

## JUDICIAL DEVELOPMENT UNDER THE CUSTOMARY LAWS IN THE AUTONOMOUS DISTRICT OF KARBI ANGLONG INDIA

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*Established under the Sixth Schedule of the Indian Constitution. Karbi Anglong District has been given the privilege to have its own local Judicial Body. Which had the power to trail cases of minor gravity and helped in resolving disputes related to their customary laws. However, this system was not very much successful in its growth as the Judicial System of Karbi Anglong until August 2017 as the Judiciary of the District was merged with the executives. Thus showing a clear trace of Negligence of the local customary laws of the people. Now, however, with the historic judgment of Honorable Gauhati High Court regarding the separation of Judiciary, along with the necessary steps taken by the Honorable Court regarding the establishment of the new court in all the Autonomous Districts of Assam. A new hope of a revival of customary law has been developed. This paper seeks to study effects of the new day Judicial System with the right of recognition of the local customary laws of the people. And would also try to present a view of the historical development of customary laws in Karbi Anglong District till date along with its implementation in the present system.*

**Keywords** | Sixth Schedule, Karbi Anglong Autonomous Council [KAAC], Scheduled District, Government of India Act 1935, The Assam Criminal Law (Amendment) Act, 1953, Assam Administration of Justice in the KarbiAnglong District Act, 2009, Civil Courts Act, 1887, Excluded Areas, Partially Excluded Areas.

### INTRODUCTION

Established under the purview of **Sixth Schedule** of the Indian Constitution, the Karbi Anglong District of Assam has been given special powers to run its Executive, Legislature, and Judicial Bodies. Currently, known as **Karbi Anglong Autonomous Council [KAAC]**. The people living in this region is mostly influenced by there age-old customs, tradition, and culture. They were never ruled by the British Government directly, nor any rules implemented by the British Provisional Government were imposed upon them<sup>1</sup>. Thus, for the protection and preservation of the culture of the tribal people, Government of India under the 6<sup>th</sup> Schedule of the Indian Constitution have inserted the provision of

<sup>1</sup> DAS, K., Dr, & Choudhury, L. R. (n.d.). Karbi Anglong: A Journey from District Council to Territorial Council. International Journal of English Language, Literature in Humanities. doi:10.24113/ijellh

Autonomous districts and autonomous regions. Of which the district of Karbi Anglong is also a part. Thus empowering the local people with a mini-constitution of their own.

Which empowers them to operate their own separate Judicial System under **Para 4 of the 6<sup>th</sup> Schedule**. The courts, namely The Village Councilor Court and The District Councilor Courts may be established. Where the Local tribal people can settle their dispute as per their customary laws.

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## BACKGROUND OF KARBI ANGLONG

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The Karbi Anglong district in Assam is located in the High Hills and Forest in some of the most interior regions of Assam. It is one of the thirty-three districts of Assam. It is also one of Autonomous Regions in Assam who have their special privilege to run their own Autonomous Council to make their own rules under the 6<sup>th</sup> Schedule of the Indian Constitution. During the Pre-British Period, The Karbis were Under the Protection of the Ahom Rulers<sup>2</sup>. During the British Rule, it was known as the Mikir Hills Tract and was declared a 'Scheduled District' constituted in 1874 which was a part of the then Nagoan and Sivsagar Districts of Assam. Which was, later on, declared as the part of the 6<sup>th</sup> Schedule area under the **Government of India Act 1935**<sup>3</sup>.

