IJNRD.ORG ISSN : 2456-4184
INTERNATIONAL JOURNAL OF NOVEL RESEARCH AND DEVELOPMENT (IJNRD) | IJNRD.ORG
An International Open Access, Peer-reviewed, Refereed Journal

Legal Pluralism in North East India: The Dynamics in Adjudication of Criminal Justice System with a Focus on the State of Arunachal Pradesh

Dr Mizum Nyodu[1]

Abstract

It is said that, 'first came customs and then came law.' Customs evolving from within the society and plays an important role where, the society itself acts as an enforcing agent and can be also termed actual law of the people by virtue of it being emanating from within the society. The administration of justice in the North-eastern States of India also was majorly dispense customarily. The paper attempts to look at the existence of dual system of justice dispensation in the North-East region with specific reference to the state of Arunachal Pradesh, which was a culminative factor of the existent practices getting recognition in the colonial period through various regulations and acts, which after independence was mandated by the Sixth Schedule of the Constitution of India along with extension of other regulations and acts. The paper traces the development of formal justice system alongside of customary justice system in criminal trials across the hill areas and to analyse the conflicting as well as consensual methods of justice dispensation coexisting in complete harmony.

Introduction

The tribals of the Northeast India have lived for centuries in perfect harmony with the nature, isolated from outside influences, and developed self-governance systems based on their own customary rules, eventually leading to the formation of customary laws. In the process, two main forms of 'customary adjudication of justice'[2] emerged – the chieftainship' and 'village council system'. Within these tribal communities' crimes existed like any other society and elaborate rules for administration of justice were established to address them within different tribes. However, the arrival of the British in India affected the governance and justice dispensation systems of these tribes. The heinous crimes were decided through the formal justice system established by British thereby limiting the jurisdiction of customary courts to decide cases. Thus, the British rulers implemented a unique policy of minimal-interference in the affairs of the indigenous tribes of North-

[1] Asst Prof, Jarbom Gamlin Govt. Law College, Jote
[2] Joseph Blocher, "Order Without Judges: Customary Adjudication" 62(3) *Special Symposium Issue Custom and Law* (December, 2012).

east India allowing them to settle certain offences through customary mechanisms, resulting in a system of legal pluralism.[3]

The term 'custom' substantially differs from the term 'customary laws.'[4] There can exist various customs without any legal authority but customary laws have the sanction of society, the non-obedience of which would invite punishment. In the dawn of human history, our ancestors led individualistic and nomadic lifestyles, devoid of organized societal structures. They existed in harmony with the laws of nature, each person independent without the need for communal ties. As time advanced, through the process of learning and experimentation, they gradually grasped the advantages of collective living. Certain behavioural patterns surfaced, evolving into imperative norms that were willingly and deliberately embraced by the members of the growing community. This stage is where the custom first attained its existence which we call today the usage.[5]

Mayne says:

"A belief in the propriety or the imperative nature of a particularly course of conduct, produces a uniformity of heavier in following it; and a uniformity of heavier in following a particular course of conduct produce a belief that it is imperative or proper to do so. When from either cause or from both causes, a uniform and persistent usage has moulded the life and regulated the dealing of a particular class or community, it becomes a custom."[6]

The jurist like **Austin** did not recognize custom a "law" until and unless it is recognized by a Court of law. Austin termed Customary Law as '*Positive morality*". According to him "*Customary laws as being the rules of positive morality arise from the consent of the governed and not from the position or establishment of political superiors. But considered as moral rules turned into positive laws, customary laws are established by the State directly, when the customs are promulgated in the statutes, circuitously, when the customs are adopted by its tribunals."*[7]

Although the tribes may not have complete jurisprudential comprehension of the term justice and its various forms, yet they had a fair idea of what constitutes justice. R. Marret[8] in his study concludes: "*To suppose that the tribals of Northeast India have no sense of right and wrong is of course an absurd mistake."*

Similarly, a High-Powered Planning Commission Group in 1983[9] observed, *"The tribal system of justice in the North East hilly areas has some inherent features which make for its strength and relevance namely proximity, accessibility, speed and credibility. The system is also most expeditious. Rightly the question is*

[3] See definition of 'legal pluralism' Alan Barnard, Jonathan Spencer et. al, *The Routledge Encyclopedia of Social and Cultural Anthropology* 422 (Taylor and Francis, 2009).
[4] Mojisola Eseyin and Edidion Nsungurua, "The Distinction Between Custom and Customary Law: Division Without Partition" 2(6) *International Journal of Law and Legal Jurisprudence Studies* (2015).
[5] Manjushree Pathak, *Tribal Customs, Law and Justice* 44 (Mittal House 2003)
[6] John D. Mayne, *Mayne's Treatise Hindu Law and Usage* 63-64 (Bharat Law House 1986)
[7] John Austin, *Lectures on Jurisprudence* 101 (J. Cockcroft & Co. 1875-78)
[8] R. Marret, "*The beginning of Moral and Culture*" in An Outline of Moral Knowledge as mentioned in Administration of Justice in North East India, Law Research Institute, 5, (1987)
[9] Administration of Justice in North East India, Law Research Institute, Guwahati, 1987, page 682

asked whether the extension of the Anglo-Saxon system of justice is a progressive or retrograde step. Should the exiting tribal system be disturbed to meet the challenges of development?" The said Group answers this question by concluding - *"The traditional system of justice – civil as well as criminal – and in matter affecting their social and economic life should not unnecessarily be disturbed*."

