

Rules for the Administration of Justice and Police in the Sibsagar, Nowgong and Mikir Hills Tracts (Mikir Hills)

ASSAM

India

Rules for the Administration of Justice and Police in the Sibsagar, Nowgong and Mikir Hills Tracts (Mikir Hills)

Rule

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Rules for the Administration of Justice and Police in the Sibsagar, Nowgong and Mikir Hills Tracts (Mikir Hills)Published vide Notification No. 2617-A.P., dated 29th March, 1937Last Updated 10th February, 2020Notification No. 2617-A.P. Under the powers vested in him by Section 6 of the Scheduled Districts Act XIV of 1874, the governor is pleased to prescribe the following rules for the Administration of Justice and Police in the Sibsagar, Nowgong and Mikir Hills Tracts. This cancels all previous orders on the subject.I-General

1.

The Administration of Mikir Hills is vested in the Governor, Deputy Commissioner of the United District of Mikir and North Cachar Hills and his Assistants, the mauzadars, gaonburas, sardars, dolois and other village authorities or such other classes of officers as the Governor may see fit, from time to time, to appoint in that behalf, subject to the exceptions, restrictions and rules hereinafter recorded.

1A.

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

all or any of the powers of the Deputy Commissioner.

1B.

The High Court may, for any reason which it considers proper, transfer any original case whether civil or criminal, at any stage when it is pending or under trial before any Court, to any other Court competent to try it.

1C.

In these Rules-(1)"Mikir Hills" means the Mikir Hills Autonomous Districts comprising of the tribal areas within the boundaries defined in Notification No. TAD/R-31/50/151, dated 13th April, 1951.(2)The term "Deputy Commissioners" and "their Assistants" wherever they occur, shall be read as "Deputy Commissioner" and "his Assistants" respectively.II-Police

2.

The police of the Mikir Hills shall consist of-(a)Regular police subject to Act V of 1861 At.(b)Rural police, consisting of mauzadars, gaonburas, and other village authorities recognized as such by the Deputy Commissioner.

2A.

Rural police shall not be deemed to be police officers for the purposes of Section 26 of the Indian Evidence Act or Section 162 of the Code of Criminal Procedure.

3.

The control of the police of the Mikir Hills is vested in the Deputy Commissioner acting under the orders of the Governor or Assam and in such other officers as the Governor may, from time to time, appoint. Misconduct on the part of the regular police shall be punishable in accordance with Act V of 1861, the Penal Code or any other enactment to which they may be subject. Misconduct on the part of the rural police is punishable by dismissal or by fine, which may extend to Rs. 500, or imprisonment to an extent which would be awardable under the Penal Code for a like offence. Imprisonment may be awarded in lieu of fine, but only by the Deputy Commissioner or other person duly authorised.

4.

An appeal lies from all orders of mauzadars, gaonburas and other village authorities in police matters to the Deputy Commissioner whose orders are final. But the Governor may call for the proceedings of any officer subordinate to him and modify or reverse any order should he think fit.

5.

The ordinary rules of the police shall, as far as they are applicable, be observed by the regular police and all returns in matters of accounts and all registers required to be kept by the police, as far as they are applicable, shall be made and kept up. The Inspector General of Police, Assam, shall exercise the powers of Inspector-General in the Mikir Hills.

6.

The regular police shall only act when required to do so by general or special order of the Inspector-General of Police or Deputy Commissioner or other officer duly authorised, who may assign to the force any portion of the duties of police under Act V of 1861 in any locality.

7.

The ordinary duties of police shall be discharged by muzadars, gaonburas and other village authorities. They shall arrest all criminals and repress all disorders within their respective jurisdictions.

8.

It is the duty of the mauzadars, gaonburas or other chief village authorities to report to the Deputy Commissioner or his Assistants, all crimes, violent deaths or serious accidents, occurring in their jurisdiction and all occurrences whether within or beyond their jurisdiction, which may come to their knowledge, likely to affect the public peace, at the earliest possible moment, and to deliver up offenders to the officer 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 the place of arrest to the Court of such officer.

