CHAPTER X

ADMINISTRATION OF JUSTICE

Sources of law determine the basic framework of judiciary. The whole idea of justice is based on law. Law is the cornerstone of judiciary. In judiciary the supremacy of law is universally a recognised factor. The tribal customs conventions, usages, ancient practices, ethical codes, precepts, fables, antecedents, taboos, royal edicts, constitute the main sources of law. The social customs, social institutions the social structure, the clan system, the economic condition, mutual agreements and contracts, family environments, kinship, religion etc. have had distinctly played their parts in the evolution of jurisprudence or the science of law. The law of marriage and women's property, law of divorce, law of inheritance and succession, law of household property, law relating to building and houses, law concerning the non-performance of agreements, law of debts, law of crimes and violence, defamation and assault, law relating to border disputes, from the main part of the customary laws of the tribal people of North East India.

2. Ibid.
A study of the administration of justice in North East India, in particular of Meghalaya will be an interesting field of study. There is a necessity of knowing the present judicial system prevailing among the tribal people of Meghalaya and the Pnars in particular. So far the people have been depending on the interpretation of the local lawyers on what the customary laws of the particular tribe or tribes are. In some cases an attempt is being made to modify the customary laws. In this chapter the author attempts to enquire into the judicial system prevailing in Pnar Hills.

We can divide the administration of justice in the Pnar Hills into two sections namely traditional and modern. The traditional system of administration of justice is based on the judicial system prevailing today on the patterns devised by traditional rulers in the past. It was continued by the British with slight modifications. The Sovereign Democratic Republic of India inherited the system laid down by the fore-fathers and continued by the British.

Traditional systems cannot exist all by themselves. They have to live with other people who may not have the same customary laws. As a result conflict of laws usually prevails and it is so difficult which law to prescribe
in a particular dispute or disputes. Hence another judicial system is generally devised to remove inconveniences caused by the different people and communities such a judicial system which tries to maintain law and order among different groups of people is generally an accepted modern system. In Pnar Hills the traditional as well as the modern system operates side by side.

So far no detailed study on the traditional system of administration of justice in the Pnar Hills has been done to understand the traditional system of administration of justice. When we come to modern judicial system, we have books, publication and articles.

**TRADITIONAL JUDICIAL SYSTEM**

One of the earliest writers on the judicial system of the tribals, Sir William Robinson, in his account tells us that the judicial sitting was an elaborate one. One day before the day fixed for the sitting of the judicial durbar, an announcement was made in the evening directing all the adult male villagers to stop from going to their daily works to attend the durbar. The attendance was compulsory.

5. Ibid.
6. Ibid.
for all the adult male villagers to attend. The headman or the Wahehchomong used to summon the village durbar or Durbar chnang through the village crier, the Sangot\textsuperscript{7}. The proceedings are opened by the headman. Witnesses are brought for both sides. At the close the headman summarises the evidences on both sides. Then he pronounced to judgement.

The doloi with his officials meet at the Elaka Durbar where similar procedure is adopted. Here the villagers are free to attend. Witnesses are required as in the case of village durbar. As in the village durbar the dolloi with the decision of the durbar pronounced the judgement. As per provision of the sixth schedule to the constitution of India, the village court is substituting the durbars. However in some elakas like the Nangkhlieh elaka, they continue the old practice of depending on the elaka durbar to decide cases of dispute strictly in accordance with their customary laws\textsuperscript{8}.

In the past the supreme judicial organisation in the Pnar Hills was the Raj Durbar at Jaintiapur, the capital of the old Jaintia Kingdom. The Raj Durbar played the role of supreme court for the Jaintia state. Appeal from elaka durbars were taken to Raj durbar. Again disputes between

\textsuperscript{7} Ibid.
\textsuperscript{8} Interview with Bah chism the headman of Pokseh Village.
elakas were referred to the Raj durbar. At times there were cases of disputes between the Raja and his dolloi or dollois which the Raj durbar had to dispose of with the help of the ministers and other dollois who were not involved in the disputes. It may be recalled here that such a dispute had occurred during the British period when the case between the Raja of Jaintia against the dollois of Jowai and Nartiang had to be arbitrated by an Englishman Lt. Dnglis by name. This level of administration has gone out of existence with the annexation of the Jaintia state to British India in 1835.9

The court at every level of judicial administration tries to bring about a compromise or pyniasuk between the two parties. The idea of compromise is also respected by the church. The presbyterian denominations used to seek permission from the church committee or Komiti Walang to allow them to appear before any judicial tribunal of their tribe or of the government. Before giving permission, the church attempted at a compromise. It is only when such attempts fail that the church would allow its members to appear before any other tribunal. Any violation of this rule resulted in the suspension or ex-communication from the church membership.

