

History of Modern Judiciary in Khasi Hill Meghalaya

E. Jyrwa

After the annexation of Khasi Hills by the British, the rulers of the Khasi States were empowered to govern their respective states and allowed to adjudicate and decide all Civil and Criminal cases except the more heinous ones in which their own subjects alone were concerned through Sanads. The system of administration of justice which was started in 1833 was continued up to 1841. After 1841, the *Syiems* heard all civil cases up to a certain limit and all criminal cases not of a heinous character in which the people of their own village were concerned. This state of affairs continued until 1869 when the Garo Hills Act (Act XXII) of 1869 was applied to Khasi Hills on 1 November 1871¹.

By a promulgation issued under the Government of India Act, 1870, on 6 February 1874, Assam was made a separate administration under the Chief Commissioner and its territories included among others Khasi and Jaintia Hills. After its constitution as a Chief Commissioner's province, it was a Scheduled District under the Scheduled District Act (Act XIV of 1874). Under this Act, the administration of criminal justice in the Khasi and Jaintia Hills was vested on the commissioner of Assam, the Deputy Commissioner and his Assistants and the recognised village authorities such as the *Syiems*, *Lyngdohs*, *Wahadadars* and *Sirdars* authorised by the head of the province.

The Deputy commissioner was competent to pass a sentence of death, transportation or imprisonment up to the maximum amount provided for the offence. However, the sentences of imprisonment of seven years shall be subject to the confirmation of the Chief Commissioner. The Deputy Commissioner authorised the village elders to dispose of minor cases and inflict fines up to Rs. 50/-².

Relating to the administration of Judicial system in the Khasi and Jaintia Hills District, the Governor of Assam issued rules for the

Administration of Justice and Police in the Khasi and Jaintia Hills District prescribed by Government Notification No. 2618-A.P., dated 29 March 1937, cancelling all provisions on the subjects. The rules of their own force extend to the whole of the Khasi and Jaintia Hills District but did not apply to the "Khasi States", substantial portions thereof were extended to those states by the crown representative, acting under the Indian (Foreign Jurisdiction) order in council issued under Notification NO. 164-IB, dated 18 August 1937 of the Foreign Jurisdiction Act. Incidentally, the Rules *per se* did not confer any judicial power on any village chief unless the Deputy Commissioner conferred the power on him and recognised it by the grant of a *Sanad*³.

The Rules for the Khasi areas applied to the whole of the British territory of Khasi and Jaintia Hills, but Rules relating to criminal justice, did not apply to the municipal and cantonment areas of Shillong. However, the rules applicable to civil matter were extended to the whole district, without exception. The Rules were also applicable to the administered area and the Deputy Commissioner exercises jurisdiction with regard to the civil matters. The Governor may appoint an Additional Deputy Commissioner, for the trial of a particular area, civil and criminal, and may direct the Additional Deputy Commissioner to exercise all or any of the powers of the Deputy Commissioner. The High Court may, for any reason transfer any original case, whether civil or criminal, when it is pending or under trial before any court, to any other court competent to try it.⁴

Section 16 of the Rules, 1937 states that the administration of criminal justice was administered by the Deputy Commissioner, his Assistants, the *Sardars* and other Chief village authorities. An assistant to the Deputy Commissioner is competent to try an offence under Section 147 of the Indian Penal Code relating to punishment for rioting even if both the parties belong to Khasi tribe. Section 17 further states that the Deputy Commissioner was competent to pass a sentence of death, transportation or imprisonment up to the maximum amount provided for the offence and a fine up to any amount provided that all sentences of death, transportation or imprisonment of seven years and upwards shall be subject of the confirmation by the High Court of Assam. Section 18 also states that the Deputy Commissioner may empower any *Sardar* or any village authority to

dispose of cases relating to offences involving damage to property not exceeding Rs. 50/- injury to person not affecting life or limb, house trespass and theft where the value of property did not exceed Rs.50/- . In such cases, these village authorities are competent to impose a fine for any offence triable by them, up to the amount of Rs.50/-. They may also award compensation to the extent of the injury sustained, and enforced it by attacking the property of the offenders. In cases in which the fine is not paid or realised, they shall represent the facts and send in the offended to the Deputy Commissioner, who may try the case and impose such other punishment as he is competent to inflict. An appeal lie to the High Court punishment as he is competent to inflict. An appeal lie to the High Court from any sentenced-passed by the Deputy Commissioner or Additional Deputy Commissioner, within thirty days of the order appealed against, excluding the time required for procuring a copy of the order. In case of a death sentence, the appeal must be preferred within seven days⁵.

