

Administration of Justice (Khasi Syiemship) Order, 1950

ASSAM

India

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Rule

ADMINISTRATION-OF-JUSTICE-KHASI-SYIEMSHIP-ORDER-1950 of 1950

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Chapter I General

1. Short title, commencement and extent.

(1)This order may be called the Khasi Syiemship (Administration of Justice) Order, 1950, and it shall come into force at once.(2)It extends to the areas of the United Khasi Jaintia Hills District which were known as the Khasi States immediately before the commencement of the Constitution of India excluding so much of the area of the said District as is comprised within the Municipality of Shillong, hereinafter referred to as "the Khasi Syiemships".

1A. Definition.

- In this Order, "Syiem" means the customary head of the Khasi tribal institution of an administrative area of the United Khasi Jaintia Hills District known as the Khasi State prior to the commencement of the Constitution of India recognized as such by the Governor of Assam and includes a Sirdar, Lyngdoh or Wahadadar, as the case may be, and the "Siemship" should be construed accordingly.

Chapter II

Criminal Justice

2. Administration of criminal justice.

- Criminal Justice shall be administered by-(1)The Deputy Commissioner or Additional Deputy Commissioner, United Khasi Jaintia Hills District and his assistants.(2)The Court of the Siems.

3. Application of I.P.C.

- The Indian Penal Code as for the time being in force in other areas of the State of Assam shall apply to the Khasi Siemships as it applies to the other areas of the State.

4. Power of Deputy Commissioner, etc., and his assistants.

(1)The Deputy Commissioner or the Additional Deputy Commissioner may pass any sentence authorised under the Indian Penal Code or any other law for the time being in force in the Khasi Siemships by any sentence of death or transportation shall be subject to confirmation by the High Court of Assam.(2)The Courts of The Assistants to the Deputy Commissioner and of the Siems shall exercise such powers, not exceeding those of a Magistrate of the First Class as defined in the Code of Criminal Procedure, 1898 as they may be invested by the Governor of Assam.

5. Death reference.

- When the Deputy Commissioner or the Additional Deputy Commissioner persons sentences of death the proceedings shall be submitted to the High Court of Assam hereinafter referred to as "the High Court" and the sentence shall not be executed rules it is confirmed by the High Court.

6. Accused to be informed regarding, appeal.

- The Deputy Commissioner or the Additional Deputy Commissioner shall inform the accused of the period (namely 7 days) within which, if he wishes to appeal, his appeal should be preferred:Provided that no order of confirmation shall be made under this rule until the period allowed for preferring an appeal has expired, or if an appeal is presented within such period, until such appeal is disposed of.

7. Steps on receipts of High Court's orders.

- When a sentence of death passed by the Deputy Commissioner or the Additional Deputy Commissioner is submitted to the High Court for confirmation, the Deputy Commissioner or the Additional Deputy Commissioner shall, on receiving the order of confirmation or other order of High Court thereon, cause such order to be carried into effect by issuing a warrant in Form 35, Schedule V

to the Code of Criminal Procedure, 1898, and taking such other steps as may be necessary.

8. Time and place of execution.

- The Deputy Commissioner or the Additional Deputy Commissioner shall fix the time place of execution, and the time fixed shall not be less than 21 days or more than 28 days from the date of the issue of the warrant.

9. Appeal from conviction passed by Assistant to Deputy Commissioner or by Syiem.

- An appeal shall lie to the Deputy, Commissioner or Additional Deputy Commissioner from the order of conviction of the Assistants to the Deputy Commissioner or of the Siem if preferred within 30 days and 60 days respectively of the date of the order, exclusive of the time needed for obtaining a copy of the order appealed against. Provided that no appeal shall lie against the sentence of fine only passed by a Magistrate of the First Class when the amount of fine does not exceed Rupees fifty.

10. Appeal to High Court.

(1) An appeal shall lie to the High Court from any sentence passed by the Deputy Commissioner or Additional Deputy Commissioner. (2) Such appeals must be presented within 30 days from the date of the order appealed against, exclusive of the time needed for obtaining a copy of the order. Provided that an appeal from a sentence of death shall be preferred within seven days of the date of sentence.

11. Government appeal.

- The Governor of Assam may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal of the Deputy Commissioner or Additional Deputy Commissioner or Assistants to the Deputy Commissioner or Court of a Syiem. Such appeals shall be presented within 90 days from the date of the order of acquittal excluding the time needed for obtaining a copy of the order.