10. Ibid.
The family council or Ka Dorbar Kur has a say in any dispute especially dispute relating to property if it concerns the members of the family. In fact, every dispute relating to property is usually settled through the family council by a compromise. This is done to avoid further complications in disputes over property which may bad to more serious crimes when the case is referred to other levels of judicial administration.\textsuperscript{11}

When such an attempt to bring about a compromise either by the church by the family council or by any other tribunal failed then the village crier or the Sangot is called upon to announce the convening of the judicial meeting for the purpose. When all the adult male members of the respective levels of judicial administration have assembled in the durbar, then both the complainant and the defendant addressed their pledges to tell the truth and nothing but the truth in the durbar. One of the men opened the case or debates and others followed suit. The employment of pleaders or Ki Kmi is allowed. In the traditional system of administration of justice, therefore, we have the chief or the headman acting as judge and the durbar as the jury.\textsuperscript{12}

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\textsuperscript{11} Ibid

\textsuperscript{12} Information from the people of Lamin.
Witnesses are thoroughly examined by the party or parties and are called Ki Sakhi. The Sakhis have to undergo a swearing to tell the truth on a pinch of salt placed on the sword or on the gourd called U Klong which is the most serious swearing. Traditional judicial durbar is generally a long drawn out process. It may take place in one sitting alone or it may continue for a number of days.

In case where there are no witnesses called Sakhi or evidence saki, decisions are made by resorting to a system of trial by ordeals. One form of ordeal is water ordeal or I - Yangam-Um where a bag of gold and a bag of silver are placed at the bottom of the stream or tank and the parties will find out their divers called Ki Ksih who dived into the bottom of the stream in search of those bags. The side which gets the bag of gold is declared the winning party. Another slight variations of this practice is that two pots each containing a packet of gold and a packet of silver are placed at the bottom of the stream or tank. If both sides get either a packet of gold or a packet of silver, then the case is amicably settled or divide the piece of land or property under dispute equally.\(^{13}\)

\(^{13}\) Ibid.
Still another third form of water ordeal is usually resorted to in a very crude form. This is the system where the divers have to remain under water. The side which puts its diver the longest time under water is declared the winning party. In order to remain longer under water, the respective parties used to fix a spear in the body of the diver to hold him down under water. To differentiate the system from the other two water ordeals, this is called I Yangam-Ksih.

The most dreaded ordeal, however, is that of an ordeal of swearing on a gourd of rice beer called U Klong or U Klong U Khnam where any guilty party is supposed to suffer certain misfortunes like unnatural deaths, accidents etc, if the swearing is false. Nobody can force this ordeal on others. One of the parties to the dispute may propose and it is for the opposite party either to accept or reject the proposal. When the proposal is accepted in an open judicial durbar, a gourd containing fermented rice beer with an arrow planted in the rice is provided. The party desiring to swear in the gourd or rice beer will bring the same to the judge who will invoke the goddess of the state to judge the man. The content of such an invocation boils down to the effect that if the person swears falsely, he will surely die. Any person who takes

14. Narrated by Rev. Herman age 64.
this type of ordeal is declared the winner. The lesser crimes are settled by an ordeal of eating uncooked rice or I-Yabam-Khao where a guilty party is supposed to suffer from indigestion. There is another form of rice ordeal called I-Yachet-Khao. In this form or ordeal all the supposed guilty parties give a small quantity of rice wrapped in a leaf or a piece of cloth. Then all the separate pieces so wrapped are cooked together in the same pot. It is believed that the guilty party's rice packet will remain uncooked even after the normal time for cooking is over.