9.

The mauzadars, gaonburas and village authorities shall watch, report and, under the orders of the Deputy Commissioner, apprehend and deliver up all vagrants or bad and suspicious characters found in their jurisdictions.

10.

On the occurrence of any heinous crime in his district, any village officer, who may be by custom or appointment charged with the duty of arresting criminals, shall at once apprehend the offender, if able, and in any case at once report to the mauzadar or gaonbura who, if the offender has not been apprehended, will proceed without delay to the place where the crime occurred and enquire into the matter. If a crime beyond his cognizance has been committed, he will immediately report it to the Deputy Commissioner or other duly authorised officer, whether the Offender has been apprehended

or not.

11.

Mauzadars, gaonburas and other village authorities may pursue with hue and cry an offender, fleeing beyond their jurisdiction and arrest him, but ordinarily no mauzadar, gaonbura or other village authority shall attempt to arrest an offender beyond his own jurisdiction without the cognizance and cooperation of the mauzadar, gaonbura or chief village authority of the jurisdiction to which the offender has fled. When an offender is traced from one jurisdiction to another, it will be sufficient to point him out to the mauzadar, gaonbura or other competent authority of the village to which the offender has fled, and request him to make the arrest.

12.

When the mauzadar, gaonbura or other chief village authorities feel unable to arrest an offender, they must apply to the Deputy Commissioner, or his Assistants or any officer duly authorized, to grant them such aid as he or such officer may consider necessary.

13.

The mauzadars, gaonburas and other chief village authorities are empowered to arrest or cause .to be arrested, and may also fine, all drunkards and other disorderly persons found brawling out of their houses, and all persons found gambling; the fine not to exceed that awardable under their powers in criminal matters as hereinafter defined.

14.

All the inhabitants of the Mikir Hills who are under the administrative control of the Deputy Commissioner, are bound to aid the regular police and village authorities, when required to do so in the maintenance of order, or the apprehension of offenders. Any person failing to do so is liable to fine, the fine to be adjudged by the mauzadar, gaonbura or other chief village authority, to the extent he is empowered to award in criminal cases or by the Deputy Commissioner if fine beyond the amount those officers are authorised to impose is considered necessary. When the particular persons blamable for failure to aid in any community cannot be ascertained, the mauzadar, gaonbura or chief village authority shall be considered responsible, and if it appears that the community is to blame and that particular offender cannot be discovered, a fine may be imposed upon the community, but by the Deputy Commissioner only.III-Criminal Justice

15.

Criminal justice shall be ordinarily administered by the Deputy Commissioner, his Assistants, and by the mauzadars, gaonburas, and other chief village authorities of the different communities.

16.

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. The High Court or the 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 offender shall be punished by a sentence exceeding that awardable under the Indian Penal Code. Assistants to the Deputy Commissioner shall exercise such powers, not exceeding those of a Magistrate of the First Class as defined in the Criminal Procedure Code as they may be invested with by the Governor.

16A.

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

16B.

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.

16C.

In any case 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 order a new trial on the same or on amended charge, 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.

16D.

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.

16E.

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.

17.

Any mauzadar, gaonbura or other chief village authority may be empowered by the Deputy Commissioner to dispose of the cases of the cases of persons charged with any of the following offences :Injury to property not exceeding Rs. 50.Injury to person not affecting life or limb.House-trespass.Theft.They may impose a fine for any offence they are competent to try to the extent of Rs. 50. They may award restitution or compensation to the extent of the injury sustained and enforce it by distraint of the property of the offender. In cases in which the fine is not paid or realised either in whole or in part, they shall represent the facts and send in the offenders to the Deputy Commissioner or any of his Assistants who may retry the case and impose such other punishment as he is competent to inflict. All mauzadars, gaonburas or other chief village authority who may be empowered as above shall receive a sanad or recognition under the signature of the Deputy Commissioner.

