judiciary must follow the standards of morality and behaviour which it sets for others.

### **Impartial Justice**

Lord Denning once said, "Justice is rooted in confidence, and confidence is destroyed when the right-minded go away thinking that the judge is biased. The judges should not be diverted from their duties by any extraneous influences, nor by any hope of reward, nor by the fear of penalties, nor by flattering praise, nor by indignant reproach. It is the sure knowledge of this that gives the people confidence in judges". The only real source of power that the judges can tap is the respect and confidence of the people.

If a judge decides wrongly out of motives of self-promotion, he is no less corrupt than a judge who decides wrongly out of motives of financial gain. In either case, the incumbent of the office is not worth of being a judge. His actions erode the credibility of the institution in public mind and that is the greatest threat to the independence of judiciary.

### **Speedy Justice**

The right to speedy trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India. One of the greatest challenges that stares us in the face as we approach the 21st century is the failure of judiciary to deliver justice expeditiously which has brought about a sense of frustration amongst the litigants. Human hope has its limit and waiting endlessly is not possible in the current life style. The consumer of justice wants unpolluted, expeditious and inexpensive justice. In the absence of it, instead of taking recourse to law, he may be tempted to take the law in his own hands. The lack of speedy dispute resolution system has a direct impact on the level of lawlessness in our society. It should also be kept in mind that a peaceful society is a necessary pre-condition for any kind of development.

One of the causes of delay in the disposal of cases is 'judge-made' i.e. his lack of punctuality, laxity and lack of control over the case file and court proceedings. Hardly an attempt is made to examine the parties to the case at the first hearing. Other causes of delay are the grant of unnecessary adjournment on the mere asking and the delay in pronouncing judgements.

Court time is sacrosanct and no judge has any right to waste

it. The judges at all levels must respect the court time and remain punctual. As we enter the 21st century, it is for all concerned to get the arrears of court cases eradicated at the earliest. This will be possible only with the unstinted cooperation of the Bar Association and the presiding judges as partners in the great task of administration of justice.

### **Expensive Justice**

Equality before law enshrined in Article 14 of the Constitution of India, Protection of Life and Personal Liberty in Article 21, and Equal Justice and Free Legal Aid in Article 39-A, are constitutional imperatives. The right to consult and to be defended by a legal practitioner of one's choice is also guaranteed by Article 22 (1) though it does not guarantee any right to get legal assistance from the State. In spite of these constitutional promises, the administration of justice to the poor common men remained neglected, and its main beneficiaries turned out to be the men having money power and lately the muscle and contact power. It was the 42nd Amendment of the Constitution which had brought new hope for the neglected poor.

An easy access to courts is not affordable for the poor and downtrodden because of the high cost of litigation. The bar today appears to be autonomous and not accountable. The legal professional law has a rich class bias conferring freedom to the lawyers to sell their legal services at their own price. The commercialised shops of law professionals, having negotiable high price of each item of legal service are beyond the reach of the have-nots. Unless this lawyer's freedom is curbed, only rich people will be attracted by them.

The procedural laws prescribing the eligibility requirement to claim free legal assistance by the indigent persons should be enforced more vigorously. The provision of Public Interest Litigation or Social Interest Litigation also needs to be fully utilised with the help of public-spirited persons and lawyers.

### **Administration of Criminal Justice**

Administration of criminal justice in India is at crossroads. Large scale of acquittals are eroding people's confidence in the effectiveness of criminal justice system. When people see persons accused of heinous and ghastly offences getting acquitted, they believe that either the courts are too liberal or pro-criminal or are not functioning the way they ought to function.

Unfortunately, the people do not know nor do they try to know the reasons for such acquittals. It may be pointed out that most of the acquittals are on account of the fact that the witnesses produced by the prosecuting agencies do not on many occasions support the prosecution cases. At the same time, a very large number of acquittals are on account of faulty, non-scientific and disoriented investigation. Some acquittals take place because the judicial officer, rather than carefully and properly shifting the evidence, take to the easy course of throwing out the prosecution case on account of insignificant discrepancies and narrow technicalities. They ignore human psychology and behavioural probability when assessing the testimonial potency of the evidence. While sparing the innocent, the courts must respond to the society's cry for justice and punish the guilty by a proper and judicious approach to the assessment of evidence.

### **Judicial Administration in Mizoram**

In the light of the foregoing discussion on certain aspects of judicial system in India, we may now have a brief observation on the judicial administration in Mizoram-its maladies and remedial measures.