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## THE JUDICIAL ADMINISTRATION OF KARBI ANGLONG IN THE PRE-BRITISH PERIOD

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The traces of Judicial Administration of the Karbi People in the earlier times says that the Karbi People had an organized three tier system to Deliver Justice to its people. Where **LINDOKPO** the social chief of Longri. Was entrusted with Judicial Powers along with his representative of 28 officers know as "**Pinpomar Amer**". Where the LINDOKPO was empowered to decide a case only when "Pinpomar Amer" fails to do, then the decision given by the LINDOKPO was considered to be final<sup>4</sup>. Similarly, at a medium scale, there were the Heads of the Havar called as "**Habe**" and his representative known as "**Havar Amei**" who was also entrusted with Judicial Powers. The Habe was regarded to be the Custodian and interpreter of the customary laws of the Karbi People<sup>5</sup>. Whereas at last in the smaller and lowest scale of the Judicial Administration of the Karbi People was know by the name of "**SARTHE**" who was the head of the village. Also had control over the Judicial matters of his Village<sup>6</sup>.

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## INFLUENCE OF BRITISH GOVERNMENT IN KARBI ADMINISTRATION

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<sup>2</sup> Bey, M. S., Sri. (2005). A Glimpse Of The Socio-Political Evolution Of The Karbis Of Karbi Anglong Of Assam (1st ed.). Diphu, Karbi Anglong: Shri Bimola Teronpi Shri Moti Piree Beypi.

<sup>3</sup> ~ibid~

<sup>4</sup> ~ibid~

<sup>5</sup> ~ibid~

<sup>6</sup> ~ibid~

British Government took all the necessary steps to provide a Political Safeguard to The Tribal People of North- East India. The British Government in fact under the **Government of India Act 1935**, established the Sixth Schedule which contains recommendations regarding Political Safeguard of the Tribal People. Which had created two separate lists of tribal area 1) **Excluded** and 2) **Partially Excluded areas**. In which the Mikir Hills area was regarded to be a Partially Excluded area. Although not every person British Authority agreed to this decision the Government and have lead to a Debate in The House Of Commons. Where **Wing Commander James** did not like the proposal to bring Mikir Hills to partial exclusion. he wanted them to be entirely excluded<sup>7</sup>. **As Lt. Col. Smiles** in his statement against the recommendation of the British Government said, "I see no justification for their inclusion as Partially Excluded area. They are not fit for the rough and tumble of political life and they are very isolated districts."<sup>8</sup> Various studies were undertaken to know weather Mikir people should be **Excluded totally** or should be **Partially Excluded** from the protection provided under the **6<sup>th</sup> Schedule**. The Government of Assam also wrote to the local officers requesting for their views. Where both the Deputy Commissioner of Nogaon and North Cachar Hills suggested on total exclusion of the Mikir People<sup>9</sup>. Thus later on in the year 1937, the British Government notified the rules of the Mikir Hills area after a thorough examination regarding the system of Administration of the Excluded and Partially excluded areas. Namely "**THE RULES FOR THE ADMINISTRATION OF JUSTICE AND POLICE IN THE SIBSAGAR, NOWGAON AND MIKIR HILLS TRACTS**" and "**RULES FOR THE ADMINISTRATION OF JUSTICE IN THE NORTH CACHAR HILLS DIVISION**". Where Excluded areas were the:- The North Cachar Hills, sub-division of the Cachar district. ' and Partially excluded areas were The Mikir Hills (in the Nagaon and Sibsagar Districts)<sup>10</sup>.

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### THE DEVELOPMENT OF SIXTH SCHEDULE UNDER THE CONSTITUENT ASSEMBLY

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During the period of relinquishment of power from The British Government to The Provisional Government of India. The Constituent Assembly saw one of its most heated Debate while adopting the rules relating to the Sixth Schedule. As some members opposed the creation of District and Regional Council. "The Responsibility of Parliament life can be shouldered by those who are competent, wise, just and literate. To vest political power in the hands of the tribals is the surest method to invite chaos, anarchy, and disorder throughout length and breadth of this country ....." said Shri Brajeshwar Prasad (Bihar:

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<sup>7</sup> H.C.D Vol. 308 Col.Speech of Wing Commander,James.

<sup>8</sup> Bey, M. S., Sri. (2005). A Glimpse Of The Socio-Political Evolution Of The Karbis Of Karbi Anglong Of Assam (1st ed.). Diphu, Karbi Anglong: Shri Bimola Teronpi Shri Moti Piree Beypi.

