



A Question of Civil Justice in The Tribal Society with Reference to The Arunachal Pradesh Civil Court Act, 2021

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Abstract:

The draft Arunachal Pradesh Civil Courts Bill, 2013 was initiated by the Gauhati High Court to facilitate the judicial discrepancy in Arunachal Pradesh. On April 5, 2021, the State Legislative Assembly introduced and passed the Bill with the Governor's assent. The Act is called the Arunachal Pradesh Civil Courts Act, 2021. The Act vehemently repealed several sections of the Assam Frontier (Administration of Justice) Regulation, 1945. The primary objective of this Act is to establish a clear framework for the adjudicating institution so that justice can be delivered. As a result, it established the indigenous tribal institution as the lowest-level Subordinate Court, known as the Customary Court. The Act clarified the structure of the adjudicating body and established jurisdictional extend of procedures especially for civil proceedings. However, in course of providing structural clarity and formal expediency the Act seemed to cover with several shortcomings. One such instance is the Act's absence of any mechanism pertaining to the synchronization of the Customary Court with its immediate Upper Court. Following the passage of this Act, administrative duality with regard to civil cases persisted. Therefore, the Act has its pros and cons. The study is primarily focused on relooking and researching outlook of the Arunachal Pradesh Civil Court Act, 2021.

Key words: *Civil Affairs, Customary Law and Court, Justice, Rights, Tribe society.*

Introduction

'Justice is based on fairness and provides maximum rights to all and makes their life peaceful and advantageous'; John Rawls in his work 'Theory of Justice' (1971)ⁱ. The theory of Justice states that, a well-organized community requires a basic concept of justice, which can only be formed by rational individuals. 'Justice as Fairness,' according to Rawls, is understood as a virtue of institutions or practices rather than of specific actions or individuals. Justice is a rule or criterion for determining right or wrong in modern society,

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according to Dr. B. R. Ambedkar, justice is merely another name for liberty, equality, and fraternity. Different schools of thought have their own ideas about what it means to be just. Every culture, region, and time has its own definition of justice. It can be analyzed and comprehended from a variety of perspectives. As such Adam Smith criticized those theorists who have a tendency to look for a single, homogeneous virtue in which all just values encompass. Therefore, the paper is primarily focused on the notion of civil justice in tribal society of region with reference to the Arunachal Pradesh Civil Court Act, 2021.

Arunachal Pradesh is the land of multi tribal communities or marginalized indigenous tribes. The indigenous tribes of Arunachal Pradesh had been administered through the 'isolationist policy' by then governments; Ahom, British and even the Government of India for sometimes. The people were kept unregulated for centuries because of that they remained underprivileged and disadvantaged and relatively backward in their developmental process. However, with the course of time tribals were gradually incorporated into the general settings of governance with some exceptional rules and regulations. One such example is the Assam Frontier (Administration of justice) Regulation, 1945 (hereafter referred to as AFR-1945). The main purpose of this AFR-1945 was to consolidate and amalgamate the system of justice in those Frontier divisions. It was promulgated to bring uniformity in administration of justice among the scattered frontier divisions of then Assam. The Regulation was introduced in order to ensure that a vast majority of disputes and cases both civil and criminal were adjudicating in accordance with the prevailing traditional codes of the tribal communities. The Regulation was continued even after India's independence and the evolution of present Arunachal Pradesh as Union Territory and the State of Indian union. With the Course of time several regulations and laws have been enacted for the present state of Arunachal Pradesh that brings along dynamism in adjudicating system. There has been discrepancy of justice deliberation even with the existence of AFR-1945, High Court, other central laws etc. Therefore, to mitigate the adjudicating discrepancy the Arunachal Pradesh Civil Courts Act, 2021 was enacted. However, the Act along with its advantages seemed to cover with several shortcomings and probable advantages and perhaps bring confusion for the administration of civil justice.

1.2: Methodology:

The data for present study was collected from both primary as well as secondary sources. The primary source of data collection for the study was carried out through field survey. Data was collected through observation method and structured and unstructured interviews. Secondary data was collected from relevant official Acts, reports, records, articles and other published and unpublished material available. The main

tools for the study were set of suitably designed and structured open- ended questionnaire. The extensive field notes of the discussions with local intellectuals and knowledgeable persons were maintained.