#### **1. Faulty and Slipshod Investigation of Cases**

This is one of the disadvantages in our legal system. Half-hearted or incomplete investigation adversely affects framing of charge-sheet. This in turn misleads the court. A complete and factual evidence is essentially necessary for right decision. A successful investigation of cases is the result of a hard-working and devoted investigating officer, a spontaneous and reliable public cooperation, and the provision of the required facilities by the government. It is also necessary to build up good cooperation between the police and the prosecution.

#### **2. Adjournment of Hearing or Trial of Cases**

Another drawback of the courts in Mizoram is the postponement of court dates on a small pretext or technicality. This discredits the judicial system. As already mentioned in the general discussion heretofore, court date is sacrosanct. The judge must respect the court time and remain punctual. Poor litigants cannot afford to waste time. A time limit for adjudication may be prescribed, and the procedural laws may also be suitably amended. Once fixed the court date and summons issued by the court, priority should be given by all concerned, the judge, the prosecution, and the litigants.

#### **3. Poor Attendance of Case Witnesses**

The Mizo people, by and large, are averse to involvement in legal

and other controversial matters. This always is the reason for lack of ready assistance or cooperation in cases which is most needed by the investigating officer. As such, on many occasions the case witnesses do not comply with summons of the court. Another reason for poor attendance of courts by witnesses is inadequate amount of travelling and daily allowances given to the witnesses. All the more, postponement of hearing due to absence of judges is very much disgusted by the witnesses. In such a situation, it is unrealistic to expect the person or persons witnessing to turn up at the next court time. It is, therefore, essential to educate the public to play their role in cooperating with the investigating officer as true citizens and oblige court summons. On the other hand, courts should avoid postponement of trial of cases, and at the same time, pay the case witnesses adequate allowances so as to cover their expenses for coming to the court.

#### **4. Expensive Justice**

Our present system of justice is unfortunately expensive. Indigent persons can hardly have access to justice. The old days of simple and inexpensive court system and direct presentation of case arguments in the court by the parties to the case have gone. Our judges insist assistance of legal professionals even in simple cases at the drafting stage of petition, and later at hearing and argument stage. This has advantages and disadvantages. Its advantages are: *it helps the prosecution office to keep and prepare papers in a systematic way; it helps the judge to know the relevant legal and technical points to base on from the learned arguments of lawyers; it generates employment for the law graduates.* Its disadvantages are: It may pervert truth if the judge decides cases on the basis of lawyer's statement only and not on the merit of the case which the judge is supposed to find out. Winning or losing a case depends entirely on the efficiency of lawyers. The most glaring defect is a high rate of fees for legal services rendered by advocates. A rich man who can engage lawyer has an advantage over the poor. This is against the fundamental *right of equality before law.*

#### **Accountability of the Bar**

The existing Bar Association is autonomous and not accountable for its activities. The lawyers have freedom to sell their services at their own rates. Their rates are so high that poor citizens cannot afford to avail themselves of their services. Only rich people are attracted by lawyers. The eligibility requirement to claim free legal assistance, prescription of nominal court fee and fixing of minimum

fee for lawyers which are laid down in the procedural laws have very little effect. What is needed today is an accountable and transparent judiciary including the Bar. The Court, the Bar, and the Bureaucracy in unison should address to themselves the right to free legal services and fold up their sleeves to implement fully the legal aid scheme.

### **Pendency of Cases**

A maxim goes that 'Justice delayed is Justice denied'. Speedy justice is the *sine quo non* of criminal jurisprudence. The failure of civil and criminal justice system is manifesting itself in abnormal delays in litigation and huge pendency in courts. Mizoram is no exception.

In the Scriptural proverb, we find a canonical message which runs as follows—"*Do not withhold good from those who deserve it, when it is in your power to act. Do not say to your neighbour, 'Come back latter, I'll give it tomorrow' when you now have it with you*". From this, we can explicitly know that to do right things in time si divine, or in other words, justice, and delaying can amount to sin, that is injustice in legal connotation. The following table will show the position of our court-cases in Mizoram as on 30th June, 2000 in regard to pending cases.

The struggle to clear the arrears of cases have been made through different fronts including Lok Adalat and the Permanent Conciliation Centre. The contribution of Lok Adalat and the Permanent Conciliation Centre is quite commendable. The Conciliation Team is composed of sincere, hardworking and devoted members on part-time basis. The question is how to clear the arrears which may be more this year. The courts should see that the time spent by the culprit in prison during trial does not exceed the maximum punishment permissible under the law.