THE PNAR JUDICIAL SYSTEM DURING THE BRITISH PERIOD

The state of Jaintia was annexed by the British on March 15th 1835. After the order of annexation was promulgated on February 23rd 1835, while the Jaintia plains was attached to central Assam under the senior commissioner of Assam, that of Jaintia Hills was placed under the administration of the political Agent at Cherrapunji. It was under a wrong notion that Jaintia Hills were treated as a part of the Khasi Hills. The superintendence and control of magisterial and judicial functions was

15. Ibid.
entrusted to the political Agent of the Khasi Hills from 1835 to 1953. The Political Agent of the Khasi Hills exercised magisterial functions over Jaintia Hills. But all petty civil and criminal cases were first heard and frequently settled by the priests or the Langdoh in durbar. If the decision of the priest or Langdoh did not give satisfaction, the case was brought before the Dolloi or in his absence, before his deputy the pator. If the pator decided the case, either party could have it re-heard by the Dolloi on his return to the village and a decision was then made by the Dolloi in Durbar. Against the decision of the Dolloi an appeal was taken before the principal Assistant Commissioner at Cherrapunji. In case of sirdarship, there were no pators or Langdohs.

The political Agent could impose fine upto Rs. 500/- and imprisonment upto two years and in certain cases upto five years. The Assistant to the Political Agent also exercised certain magisterial functions subordinate to the political Agent. All cases of heinous nature were sent to the suddar court. In cases of civil nature, the Suddar Court could call for and revise the proceedings of the political Agent. By 1935 the political Agent was

17. Interview with Siang Pothmi M.A. age 40 Lamin
placed in civil and criminal cases in Jaintia Hills as in the Khasi Hills under the control and superintendence of the Suddar Dewani and Nizamut Adalat respectively. Justice was administered by the spirit of the instruction of the Government and the Assam Rules.  

In 1853 Mr. Mills pointed out that Jaintia Hills was a distinct territory and not part of the Khasi Hills, and that the illegality of the magisterial functions exercised by the assistant to the political Agent was not free from doubt. The extension of rules and regulations as well as the extension of the jurisdiction of Suddar Dewani and Nizamut Adalat was done or carried out on wrong premises. According to W.J. Allen in his report of October 1858, the judicial anomalies pointed out by Mill's report had been for the most part removed.

Following the report of Mr. Mills, the Junior Assistant Commissioner was appointed as Administrator of Jaintia Hills and a British portion of Khasi States. Before this arrangement was made, the system of administration of justice which was started in 1835 was

18. Ibid.
continued up to 1841. After 1841 the Dolloi heard all civil cases up to a certain limit and all criminal complaints not of a heinous character in which only the people of their own village were concerned. This continued until 1869 when the Garo Hills Act (Act XXII) of 1869 was applied to Jaintia Hills on November 1st, 1871. Under the Act of 1869, Act VI of 1835 (in so far as it is related to Jaintia Hills) and Regulation of 1822 were repealed.

On February 6th 1874 Assam was separated from Bengal and placed under a chief Commissioner and its territories included among others, the Jaintia Hills. After its constitution as a chief Commissioner's province, it was declared a scheduled district under the scheduled district Act (Act XIV of 1874). But though the whole of the chief commissionership of Assam was a scheduled district, the Act was declared by the Governor General to be in force only on November 1877. Further, in exercise of the powers conferred by the scheduled district Act, 1874, rules for the administration of justice and police in Jaintia Hills were prescribed by Government notification no 1252 J dated November 29th 1906. This Government notification of 1906

20. Ibid.
21. Ibid.
cancelled all previous orders on the subjects and the new rules came into effect. Under these rules, the administration of criminal justice was administered by the deputy commissioner, his assistant, and by the dolloi, sirdars and other village authorities like the headmen and priests. The deputy commissioner was competent to pass a sentence of death, transportation or imprisonment upto the maximum amount provided for the offence and a fine upto any amount provided that the sentence of death or transportation shall be subject to the confirmation of the Lt. Governor and provided that all sentences of imprisonment of seven years and upwards shall be subject to the confirmation of the commissioner\textsuperscript{22}.

Any dolloi, sirdar or village authorities empowered by the deputy commissioner could dispose of cases of persons charged with any of the following offences: injury to property not exceeding Rs.50/- injury to person and affecting life or limb: House tresspass: theft where the value of property does not exceed Rs. 50/- In such cases, they may also carry out their decision or order of attachment of property as soon as judgement was pronounced.

