



## **The Administration of Justice in ‘Tribal Areas’: A Case of Arunachal Pradesh**

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### *Abstract*

*Arunachal Pradesh in 1914 was known as North East Frontier Tracts. It was renamed as North East Frontier Agency in 1954. In 1972, it became a Union territory with a new name- Arunachal Pradesh. The tribal areas/scheduled areas, as known constitutionally at present, were administered differently by framing tribal-specific rules and regulations. The indigenous ways of administration of justice-both criminal and civil-were allowed to be functioned with little or no interference from the State’s Administration. In Arunachal Pradesh, this practice continued, post-independence. The traditional self-governing institutions were in operation under the broad framework of the Assam Frontier (Administration of Justice) Regulation, 1945. In fact, these institutions were strengthened and the people were encouraged to continue with traditional justice delivery system. These institutions not only were responsible for administration of justice but had influence on socio-economic and religious affairs of the people. Under 1945 Regulation, executives (Deputy Commissioners, Circle Officers) have adjudication power. However, with the introduction of statutory political institutions (Panchayati Raj) and separation of judiciary from executive, the relevance and authority of village authorities (Gaon Buras) have minimized.*

**Keywords:** *Regulation, Village Authority, Administration, Justice, Tribal.*

### **Policy of Non-interference**

Arunachal Pradesh, even before its evolution as a distinct political entity, remained protected and the protective policy continued even after India’s independence. Both Ahom kings and the colonial rulers followed the policy of ‘non-interference’ towards the hill tribes of North east Frontier Tracts. The successive Ahom rulers framed their policies on the twin considerations of the exigencies of political situation and the strength and weakness of the

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ruling tribal chiefs. Since the extension of regular administration in the tribal areas was considered to be unviable both politically and economically, the colonial rulers remained concerned only with protecting their plain interests from hill tribes by taking out occasional punitive expeditions. Hence, because of the political exigency the British government had to frame a unique and tribal-specific administrative system in accordance with the spirit of their customs and traditions. The normal rules and regulations were not extended to the tribal areas during the colonial period.

The areas of North East India, which included present Arunachal Pradesh, were brought under the 'non-regulated system' of administration by the Regulation X of 1822.<sup>i</sup> Through this Regulation, 'the powers of Collectors, magistrates and Judges were centred in the same hands, and intensely centralized and all powerful executive was constituted for bringing the administration within the reach of the people through simple and personal procedure'(Hansaria 2016: 1).

The powers under summary legislation authorized the then Lt. Governor of Bengal to prescribe a line called 'Inner Line' in each or any of the districts beyond which no British subjects can pass without an Inner Line Permit, under Section 7 of the Bengal Eastern Frontier Regulation, 1873.<sup>ii</sup> *The Scheduled Districts Act, 1874* provides that the Local Government may from time to time by notification in the local Gazette- (a) declare what enactments are actually in force in any of the Scheduled Districts, or in any part of any such district, (b) declare of any enactment that it is not actually in force in any of the districts or in any part of any such district. In April 1874, the whole of the then Assam was declared as a Scheduled District. However, the provisions of the Act of 1874 were extended to the North East frontier Tracts only in 1916 (Government of Arunachal Pradesh 1982: 3).

*The Assam Frontier Tract Regulation, 1880* was enacted, which provided authority to the Chief Commissioner of Assam to remove any part of the frontier tracts of Assam from the operation of enactments in force therein. In exercise of the power under the provisions of the Regulation of 1880, and by extending the said regulation to the hills inhabited or frequented by Abors, Miris, Mishmis, Singphos, Nagas, Khamtis, Bhutias, Akas and Daflas, the hill areas of Assam were separated from the Lakhimpur and Darrang districts of Assam. Thus, the hill areas, which were under the administrative jurisdictions of the Deputy Commissioners, Lakhimpur and Darrang Districts of Assam, became a separate political entity- North East Frontier Tracts.

The Government of India Act, 1915 as amended by the Government of India Act, 1919 provided for designation of tribal areas as 'Backward Tracts.' The Governor-General acting under section 52A of the Act of 1919 declared the tribal areas in Assam, including North East Frontier Tracts (The Sadiya Frontier Tract, Balipara Frontier Tract, Lakhimpur Frontier Tract), as 'Backward Tract' within the constitutional framework of the Government of Assam.

