CHAPTER VII

Social Justice

To dispense justice in the matters of offence, crime or controversy, there were different places where trials were held under the different authorities. These places are the village Namghars, the Satra institutions, the outside sitting rooms of the higher officers or nobles known as 'Chora' and the two main courts, one under the Barbarua at the capital, the other under the Barphukan at Gauhati. Gunabhiram says that there was no written code to administer justice. In the trials regarding some crimes and offenses or in some controversial matters, such as inheritance to property, a great deal of help was taken from the Hindu 'Smrti-Sàstra', such as 'Ripunjaya' and 'Gangàjala' to dispense justice and to award punishments. In the trials, deposition of the witness was also recorded as evidence. In some cases, where it was difficult to find out the truth or the real culprit, recourse had been taken to a method of deciding it by asking one of the parties to take oath or to undergo ordeal of 'Ghata' or 'Jala'. The witnesses could not dare to give false evidence; because, according to Gunabhiram, the trials were conducted by very minutely and accurately by efficient people and the punishments inflicted on the guilty persons were very severe.

It is true that after the Moamaria revolution, the standard of the administration had fallen to a great extent in the country. Prior to this disturbance, the justice was "speedy, efficient and impartial." 2 Gait says that "at an earlier period the judge decided according to the custom of the country, and his own standard of right and wrong," But in later times the judges came to be guided by Hindu law, expounded by the Bràhmanas, in civil matters. In the court at the capital, and in every subordinate courts under
the higher officers and nobles, there were 'Brahmin-Sabhā-pandits', 'Katakis' and 'Gaṇakas' to assist the judges. In the Satra institutions and in the villages also, the 'Brahmin-Pandits' helped the judges in the trials regarding socio-religious offences or crimes. From the records we know about the existence of different 'Smrtikāras' and their culture on 'Smṛti' (Hindu law) in the early period. In the Medieval period, under the patronage of king Naranarayana, Pitamber Siddhanta Vasisa, the great 'Smrtikāra' of the time, composed eighteen 'Kaumudis' (works on smṛti), which included 'Danda-Kaumudi' (criminal code) and 'Vivāda-Kaumudi' (civil code). These two 'Kaumudis', obviously helped in dispensing justice in the courts.

In the period of our discussion, we have seen that generally the punishment was awarded to a person, who committed sin or other offence, by an order of the (i) King or by the (ii) Society in which he lived. (i) The punishment inflicted by the order of the king or the law of the country is of two kinds, viz., (a) the capital punishment and (b) the monetary punishment. The capital punishment is called 'Mṛtyu danda' (punishment by death), also, which includes a sentence of exile or imprisonment or death. The monetary punishment implied imposition of fines and in case of person who did not abide by the order, the king or the authority concerned realised it by force. (ii) The punishment of Society mainly consisted of expiation. Like the former one, this punishment was also of two kinds, viz., (a) fast, penance and meditation and (b) bestowing of cows. Sometimes the society fined a guilty person for committing an offence. In case of punishment awarded by the Society, the sinner or the offender accepted it willingly; if he did not accept it, the society boycotted him and neither he nor the members of his family were allowed to participate in any social function
or festival held in the village Namghar nor anybody of the society was allowed to be present in any function or festival performed in the house of such a man.

Trials of cases of petty offences, crimes or sins and other controversies were held in the village Namghar, where the elderly persons of the village, the 'Brahmin-priests' and 'Ganakas' assembled and decided them. A person was sentenced to a fine in case of a minor offence, but in case of a serious crime, he is awarded with a sentence for expiation in accordance with the rules of the scriptures. When it was difficult to find out the real culprit by trials, the accused was ordered to take an oath or undergo an ordeal which were performed ceremoniously by one of the parties. But such an oath or an ordeal was generally administered in the Satra institutions. Taking of oath or undergoing ordeals fall within the category of 'Divya'.

There is a work known as 'Divyatatva' by Raghunandan Bhattacharyya. As to

* The term 'Divya' literally means an oath. Taking of oath and undergoing ordeals, such as 'Ghata' or 'Jala' fall within the category of 'Divya'. Before taking an oath or undergoing an ordeal certain religious functions are to be conducted as laid down in the scriptures. The man who prepares for such an ordeal observes fasting from the day before the ordeal till the end of it. In the ordeal system of 'Ghata' a weighing scale and an earthen pot with full of water are made ready. Then after performing ceremonial rites as directed by the scriptures the accused person is weighed by keeping the pot and other things on one side of the scale and the man on the other. When they become equal in weight, both the pot and the accused person are removed from the scale. Then again, after performing certain rites, the accused person is scaled with the same things and if the weight of the accused person becomes more, he is considered to be innocent and if his weight becomes less, he is considered to be guilty. If the weight remains equal like that of the first time, it is believed that some mistakes might have been done in conducting the ordeal function and the ordeal is to be re-instituted in due procedure again. The ordeal
the procedure of taking oath or undergoing other ordeals, details are available in the 'Vyabahāra Kaumudi' of Siddhanta Vagisa. As said above, cases of serious social offence or crime were committed to the Satras by the village-authority for trial. Now, in case of committing a sin, at the end of the 'Prāyāyaschitta' (expiation) or the ordeal, either at the village or at the Satra, a document was made with the signatures of the Brāhmaṇa and other elderly persons of the village, or with the seal and signature of the Satra institution and its head. The affair does not come to an end there; in case of a serious sin, the sinner, after all these were over, was sometimes required to take the company of the village people by inviting them to a 'Nama-kirttana' and feast at his home. The head of the Satra institutions in those days went to the extent of giving capital punishments to the offenders who were their disciples. The ordeal systems of 'Ghata', 'Jala' etc. it is said, were abolished by the British administrators.

