

Rules for the Administration of Justice in the North Cachar Hills Sub-Division

ASSAM

India

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Rule

RULES-FOR-THE-ADMINISTRATION-OF-JUSTICE-IN-THE-NORTH-CACHAR-HILLS-SUB-DIVISION of 1937

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Rules for the Administration of Justice in the North Cachar Hills Sub-DivisionPublished vide Notification No. 2530 (c) A.P., dated 25th March, 1937Last Updated 10th February, 2020(North Cachar Hills)No. 2530 (c) A.P. - In exercise of the powers conferred on him by Section 6 Act XIV 1874 (the Schedule Districts Act) the Governor of Assam is pleased to prescribe the following revised Rules for the administration of justice in the North Cachar Hills Sub-division. This cancels as previous Orders on the subject.I-General

1.

The administration of the North Cachar Hills Sub-division is vested in the Governor of Assam, the Deputy Commissioner, Assistant to the Deputy Commissioner, and the village authorities, or such officer or officers as the Governor of Assam may see fit from time to time to appoint in that behalf, subject to the restrictions and rules herein recorded.

1A.

The Governor may, when he thinks fit, appoint an Additional Deputy Commissioner either generally or for the trial of a particular case, civil or criminal, and shall direct that such Deputy Commissioner shall for the general or special purpose aforesaid, exercise all or any of the powers of Deputy Commissioner.

2.

The Deputy Commissioner shall nominate and appoint the village authorities, subject to the confirmation of the Governor of Assam and shall assign to them their respective functions under these Rules and define, so far as may be necessary, the local limits within which such duties shall be exercised by each respectively, and may cancel and modify any such order. When no village authorities have been so nominated and appointed, the powers and duties assigned to them by these Rules shall be exercised and performed by the Deputy Commissioner, or by such officer as he may deputy for this purpose.II-Police

3.

The ordinary duties of police in respect to crime will be discharged by the village authorities. They shall arrest all criminals and maintain peace and order within their respective local limits.

3A.

The village authorities shall not be deemed to be police officers for the purpose of Section 26 of the Indian Evidence Act or Section 162 of the Code of Criminal Procedure.

4.

It shall be the duty of the village authorities to report to the Deputy Commissioner at the earliest practicable moment all crimes, violent deaths and serious accidents occurring within their respective local limits and all occurrences, whether within or beyond such limits, which may come to their knowledge and which are likely to affect the public peace, and to deliver up offenders to the officers authorised to try them as soon as may be within a period of twenty-four hours of arrest excluding the time necessary for the journey from place of arrest to the Court of such Officer.

5.

The village authorities shall watch and report, or apprehend and deliver up all vagrants or bad and suspicious characters found in their districts.

6.

On the occurrence of any heinous crime or of offences under the Arms Act or Excise Act within their local limits, the inhabitants of the village shall at once, if possible, apprehend the offenders, and in any case shall at once inform the chief village authority, who, if the offender has not been apprehended, shall proceed without delay to the place where the crime occurred, and enquire into the matter. He shall further, as soon as possible, report any such offence to the Deputy Commissioner or other duly authorised officer whether the offender has been apprehended or not.

7.

The village authorities may pursue an offender fleeing beyond their jurisdiction and arrest him, but shall not ordinarily attempt to arrest an offender beyond their own jurisdiction without the cognizance and co-operation of the village authorities within whose limits the offender has fled. When an offender is traced from one jurisdiction to another, it will be sufficient to point him to the village authorities within whose limits he may be found, aiding them, if required, to effect his capture.

8.

When the village authorities are unable to arrest an offender, they shall apply to the Deputy Commissioner or any officer duly authorised, for such aid as he or such officer may consider necessary.

9.

All inhabitants of the Sub-division are bound to aid the village authorities when required to do so for the maintenance of order or apprehending offenders and are liable to fine for failing to give such assistance, the fine to be adjudged by the chief village authority to the extent of this powers in criminal cases, or by the Deputy Commissioner, or on Assistant to the Deputy Commissioner as may be specifically authorised by the Deputy Commissioner. And if it appears that the community is to blame, and that particular offenders cannot be discovered, a fine may be imposed upon the community, but by the Deputy Commissioner only.

10.

Misconduct on the part of the village authorities in police matters shall be punishable by dismissal or by fine which may extend to Rs. 500 or by imprisonment of either description to the extent which would be awardable under the Penal Code or other law for law for a like offence, or by both. Imprisonment may be awarded in lieu of fine, but only by the Deputy Commissioner or an Assistant to the Deputy Commissioner as may be specifically authorised.