The British initially practised non-interference, but later recognized customary rights in the North East through "Regulation X"[10] leading to the recognition of customary rights as early as 1822. The Indian Evidence Act of 1872 further acknowledged and preserved the region's centuries old customary law.[11] These records reveal the validity of the customary law of the North East India nearly of two centuries old[12]."

These regulations on various intervals got replaced by some other Regulation and were introduced to the states stagewise. The provisions in the Regulations provided for adjudication of justice both formally and customarily and therefore there is an existence of two system simultaneous in the northeast of India. Hence, when several legal systems co-exist within the same political system, the situation is generally called "*Legal Pluralism*".[13]

"Normally, the provisions of the Code of Criminal Procedure, 1891, and the Code of Civil Procedure, 1908, did not apply in the tribal hill areas, where 'customary rights and native laws' were protected. However, the government debarred the village and district customary courts from dealing with heinous crimes, which could be punishable with death, life imprisonment or imprisonment for a term of not less than five years. The non-heinous crimes were tried by the traditional village authorities and penalties were awarded as per the conventions of customary laws"[14]. Thus, by segregating the crimes into heinous and non-heinous, the colonial rulers introduced a parallel legal system (alongside customary law courts). This was the beginning of a trend of pluralistic legal procedures got introduced and implemented in hill areas[15].

This paper through the study attempts to explain the parallel existence of formal justice system with customary justice system in the administration of criminal justice in the Northeast India with specific attention to the current operational status in the state of Arunachal Pradesh giving way to the prevalence of legal pluralism.

A Brief Historical Evolution

The *Ahoms,* the rulers of Ahom Kingdom of the present Assam, were known to be offshoot of Tais or Shans of Southeast Asia who had ruled Assam for 600 years. Their judicial administration which persisted earlier in the Assam region was complex, which gradually came to be influenced with the Hindu Brahmanical

[10] Regulation X of 1822.
[11] The Indian Evidence Act, 1872 (Act no. 1 of 1872), s.13. *Facts relevant when right or custom is in question.*
[12] Goswami Sanjib, "conference on *Non-Adversarial Justice: Implications for the Legal System and Society* Organized by A.I.J.A. and Faculty of Law, Monash University" (4th – 7th May, 2010 available at https://aija.org.au/wp-content/uploads/2017/08/Goswami.pdf)
[13] Willy, C.J. "*Comparative Jurisprudence*," In Hunter and Whitter (Ed) 84-85 Encyclopaedia of Anthropology (1976)
[14] J.N. Das, *"A Study of Administration of Justice among the Tribes and Races of North Eastern Region,"* ("Law Research Institute, Eastern Region, Guwahati High Court" 1987).
[15] *Ibid*.

systems. From *Lengdon Code,* a collection of Moral Rules[16] founded on ethics, justice and fair trial **to** *Buranji* (the class of historical chronicle of Ahom Era),[17] it can be seen that there was no punishment inflicted for crimes committed. Hence, a nascent stage of justice delivery system can clearly be discerned from these records. In the 14th century, the idea of family in Ahom rule evolved with which came the regulation on sexual practices. British Era began with grant of *Dewani of Bengal*, *Assam, Jantia, Cahchar and Manipur* which in due course came under influence of British. It was seen that the barbaric *Burmese* rule in the North Eastern region was replaced by the advent of British and its victory over the Burmese occupiers made the colonial masters as saviour.

The British understood that the laws enforced by them did not suit the innocent tribal population, therefore had to alter them from time to time. There were instances of alteration and debarring certain laws to be applied in these areas which seemed not to suit the indigenous population. While in such situations the customary laws held the field as usual in their own spheres. It is observed, by these developments that the Rules of Administration of Justice have been promulgated at different times for different areas superseding the previous ones, which had been the cause for confusion among the students of law. These Rules introduced during the British period can be broadly divided into three series according to the period of their initiation, namely

- 1872-74 Series
- 1906-14 Series
- 1937-45 series.

The Rules and Regulations framed during these three series; the administration of justice system of whole northeast was covered. These series of law at later stage accommodated administration of justice of the petty offences customarily. However, after independence many such laws were discontinued and new laws were put in place but it is observed that all those subsequent laws provided space for the application of customary law as it did in these series of Rules and Regulations.