\textsuperscript{22} Ibid.
All cases had to be decided in open durbars in the presence of at least three witnesses. They were allowed also to compell the attendance of the complainant and the accused. Appeal from the decisions lay to the deputy commissioner or his assistants. There was no appeal as a matter of right from any sentence passed by the deputy commissioner involving less than three years of imprisonment and appeal lay to the commissioner against the sentences of three years imprisonment and up-wards and to the Lt. Governor from all sentences of death or transportation

The procedure of the commissioner, deputy commissioner and his assistants was in accordance with the spirit of the code of criminal procedure as far as it was applicable to the circumstances of the district and in consistent with the rules.

The administration of civil disputes was also entrusted to the Deputy Commissioner, his assistants, dollois, Sirdars and other village authorities. They could be recognised by the Deputy Commissioner by Sanads under his signature as competent to try cases without limit as to the amount, but they could not try cases in

23. Interview with Rev. Ugo age 54 Ralian.
which their near relative was involved. All cases must be decided in open durbar in the presence of the parties and at least three respectable witnesses. An appeal lay to the commissioner against the original decision of the deputy commissioner if the value of the suit was Rs. 500/- or above24.

The court of the commissioner, deputy and assistant commissioner was guided by the letter or the code of civil procedure.

The above rules of 1906 continued till the Government of India Act 1935. In accordance with the provisions of the Government of India Act 1935 Jaintia Hills was included in partially excluded areas of Assam by an order in council dated April 15th 1937. Earlier by notification No. 2618 - AP dated March 29th 1937 the above rules of 1906 were re-notified and the position more or less continued till the transfer of power on August 15th 194725.

24. Ibid.
25. Based on field work in the rural areas.
The rules for administration of justice of 1937 continued to operate in Pnar Hills ever after the transfer of power. Slight modifications to the rules had been made without changing the fundamental nature of the arrangements made in 1937. After the transfer of power, it was provided that the administration of the district was vested in the Governor of Assam, Commissioner, Deputy Commissioner, assistant to the Deputy Commissioner, and the traditional village authorities recognised by the Government. When the Assam High Court was established in 1948, administration of justice for Pnar Hills was also transferred to that court. This position continued until the relevant provisions if the constitution of India of 1950 came into operation.

The sixth schedule to the constitution of India in sub-paragraph 4 of paragraph 2 vested the administration of justice in the district and regional councils except for certain kinds of civil and criminal cases. Similarly, sub-paragraph 4 of paragraph 4 of the sixth schedule provided for the power of the district and regional councils to make rules regulating the constitution of the

26. Interview with people of Pamura)
village councils and court and the powers to be exercised by them through particular procedure to be followed by any appellate body above them. Consequently, the district council of United Khasi Jaintia Hills had formulated its own rules for administration of justice within the limits of the rules formulated by the Government of Assam. In that new set up, the Deputy Commissioner's former appellate judicial power was lost.  

In view of the provisions under paragraph 4 of the sixth schedule to the constitution of India and with the enactment of the United Khasi-Jaintia Hills autonomous district (Administration of Justice) Rules 1953 duly notified on December 18, 1953 the jurisdiction of the Deputy Commissioner's court under the aforesaid rules will no longer be available to suits and cases where the parties are tribals and where the cases within the jurisdiction of the courts constituted by the district council under the said rules of 1953 and paragraph 4 of the sixth schedule. The rules of 1953 were in force since January 7th 1954.

27. Ibid.
Under the district council rules 1953, there are the following types of courts: (1) Village courts (2) Subordinate and additional district council courts and (3) District Council Court. In Jaintia Hills until 1966, there were 19 village courts and one subordinate district council court of Jowai. The district council court was then located in Shillong. With the separation of Jaintia Hills, from the United Khasi Jaintia Hills the new Jowai autonomous district council (later on renamed Jaintia Hills autonomous district council) continues to have a provision for 19 village courts and in the place of the subordinate district council court, there is at present a full fledged district council court at Jowai. By the Jowai autonomous district (Administration) Act (Act I of 1967) the united Khasi-Jaintia Hills autonomous district council (Administration of Justice) Rules 1953 were adopted.

Originally, the punishment that the court constituted by the district council may impose did not exceed five years in criminal cases. Higher power may however be conferred by the Governor on the district council courts under paragraph 5 of the sixth schedule provided that the

28. Information collected from Bah Peter Sullai age 42 Jowai.
29. Ibid.
code of civil procedure and the code of criminal procedure shall not apply to the trial of any suit, cases or evidence in an autonomous district to which the sixth schedule applies.\(^\text{30}\)

Paragraph 4 and 5 of the sixth schedule to the constitution have been amended and the said amendment will come into force from the day to be notified by the president of India. Once these amendments are brought into force, the district council village courts shall be competent to try cases if the parties are non-tribals and the Governor shall have power to make rules for the constitution of such village courts and the powers to be exercised by them and the courts to which the appeal will lie.