12. Power of appellate Court in disposal.

- The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under Rule 11 the accused, if he appears, the Court may if it considers that there is no sufficient ground for interference dismiss the appeal. If it considers there is sufficient ground it may set aside the order and pass any other orders in the spirit of Section 423 of the Code of Criminal Procedure.

13. Revision.

- The High Court or the Deputy Commissioner or the Additional Deputy Commissioner may call for and examine the record of any proceedings of the Subordinate Criminal Courts for the purpose of satisfying itself or himself as to the correctness legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such subordinate Court and enhance, reduce, cancel or modify, any sentence or finding passed by such Court or remand the case for retrial.

14. Application of Criminal Procedure Code.

- The procedure of the High Court of Assam, the Deputy Commissioner or the Additional Deputy Commissioner and his Assistants shall be in the spirit of the Code of Criminal Procedure, 1898, as far as it is applicable to the circumstances in the Syiemships.

14A. Issue of Commission.

(1)Whenever, in the course of an inquiry, trial or other proceedings under these rules it appears to the High Court or the Court of the Deputy Commissioner that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expenses or inconvenience which, under the circumstances of the case, would be unreasonable, such Court may dispense with such attendance and may issue a commission for the examination of the witness following the spirit of the Code of Criminal Procedure, 1898.(2)Whenever, in the course of an inquiry, trial or other proceeding under these rules before the Court of an Additional Deputy Commissioner or an Assistant to the Deputy Commissioner, it appears the commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Court shall apply to the Deputy Commissioner stating the reasons for the application, and the Deputy Commissioner may either issue a commission or reject the application.

14B. Return of commission.

- Whenever a commission for the examination of witness issued under the preceding rule or under any law for time being in force in the rest of India is received by the Deputy Commissioner, he, or such of his Assistants having the powers of a Magistrate of the First Class as he may appoint in this behalf, shall execute and return the commission following the spirit of the Code of Criminal Procedure, 1898.

15. Provision for appearance of an Advocate.

- An Advocate who is entitled to practise in the High Court may appear in any case before the Deputy Commissioner or the Additional Deputy Commissioner or his Assistants.

Chapter III

Special Provision as to the Court of a Syiem

16. Definition of Court of Syiem and its jurisdiction.

(1)A Court of the Syiem means a Court established under the customary law of the Khasi Syiemship and recognised as such by the Governor of Assam. Such a Court also includes the Court of Sirdar, Lyngdoh or Wahadadar in the case may be.(2)The Court of the Siem may try any offences under the Indian Penal Code or under any other law for the time being in force within its respective locality except whose punishable with death, transportation or involving a punishment of 5 years' imprisonment 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 Syiem's Court shall have jurisdiction over non-Khasis who voluntarily invoke or submit to is jurisdiction.

17. Maintenance of Registers.

- The following registers shall be kept in the Court of Deputy Commissioner, Additional Deputy Commissioner and Assistants to the Deputy Commissioner.(1)Register of Petitions.(2)Register of Crimes.(3)Register of Criminal Cases disposed of.(4)Register of Fines.

Chapter IV

Civil Justice

18. Authorities of civil justice.

- The administration of civil justice is entrusted to the Deputy Commissioner, Additional Deputy Commissioner, Assistants to the Deputy Commissioner and Courts of the Syiems.

19. Jurisdiction of Siem's Court.

- A Siem's Court can adjudicate any civil cases arising within its respective locality in which Khasis who reside or hold land within its respective locality are concerned.

20. Jurisdiction in no.

- Khasi cases - In regard to non-Khasis, the Assistants to the Deputy Commissioner shall be the Court of First instance, except when the parties concerned invoke or voluntarily submit to the jurisdiction of the Syiem's Courts.

21. Exercise of original jurisdiction.

- The Deputy Commissioner or Additional Deputy Commissioner and his Assistants shall not ordinarily function as an original Court in cases triable by Syiem's Court.

22. Reference to Panchayat.

- The Deputy Commissioner or Additional Deputy Commissioner and his Assistants shall, in all cases in which the parties are indigenous inhabitants of the hill, endeavour to induce them to submit their case to a Panchayat or an arbitration. In case of an arbitration each party shall name an equal number of arbitrators, and shall choose, or leave the arbitrators to choose an Umpire.

23. Principles for adjudication.

(1) In all civil matters the Deputy Commissioner or Additional Deputy Commissioner shall adjudicate according to customary law wherever applicable and where the customary law cannot be applied to either party it shall adjudicate, according to justice, equity and good conscience. (2) It shall be discretionary to examine witnesses on oath in any form or to warn them that they are liable to punishment for perjury if they state that which they know to be false.