<sup>9</sup> ADMINISTRATION OF THE HILL AREAS, IN PARTICULAR, MIKIR HILLS & N.C. HILLS, DURING BRITISH RULE. (n.d.). Retrieved October 8, 2017, from [http://shodhganga.inflibnet.ac.in/bitstream/10603/67599/9/09\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/67599/9/09_chapter%203.pdf)

<sup>10</sup> ~ibid~

General).<sup>11</sup> Lakshinarayan Sahu, Member of the Constituent Assembly from Orissa thought that the District Council and Regional Council can never benefit as this would promote the sense of self-centeredness and the Tribes could never be able to merge with the people living in the Planes. However, Dr. B.R Ambedkar defended the creation of the District Councils. And mentioned about the difference between Tribals living in Assam and the tribals living in other places. He said that Tribal People living in Assam has their grassroots in their culture and civilization. They did not adopt the mode of Life and Manners of their neighbors<sup>12</sup>. Dr. Ambedkar has also mentioned the difference in the laws of Inheritance and marriage which are completely different from the people living in the Plains. Justifying his reasons for the inclusion District Councils and Regional Councils Dr. Ambedkar argued the position of the Red Indians in the U.S.A. Where the Government of U.S.A have created Reservation<sup>13</sup>.

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### ESTABLISHMENT OF VILLAGE AND DISTRICT COUNCILOR COURTS

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Following the development of the Rules of Administration in Mikir Hills Tracts and The North Cachar Hills after the period of Independence of India from the British Rule. The rules Administration of Justice was laid down in **Para 4 of the 6<sup>th</sup> Schedule** which empowered the creation of District Councils or courts and Village Councils or Courts for the trial of suits and cases between parties all of who belong to 'scheduled tribes' community within such areas, subject to certain exceptions. This para also gives authority to the District or Regional Councils to appoint persons who are considered to be suitable as a member of such Village Councils or court. Moreover, the District Council was also empowered to act as a court of appeal for all the suits and cases decided by a Village Council or Court<sup>14</sup>. No other court except the High court of the State and Supreme Court of India had the Jurisdiction of these Cases<sup>15</sup>. However, the researcher while conducting his personal Interview relating to the relevance of these courts in Practical expects found out.

- 1) These courts never came into a perfect setup in The Karbi Hills.

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<sup>11</sup> Prasad, B., Shri. (1949, September 6). Address presented at Constituent Assembly of India met. Retrieved October 8, 2017, from <http://parliamentofindia.nic.in/ls/debates/vol9p27a.htm>

<sup>12</sup> Ambedkar, B. R., Dr. (1949, September 6th). Address presented at Constituent Assembly of India met. Retrieved October 8, 2017 Retrieved October 8, 2017, from <http://parliamentofindia.nic.in/ls/debates/vol9p27a.htm>

<sup>13</sup> FRAMING OF THE SIXTH SCHEDULE. (n.d.). Retrieved October 8, 2017, from [http://khadc.nic.in/acts\\_rules\\_regulations\\_bills/misc/Framing%20of%20the%206th%20Schedule.pdf](http://khadc.nic.in/acts_rules_regulations_bills/misc/Framing%20of%20the%206th%20Schedule.pdf)

<sup>14</sup> CHAPTER 3 The Judicial System in the Autonomous Districts of Meghalaya : General Observations and the Sources of Law. (n.d.). Retrieved October 8, 2017, from <http://14.139.60.114:8080/jspui/bitstream/123456789/692/7/The%20Judicial%20System%20in%20Autonomous%20Districts%20of%20Meghalaya.pdf>

<sup>15</sup> DAS, K., Dr, & Choudhury, L. R. (n.d.). Karbi Anglong: A Journey from District Council to Territorial Council. International Journal of English Language, Literature in Humanities. doi:10.24113/ijellh

- 2) The Common People Preferred The Assistant Commissioner Court more than the Village and Districts Courts.
- 3) Lacks of Government fund for the establishment of these courts.
- 4) The absence of Codified Laws under the Customary Law.