11.

An appeal shall lie from all orders of the chief village authority in police matters to an Assistant to the Deputy Commissioner and from him to the Deputy Commissioner, whose orders are final but the Governor may at any time call for the proceedings of any officer subordinate to him and modify or reverse any order passed.

III-Criminal Justice

12.

Criminal justice shall be ordinarily administered by the Deputy Commissioner, or an Assistant to the Deputy Commissioner and by the chief village authority duly authorised in this behalf.

13.

The Assistant to the Deputy Commissioner shall exercise such powers not exceeding those of the Magistrate of the First Class as defined in the Criminal Procedure Code as he may be vested with by the Governor of Assam.

14.

The Deputy Commissioner shall be competent to pass sentence of death, transportation, or imprisonment up to the maximum amount provided for the offence, of whipping and of a fine up to any amount: Provided that all sentences of death, transportation or imprisonment of seven years and upwards shall be subject to the confirmation by the High Court.

14A.

When the Deputy Commissioner passes sentence of death, the proceeding shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court.

14B.

The Deputy Commissioner shall inform the accused of the period (namely 7 days) within which, if he wishes to appeal, his appeal should be preferred.

14C.

If any case is submitted under Rule 16-A, the High Court-(a) may confirm the sentence or pass any other sentence warranted by law, or (b) may annul the conviction and convict the accused of any offence of which the Deputy Commissioner might have convicted him, or (c) may acquit the accused person: Provided that no order of confirmation shall be made under this clause 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.

14D.

When a sentence of death passed by the Deputy Commissioner is submitted to the High Court for confirmation, the Deputy Commissioner shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant in the form given in Schedule V. No. XXXV of the Criminal Procedure Code, or some similar form, or taking such

other steps as may be necessary.

14E.

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

15.

The High Court or Deputy Commissioner may call for the proceedings of any officer subordinate to him and reduce, enhance or cancel any sentence passed, or remand the case for re-trial; but no offence shall be punished by a sentence exceeding that awardable under the Indian Penal Code.

16.

Fine, or fine and imprisonment may be awarded in lieu of any punishment; but no offence shall be punished by a sentence exceeding that awardable for such offence under the provisions of the Indian Penal Code.

17.

The chief village authorities may themselves dispose of the cases of the persons residing within the jurisdiction charged with the following offences: Theft. Injury to property of whatever kind. Injury to person not endangering life or limb. House-trespass. Affronts of whatever kind.

18.

The chief village authorities may impose a fine for any offence they are competent to try up to a limit of Rs. 50 and may award restitution or compensation to the extent of the injury sustained. Fines may be realised by distraint of the offender.

19.

The village authorities may not decide cases-(a)where the defendant does not reside within their jurisdiction;(b)where the offence is one against the State, or causing death or danger to life or limb or of robbery of any sort with violence, or of arson, of making or passing counterfeit coin, or of making fraudulent documents', or offences under the Arms Act or Excise Act and generally any offences of a heinous nature.

20.

The chief village authority shall decide all cases in open Darbar in the presence of the least three witness and of the complainant and accused whose attendance they are empowered to compel.

21.

The chief village authority may carry out his decision as soon as pronounced, unless the accused person claim to appeal. If the sentence is a fine and the accused person does not pay, he shall be sent to Haflong to be dealt with by the Deputy Commissioner while the fine is being realised.

22.

Either party may appeal to the Assistant Deputy Commissioner from the decision of the chief village authority within thirty days. The case shall then be tried de novo.

23.

An appeal shall lie to the Deputy Commissioner from the decision of the Assistant to the Deputy Commissioner if preferred within thirty days :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 Rs. 50

24.

An appeal shall lie to the High Court from any sentence passed by the Deputy Commissioner. All appeals must be presented within thirty days of the date of the orders appealed against, excluding the time required for procuring a copy of the order :Provided that an appeal from a sentence of death shall be preferred within seven days from the date of the sentence.

24A.

The Governor may direct an appeal to be presented to the High Court from an original or appellate order of acquittal passed by any Court other than the High Court. Such an appeal shall be presented within ninety days from the date of the order of acquittal excluding the time needed for obtaining a copy of the order.

24B.