18.

Mauzadars, gaonburas or other duly recognised village authorities may carry out their decision or order attachment of property as soon as judgement is pronounced, but in no case is property attached be sold if the party convicted claims to appeal within thirty days, without the orders of the Deputy Commissioner or one of his Assistants.Mauzadars, gaonburas or other duly recognised village authorities may not decide cases-(a)where their fathers, mothers, sons, daughters, wives of the children, husbands, or wives of any of these are concerned; or(b)where the defendant is not a native of the Mikir Hills or is not resident within their jurisdiction;or(c)when the offence is one against the State, or has caused death or danger of life, or amounts to robbery or concerns counterfeiting of coin, or making of fraudulent documents, or the like.

19.

The mauzadars, gaonburas or other duly recognised village authorities shall decide all cases in open Darbar in presence of at least three witnesses and the complainant and accused, whose attendance they are empowered to compel. Either party may appeal from the decision at the time decision is pronounced, or within thirty days thereof, to the Deputy Commissioner or one of his Assistants, in which case mauzadar, gaonbura or other duly recognised authority will take the parties or cause them to be sent before the Deputy Commissioner or his Assistants together with the persons required to attend as witnesses. The case shall then be fired de novo.

20.

An appeal lies to the Deputy Commissioner from the decision of his Assistants 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.

21.

An appeal shall lie to the High Court from any sentence passed by the Deputy Commissioner or Additional 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.

21A.

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.

21B.

(1) Whenever, in the course of an inquiry, trial or other proceeding 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, 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 witnesses following the spirit of the Code of Criminal Procedure, 1898. (2) Whenever in the course of the 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 that a 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.

21C.

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.

22.

The procedure of the High Court, and the Deputy Commissioner and his Assistants shall be in the spirit of the Code of Criminal Procedure, as far as it is applicable to the circumstances of the tracts

and consistent with these rules. The Chief exceptions are:(a)Only verbal order of notice or summons shall be requisite, except when the regular police are employed or the person concerned is not a resident of or in the district at the time; or if in the district, but resident beyond it, where his place of abode is not known. But verbal order or summons shall be for a fixed day, and the order shall be made known to the person affected or to some adult member of his family or proclaimed at the place he was last known to be at, in sufficient time to allow him, if he sees fit, to appear.(b)A note of the substance of all the proceedings in cases tried before them must be kept by the Deputy Commissioner and his Assistants in the form prescribed by Section 263 of Act V of 1898. In cases requiring a sentence exceeding three days, a full note of the evidence and proceedings must be kept. Examinations and proceedings shall generally be recorded in English only.(c)The proceedings of mauzadars, gaonburas or other duly recognised village authorities need not be in writing, but if at the trial before the village authorities any person who can write can be found, a brief note of the proceedings is to be made.(d)All fines levied by mauzadars, gaonburas or other duly recognised village authorities shall be paid to the Deputy Commissioner or his Assistants or other officers empowered to receive them, within eight days from the date of realization.(e)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 know to be false.For the defence of paupers accused of murder, Rules 19 to 21 of Assam Law department Manual-Part II-Criminal Rules-shall be followed mutatis mutandis.

23A.

(a)The President or the Governor 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, as the case may be, those conditions are not fulfilled, the President or the Governor, may cancel the remission and order the sentence to be carried out, and 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.

23B.

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

23.

The Administration of Civil Justice in the Mikir Hills is entrusted to the Deputy Commissioner, his Assistants, mauzadars, gaonburas and other chief village authorities.

24.

Mauzadars, gaonburas and other chief village authorities may be recognised by the Deputy

Commissioner by sanad under his signature as empowered to try cases without limit as to amount, but with the following reservations:(a)They may not try suits in which their fathers, mothers, sons daughters, uncles, aunts, sisters, brothers, the children of foregoing, their wives or persons in the above relation to a wife, or any near relative are parties, nor suits in which any person who does not belong to a Scheduled Tribe specified in Item 1 of Part I-Assam of the Schedule to the Constitution (Scheduled Tribes) Order, 1950 resident in the Mikir Hills or is a native of another village or resident in their jurisdiction is a party;(b)All suits must be decided in open Darbar in the presence of the parties and at least three respectable witnesses.