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## DEVELOPMENT OF THE COURT OF ASSISTANT COMMISSIONER

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With the passage of Time, new acts came into effect replacing the old ones. The Judicial System instead of becoming more people friendly it becomes more like an authoritative one. With the passing of **The Assam Criminal Law (Amendment) Act, 1953** which was passed to amend the rules relating to Administration of Justice of Tribal People in the State of Assam. The act amended Rule 21-B of the **Rules for the Administration of Justice and Police in Sibsagar and Nowgong and Mikir Hills Tracts**, published with Notification No. 2617-AP, dated the 29th March 1937. As well the rules relating to the rule 23-A of the Rules for the Administration of Justice and Police in the Khasi and Jaintia Hills, Rule 14-A of the Khasi Siemship (Administration of Justice) Order, 1950, Rule 22-B of the Rules for the Administration of Justice and Police in the Garo Hills District, Rule 11-A of the Rules for the Regulation of the Procedure of Officers Appointed to Administer Justice in the Lushai Hills, Rule 21-C of the Rules for the Administration of Justice and Police in the Naga Hills District and Rule 24-B of the Rules for the Administration of Justice in the North Cachar Hills Sub-division<sup>16</sup>. The new rule which replaced the above mentioned old rules. Created the new Guideline which empowered the Deputy Commissioner or his Assistant to examine Witness under any law which is currently at force. This act empowered the Deputy Commissioner to have the powers of a First Class Judicial Magistrate. He could put the case into trail under the spirit of the Code of Criminal Procedure, 1898<sup>17</sup>. This practice continued until August 2017 in the District of Karbi Anglong. Which clearly symbolizes the ignorance of the concept of separation of Judiciary from that of the executive in the Karbi District.

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## FURTHER DEVELOPMENT OF JUDICIARY UNDER THE ASSAM AUTONOMOUS DISTRICTS ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) ACT, 1957.

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After the implementation of **The Assam Criminal Law (Amendment) Act, 1953** which lead to the creation of the Deputy Commissioner Court to put on the trial of the criminal cases of the People belonging to the Tribal Areas. The Government of Assam again in the year 1957 under **The Assam Autonomous Districts Administration Of Justice (Miscellaneous Provisions) Act, 1957** had decided to implement certain changes which would strengthen the Village and District Councilor Courts.

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<sup>16</sup> The Assam Criminal Law (Amendment) Act, 1953

<sup>17</sup> ~ibid~

The act under its guidelines mentions about certain special cases where the Deputy Commissioner Court had no Jurisdiction put on trial. But rather created an obligation for the Deputy Commissioner Court to transfer those special types of cases to the District Councillor Court<sup>18</sup>.

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## THE PRESENT DEVELOPMENT OF THE JUDICIAL SYSTEM OF KARBI ANGLONG.