For the first time, the British had extended laws after annexing the Part of Garo Hills with Rangpur district of Bengal in 1822 even before it annexed Brahmaputra Valley to Assam in 1826. Thereafter, they extended Regulation X of 1822 to *Garo Hills* for administration of tribal areas of the East. The said Regulation X showed the seed for accommodating tribal customary justice to some extent. Subsequent to the annexation of Assam in the year 1826, *the Assam code 1837* was framed for the regulation of civil and criminal cases in procedure. Later these rules were revised in the year 1847. However, these rules and their implantation came in for sever criticism in 1853 by the renowned Anandram Dhekial Phookan and A.J Moffat Mill, who was the author to "The Report on Assam".[18] By the year 1860, the General codes of civil and Criminal Procedure code were extended to the Brahmaputra Valley. In the year 1862, the Indian penal Code came into force in Assam *pro-prio vigore*.[19] Thereafter, specific special regulation was framed for the *Garo Hill*

[16] Gopal Ch. Barua; Ahom Buranji, p 13
[17] https://www.assamexam.com/assam-history/assam-history-treaty-buranjis-history-chronicle/
[18] A.J. Moffat Mills, "Report on Assam para 113 and Appendix J paragraph on Judicial system.
[19] Gari, History of Assam. Chapter XVII

areas viz *The Garo Hills Act of 1869*. However, this Act was also repealed in 1874 and was replaced by *Scheduled District Act of 1874*.

The legal administration of assam went through considerable change after 1828, by the Act II of 1835, functionaries were placed under the control and superintendence of *Sadeer Dewani Adalat* in all matters of Civil and Criminal Cases. The Assam Code was the next fundamental development in the judicial history of Assam regulating procedure in civil and criminal cases. This can be seen as an effort to simplify the regulations in Assam keeping in consideration the ethnographic diversity but even then, the shadows of Bengal Regulation remained.

In 1860, the General Codes of Civil and Criminal Procedure superseded the Assam Code of 1837[20] and in 1862, the British sought to impose the Indian Penal Code on these regions as well. After realizing that the demography and cultural differences in the area made it difficult to implement the IPC, the British sought to remedy the issue by introducing the Scheduled Districts Act XIV of 1874 and Local Laws. The legal basis for this change emanated from Acts VIII and XII of 1874 (The Assam Chief Commissionership Act, 1874 and The Sylhet Act, 1874[21] respectively) which designated the area, comprising of the two valleys (the Brahmaputra and the Surma) and the hill areas, as Assam. All legal powers from the Lieutenant Governor of Bengal, were transferred to the Chief Commissioner by the same Acts. However, through all this, the Calcutta High Court continued to exercise jurisdiction over the State of Assam.

Justice System in NEFA (Arunachal Pradesh) during British period.

The British without attempting to impose western models of administration, provided a space for the adjudication of justice customarily in the Tribal Areas (NEFA*).* The administrative territorial evolution may be traced back to the Government of India, Foreign and Political Department Notification of 1914, which provided that the *Assam Frontier Tracts Regulation, 1880* would extend to the hills inhabited or frequented by Abhors (now known as Adi), Miris, Mishmis, Singphos, Khampties, Bhutias, Akas and Daflas. The Hill areas were separated from the then *Darrang and Lakhimpur District* of the province of Assam by issuance of Notifications under the Assam Frontier Tracts Regulations, 1880 and three Frontier tracts came into existence which was collectively known as North-East Frontier Tracts (NEFT).

The actual British administration can be conveniently said to have started from 1914 onwards till 1947. Accordingly, the Rules for administration of Justice in Central and Eastern Section of North East Frontier Tract were promulgated in the year 1914 vide notification No. 6709P dated16.11.1914, for the Western Section vide notification No. 6728P Dated 17.11.1914 and for the Lakhimpur Frontier Tract vide notification No. 6865P Dated 18.11.1914 issued by invoking the power under Section 6 of the Schedule Districts Act 1874. Later these Rules were changed by renaming Sections as Tracts viz. (i) The Rules for Administration of Justice in Balipara Frontier Tract, (ii) The Rules for administration of Justice in Sadiya Frontier tract and (iii) The Rules for Administration of Justice in Lakhimpur Frontier Tract vide notification

[20] Assam Code of 1837, Act of XXIX, 1937.
[21] Act No. XVI of 1874.

no 2530 (f) AP, no. 2530 (e) AP and no. 2530 (d) AP Dated 26.03.1937 respectively. In 1945, the three sets of Rules of 1937 was consolidated into one set of Rule called Assam Frontier (Regulation of Justice) Regulation, 1945 (Regulation I of 1945).