With regards to civil justice, section 25 of the Rules 1937, entrusted the Deputy Commissioner, his Assistants *Sardars* and other village authorities to try the case. Section 26 states that the *Sardars* and other Chief Village authorities may be recognised by the Deputy Commissioner by *Sanad* under his signature as competent to try cases without limit as to amount, but with the following reservations : (a) they may not in which their fathers, mothers, sons, daugghters, uncles, aunts, sisters, brothers, the children or any near relatives are parties, nor being a suit in which a native of the plains, or native of another *Sirdarship* nor resident in their jurisdiction are parties; (b) all suits must be decided in open *darbar* in the presence of the parties and at least three respectable witnesses. It was held with reference to this provision in the Rules of 1937, that the trial of a suit by the *Durbar* was not initiated simply because the plaintiff is one of the *darbaris*.⁶

Further, section 27 empowers the *Sardars* and other village authorities to compel attendance of parties to any suit, being residents within their own jurisdiction, and to a fine within the limit of Rs.50/-. Section 33 also states that an appeal shall lie from the decision of the *Sardar* or other duly recognised village authority to the Deputy Commissioner or an Assistant to the Deputy Commissioner⁷.

With the advent of independence, the 25 Khasi states that is Syiemship, Lyngdohship, Sirdarship and Wahaddarship had formed themselves into a federation of Khasi States in 1946. The *Durbar* of the Federation of Khasi States which included all the Khasi States as members agrees that with effect from 15 August 1947, all existing administrative arrangements between the province of Assam and the Indian Union and the Khasi States shall, with the exception to be noted below, continue in force for a period of two years or until now or modified arrangements have been arrived at between the respective authorities concerned. The Federation signed the Instrument of Accession of the Khasi Hills States which was accepted by the then Governor-General of India on 17 August 1948. In the annexed agreement to the Instrument of Accession, the Khasi States agreed with the exceptions that for judicial matters (a) the Federation will set up a competent court of the Federation to exercise the judicial functions formerly vested in the political officer; (b) in matter of customary laws there will be no appeal from the court of the Federation. In other cases an appeal will lie to the Governor until a High Court of Assam was established when such appeal will lie to the Assam High Court; (c) the judicial authority exercised by State Courts in respect of Khasis would be maintained; (d) in regard to all non-Khasis the judicial arrangement as existed would continue for the present except that the judicial powers of the Political officer would be vested in the court of the Federation when its competence was recognised. Where non-Khasis had voluntarily agreed to submit to the jurisdiction of a state Court that court would continue to be the original trying court. Where State Courts comply with certain conditions to be laid down they may be vested with First, Second or Third Class powers as defined in the Criminal Procedure Court and their jurisdiction would include both Khasi and non-Khasis. The Chief Justice of the Assam High Court, when established, would assume this power which was vested in the Governor⁸.

Certain changes also took place such as the application of the Indian Penal Code and Rules relating to Civil and Criminal justice under the Schedule District Act, 1874 and published with notification dated 29 March 1937, to the Khasi States vide Central Government order No. 165-1-B., dated 16 March 1948, made under Extra Provincial Jurisdiction Act, 1947. The order of 16 March 1948, however, was superseded and was issued by another order known as the Khasi

States Federation (Administration of Justice) orders, 1948, made by the Government of India under Extra-Provincial Jurisdiction Act, 1947. This order extends to the whole of the Khasi States Federation excluding the Shillong Administered Areas⁹.

Subsequently, in October 1948, the Government of India issued another order known as the Khasi States Federation (Administration of Justice) (Supplemented) order, 1948. The order came into force from 1 July 1948¹⁰. Administration of both civil and criminal justice in the Khasi States Federation was administered by the court of the Khasi States Federation, its subordinate courts and the state courts. The court of the Federation was competent to pass sentences of death, transportation or imprisonment up to the maximum amount provided for the offence. The court function for two and a half years. No appeal from the decision in matters of customary laws was made. In other cases, appeal could be made to the Governor until a High Court for Assam was set up.