24. Appellate Court.

- An appeal shall lie to the Deputy Commissioner or the Additional Deputy Commissioner from decision of the Assistants to the Deputy Commissioner and the Siem's Court within 30 days and 60 days respectively of the date of the decision exclusive of the time needed for obtaining a copy of the order appealed against: Provided that the Assam High Court shall be a Court of Appeal from an original decision of the Deputy Commissioner or Additional Deputy Commissioner if the value of the suit be Rs. 500 or over or if the suit involves a question of right to, or possession of, immovable property.

25. Power of Deputy Commissioner, etc., in disposing of an appeal.

- The Deputy Commissioner or the Additional Deputy Commissioner after hearing the parties or their pleader may examine the parties and, if the decision appears to be just, shall affirm and enforce it as one of its own. If the Court sees reason to doubt the justice of decision it shall reverse, vary, modify or pass such other order or orders as it deems fit, and shall state the relief to which the appellant is entitled.

26. Appeal to High Court.

- An appeal shall lie within sixty days of the date of decision exclusive of the time needed for obtaining a copy of the order appealed against to the High Court from any original or appellate decision of the Deputy Commissioner or the Additional Deputy Commissioner.

27. Revisional power of High Court.

- The High Court may, on application or otherwise call for the proceedings of any case decided by the Deputy Commissioner, or Additional Deputy Commissioner, his Assistant and Syiem's Courts and pass such orders as it may deem fit.

28. Security for costs of appeal.

- Any Court before which an appeal is filed may, before admitting the appeal, order the deposit by the appellant of all reasonable expenses (including pleader's fees) likely, in the opinion of the Court, to be incurred by the respondent in the hearing of the appeal or may order security to be given for such expenses, and if the appellant be a judgement-debtor may also order security to be given for part or the whole of decretal amount.

29. Application of C.P.C.

- The procedure of the High Court of Assam, the Deputy Commissioner or Additional Deputy Commissioner and his Assistants shall be guided by the spirit, but not bound by the letter of the Code of Civil Procedure, 1908 and without prejudice to the local customs and usages governing any party to a case.

30. Execution of decree.

- The decree of the Appellate Court shall be transferred to the Court passing the original order for execution as a decree of its own.

31. Properties liable to attachment and sale in execution.

- Property, movable or immovable, belonging to the judgement-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgement-debtor or by another person in trust for him or in his behalf, is liable to attachment and sale in execution of a decree. Provided that the following particulars shall not be liable to such attachment or sale, namely-(a) the necessary wearing apparel, cooking vessels, beds and bedding of the judgement-debtor, his wife and children, and such personal ornaments as in accordance with religious usage cannot be parted with by woman; (b) tools of artisans and where the judgement-debtor is an agriculturist or hill man, his implements of husbandry and such cattle and seed-grain and such portion of agricultural produce; as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such and for purpose of providing until the next harvest for the support of the judgement-debtor and his family; (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him and any house or house-site belonging to a hillman; (d) book of account; (e) a mere right to sue for damages; (f) any right of personal service; (g) Stipends and gratuities allowed to pensioners of the Government or payable out

of any service, family pension fund noticed in the Gazette of India by the President in this behalf, and political pensions.(h)allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty.(i)the salary or allowances equal to the salary of any such public officer or servant as is referred to in Clause (h) while on duty, to the extent of the first hundred rupees and one-half of the remainder of such salary or allowances:Provided that where the whole or any part of the portion of such salary or allowances liable to attachment, has been under attachment whether continuously or intermittently for a total period of twenty-four months, such portion shall be exempt from attachment, until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same-decree, shall be finally exempt from attachment in execution of that decree.(j)the pay and allowances of person to whom the Indian articles of War apply;(k)all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1897 for the time being applies in so far as they are declared by the said Act not to be liable to attachment;(l)the wages of labourers and domestic servants whether payable in money or in kind;(m)an expectancy of succession by survivorship or other merely contingent or possible right or interest;(n)a right to future maintenance;(o)any allowance declared by law passed under the Government of India Act, 1919, the Government of India Act, 1935 and the Constitution of India to be exempt from liability to attachment or sale in execution of a decree; and where the judgement-debtor or a person liable for the payment of land revenue any movable property, which under any law for the time being applicable to him is exempt from sale for the recovery of an arrear of such revenue.Explanation. - (1) The particulars mentioned in Clauses (g), (h), (i), (l) and (o) are exempt for attachment or sale whether before or after they are actually payable.(2)Nothing in this rule shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment of sale in execution of decrees for rent of any such house, building, site or land or if themselves the subject of the suit.