The Sixth Schedule

The British laws promulgated in these regions allowed existence of two parallel justice system which was later incorporated into the constitution with great detail and more autonomy in autonomous districts[22]. This is made possible by such pioneering innovations of the constitutional framework as the Sixth Schedule which Justice Hidayatullah revealingly termed as "*Constitution within a Constitution*".[23] However, this view was not accepted by the majority in the Constitution Bench decision of the Hon'ble Supreme Court of India in *Edwingson Bareh vs. State of Assam.*[24] After the promulgation of Constitution of India 1950, many states in the northeast had been provided with special laws which stems out of Sixth Schedule . The said schedule has provided for creation of District Councils and thereby empowering them to legislate laws to administration of Justice[25]. In *State of Meghalaya* v. *Judge District Council Court, Shillong*[26], the Division Bench of Gauhati High Court concluded that, District Council Court may try cases as District Council is the creation of Para 4 & 5 of the Sixth Schedule of the Constitution of India.

At the time of framing of the Constitution, great care had been taken to ensure the realizations of the aspirations of the people of this area and that the psyche of the simple citizens of these regions. To assist the Constituent assembly in this regard, the Advisory Committee on Fundamental Rights, Minorities and Tribals etc. appointed two sub-Committees, namely the North-East Frontier (Assam) Tribal and Excluded Areas sub-Committee and the Excluded and Partially Excluded Areas (other than Assam) sub-Committee to examine the matter in deal. Dealing with the social and economic life of the tribal people, the joint report of the two sub-Committees stated: *this is made possible by such pioneering innovations of the constitutional framework as the Sixth Schedule*. Many states in the northeast had been provided with special laws which stems out of it. The Sixth Schedules have provided for creation of District Councils and thereby empowering them to legislate laws to administration of Justice.

Formal and Customary Criminal Justice System Through Special Laws Post British Era

As not all British-imposed laws from that period became obsolete post-independence; some remained relevant and are diligently followed by respective state governments with necessary modifications. “The Constitution of India under Article 372, allows continuance of all laws in force in the territory of India which includes not only the enactments of the Indian Legislative but also the common law of the land which was being administered by the courts in India and whereby includes personal law, rules of English law as well as the customary laws”.[27] In *Delhi Airtech* case the court observed that, Article 13 of the constitution[28] mandates

[22] *Supra* note 2.
[23] The concept of "Constitution within the Constitution" is attributed to M. Hidayatullah, the 6th Vice President of India and the 11th Chief Justice of India, while delivering the 3rd Anundoram Barooah Law Lecture at Gauhati in 1978.
[24] AIR 1966 SC 1220
[25] The Constitution of India, 1950.
[26] *State of Meghalaya* v. *Judge District Council Court, Shillong* (1993) 2 GLR 99.
[27] Amina (in re), AIR 1992 Bom 214: 1991
[28] Constitution of India 1950

that the pre-Constitutional law can continue provided if it is not inconsistent with the provisions of Part III of the Constitution and Article 372 also permits continuance of such laws.[29] Article 372 is amply clear wherein it provides that "all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority.

Prior to the promulgation of Constitution, Bordoloi Committee was constituted under the chairmanship of Gopinath Bordoloi to prepare a report on tribal areas of Assam.[30] The report provided a detailed information on uniqueness of tribal institution with respect to village council and as to how such councils were the bedrock of grassroot governance. The report also suggested that there was a need to protect tribal people from mainstream dominance and interference and safeguard their rights and at the same time they must also be prepared to be integrated with the nation. The Committee therefore suggested creation of Autonomous District Councils and a mechanism for self-governance for tribal areas. The suggestions were accepted and incorporated in the Sixth Schedule majorly with the intention to facilitate self-representation of the indigenous tribes. Customs in India has been accorded constitutional status by virtue of Article 13(3) of the Constitution of India. Further Customs has been codified in various North East States. Part 4 of Sixth Schedules empowers the Autonomous District Councils (ADC) to constitute Village councils, Subordinate Council Court and District Council Courts as Court of Appeal. Paragraphs 4 and 5 of the Sixth Schedule deals with administration of justice in Autonomous Districts and Autonomous regions. As per para 4 Districts councils are empowered to constitute Courts for trial of suits and cases between the parties all of whom belong to the Scheduled Tribe within such areas. Para 4 of Sixth Schedule to Indian Constitution stipulates Administration of Justice in autonomous districts and autonomous regions which provide: "*The regional council for autonomous regions and District Council for autonomous Districts in respect of areas within the district other than those which are under the authority of the regional councils, if, any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to the Schedule Tribe within such area, other than suits and cases to which the provisions of sub-para 1 of para 5 of this schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts*."

In order to give statutory colour to customary laws, several states have enacted legislative instrument which recognizes resolution of disputes through customary laws. For instance the Garo Hills Autonomous District (Administration of Justice) Rules 1953, The Mikir Hills Autonomous (Administration of Justice) Rules 1954, The rules for Administration of Justice and Police in Nagaland 1937 (overhauled by 1974, 1982 and 1984 amendment), The Lushai Hills Autonomous District (Administration of Justice Rules) 1953 which provides for constitution of village courts, Subordinate District Council Court, District Council Courts for dispensing justice and such courts are required to dispense justice as per the prevailing customs of that State/Tribe and at the same time such courts are guided by the principles and spirit of the State Procedural Law that is the Code of Criminal

[29] Delhi Airtech Services P. Ltd. v State of Uttar Pradesh, AIR 2012 SC 573 (582)
[30] Constituent Assembly constituted Bordoloi Committee in 1946.