In 1990, there was Conference of Magistrates in Mizoram. In the Conference, they compiled number of pending cases, and it was unanimously agreed to make a date line before which each concerned magistrate should try to clear arrears of cases under his/her disposal. This type of special drive for clearance of pending cases may be organised periodically.

On entering a new millennium, one should realise a great challenge posed by pendency of cases. The magistrate should rise to the occasion with determination. They should also recognise that judiciary is an organ of the State with the sole objective of serving

Sl. No.	Name of Court	Aizawl District		Lunglei District		Chhimtuipui Dist. (Saiha)		Champhai District	
		Civil	Crml	Civil	Crml	Civil	Crml	Civil	Crml
1	2	3	4	5	6	7	8	9	10
1.	D.C. Court	314	1053	13	183	5	123	—	110
2.	District Council Court	33	—	—	—	—	—	—	—
3.	Subordinate Dist. Council Court	—	—	32	—	—	—	83	—
4.	Special Court, ND & PS	150	331	—	—	—	—	—	—
5.	Gauhati High Court, Aizawl Bench	280							
Total		Civil cases		630		Criminal cases		1800	
		High Court		280		Grand Total		2710	

the public in a fair, efficient and accountable manner. The loyalty of the judiciary must be for public good and speedy justice, and not to be the convenience of advocates or politicians or bureaucrats. Case appeals should also be restricted, and all appeals should be heard expeditiously.

In order to facilitate better and speedy services of courts, the following suggestions may now be made— Additional staff, wherever necessary, additional and better facilities, equipment, say infrastructures; efficient investigating officers and staff; cordial relation and cooperation between police and the prosecution, strict adherence to court date and time, determined implementation of free legal assistance scheme for poor litigants; realisation of nominal or reasonable fee for legal services rendered by the lawyers; proper training of judges and other staff of the courts, and lastly, a review or evaluation of performances of courts from time to time.

### Independence of Judiciary

This is what we call in common parlance in Mizoram separation of Judiciary from the Executive domain. Government of Mizoram have gone half way on this issue when partial separation of judiciary was approved on the heels of creation of Mizoram Judicial Service. Unfortunately, very little change or difference, if not nil, has been noticed in the functioning of our courts. For instance, the Executive

Magistrates who are given magisterial powers mainly for maintaining law and order, that is, to deal with public nuisance or riots, are allotted trial of cases along with members of Judicial Service. Needless to say, the Executive officers are busy enough with their normal works, and can hardly spare time for hearing and trial of cases. No wonder court dates and time have to be postponed due to non-availability of the judge. Not only this, their knowledge of law is also limited.

It has been nearly thirty years since Mizoram started as Union Territory Government with Legislative Assembly and 14 years since Statehood. Not only we have our own government, a Bench of Gauhati High Court is located in Aizawl. It is high time to have an independent judiciary if we want efficient and prompt disposal of cases. This is warranted enough by a separate Judicial Service, members of which are legally qualified and whole-time workers in the department. The State government have to give serious thought to this issue. The sooner the better for securing to the public justice as guaranteed by the Constitution.

The next step to the separation of Judiciary will be purgation of the judicial system, as an independent judiciary calls for efficiency, impartiality or integrity at all levels of judicial administration. A free and independent judiciary must have officers of unimpeachable integrity and highest character apart from acknowledged competence in law.

The concept of independence of judiciary is not limited only to independence from executive pressure or influence but also to independence from other pressures and prejudices. We should bear in mind that while administration of justice draws its legal sanction from the Constitution, its credibility rests in the faith of the people. Therefore, a judge must have the basic sensibility to know human suffering, poverty, inequality and exploitation. He needs self-improvement. *'Justice is never given, it is always a task to be achieved. It is a struggle, as between law and liberty, law and conscience, values on human dignity and all that goes with it.'*

### **Conclusion**

At the risk of being trite, we have discussed certain principles of jurisprudence and within the scope of the discussion, few aspects of the judicial administration in Mizoram have also been discussed. Nevertheless, there will be no gainsaying that there is a need for further improvement on the part of judges in particular, and on the part of judicial staff in general. Let us hope that this state

government will come forward with tangible scheme so that we may have in the near future an exemplary judicial system that can achieve the constitutional goal of securing to all citizens justice-social, economic and political.

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