The Government of India Act, 1935 incorporated certain recommendations of the Simon Commission and the tribal areas then called as 'Backward Tracts' were regrouped under two categories: 'Excluded Areas' and 'Partially Excluded Areas.' The Act provides that no Act of the Federal Legislature or of the Provincial Legislature shall apply to an Excluded or Partially Excluded Area unless directed by the governor. As per the provisions of section 91(1) of the Government of India Act, 1935, the *Government of India (Excluded and Partially Excluded Areas) Order, 1936* was promulgated. The North-East Frontier Tracts (Sadiya, Balipara and Lakhimpur Frontier) were included under 'Excluded Areas.'<sup>iii</sup>

After India's independence in 1947, the Governor of Assam was deprived of his discretionary powers in respect of the North East Frontier Tracts. The administrative jurisdiction was passed on to the Government of Assam by virtue of the provisions of the Indian Independence Act, 1947. However, the administration was continued to be carried by the Governor on the advice of the Chief Minister of Assam, who was then called the Prime Minister.

When the constitution of India came into force, all the hill areas (including the North East Frontier Tracts) were simply designated as 'Tribal Areas.' The Sixth Schedule<sup>iv</sup> to the Constitution of India provides special provisions for administration of the tribal areas in Assam. The tribal areas of Assam were divided into two parts: Part A and Part B. The North East Frontier Tracts was specified in Part B of the table appended to Paragraph 20 (1) of the Schedule. The extension of the Central rules was made possible in the area. There was a change the administrative set up of the Frontier Tracts. The Government of Assam was relieved of their responsibility for the administration of North-East Frontier Tracts. The Governor of Assam was once again entrusted with the discretionary power, and the paragraph 18 of the Sixth Schedule empowers the Governor of Assam to administer the area as the agent of the president.<sup>v</sup>

### **Administration of Justice through Traditional Village Councils**

Following the policy of 'non-interference', the existing traditional forms of village administration, which were carried through Village Councils, were allowed to be functioned without much interference. The traditional societies of Arunachal Pradesh did not have police to maintain law and order in the society and courts to adjudicate the cases. It was the responsibility of the village Councils to maintain peace and order in respective tribal territories. Every tribal group has its own type of village council with different nomenclature but with almost similar functions. Tribal Councils not only maintained peace in the society but also regulated the socio-political and cultural, and even economic activities of the people.

Even with the introduction of modern participatory political institutions, the traditional institutions continue to function as effective instrument in management of village affairs alongside the modern institutions. Such village councils are known as *Kebang* amongst the Adis; *Buliang* amongst the Apa Tanis; *Gindung*, *Bang Nyele* or *Nyagam Aabhu* amongst the Nyishis; *Mokchup* amongst the Khamtis and *Mangmajom* amongst the Monpas.

K.A.A. Raja (1975: 6-7) understands the socio-political organisations of the tribes of Arunachal Pradesh by classifying them into five distinct types. Firstly, the 'Adi Republican type', with well organised villages administered by a council of elders and youth organisations as their executive agents. Secondly, the 'Autocratic Nocte and Wanchoo type' with hierarchical social and political order. Thirdly, the Individualistic 'Mishmi type' where there is no organised integrated village administration and households, and clans formed the only bonds of cohesion. Fourthly, the 'Theocratic Monpa type' in which the society is divided into a sacred and a lay order. Fifthly, the 'Apatani type' with large village segmented into clan sectors, each administered by its own clan council. According to Gogoi (1971) tribal councils of the tribes of Arunachal Pradesh can be classified into four types: (i) Chieftaincy (ii) Gerontocracy (iii) Arbiter system and (iv) Democratic type.

Writing on the vibrancy of indigenous self-governing institutions of the indigenous communities of Arunachal Pradesh, P.N. Luthra, the then Advisor to the Governor of Assam writes (Elwin 1988: ix),

"In India's recent history which is crowded with centuries of alien rule exercised from the centre, there has been gradual decay of the age-old village authority which in ancient times used to managed the affairs at the village and community level. Happily in the North East Frontier Agency the inherent urge of its people to take stock of their problems and deal with them has remained intact ..... there is a wide measure of indigenous democracy in the prevailing patterns of social customs and laws of the people."