32. Detention of debtor.

- There shall be no imprisonment for debt, excepting in cases where the Deputy Commissioner or the Additional Deputy Commissioner is satisfied that fraudulent disposal or concealment of property has taken place and in such cases the debtor may be detained for a period not exceeding six months.

33. Provision for appearance of Advocate.

- An Advocate who is entitled to practise in the High Court of Assam may appear in any case before the Deputy Commissioner or the Additional Deputy Commissioner or his Assistants.

34. Application of Indian Limitation Act.

- Except in so far as provided by these rules, the Indian Limitation Act, 1908 (Act IX of 1908), shall not apply to suits in which either or both parties are member of a Scheduled Tribe or Tribes specified in Items I and 2 of Part I-Assam, of the Schedule to the Constitution (Scheduled Tribes) Order, 1950.

35. Maintenance of Registers.

- The following registers shall be kept by the Courts of the Deputy Commissioner, Additional Deputy Commissioner and the Assistants to the Deputy Commissioner: (1) Register of Petitions. (2) Register of Suits. (3) Register of Execution Cases.

Chapter V

Cancellation and Savings

36. Cancellation and savings.

(1) The Khasi States Federation (Administration of Justice) Order, 1948, published in the Government of India Ministry of States Notification No. 237- P, dated the 16th June, 1948 and the Khasi States Federation (Administration of Justice) (Supplemental) Order, 1948 published in the Government of India, Ministry of the States Notification No. 296-P, dated the 4th October, 1948 are hereby cancelled. (2) Notwithstanding such cancellation, every suit, appeal, application for revision proceedings and other business relating to both civil and criminal justice, pending on the date of commencement of this Order, before the Court of the Dominion Agent, Additional Dominion Agent, Khasi State or his State Courts shall be transferred or deemed to have been transferred for disposal to the Court which would have been competent to entertain and dispose of such suit, appeal, application for revision, proceedings or business, had this order been in force on the date of institution or commencement of the same and the latter Court deal with and dispose of the same in accordance with law.

Part I

Application of Enactments The enactments and rules specified in the Scheduled hereto annexed in so far as the same may be applicable and subject to any amendments to which they are for the time being subject in other areas of the State of Assam shall apply to the Shillong Administration Areas. Provided, first, that the said enactments and rules shall apply only to such cases as the Khasi Chief concerned is not empowered to adjudicate and decide. Provided further that for the purpose of facilitating the application of the said enactments and rules any Court may construe the provisions thereof with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before the Court.

Schedule

1. The Indian Penal Code (XLV) of 1860)

2. The Code of Criminal Procedure, 1898 (V of 1898) except the first proviso to Section 188.

3. The rules relating to Civil Justice as contained in Section IV of the rules for the Administration of Justice and Police in the Khasi and Jaintia Hills made by the Governor of Assam under Section 6 of the Scheduled Districts Act, 1874, and published without notification of the Government of Assam No. 2618-A.P., dated the 29th March, 1937.

Part II

JurisdictionAll Courts, including the High Court of Assam, which have for the time being criminal jurisdiction other areas of the Town of Shillong shall exercise the like jurisdiction in the Shillong administered areas. The High Court of Assam shall also exercise all such appellate and other jurisdiction on the civil side, as has hitherto been exercised, under the rules for the administration of civil justice as appealed to the Shillong administered areas, by the Governor of Assam.

Part III

Supersession and SavingThe notification of the late Political Department No. 165, IB, dated the 18th August, 1937, is hereby cancelled. Provided that all proceedings pending on the 16th March, 1948 shall be carried on as if the said notification had not been cancelled. NotificationsNotification, No. 166-IB, dated 16th March, 1948 issued by the Government of India, Ministry of States. - In exercise of the powers conferred by Section 4 of the Extra Provincial Jurisdiction Act, 1947 (XLVI of 1947) and of all other powers enabling it in this behalf the Court Government is pleased to make the following orders for the application of enactments to and for the exercise of jurisdiction within, "the Shillong Administration Areas, that is to say, so much of the areas for time being comprised within the Municipality of Shillong as forms parts of the United Khasi-Jaintia Hills-District".