In 1949, in exercise of the powers conferred by section 4 of the Extra Provincial Jurisdiction Act, 1947 (Act No. XLVII of 1947), as delegated to the Governor of Assam by the Government of India. Ministry of States, dated 3rd November 1948, and of all other powers enabling the Governor of Assam in this behalf, and in supersession of all previous orders on the subject existing prior to the 15 August 1947, the Governor of Assam made the Khasi States (Application of Laws) order 1949. Section 6 of the order 1949, states that any court of Authority may construe the provision of any enactment applied by this order thereunder with such modifications not effecting the substance as may be necessary in order to adopt them to the matter before the court of authority; further, any order passed, in any case or in relation to the Khasi States, Shillong Administered Areas, with effect from 15 August 1947, by any officer or Authority on whom powers are conferred shall be deemed to have been passed and the order shall apply accordingly¹².

The Khasi states Federation court ceased to function with effect from 26 January 1950, when the Khasi States Federation went out of existence with the merger of Khasi States into Assam. Therefore the Khasi States Federation (Administration of Justice) Order, 1948 issued by the Government of India, Ministry of States dated 16 June 1948, and also the Khasi States Federation (Administration of Justice)

supplemental order, 1948, issued by the Government of India, Ministry of states, dated 4 October 1948, was cancelled¹³.

When the constitution came into force, the Rules for the Administration of justice, 1937, made on 29 March 1937, were in force in the area within the Municipality of Shillong, and forming part of the state of Myllem. The lapse of paramountcy of British crown and the creation of new relationship under the instruments of Accession and the agreement which formed part of the Instrument of Accession did not in anyway affect the applicability of the Rules for the administration of civil justice so far as the Shillong Administered area was concerned¹⁴.

On 25 January 1950, the Governor of Assam in exercise of the powers conferred by section 4 of the Extra provincial Jurisdiction Act, 1947, as delegated to the Governor by the Government of India in the Ministry of States, and of all other powers enabling him in this behalf, the Governor of Assam issued another order known as the Khasi States (Administration of Justice) order, 1950 under Notification No.S.K./140/49/8 dated 25 January 1950¹⁵.

Section 1(2) of the Khasi States (Administration of Justice) order, 1950, applied to the area of the United Khasi-Jaintia Hills District which were known as Khasi States immediately before the announcement of the constitution of India, excluding so much of the district as is comprised in the Municipality of Shillong. On the criminal sides, section 2 of the order states that criminal justice was administered by the Deputy Commissioner of Additional Deputy Commissioner, Khasi and Jaintia Hills District and his assistants and also by the Syiems, Sirdars, Lyngdohs or Wahdadars. Section 4(1) empowers the Deputy commissioner or Additional Deputy Commissioner to pass any sentence authorised under the Indian Penal Cod or any other law for the time being in force in the Khasi States; but any sentence of death or transportation shall be subject to the confirmation by the High Court of Assam. Section 4(2) states that the courts of the Assistants to the Deputy commissioner and of the syiem of the Khasi States, shall exercise such powers, not exceeding those of a Magistrate of the First Class as define in the Code of Criminal Procedure 1898, as they may be invested with the Governor of Assam.

An appeal shall lie to the Deputy Commissioner or Additional Deputy Commissioner from the Assistant to the Deputy Commissioner preferred within thirty and sixty days respectively at the date of the order. Any person convicted on a trial by the Deputy Commissioner may appeal to the High Courts. Such appeal must be presented within thirty days from the date of the order appealed against¹⁶.

The (Administration of Justice) order, 1950, also provides special provision to the court of a *Syiem* of a state. Section 16 states that the *Syiem's* courts which were established under the customary law of the state recognised as such by the Governor of Assam, could try and offence under the Indian Penal Code or under any other law for the time being in force within its respective locality except these punishable with death, transportation or involving a punishment of five years which may arise within the limits of its locality and in which the Khasis who reside or hold land within its locality are concerned. Provided, that the *Syiem's* court would exercise jurisdiction over non-Khasis only if the parties voluntarily invoke or submit to its jurisdiction¹⁷.

On the civil side, section 19 states that the *Syiem's* court can adjudicate any civil cases arising within its respective locality in which Khasis who reside or hold land within its respective locality in which the parties were Khasis. With regard to non-Khasis, section 20 of the order states that the Assistant to the Deputy Commissioner shall be the court of first instance, except when the parties concerned invoke or submit to the *Syiem's* court within its jurisdiction. The Deputy Commissioner or Additional Deputy Commissioner and his Assistant could not function as an original court in cases triable by *Syiem's* court¹⁸.