**CONCLUSION**

Since the beginning of the code of criminal procedure and the code of civil procedure in India the same have not been applied to the Pnar Hills. Even the Indian Penal code has a partial application only. In a word, the idea of judicial autonomy has been running through the British

\(^{30}\) Ibid.
Judicial autonomy is no doubt very necessary, but this autonomy has often been abused either unknowingly due to the intricacies of introduction modern elements of non-tribal legal system or internationally by taking advantage of the ignorance of law by the simple folk of the tribal village in the region. Money economy has further aggravated the deteriorating condition of the importance and utility of the Pnar system of justice. To the unsophisticated mind of the majority the hill people, the idea of the court system is synonymous with the idea of money transaction. Oaths, whether of traditional or of modern forms are not always reliable because of similar reasons. What is worse, even the interpretation of the tribal customary laws cannot be wholly depended upon as there are a number of variations in interpreting the same\textsuperscript{32}. It depends on whether a particular interpretation is backed by certain influential quarters. During the British period the Pnar Christians used to take upon themselves the responsibility of interpreting the customary laws. Now, of course, the non-christians have also come forward to give their side of the interpretation. It is very difficult at present to introduce a uniform system of administration of justice as the customary laws have not been codified.


\textsuperscript{32} Ibid.
Sir Keith Cantlie's notes on Khasi Law is of immense help in trying to understand some of the legal principles prevailing in Jaintia Hills. But even this work is not acceptable to the majority of people as authoritative as it is not exhaustive but also different interpretations on sections dealing with the Pnar customary laws have come to the surface now.  

The Pnar people do not seem to be enthusiastic in codifying their customary laws at present, with the existence of the autonomous district councils the thrust appears to be more legislative rather than codification. Perhaps legislations can bring into existence a sort of uniformity in their traditional system rather than codifying the customary laws that vary from place to place. For example, it is easier to have legislation by Jaintia Hills Autonomous District Council on the law of inheritance rather than codify the customary laws of inheritance that differently prevail in the 19 administrative units of Jaintia Hills. However whether the question is one of legislation or of codification, the result is the same. The result is that codification or legislation may destroy the best we have in the Pnar system of administration of

33. Interview with A. Pyrthuh M.A. age 40 Dy. Director of census of India.
34. Ibid.
justice. For example a number of cases have been decided in the Tribal Council among the Biates Jaintia Hills. Disputes in that society are brought into their council called the Nam Ringa Dewan or Nam Tin Dewan on basis of their tribal law the Nam Ringa Dan or Nam Tin Dan.

Similarly a number of disputes have been decided in Kur various clan council called durbar such settlement of disputes by various traditional councils have no place in the judicial set up as we had during the British period or at present. Any codification or legislation in future will have to take into consideration the existence of such tribunals which have not figured in the present judicial structure of administration of justice in the hill areas in general and in Jaintia Hills in particular35.

The Pataskar commission had this to say concerning judicial autonomy: "One of the purpose of the sixth schedule was to allow the tribal people to administer themselves in all matters of vital local concern and to save them from an administration that was both expensive and remote. The tendency of the councils has on the other hands, been to substantiate this traditional system of administration something more a kin to the fullfledged

35. Ibid.
Simplicity, inexpensiveness and justice have been the basis of traditional judicial administration in the hill areas of Jaintia Hills. The Pnars are no exception. But because of the introduction or grafting of modern

36. Interview with Rev. H. Fautin age 57 - Jowai.
legal system to that of Jaintia traditional system, the Pnars have failed to get the best of the two system\(^\text{37}\). Now for the last one hundred years, this confused state of judicial administration have benefited only the well-to-do people and most of the poor people who sought justice from the courts have become paupers because of the cost of litigation the process of which they are not aware of until they to lose all they had in the beginning of the case. It is time that the scholars, administrators, jurists and responsible citizens should decide either to discard the traditional system or to completely do away with the modern system of judicial administration. The two systems cannot go together except at the High Court and the Supreme Court levels\(^\text{38}\).

37. Ibid.
38. Ibid.