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After Nearly five decades of having a Unified Judicial System. In the year 2013, Honorable Gauhati High Court in the year 2013 **Subhasis Chakraborty V. State of Meghalaya**. Passed the Historic Judgment by which The Honorable Court as per the Mandate of Article 50 of the Indian Constitution ordered t that “administration of justice be entrusted to judicial officers under the control of the High Court in accordance with the provisions of Criminal Procedure Code and Civil Procedure Code.” Thus, in Accordance with this Judgement, the Government of Assam in the year 2013 passed the “**Assam Administration of Justice in the Karbi Anglong District Act, 2009**” which lead to the creation of Competent Civil and Criminal Courts with appropriate Jurisdiction under the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973. However, the process of enforcement of this law was not that easy as several questions were Raised regarding the violation of the sixth schedule of the Indian Constitution by the Implementation of this act and Also questions regarding the incompetence of the State Government to establish Civil and Criminal Court with reference to the Powers of the District Autonomous Council to set up trial courts of matters arising out of laws framed under Para 3 and where both the parties are concerned tribes. Thus, this leads to the notification that the provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973 must follow the provisions of the Sixth Schedule while conducting proceedings, inquiry, investigation, trial and other incidental matters in with reference to the Civil and Criminal Cases<sup>19</sup>. Also, the court held that “We are prima facie of the view that there is no hurdle in setting up of Courts in the two districts. The fact that District Council has jurisdiction under Para 4 of Sixth Schedule to set up Village Council/ Court for administering laws framed by it under Para 3 in respect of cases where both parties are Scheduled Tribes does not in any manner affect setting up of Courts not falling within the purview of Para 4”<sup>20</sup>. It took the Bengal, Agra, and Assam **Civil Courts Act, 1887** as the base of the establishment of any new court which is not covered under para 4 of the sixth schedule. This act has also repealed the earlier acts relating to the Administration of Justice in the Reason of Karbi Anglong such as the “Rules for the Administration of Justice and Police

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<sup>18</sup> The Assam Autonomous Districts Administration Of Justice(Miscellaneous Provisions) Act, 1957.

<sup>19</sup> ~ibid~

<sup>20</sup> ~ibid~

in Sibsagar and Nowgong and Mikir Hills Tracts.” insofar they are inconsistent with the provisions of this new Act<sup>21</sup>.

The new rule came into force which allowed the Courts of competent jurisdiction to set any criminal case into trial by the Code of Criminal Procedure, 1973 as amended, and any civil court by the provisions of the Code of Civil Procedure, 1908 as amended<sup>22</sup>.

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## RESEARCHER'S FINDINGS & CONCLUDING OBSERVATION

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Thus, from the discussion, it is quite clear that Establishment of District Judiciary Court at Diphu, Karbi Anglong on August 2017, was the result of a long Judicial Discussions<sup>23</sup>. Its influence can be traced back to Medieval Times when for the very first time the people of Karbi Anglong have started their tribal judicial system. Where LINDOKPO the social chief of Longri. Was entrusted with Judicial Powers along with his representative of 28 officers know as “Pinpomar Amer”. This development was then further continued during the times British who for the very first time included the concept Sixth Schedule arguing that the conditions of the people living in the tribal area were less involved in relationships with the regular day to day involvement of the people living in the Plain Areas. Further, Followed in the provisions of the Indian Constitution under **Articles 244(2) and 275(1)** in the **sixth schedule**. Which enabled the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas.

However, it must be noted that the Researcher while conducting his field study found very little practical influence of Customary laws into Judicial System of Karbi Anglong. The local people also preferred to use the Judicial System laid down by the CPC and CRPC and went the Assistant Commissioner Court for the trail. Moreover, it was also found although the Constitution lays down the mandate to establish the District and Village Councilor Court in Practice, they were nowhere to be found. Lack of Codified tribal laws is making it difficult for the court I imply them to a particular area.

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## SUGGESTIONS

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Some suggestions which the researcher would like to suggest to **the stakeholders to implement** for a better administration of Tribal Justice –

- 1) Recognition of Tribal Law by giving it a legislative form.

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<sup>21</sup> ~ibid~

<sup>22</sup> ~ibid~

<sup>23</sup> Judiciary Court inaugurated in Diphu. (n.d.). Retrieved October 12, 2017, from <http://www.easternmirrornagaland.com/judiciary-court-inaugurated-in-diphu/>

- 2) Establishment of Tribal-Legal Board which would look after the implementation of Customary Law as per the sixth schedule.
- 3) Appointment of Legal Advisory Board which would help the Honorable Judges which deciding cases relating to the Customary Laws.
- 4) Proper Implementation of the Sixth Schedule by establishing the District and Village Councilor Court.

To raise awareness regarding the Customary Laws and its implementation by conducting seminars and awareness camps among the local people.