Procedure 1973. Existence of customary justice system and formal justice system may seem conflicting at first due to reasons of overlapping jurisdiction or improper application of procedures, but in generic sense customary justice may co-exist with formal justice system if informal mechanism and procedures of justice are not trammelled by the technicalities of formal laws. This very reasoning was applied by the Apex Court in *Gurumayum Sakhigopal* case[31]. Though the structure and mechanisms of tribal justice system differs from the regular or formal justice system, the customs and traditions are attuned with the modern jurisprudence. Customary system of administration of justice system is based on parliamentary democracy. The Council or the forum derives its power and authority from the will of the people having both social and supernatural recognition.[32]

The Analysis of the Regulation "The Assam Frontier (Administration of Justice) Regulation 1945" herein after referred to as AFR 1945.

The AFR 1945**,** was enacted to consolidate and amend the laws governing the administration of justice in the frontier tracts of Assam. With the enactment of the 1945 Regulation, the Statutory recognition was accorded to the village/tribal councils and thereby the tribal councils were required to function within its general framework. It can be said that the implementation of 1945 Regulation was an unintentional action of bringing the tribal society at par with the national mainstream by synthesizing modern criminal justice process in the customary justice mechanism. The regulation provides for two tier structures of administration of justice, that is administration by Deputy Commissioner and Assistant Deputy Commissioner at the upper level and the Village Authority at the lower level. Executive and Judiciary were not separated.

The Regulations in a detailed way elaborates on the powers and responsibilities of the village authorities.

Village Authority: Gaon Bura

Village authority as provided under the regulation differs from the traditional village council. Traditional tribal councils derived its sanction from customs, practices and will of the people. Village authorities provided in the regulation on the other hand are bodies appointed by the Deputy Commissioner/administrators in a district by exercising powers under Section 5 of the Regulation[33]. The 1945 Regulation recognized the traditional indigenous system and introduced the Gaon Bura system to be appointed as village authorities.

The customary justice mechanism and machineries varies from one area to other even within the state of Arunachal Pradesh. Chieftainship was practiced in *Tirap Division in Wancho and Nocte Tribe* whereas *all other tribes had democratic set up of a village council system* and each tribe had their own method of electing/selecting their headman[34]. For instance, in *Galo Tribe* the person who sits as the Administration of Justice/Village Authority is called *Kvba Abo*. *The Kvba Abo is a person possessing a fair knowledge of customary law, commands meticulous reasoning, decision-making acumen by abiding the principle of just, fair*

[31] *Gurumayum Sakhigopal v K. Onghi Anisija Devi (1961).*
[32] Synergy Between tribal and formal customary law report
[33] Assam Frontier (Administration of Justice) Regulation 1945.
[34] Customary Laws of Arunachal Pradesh: Conflict Areas of Customary Laws, Formal Laws, p.47.

and good conscience, extremely impartial, possessing utmost integrity and not being impoverished and such person is termed as Xwjik Xikok (Nyijik Nyikok) or Jwktv Koktv (Jikte Kokte).[35] The communication skill or Oratory skills are not seeming to be the necessary/obligatory requirement for a *Kvba Abo*.[36] Rather one needs judicial mind, analytical ability of the matter, impartiality and of course should not be penurious. Another aspect for consideration of appointment which is unrelated to the individual capability or trait is that of a clan. If there are more than one clan in a village, the *Gam ship* is appointed in each clan as far as possible, provided there are vacancies. This is done for equal representation of all clans, although clannism should be refrained and the *GB's* appointed should be impartial once they are appointed. So, after the death of a *Gaon Bura*, the *Gam ship* is offered to any of his descendants or from deceased clan to maintain the equilibrium. This is so done to build the confidence of the system by all at the appointment stage.[37]

The 1945 Regulation does not provide the mode of appointing a village authority in itself. However, as cited by case laws, researched reports now it is well settled that such appointments were to be made in accordance with the well-established customary practices.[38] It is pertinent to mention the report submitted by the *Daying Ering Committee* observing that '*only actual headman of a village council approved by tribal usage and custom should be recognized'*.

Section 5 of AFR 1945 States, "*the Deputy Commissioner shall appoint such person as he considers to be the members of a village authority for such village or villages as he may specify and may modify or cancel any such order of appointment and may dismiss any person so appointed*".