1.3: Overview of the Arunachal Pradesh Civil Courts Act, 2021:

Despite having the AFR-1945, the High Court, and other core legislations in the state, there have been differences in the notion of justice and its deliberation. Accordingly, the Gauhati High Court started working on the draft Arunachal Pradesh Civil Courts Bill, 2013 to help resolve adjudicating ambiguousness in the state. The measure became necessary because civil jurisdiction was not clearly administered, even after the Judiciary and Executive branches were split off in 2010. The Guahati High Court's (Notification No. JUD/DSC-37/2010) ruling, which divided the state's executive and judicial branches, provided the main impetus for the drafting of this bill, which repealed and amended the AFR-1945. The separation of judiciary from executive has stood as a stumbling block for seeking justice, relating to appeal against the decision of village authority. Thus, the Bill contains the provision for appeal against the decision of Village Authorities in Regularly constituted Civil Courts. With the passes of bill citizens can make an appeal to the regular Courts in case of dissatisfaction regarding the decision of village authority in civil matters. The Act gave birth to nomenclature the Customary Court (village authority) as lowest subordinate court in Arunachal Pradesh.

1.3.1: Reasons for enactment of the Arunachal Pradesh Civil Courts Act, 2021:

There were several reasons for the enactment of Arunachal Pradesh Civil Courts Act, 2021, some of the most common but significant reasons areⁱⁱ:

- Amalgamation of Executive and judiciary in the state was not efficient for the administration of both the organs of the government.
- Executives or bureaucrats were overburdened with judicial works as their additional duty.
- Most of executives were not equipped with requisite knowledge for the judicial administration.
- Corruption by Executives such as misuse of judicial power, favouritism, nepotism, etc.
- Politicization of judicial offices by politicians and bureaucrats that eventually made politicians as ultimate route of justice adjudication.



- Political appointment of *Gaon Burahs* led institution of Customary Courts distorted because *Gaon Burah* sometimes acted as puppets in the hands of politicians.
- Never in the history did Customary Courts alleged or convicted the wealthy and powerful people or officials like an Member of Legislative Assembly, Panchayat leaders, rich and strong men, etc.
- Customary Courts have narrower approach as they have lack of touch in many areas like socio-economic and political field in their administration.
- Modern education imparted and helped people to understand ideas of equity, accessibility and efficiency of justice administration.

1.3.2: Significance of the APCC, Act, 2021:

The Bill was finally introduced and passed by the state Legislative Assembly and received the assent of the Governor on 5th April, 2021. So, now the Act is called the Arunachal Pradesh Civil Courts Act, 2021. The Act vehemently repealed several sections of the Assam Frontier (Administration of Justice) Regulation, 1945. The gist of this Act is to give citizens a clear platform for justice deliberation, so it made Customary Court as the lowest organ of regular judicial pyramid. And also bring clarity in managing Civil Jurisdiction in the state. The Act consists of four chaptersⁱⁱⁱ such as;

Chapter One contains the introductory part such as definitions and over view of the Act. It is called the Arunachal Pradesh Civil Court Act, 2021 and extended to whole of the state of Arunachal Pradesh. The words 'Assistant Commissioner' in Act means and includes Assistant Commissioner, Extra Assistant Commissioner, Sub- Divisional Officer and Circle Officer. The words 'Deputy Commissioner' means and includes Deputy Commissioner of district and Additional Deputy Commissioner. The word 'codes' means the Code of Civil Procedure, 1908. And words 'Customary Court' means Court of traditional Council or authority of village. Like that the words governor, government, notification, service, state, official gazette is associated with the state of Arunachal Pradesh. And the words 'High Court' means the Gauhati High Court.

Chapter two laid down the provision for establishment and Constitution of Civil Courts. The Act provides for classes of civil affairs with presiding officers Courts, such as;

- a) Court of District Judge- Senior Judge (District Judge).
- b) Court of an Additional District Judge- Additional District Judge



- c) Court of Civil Judge (Senior Division) - Civil Judge Senior Division.
- d) Court of Civil Judge (Junior Division) - Civil Judge Junior Division.
- e) Customary Court- Village Authority (Gaon Burah/Buri)

It also comprises the procedure for the establishment of Civil Courts in the state. The rules for the setting up of new civil court are:

- a) In consultation with Gauhati High Court the government of Arunachal Pradesh may establish above mentioned courts and appoint judicial officers.
- b) The places for the establishment and relocation of civil courts shall be fixed by the government with prior consultation with High Court.
- c) Every Court except the Customary Courts shall use a seal which bear the State emblem with the name of the Court in English language and it shall be determined by the state government in consultation with High Court.
- d) It consists of the rules for the placement of District Judge, Additional District Judge, Civil Judge (senior and junior division) according to requisition of time and condition. It states that no person other than a person belonging to Grade I, II and III in the Arunachal Pradesh Judicial Service shall be eligible to be posted as judge of cited Courts respectively.
- e) It directs that the Courts of existing Deputy Commissioner under the AFR-1945, prior to commencement of this Act is deemed to be Court of Civil Judge (senior and junior judge) in respect to appeals that lie from the Customary Court, until such time, such appeals are disposed of.

Chapter three provides key substance of the civil jurisprudence. It comprised and defined the rules and scope of jurisdiction of Civil Courts in the state, Such as;

- a) The government may, by notification, fix and from time to time vary the local limits of jurisdiction of any Civil Courts in consultation with the High Court.
- b) A Court of District Judge and where the Court of Additional Judge is available, such Courts are deemed as the Civil Court of original jurisdiction within the local limits of respective jurisdiction.
- c) Subject to the provisions of the Code, the jurisdiction of a Court of District Judge is extended to all original's suits and proceedings of a civil nature.
- d) A Court of District Judge and where the Court of Additional Judge is subjected to the general control of the High Court, have administrative control over all other Courts within the local limits of the respective jurisdiction.



- e) A Court of Civil Judges (senior and junior division) has jurisdiction over all original civil claims and processes, according to the requirements of the Code of Civil Procedure, 1908. However, notwithstanding any other law in force at the time, the pecuniary jurisdiction of the Court of Civil Judge junior division is extended to all civil suits with a value of less than rupees 10,00,000 (ten lakhs' rupees) or as may be prescribed by the government from time to time in consultation with the High Court.
- f) Appeals from a Court's decree or order in original cases and civil procedures is laid before the Higher Courts when such appeals are allowed by law. The Act stated that any appeal on civil suits pending in the Courts of Deputy Commissioner under the provisions of AFR-1945 must be decided by the concerned Deputy Commissioner as soon as feasible, but no later than one year from the date of the Act's commencement. In the event that an appeal is filed against a decision of the Customary Courts, the case will either be dismissed or reopened in the District Courts.
- g) The Act also imposes restrictions on judges in specific circumstances, such as no judicial officer or authority of customary court shall try any suits to or in which he/she is a party or personally interested, no judicial officer or authority of customary court shall try any appeal against any decree or order passed by him/her in any other capacity.
- h) Regarding the application of Code, the procedure prescribed in the Code shall be followed by all Civil Courts except the Customary Courts.

The last chapter contains miscellaneous contents. However, most significant amendments and endeavours are enshrined under this chapter. As the major area of conflict and contrast regarding administration of civil justice in the state is based on notion of justice according to distinct legislations. The concept of justice and its administration is perceived differently by customary law of tribe, AFR-1945 and Civil Proceeding Codes of India. So, to provide an appropriate, efficient, affordable and accessibility of civil justice, requisite amendments were made. Where the Assam Frontier (Administration of Justice) Regulation, 1945, was vehemently amended. some of which are as follows ^{iv};

- With the commencement of this Act the AFR-1945 shall be referred to as the Principal Regulation.
- The words Deputy Commissioner and the Assistant Commissioner in section 15 and 36 have been deleted.
- The words District Sessions' Court shall be substituted for the words the Deputy Commissioner of section 24.



- In section 40, for the existing entries the following shall be substituted. 'The village authorities shall try all suits without limit of value, in which both the parties are indigenous to the state of Arunachal Pradesh'.
- In section 57, 58 and 59 for the word of 'the Deputy Commissioner' and Assistant Deputy Commissioner' the word 'Village Authority has been substituted.
- There have been several amendments in the pecuniary jurisdictions of civil suits such as; In section 41, for the words and figure, 'rupees 500' the words and figures 'rupees 5000' has been substituted. In section 42, for the words and figure, 'rupees 5000' the words and figures 'rupees 50,000' has been substituted.
- In the Principal Regulation for the word 'administrator' wherever appears the word 'State Government' has to be substituted.
- In the Principal Regulation for the word Union Territory' wherever appears the word 'State' has to be substituted.