Sinha (1988: 100) describes how the power and authority are exercised in different traditional societies of Arunachal Pradesh. To quote him,

"The political organisation of a tribal community is the traditional way in which the society recognizes the exercise of authority. The authority may be vested in a single individual acting as the headman of the village, or it may be entrusted to a few chosen representatives of the village forming a council of elders-as among the Adi groups- and acting on behalf of the whole village community whose confidence they may command, or in the third alternative, the village community may keep the authority to itself. While the first seems to be an autocratic set-up, the latter two are more popular among those societies where the democratic ideas have a special value."

### **A Case Study: the Apatanis**

The Apatanis, known locally as Tanw, reside in the Ziro valley, the district headquarters of Lower Subansiri of Arunachal Pradesh. As per 2011 census there are 44,800 Apatanis, whose language is a member of the Western Tani branch of the Sino-Tibetan language family. Legend has it that the forefathers of the present Apatanis had migrated to their present place from a mythological place somewhere in the valley of Tibet, through various routes. They are known for sustainable agricultural practices, and have rich traditional ecological knowledge of natural resources management and conservation.

Traditionally, no outside authority controlled the Apatani society and thus the same was politically independent. The Apatanis never had any central authority in the form of a king or chieftain either. Under their only controlling-authority, called *buliang*, all Apatani villages ensured their right on own land, forest or rivers in and around their valley. It served as a mechanism through which proper administration of justice was ensured, and maintained peace and tranquility in the society. The *Buliang* is as old as the society itself. Oral traditions have it that once in the society widespread violence prevailed in the absence of any controlling authority. To bring an end to such chaotic situation, the *Buliang* had evolved in due course of time.

The *Buliang* is liable not just to maintain order in the society but its responsibilities extended beyond the boundaries of political and judicial spheres. It did not interfere in disputes between individuals or families. In an individual or family dispute, their common relatives act as *Gondu*-the middlemen-cum-mediator for arbitration. When the normal *Gondu* fails to settle a dispute one of the parties may appeal to the *Buliang* of the village for intervention. In instant case, the appellant is bound to honour the decision of the *Buliang*.

*Buliang* lacks centralised authority to enforce binding decisions upon the larger disputes of the individual or group, as it represents their own clan. In normal situation, a dispute or case is taken up by the *Buliangs* of the concerned clan or village and is disposed off accordingly. If the concerned *Buliangs* fail to settle the same then the case is handed over to the *Buliangs* of a group of clans/villages. The final authority lies with *Supung Buliang*, to be represented by *Buliangs* of every Apatani villages.

In the event of an internal armed hostility between two or more villages, the young *Buliangs* visit the battle field first to pacify the warring factions. Thereafter, seasoned *Buliangs* would start negotiation for peaceful settlement. The *Buliangs* would arrive at the war field by wearing *Yetw* (rain-shield) to distinguish themselves from the warring parties.

After serious negotiations and long deliberations *Buliangs* would pronounce its verdict by imposing fine to either of the parties or both. With the verdict the *Dapo*- a formal peace treaty demonstration in the warring villages to restore peace and order, would be organised/enacted. It stands as a testimony to the treaty of settlement and agreement and fundamentally no one or party can violate the same.

During external war or hostility, the *Buliangs* would act to arrive at an appropriate decision, either to retaliate with the arms or negotiate peacefully with the hostile party. Once the decision is taken, the people will have to act according to the sanction of the *Buliang*. The Apatanis consider roads, bridges, religious grounds and altars, animal pasture lands, grave yards, public platforms (*Lapang*), wells, channels and dams, etc. as purely public properties. If someone destroys any of these properties, either with motivated intention or inadvertently, the *Buliangs* and other village elders deliberate amongst themselves and impose a fine in commensurate with the degree of the offence.

In the Apatani tradition, the habitual thieves or the murderers may be imposed death penalty. However, the murderers or the habitual thieves were awarded capital punishment and executed only after the sanction of the *Supung Buliangs*. We cite an instance of one Chiging Duyu of Duta village, who had a habit of stealing cattle. In 1945, he was executed in Hangu village after the sanction of the *Supung Buliangs* (Haimendorf 1962: 102).