There were three kinds of village officials under the Act:

- *Gaon Bura/Village Authority*
- *Political Interpreters*
- *Political Jamadars*

Gaon Bura

In every village there are ***Gaon Bura's*** appointed by the **Deputy Commissioner** under **Section 5** of AFR 1945 who heads the village council and among all the Gaon Bura's is made Head Gaon Bura. The ***Gaon Bura's*** discharges his duties in three capacities:

I. Administrative capacity as a representative
II. As Headman of the Village
III. As chairman of village Council

Section 5 is silent on mode of appointment of Gaon Bura (GB) and it was implied that such appointment must be done in accordance with the customary law of the particular tribe. In most of the tribe practices, the head man is appointed on basis of seniority and experience. A GB is officially appointed, conferred the status

[35] Gara Yomdak, village elder possessing Galo Customary law wisdom, Village Dipa, Lower Siang District, Arunachal Pradesh
[36] *Ibid.*
[37] *Ibid.*
[38] Judgment name, Daying Ering Reports, Law Research Institute, Guwahati

of village authority and each GB is given a red coat which is a matter of honour.[39] *Gaon Bura's* have proved to have become the heart of this institution and the red coats until today has been able to retain the cachet of their past glory.

Presently, the *Government of Arunachal Pradesh* had been issuing guidelines for appointment of *Gaon Bura's* from time to time. The guideline notified for appointment of *Gaon Bura* purportedly the Village Authority, had not specified the express linkage of the term ***Gaon Bura*** or provided reason for adopting it, in alternate to the term ***Village Authority*** as mentioned in Section 5 of AFR 1945. However, the government recently in the in the year 2020 guidelines through the *District Administration Department Notification vide DAD-7/97/2020* seems to have tried to provide such linkage making a reference which provides - *"AND WHEREAS, the village authorities so stipulated are known and called in the name and style of Gaon Burahs*" in the opening of the notification. It is further seen that in the garb of framing guidelines for appointment of *Gaon Bura* under *Section 5 of AFR 1945,* the legislators have laid down *Duties,* ***Powers, Functions and Responsibilities of Gaon Bura***.

As held in *Ojom Libang v State of Arunachal Pradesh and Ors.*[40] though Section 5 of the Regulation empowers Deputy Commissioner to appoint the village authority, he cannot act in an arbitrary manner while making the appointment and such appointments has to be in accordance with the well settled guidelines. A person is appointed as a village authority or a Gaon Bura on seniority and merit basis and such selection or election is done by the village people. As per the customs of tribals in State of Arunachal Pradesh, a *Gaon Bura* should possess a distinct social status, should possess best quality or caliber to control and conduct village council sessions. The Deputy Commissioner is required to obtain the views of entire villager's concern and then has to take decision in accordance with the majority view. Further the said Section also empowers Deputy Commissioner to cancel, modify or dismiss a person who has been appointed. However, in exercising such powers the person concerned must be accorded with an opportunity of being heard.

Division of Offence

The offences under *Section 2* of the Regulation 1945, during the British period and even now were/is divided into two categories 1, Heinous and 2. Non-heinous

Heinous offences constitute: "Murder, culpable homicide, causing grievous hurt, rape, kidnapping or abducting in order to subject to slavery, disposing or buying of persons as slaves, habitual dealing in slaves, dacoity, robbery, rioting, house-breaking, theft of cattle, mischief by fire or any explosive substances, any offence punishable under Chapter VI or Chapter XII of the Indian Penal Code, any offence punishable under Arms Act, and any attempt to commit or abetment of any of the aforesaid offences".[41]

Non-Heinous offences are the once triable by Village Authority provided under *Section 19* of the Regulation.

[39] Arunachal Pradesh- Administration of justice DURING British Period Chp XI book – "*A study of Administration of JUSTICE AMONG THE TRIBES OF north eastern Region Law Research Institute, Eastern Region, Guwahati High Court".*
[40] CR No 2035, 1994
[41] Section 2, Assam Frontier (Administration of Justice) Regulation 1945.

The offences are:

- Theft including theft in a building,
- Mischief not being mischief by fire or any explosive substance,
- Simple hurt,
- Criminal trespass or house trespass,
- Assault or using criminal force".[42]

The bifurcation of offences was so made to determine the jurisdiction of formal and customary justice system. The non-heinous offences were allowed by the AFR 1945 to be tried by the village councils of different tribes. The heinous offences were tried by the Assistant Political Officer and the Political Officer, according to their powers respectively. Usually, the Assistant Political Officers were invested with the powers of a Firsts Class Judicial Magistrate, while the Political Officer exercised the powers of a District and Sessions Court.

***Powers and Responsibilities of the Village Authority/Gaon Bura**:*

The village authorities under *Section 6* of the 1945 Regulation are vested with the powers and duties of a Police. The section states that "the ordinary duties of police with respect to crime shall be discharged by the village authorities". They are entrusted with responsibility to maintain peace and order in their jurisdiction. However, the village authorities shall not be deemed to be police for purpose of Section 25 and 226 of Indian Evidence Act and Section 162 of the Criminal Procedure Code 1974.