In all civil matters, section 23 states that the Deputy Commissioner or Additional Deputy Commissioner could adjudicate according to customary law wherever applicable, and where the customary law cannot be applied to either party it could, adjudicate, according to justice, equity and good conscience. An appeal lies to the Deputy Commissioner or Additional Deputy Commissioner from decision of the Assistants to the Deputy Commissioner and the *Syiem's* court within thirty days and sixty days respectively of the date of the decision¹⁹.

In Addition to the above order, the Governor of Assam also issued a notification dated 25 January 1950, directing that with effect from 25 January 1950, the reference to the "Dominion Agent" Khasi States". Additional Dominion Agent, Khasi States", "Assistant to the Dominion Agent, Khasi States" and the "court of the Khasi States Federation" wherever they occur in all enactments applicable to the Khasi States under the Extra Provinciala Jurisdiction Act, 1947, shall be construed respectively to the "Deputy Commissioner, Khasi and Jaintia Hills District", "Additional Deputy Commissioner, Khasi and Jaintia Hills district", "Assistant to the Deputy Commissioner, Khasi and Jaintia Hills District", "Assistant to the Deputy Commissioner, Khasi and Jaintia Hills District", and the "Court of the Deputy Commissioner, Khasi and Jaintia Hills District"²⁰.

Thus, with effect from 15 August 1947, there was no more political officer in the Khasi States. From 15 August 1947 to 25 January 1950, there was a Dominion Agent, Khasi States, and the Dputy Commissioner, Khasi and Jaintia District held the post, in addition to his own duties. But with effect from 26th January 1950, there was no more Dominion Agent, Khasi States. There remained only the Deputy Commissioner, Khasi and Janita Hills District.

In April 1952, in accordance with the provisions of paragraph 19 of the sixth Schedule to the Consitution of India, the Governor of Assam issued a Regulation III known as the the Assam Autonomous District 9Administration of Justice) Regulation, 1952. According to this Regulation necessary modifications were made in the Rules for the Administration of Justice and police in the Khasi and jaintia Hills, 1937 relating to Shillong Municipality; the Khasi States (Application of Laws) order. 1948, and the Khasi States (Administration of Justice) order, 1950²¹.

In Maty 1952, certain amendments were brought into force in certain areas of the Khasi States under the United Khasi-Jaintia Hills District (Application of Laws) Regulation, 1952. According to this Regulation, the Governor of Assam, direct that any of the laws specified in the schedule, shall extent to, and have effect, in so much areas of the united Khasi-Jaintia Hills District which were known as the Khasi States immediately before the commencement of the constitution of India, and for this purpose different areas and different dates may be specified for different laws²².

Then, on 12 December 1952 in accordance with the Khasi States (Application of Laws) Order, 1949, the Government of Assam directed that under the provision to paragraph 20 (2) of the sixth schedule to the constitution of India, the former Shillong Administered Areas should be excluded from the purview of the District council in matters relating to village or town administrative including the establishment of village or town police ²³.

Further changes were affected with the establishment of the District Council in 1952. Moreover, the formation of the United Khasi-Jaintia Hills Autonomous District Council in 1952 have eroded the Chiefs Judicial power to a considerable extent. The judicial administration in the district was bifurcated between the Deputy Commissioner and the District Council and is based on (i) the Sixth Schedule to the Constitution of India, (ii) Rules for the administration of Justice and Police in the Khasi and Jaintia Hills, 1937, (iii) the Khasi Syiemships (Administration of Justice) order, 1950, and (iv) the Assam Autonomous Districts (Administration of Justice) Regulation, 1952. However, during the pre-independence days and the period of to 1952, the judiciary was the exclusive sphere of the Deputy Commissioner who used to exercise his powers by himself and through his assistants. But in the post-independence days, after the formation of the District Council, the Sixth Schedule to the Constitution of India envisaged a scheme whereunder the District council exercises exclusive judicial powers in certain areas while in certain other matters, the Deputy Commissioner and his Assistant have been entrusted with the exercise of judicial powers.

Notes and References :

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17. *Ibid.*, p. 30 *Ibid.*, p. 37.
18. *Ibid.*, p. 31; *Ibid.*, pp. 38-39.
19. *Ibid.*, pp. 31-32; *Ibid.*, pp. 39-40.
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