In olden days, if a dispute is not resolved through mediators, a party to the dispute may resort to what is called as *Lisunii*. It is a show of wealth and strength, in which personal properties such as, cows and *mithuns*<sup>vi</sup> are killed and Tibetan bells, swords, etc are destroyed in the courtyard of the disputing party. If the second party is unable to match the destroyed properties, he concedes the defeat. There may be a situation in which the competition (of destruction) continues warranting intervention of the *Buliangs*.

There was a case involving two influential persons of an Apatani village. Mr. X killed three *mithun* in front of Mr. Y's house, and destroyed one Tibetan bell, one bronze plate and one Tibetan sword. Mr. Y retaliated by killing four *mithuns* in front of X's house. Next, Mr. X killed ten *mithuns* and Mr. Y responded by killing twenty. The following day, Mr. X slaughtered thirty *mithuns*, and Mr. Y gathered sixty *mithuns* and slaughtered them in one day. Thereupon Mr. X sent a request to all his relatives and gathered eighty *mithuns* (sixty his own and the rest twenty those of relatives) and was just was about to slaughter them when the *buliang* stepped in and persuaded him to kill only sixty, so as to just match Mr. Y's last bid. Thus, the case was settled and further destructions of properties stopped (Haimendorf 1962: 111-112).

### **Administration of Justice through a Regulation**

With the consolidation of its position in Assam and extension of its administrative jurisdiction in the hill areas, the British Administration in India, however, felt the necessity of certain interference in the ways of administration of justice prevalent among the tribal communities. Their intention was to regulate and control heinous crimes like murder, rape and slavery; crime against the state was never to be tolerated.

Hence, in 1914, three sets of rules for administration of justice were issued under the *Scheduled Districts Act, 1874*. The Rules were: (i) *Rules for Administration of Justice in Central and Eastern Section*, (ii) *Rules for Administration of Justice in Lakhimpur Frontier Tract*, and (iii) *Rules for Administration of Justice in Western Section*. In 1937, the Rules were modified and issued under the Government of India Act, 1935, in the following forms: (i) *Rules for Administration of Justice in Sadiya Frontier Tract*, (ii) *Rules for Administration of Justice in Lakhimpur Frontier Tract*, and (iii) *Rules for administration of Justice in Balipara Frontier Tract*. These sets of Rules were consolidated into one set of Rules under *Assam Frontier (Administration of Justice) Regulation, 1945*. In 1916, the Indian Penal Code, 1860 was introduced in the territory to facilitate trials by regular Courts of Law, if it became absolutely necessary.



The Regulation extends to the whole of the Balipara, Lakhimpur, Sadiya and Tirap Frontier Tracts. During British days administrative districts were called as Frontier Tracts.

Sub section 1 of the Section 3 of the Regulation provides that the administration of the Tracts was vested in the Governor. The Political Officer, the Assistant Political Officer and the village authorities were entrusted with the administrative responsibility of each tract. The Political Officer, Assistant political Officer shall be appointed by the Governor, as provided in sub -section 2 of Section 3.

Village authority (Gaon Buras) was at the lowest level of the administrative hierarchy. The Political Officer, as per sub section 1 of Section 5, was empowered to appoint such person or persons as he considers desirable to be the member of a village authority for such villages as he may specify. He may also modify or cancel any such order of appointment and may dismiss or cancel any such order of appointment and may dismiss any person so appointed.

In social, economic and civil matters, the administration did not disturb the traditional power of the tribal councils. But in police and criminal matters they were to function within the framework of the Regulation -I of 1945. Sub-section 1 of Section 8 empowers the village authority to discharge the ordinary police duties in respect of crime and to maintain peace and order within their jurisdiction.<sup>vii</sup> Political Officer, Additional Political Officer and Assistant Political Officers were the adjudicator of major criminal cases. Section 17 of the Regulation lay down that the Political Officer shall be competent to pass any sentence warranted by law. The Assistant Political Officer shall, as per Section 18, exercise any power not exceeding those of a magistrate of the first class. As given in the section 19, the under mentioned offences were included under the criminal jurisdiction of the council:

- Theft, including theft in a building.
- Mischief, not being mischief by fire or any explosive substances.
- Simple hurt.
- Criminal trespass or house trespass.
- Assault or using criminal force.