As per *Section 6 (3),* the village authorities are required to watch and report any person with vagrant, bad or suspicious character found within their jurisdiction. They are also empowered to detain or arrest any person if 'reasonable grounds of suspicion' exist that such person has committed an offence or is about to commit an offence. Such person shall be handed over to the Deputy Commissioner or Assistant Commissioner.

As per *Section 8*, when a heinous offence has been committed, the inhabitants of the village shall at once inform the village authority. The village authority shall without delay proceed to the place where the offence has been committed and enquire into it. The regulation empowers a village authority to apprehend any offender who has committed a heinous offence within their jurisdiction.

Under *Section 9*, upon receiving knowledge about any violent death, commission of crimes or serious accidents occurring in their jurisdiction, the village authority is duty bound to report to the Deputy Commissioner or Assistant Deputy Commissioner. Further, he may also arrest and deliver the offenders to the court having jurisdiction to try them within a duration of 24 hours.

In addition to arresting the offenders, the village authority also has power to pursue the offender beyond his jurisdiction. Such village authority shall inform the village authority of another village within whose

[42] Section 19, Assam Frontier (Administration of Justice) Regulation 1945

jurisdiction such offender is found. Every villager is duty bound to assist the village authority in maintaining order of apprehending offenders. If such villagers fail to give such assistants, the village authority may impose a fine not exceeding Rs 500/-.

From general reading of the provisions as mentioned above, it appears that the village authorities are vested with powers for conducting preliminary enquiry/investigation, power of arrest of offender and pursuing offender beyond their jurisdiction, making spot enquiries in occurrence area. The Regulation is silent on mode and manners in which the powers of police are to be executed.

Power to try criminal Cases

The village authorities are bestowed with power to try any individual who are residents within the territorial jurisdiction and has committed any of the following offences:

- "Theft including theft in a building
- mischief not being mischief by fire or any explosive substance,
- simple hurt
- criminal trespass or house trespass
- Assault or using criminal force or any non-heinous crime".

The village authorities are vested with powers to pass an order of fine not exceeding Rs. 3000[43] for any offence which they are competent to try. They may also award payment in compensation which should be proportionate to the extent of injuries sustained. Such fines and payment may be enforced by distraint of the offender's property.[44]

The Village Authority are empowered to order the attendance of witnesses of a case, who are required to be examined. Any witnesses failing to comply with such order may be punished by way of fine which shall not exceed Rs. 200. The cases shall be decided in open court and in the presence of at least three independent witnesses of both the parties.

If a person on whom fine has been imposed fails to deposit the amount to the village authority, then the village authority shall send him to the Assistant Commissioner to deal in a manner as he deems fit. All the decisions passed by the village authority are appealable before the Deputy Commissioner or the Assistant Commissioner.

Though statutory recognition was provided to the age-old indigenous institution and empowering village authorities as the lowest organ of the administrative justice system, major changes and dilutions were also introduced like concepts of appeal, appointment of village authority, bifurcation of offences into heinous and petty offence and jurisdiction of village authority to try such cases, etc. The Regulation seems to have altered the structure of traditional village council system.

[43] Substitute for Rs. 50 by the Assam Frontier (administration OF justice) Regulation, 1945 (Amendment) Act 2005 (No. 1. OF 2005)
[44] Section 20

In majority of the cases, prior to the 1945 Regulation, there seems to be no appellate body wherein the aggrieved could appeal against the verdict of the Village Council. The Decision of the council was binding on the parties. However, some customary experts assert the existence of appellate body even in customary justice dispensation set up although the assertion is disputed by others. Many customary law experts believe that the concept of appeal which is based on principles of natural justice was introduced to the tribal people with the application of the 1945 Regulation. The Regulation did not recognize the village councils as the Supreme or Final Authority. Prior to separation of executive and judiciary in Arunachal Pradesh, an appeal from the village authority was required to be made before the Deputy commissioner with the help of a pleader. Upon receiving the notice from the party concerned, the deputy commissioner examined the nature of an appeal, summon both the parties and order to conduct a de novo trial guided by the spirit of Code of Criminal Procedure.

Village Councils often tried heinous offences in British and post British Period

Despite the division of offences and jurisdictions to try it, the village councils used to settle heinous offences amicably and the British authorities turned a deaf ear, unless these decisions threatened to disturb the law-and-order situation. They put a stop to the practice of land grabbing and forcible occupation of fishing water by powerful villagers which often led to long drawn feuds between two tribes or two villages. The result was that, not to speak of cases regarding sexual offences but even cases of murder and homicide were dealt with by the village councils as an ordinary matter of course.[45]

This situation continued even after post British period. As previously examined, that the Regulation I of 1945 provides division of offences and a reasonable framework for administration of justice in Arunachal Pradesh. But the heinous cases which, under the said Regulation are triable by D.C/A.C only and not by any other authority. These cases, though not with the power of the village authorities, are often settled by them at the lower level itself and in such circumstances the Government does not very much interfere except where inter-village feuds threaten to disturb peace and tranquillity.