25.

Mauzadars, gaonburas and other duly recognised village authorities have power to compel attendance of parties to any suits and their witnesses-all such persons being resident within their own jurisdiction-and to fine within the limit of Rs. 50, to persons wilfully failing to attend. They have power to award all costs, also compensation of defendants for unfounded or vexatious suits brought against them.

26.

All proceedings shall be viva voce and the mauzadars, gaonburas or other duly recognised village authorities shall not be called upon to make either record or registry of their decision. After hearing both parties and their witnesses (if any) they shall, with or without the opinion of assessors, as they think fit, pronounce a decision forthwith. But if, at the trial any person who can write can be found, a brief note of the proceedings is to be made.

27.

Mauzadars, gaonburas or other duly recognised village authorities may carry out their decisions at once, and order attachment of property to be made, but in no case is property so attached to be sold if the party claims to appeal within thirty days. On such appeal being made they shall send the parties and their witnesses to the Deputy Commissioner or one of his Assistants forthwith, or as soon as may be, and either accompany them or send one respectable person who has been present at the trial with them.

28.

All notices given by mauzadars, gaonburas and other duly recognised village authorities to parties or witnesses may be verbal, and for a fixed day not exceeding thirty days from the day it is given. If a case be postponed, it shall be fixed for a day not exceeding eight days from the order, and the case may subsequently be adjourned for a period not exceeding eight days on good cause shown.

29.

The Deputy Commissioner and his Assistants shall not ordinarily hear suits triable by mauzadars, gaonburas or other duly recognised village authorities, but they have a discretion to do so when they think right; and suits, which under these rules the village authorities cannot try, must be tried by the Deputy Commissioner, or his Assistants. A register of all suits tried by the Deputy Commissioner and his assistants shall be kept in such form as the High Court shall direct.

30.

The Deputy Commissioner and his Assistants shall in all cases in which the parties belong to a Scheduled Tribes specified in Item 1 or Part I-Assam, of the Schedule to the Constitution (Scheduled Tribes) Order, 1950 resident in the Mikir Hills endeavour to induce them to submit their case to a Panchayat. If they agree to this, each party shall name an equal number of arbitrator, and shall choose, or leave the arbitrators to choose, an umpire. The names and residence of arbitrators and umpire and the matter in dispute, must be recorded before the proceedings commence, and the Court will direct the mauzadars, gaonbura or other recognized authority to assemble the Panchayat and witnesses within eight days. 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.

31.

An appeal shall lie from the decision of the mauzadar, gaonbura or other duly recognized village authority to the Deputy Commissioner, or his Assistant. A record shall be made of the matter in dispute and the decision of the village authorities. If necessary, the Court shall 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 the decision, it will try the case de novo, or refer it to a panchayat as above.

32.

Houses of house-tax-paying hill-men, need full clothing, cooking utensils, or implements whereby the owner subsists, may not be attached, sold or transferred, in execution of a decree, unless themselves by the subject of the suit.

33.

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.

34.

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 any of his Assistants, 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 the date of decision excluding the time required for obtaining a copy of the decision. An appeal which lies to the High Court may be presented 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 High Court. The decree of the appellate Court shall be transferred to the Court passing the original order for execution as a decree of its own.

35.

The High Court and the Courts, of the Deputy Commissioner or Additional Deputy Commissioner and his Assistants shall be guided by the spirit, but not be bound by the letters, of the Code of Civil Procedure.

36.

[Omitted].

37.

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 know to be false.

38.

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 1 and 2 of Part I-Assam, of the Schedule to the Constitution (Schedule Tribes), Order, 1950.