System of 'Jala' or 'Jala-Divya' is also followed almost in the same procedure. It is believed by some people that 'Jala-Divya' falls within the category of 'Koṣa-Divya' in which system, after performing some functions, the accused person is given to take the bathing water of the idol. If within the stipulated period, after taking the water, the person is attacked with disease then he is considered to be guilty. (History of Dharma Sastra, by M.M.P.V. Kanne, Vol-III). In Assam, sometimes people take recourse to the systems called 'Bāṭichalowā', 'Saukā-chalowā' or 'Bāchani-chowā' to detect the guilty person; but they are not mentioned in the scriptures. In the system called 'Bāṭi-chalowā', a man is required to take hold of a cup, incanted with 'Mantras'. The incanted cup leads the man to the guilty person. The 'Saukā-chalowā' system is also same with that of the 'Bāṭi-chalowā', in which a cane is given instead of a cup. In the system called 'Bāchani-chowā', incanted mustard oil or collyrium and other things are anointed on the nail of a man, where the man sees the image of the mischief-maker, like the reflection of an image on a looking-glass. In all the three systems, the man must be a selected one, upon whom the incantation can work effectively. In most cases a man of 'Tulā Rāsi' (Libra) is selected for the purpose.
In the Ahom system of Government, Gait says: "The Chief judicial authorities were the three Gohains, the Barbarua and the Barphukan, in their respective provinces and trials were conducted before them or their subordinates, each in his own jurisdiction. An appeal lay to them from their subordinates and in case of the Barbarua and the Barphukan, a second appeal could be made to the sovereign, which was dealt with on his behalf by theNyaykhoda (Nyāy Sodhā) Phukan. The president of each court was assisted by a number of assessors (Katakis, Ganakas or Pandits) by whose opinion, he was usually guided." As we have said above, both the Barbarua and Barphukan at their respective courts, were assisted by a set of six Phukans called 'Adalatar Phukan' (Phukans of the court). Besides these higher officers, other officers and subordinate officers also had their usual courts, where they decided the cases brought by the tenants of their establishments by holding trials in their morning and afternoon sittings. Sometimes subordinate officers were deputed by the higher officers to go to the place of occurrence to decide cases by holding summary trials. The subordinate officers after returning from such trials had to inform their higher officers about the result. It is said that in those days, although the officers were unable to read and write, they were very intelligent, conscientious, sharp in memory and righteous. Still then, approaching to the higher officers for undue favour was not very uncommon in those days. According to Gunabhiram, the phrase 'Hātani-Lotani' (requesting and entreating) stands as a testimony to this.

As to the punishment awarded to the offenders, Gait says that "the Criminal law was characterized by the greatest harshness and mutilation, branding with hot irons, and even more terrible punishments were common. In the case of offences against the person, the general principle was that of 'an eye for an eye and a tooth for a tooth' and the culprit was punished with
precisely the same injury as that inflicted by him on the complainant. The penalty for rebellion was various forms of capital punishment, such as starvation, flaying alive, impaling and hanging, of which the last mentioned was esteemed the most honourable. The death penalty was often inflicted, not only on the rebel himself, but on all the members of his family. No record was kept on criminal trials, but in Civil cases a summary of the proceedings was drawn out and given to the successful party. Cases of robbery and theft were very rare in the period. The thief was immediately convicted and ordered for execution. The death sentence was generally passed after the approval of the king or by the king himself. During the Ahom administration, it must be admitted that the punishments awarded to the offenders or sinners were very severe and in awarding punishments to the higher dignitaries special stress was laid on insulting them in the presence of the public. There are references in the chronicles to banishment of offender who is led on a donkey after his head being shaven and 'ghol' (a liquid mixture of many things, such as milk, sugar, curd etc.) poured on it; his back stripped with lime and a pitcher as a pendant from his neck. It is recorded in a chronicle that for an offence of giving shelter to some conspirators, the king Jayadhvaja Singha compelled the Bargohain to eat the liver and marrow of his son. He then ordered the Bargohain to be castigated naked in a large market place. Further, the Bargohain's son was made to eat the flesh of his own breast and thigh and drink his own urine. During the reign of king Udayaditya, due to the carelessness of the Bharali Barua, in the town of Silikhaguri, the treasury caught fire from a fire of the Bharali Barua's smoking pipe and all were reduced to ashes. For this offence, the king ordered his men to prepare a mixture from excreta of elephant and horse and made Bhelai Bharali Barua smoke the mixture.
In the court of the Koch kings or the Chutias or the Kacharis, details are still lacking about how the trials were conducted. The Bhuyan Chiefs of the North and the South bank of the Brahmaputra had courts called 'Kārkhana' where they performed magisterial duties, perhaps assisted by a 'Panchāyat'. As K.L. Barua observes in his work, 'Early History of Kamarupa,' there is every reason to suppose that "their rule was just and mild".

REFERENCES

4. Ibid ... page- 241.