Circular of 1959 authorizing the Village Authority to try Heinous Offence

It is interesting to mention that there was a circular issued by the **Advisers to Governor Shri K.M. Mehta in year 1959** to the effect that "all cases involving criminal liability, including heinous offences other than those against the state, will be dealt with by the Village Councils, provided restitution or award of compensation to the injured party was considered as a sufficient deterrent and accepted as such by the clans concerned… When a village council is adjudicating on a matter involving murder or culpable homicide, the political officer or any of his officers invested with magisterial powers will attend it in an advisory capacity. He should not, however act as the presiding officer or pronounce sentence, treating the council as a body of assessors. … Jurisdiction of tribal councils or the traditional village tribunals in respect of matrimonial cases or disputes relating to guardianship, succession, *jhumland* an allied matters should in no case be abrogated by our officers…We should be very careful not to alter the constitution and composition of the councils….. The tradition of an elected

[45] J.N. Das, "A study of administration of justice among the tribes and races of northeastern region, LRI, Guwahati". 314-316

judiciary has never existed in, for example, the United Kingdom or in India, and we should not spread the idea that the members of the councils should be elected. Let each tribe follow its own customs. …Indeed, in all areas, we should encourage the traditional methos of selection of representative's as opposed to election."[46]

The Assam Frontier (Administration of Justice) Regulation, 1945 is still operational and co-exists along with the formal justice system. The administration of customary justice in the state Arunachal Pradesh is dispense through the village councils since pre-British to till date. The importance and role of village councils in dispensation of justice cannot be undermined. A good legal system precedes good governance and the customary justice system had provided that primary support in good governance of the tribal community. The institution needs proper support of the state government to grow as a justice dispensing institution.

Conclusion

As it is said, justice, like truth, does not, in the abstract, vary from place to place or from time to time, but the manner in which it is sought to be attained may, and does, differ. Justice, in the abstract, according to Plato, means that a man should possess and concern himself with what properly belongs to him and each one should do his own proper work without interfering with others. The evolution of the customary justice system in the North Eastern region as to what it is has been a long-drawn process and culmination of different set of circumstances that prevailed and what the advent of the Britishers the customs met the statutes and started running parallelly with it in the region. In retrospection, when we examine pre independence era, the British adopted a policy of non-interference to tribal traditional justice system. By introduction of Regulation X to administer part of Garo Hills which is a tribal area, the British intended to recognize and retain the Customary justice system "practiced in the North East India as early as 1822. Later in 1872, the Indian Evidence Act was enacted and Section 13 deals with the facts relevant for the proof of customary law". The administrative developments have been looked at closely in order to understand the growth of justice system as well as that of legal pluralism in working.

The justice system before the "separation of Judiciary from Executive" were in shambles. Due to lack of technical knowledge, the learned justice giver themselves who were not clear with the system vested on them to be adopted and the litigants were the worst sufferer. There were instances of miscarriage of justice due to untrained judges. Because of non-separation of lower judiciary from executive completely the plight of justice seekers multiplied to already worsen conditions of the legal system endured. The executive magistrates were bestowed with judicial power who did not possess legal training and knowledge that lead to delay and ultimately denial of justice. There are provisions in the Regulations bifurcating the jurisdictions of customary and formal laws but that was not adhered to in practice strictly. Both the state judiciary (executive magistrate) and Village Authorities were unaware of the existence of proper demarcation of jurisdiction.

After the regulations were made applicable in the Northeast by the Britishers, which provided for resolution of dispute customarily only for non-heinous crime, there seemed to be confusion in the justice dispensation.

[46] Circular No. Jud-150/58 dated 24.1.59

Despite such bifurcation, the victims always approached the village authority and all the matters were still decided by them. The establishment of police as a law enforcing agency seems to have created more complex situation. The village authorities continued trying all offences despite the curtailment of offence jurisdiction by various Regulations & Acts promulgated in the north-eastern region. These situations led to overlapping of jurisdictions and a reason for confusion.

In the later period, when the State backed formal justice system gained more prominence, there was/is gradual decline in the customary justice systems in most states now. However, the states which have been granted the constitutional protection have retained some forms of customary practices by establishing District Customary/Council Courts and other subordinate courts as discussed. Existence of customary justice system and formal justice system may seem conflicting at first due to reasons of overlapping jurisdiction or improper application of procedures, but in generic sense customary justice may co-exist with formal justice system if informal mechanism and procedures of justice are not trammelled by the technicalities of formal laws. This very reasoning was applied by the Apex Court in *Gurumayum Sakhigopal* case[47]. Though the structure and mechanisms of tribal justice system differs from the regular or formal justice system, the customs and traditions are attuned with the modern jurisprudence. Customary system of administration of justice system is based on parliamentary democracy. The Council or the forum derives its power and authority from the will of the people having both social and supernatural recognition.[48]

[47] *Gurumayum Sakhigopal v K. Onghi Anisija Devi (1961).*
[48] Synergy Between tribal and formal customary law report.