(1) Whenever, in the course of an inquiry, trial or other proceeding under these rules, it appears to the High Courts 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, expense 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, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice and that 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 been deleted by Assam Amendment Act 1970.

24C.

Whenever a commission for the examination of a witness issued under the preceding rule or under any law for the 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.

25.

The High Court, the Deputy Commissioner and the Assistants to the Deputy Commissioner shall be guided in regard to procedure by the principles of the Code of Criminal Procedure so far as they are applicable to the circumstances of the area consistent with these Rules. The chief exceptions are—(a) Verbal order or notice only shall be requisite, in any case except, when the regular police are employed or when the person concerned is not a resident of or in the district at the time. The order shall be made known to the person concerned or to some adult member of his family and failing this shall be proclaimed at the place where he is or was last known to be at, in sufficient time to allow him, if he sees fit, to appear. (b) The proceedings of the chief village authorities need not be recorded in writing, nor shall it be necessary that examinations before the Deputy Commissioner be signed by the parties examined; but the Assistant to the Deputy Commissioner may require the chief village authorities to report their proceedings in any way which appears to him suitable. (c) There shall be no preliminary enquiries by regular or village police unless the Deputy Commissioner or an Assistant to the Deputy Commissioner sees fit to direct one. (d) Recognisance to appear shall not be taken unless it appears necessary to the Deputy Commissioner or an Assistant to the Deputy Commissioner. (e) Examinations and proceedings generally shall be recorded in English only. (f) Oaths shall not be administered to parties to suits unless the Court or either party to a suit so requires, and except in cases where the accused is charged with murder. It is, however, at all times optional with the Court to put witnesses on oath; and witnesses whether on oath or not shall be punishable for giving false evidence. When one or other party to a suit, being, natives of the hills or of similar habits, demand that evidence shall be taken on oath or the Court so require, the whole of them shall be sworn in the mode most binding on their conscience. Christians shall only be sworn by Christians; Hindus or Mohammedans shall be examined on solemn affirmation. III-A-Haflong Town

25A.

Nothing in the preceding rules in this Part shall be deemed to apply to the town of Haflong within the boundaries set out in Notification No. 8430 A.P. dated the 11th December, 1931.

25B.

(a)The President or the Governor of Assam may, either upon conditions or without conditions, suspend the execution of any sentence or remit any punishment.(b)If any sentence has been suspended or remitted upon conditions, and in the opinion of the President or the Governor of Assam as the case may be, those conditions are not fulfilled, the President or the Governor of Assam, may cancel the remission and order the sentence to be carried out, and thereupon the person in whose favour the sentence had been suspended or remitted, may, if at large, be arrested by any police officer without warrant and remanded to undergo the unexpired portion of the sentence.

25C.

The President or the Governor of Assam may commute any of the following sentences for any other mentioned after it:death, confiscation of property, imprisonment, whipping, fine.

25D.

All criminal cases arising in Haflong town shall be death with under the Code of Criminal Procedure, 1898. The area in the District and Sessions Division shall be called the district of Haflong and the Sessions Division of Haflong respectively. The District and Sessions Judge and the Additional District and Sessions Judge, Upper Assam Division, shall be the District and Sessions Judge and the Additional District and Sessions Judge respectively of the Court of Sessions for the Division. The Deputy Commissioner of the United District shall be a Magistrate of the First Class and a District Magistrate in the District of Haflong.IV-Civil Procedure

26.

The Administration of Civil Justice in North Cachar shall be conducted by the Deputy Commissioner, and Assistant to the Deputy Commissioner and the chief village authorities.

27.

The village authorities may try cases in which plaintiff and defendant are living in their jurisdiction without limit as to amount, but with the following reservations.

28.

All suits shall be decided in open Darbar in the presence of the parties, and at least three respectable witnesses.

29.

The chief village authorities shall have power to compel attendance of parties to any suit and of witnesses, and to fine up to a limit of Rs. 50 to persons failing to attend when ordered to do so.

30.

The chief village authorities shall have power to award all costs, also compensations, to defendants for unfounded or vexatious suit brought against them.

31.

All proceedings shall be viva voce, but the Sub-divisional Officer or an Assistant to the Deputy Commissioner may require the chief village authorities to report their proceedings in any way which appears to him suitable. After hearing both parties and their witnesses, if any, they shall with or without the opinion of assessors, as they may see fit, forthwith pronounce a decision.

32.