Civil justice shall be administered by the Political Officer, the Assistant Political Officers and the Village Authorities according to Section 36 of the Regulation. The Political Officer would try suits of any value while the Assistant Political Officers may try suits not exceeding Rs 1,000 in value. The powers of the village authority extended to all suits without limit by value in which both the parties were indigenous to the Tract and lived within their jurisdiction. The suits must not have been submitted to arbitration.

## **Conclusion**

The primary aim of the Regulation 1 of 1945 was to bring certain uniformities in tribal councils of various tribes with regards to dispensation of justice. Through this Regulation, the British government indirectly controlled the workings of Village Councils.

Government of India retained this Regulation in order to protect the unique customs and traditions of the tribal communities. The Regulation provided the Village Authorities with wide power to be exercised in accordance with their customary laws. The cases within village jurisdiction and of simple in nature were allowed to be settled by the Village Authorities. Till today, the *Gaon Burahs* so constituted under the 1945 Regulation as Village Authorities act like a bridge between the public and the law enforcing agencies. They are responsible for all the law and order related duties in the village.

Regulation provides the tribal council very wide powers as it is recognized that they will function and inflict punishment or order compensation as per their customary laws. However, in many cases the power and position of the village councils are weakened because the village authorities (*Gaon Burahs*) are appointed by the government. They owe their position and importance to the Government and are bound by government instructions issued from time to time.

In spite of separation of judiciary from the executive, vide Notification No. JUD/DCS-37/2010, dated January 6, 2010, some of the provisions of the *Assam frontier Administration of Justice, 1945* are still in operation. Various studies have suggested that the village people prefer rational justice delivery system, which are quick and less expensive, than the modern judicial system.

With the operation of 1945 Regulation and separation of judiciary from the executive by appointing judicial magistrates, the power and role of traditional self-governing institutions have been restrained to social and religious activities.

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## Endnotes

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<sup>i</sup> This special Regulation, enacted on the basis of the report of David Scott, was initially meant for the people of the Garo Hills.

<sup>ii</sup> The original purpose for the British to come to Assam was to restore order and to drive out Burmese invaders. However, they later realised that the tea plant was native to the area and discovered oil, coal and other minerals. They found the area attractive for capital investment. It was also realised that for economy to grow there was a need for peace and order in the area. Some of the tribals used to conduct raids in the villages of Assam plains, in retaliation of plain traders, who ventured into the tribal territory exploited natural resources (killing elephants for ivory, felling trees for timber, etc). The Regulation aimed at restricting the non-natives' entry into tribal territory. As per Section 3 of the Regulation, any outsider shall be required to obtain a permit called Inner Line Permit to cross the Inner Line).

<sup>iii</sup> The other tribal areas of Assam were included in the Excluded Areas are: The Naga Hills District, Lushai Hills District, and The North Cachar Hills District.

<sup>iv</sup> The basic aim of the Sixth Schedule to the constitution was to provide a distinct political and administrative structure for the hill areas of North East India so that the tribal communities, lacking outside exposure and having little political consciousness, are not exploited by the more advanced neighbouring people of the plains. Besides, it was a constitutional mechanism fine-tuned to balance the desire of the tribal communities for more 'political space' with 'self-autonomy' and Assam's stand against such demands.

<sup>v</sup> The Union Territory of Arunachal Pradesh was formed in 1972 by Section 7 of the *North Eastern Areas Re-organisation Act, 1971*, and it ceased to be a tribal area within the State of Assam. Thereafter, the provisions of the Sixth Schedule also ceased to be applicable to Arunachal Pradesh.

<sup>vi</sup> Semi domesticated animal, and a mixture of cow and buffalo.

<sup>vii</sup> Sub-section 2 of the same section however, states that the village authority shall not be deemed to be police officers for purpose of Section 25 and section 26 of the Indian Evidence Act, 1872 for the Section 162 of the Code of Criminal Procedure, 1898.