The chief village authorities may carry out their decisions at once unless appeal is made, or security given to the chief village authorities' satisfaction but if an appeal is made at the time of decision, the chief village authority shall send up the parties and their witnesses to the Deputy Commissioner or an Assistant to the Deputy Commissioner forthwith as soon as may be. He shall either accompany them himself or send at least one respectable person who has been present at the trial with them.

33.

The Deputy Commissioner and Assistants to the Deputy Commissioner shall not ordinarily hear any suits triable by the chief village authorities, but suits which under these Rules the chief village authority cannot try shall be tried by the Deputy Commissioner or an Assistant to the Deputy Commissioner.

34.

The Deputy Commissioner and Assistant to the Deputy commissioner shall in all cases coming before them, in which the parties are indigenous inhabitants of the frontier tract, endeavour to induce them of submit their cases to the Panchayat. In that event each party shall name on equal number of arbitrators, and the Court shall either choose, or leave the arbitrators to choose, an umpire. The names and residences of the arbitrators and umpire and the matter in dispute shall be recorded before the proceedings commence, and the Court shall direct the chief village authority, or some other person, to assemble the Panchayat and witnesses within such reasonable period as the Court may fix. When the case has been decided, the Umpire shall appear with the parties before the Court, which shall proceed to record the decision and enforce it as its own. From such decision there

shall be no appeal.

35.

On appeals to tire Deputy Commissioner or an Assistant to the Deputy Commissioner from a decision of the chief village authority, a record shall be made of the matter in dispute, and of the decision of the chief village authority; and if necessary the Court shall examine the parties and, if the decision appears to be just, it shall be affirmed and enforced by the Court as its own. If, on the other hand, the Court sees grounds to doubt the justice of the decision, it shall try the case de novo, or refer it to the Panchayat as provided above.

36.

Decree against persons resident beyond the jurisdiction of the Court in North Cachar, if satisfaction cannot be obtained within North Cachar, shall be transferred for execution to the Court having jurisdiction.

37.

Houses, needful clothing's or cooking utensils or implements whereby the owner subsists, may not be attached, sold or transferred in execution of a decree, unless the house or other things above exempted is the subject of the suit. Land may be sold or temporarily transferred where custom admits of individual rights in it being recognised.

38.

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

39.

The High Court or Deputy Commissioner may, on application or otherwise, call for the proceedings of any case decided by any officer subordinate to him and pass such orders as he may deem fit. An appeal shall lie to the Deputy Commissioner against the decision of an Assistant to the Deputy Commissioner and to the High Court against an original decision of the Deputy Commissioner, if the value of the suit be Rs. 500 or over, or if the suit involves a question of tribal rights or customs, or of right to or possession of immovable property :Provided that the petition of appeal accompanied by a copy of the order appealed against and by a clear statement of the grounds of appeal be filed within 30 days from he date of decision excluding the time required for obtaining a copy of the decision. An appeal which lies to the Deputy Commissioner or High Court may be presented to the Assistant to the Deputy Commissioner, who shall, if it be in order and presented in due time, endorse upon it the date of receipt and transmit it with the records of the case to the Deputy Commissioner. The decree

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

40.

The High Court and the Courts of the Deputy Commissioner and Assistant to the Deputy Commissioner shall be guided by the spirit, but not be bound by the letters, of the Code of Civil Procedure.

41.

It shall be discretionary to examine witnesses on oath in any form, or to warn them that they are liable to the punishment for perjury, if they state that which they known to be false.

42.

Oaths shall not be administered to parties to suits, unless the Court or other party to a suit so require. When one or other party to a suit, both belonging to a Scheduled tribe or tribes specified in Item I of Part I-Assam on the schedule to the Constitution (Scheduled Tribes) Order, 1950, demand that evidence shall be taken on oath, or the Court so require, the whole of them shall be sworn in the presence of some persons whom the Court may depute in the mode most binding on their conscience. Christians shall only be sworn by Christians; Hindus or Mohammadans shall be examined on solemn affirmation.

43.

The Assistant to the Deputy Commissioner is empowered to try suit up to any amount, but the Deputy Commissioner shall be empowered to transfer any case from the file of an Assistant to the Deputy Commissioner to his own; the grounds of such transfer to be recorded in writing.

44.

Although the Indian Limitation Act 1908 (Act IX of 1908) has been barred by Notification No. 5868 A.P. dated the 8th September, 1934, the principles of the Act should be closely followed in disputes between persons not belonging to 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.