Therefore, several sections of AFR-1945 have been deleted or substituted such as section 16, 17, 25, 26, 27, 28, 46, 47, 48, 49, 50, 51, 52, 53 and 55 have been deleted. Some deleted sub sections are Sub- section (2) of section 44, Sub- section (2) of section 45 and Sub- section (2) and (3) of section 56. The Act, also established a rule stated any other law in force at the time, all Civil Courts, except Customary Courts in a district, and their personnel, is subjected to be controlled by the High Court. Except for Customary Courts, all courts must keep records, such as books of accounts, registers, and such documents as the High Court may prescribe.

1.4: The Relation between the Act and Existing Community Practices:

Anything done or done under the Assam Frontier (Administration of Justice) Regulation, 1945, as amended from time to time, is deemed to have been done or taken under the corresponding provisions of this Act, to the extent that it does not conflict with provisions of the Act. Hence, the Act validates the previous operation of the Assam Frontier (Administration of Justice) Regulation, 1945. It shall continue to be in force unless and until the same is altered or amended. Any procedure, suit pending in any Civil Court before the start of this Act or any degree, orders passed by any such court is considered valid, notwithstanding anything contained in any other legislation currently in force. The Act is a way out for long standing challenge of duality and ambiguity in the administration of civil jurisdiction in the state. As the AFR-1945 was drastically amended, the contradictory sections have either substituted or deleted from the Regulation by



this Act. For instance, as it is mentioned above in section 40, the existing entries is substituted by the following ‘The village authorities shall try all suits without limit of value, in which both the parties are indigenous to the state of Arunachal Pradesh’. Earlier civil jurisdiction of *Gaon Burah* or *Gaon Buri* was restricted only to concerned village. Thus, in a way jurisdiction of *Gaon Burah* or *Gaon Buri* has been extended.

The commencement of the Arunachal Pradesh Civil Courts Act, 2021, has practically and absolutely separated Judiciary from executive. The long-standing vagueness of duality in the administration of justice has finally ended. The decades old endeavours of the entire stakeholder to establish separate and independent judiciary in the state has finally fulfilled. The objective of the then British government and later independent Indian government itself was to bring tribal’s towards mainland India through the Assam Frontier (Administration of Justice) Regulation, 1945. It was to make tribal gradually acquaint with the modern Codes and administration via spirit not the exact application of modern sophisticated laws in the region. Consequently, as anticipated after several decades of independence the idea of separate judiciary has been budding among the citizens of the state. It was initiated in the year 2010, further under the Arunachal Pradesh Civil Courts Act, 2021 full-fledged judiciary has established incorporating Customary Court as lowest subordinate civil court.

1.4:1 Potential contrary between the existing practices and APCC, Act, 2021:

Though the subordinate courts seemed to have it advantages yet there are apprehensions of disadvantages externalities. One key area of worry is the detrimental influence that contemporary laws and institutions have on the tribal group and its culture and tradition. In the pursuit of a unified judiciary and a simple administrative structure, the aspirations and rich cultural heritage of the tribe should not be sacrificed. Justice should be made available, accessible and affordable without surpassing the tribal customary belief and practices. The sophisticated laws and judicial organization provide nothing if the citizens are unable to access and get justice affordably. Thus, amiable consideration of both the institutions shall be the way forward to make justice deliberating agencies available, accessible and affordable for the people. There are several probable drawbacks of the Civil Court Act, such as;

The drastic amendment of the AFR-1945, there are potential gaps which later perhaps lead to certain administrative confusion and challenges. Sudden shift of system and distinct techniques of proceeding may become hurdle for the people. As per the research, it is evident that common people of the state have little understanding about India’s Civil Proceeding Codes as region has always been placed under distinct codes



of AFR-1945. The question of tribal identity which is the 'Oral tradition' has become another major issue. There are possibilities of oral tradition's foundation and practice gets jeopardized when Customary Courts operate under Subordinate Courts. For example, the idea of oral tradition is at odds in the development of a tribe's bye laws, or drafted customary law. The foundation of oral tradition consists of customary laws, which are effectively passed down and applied orally while taking the context of the situation into consideration. But the creation of Bye-Laws; customary laws most likely result in a blindfolded adjudication procedure masquerading as justice. The lives of tribals have always been guided and conducted through amicable ways for the maintenance of conducive community. Adoption of modern techniques and institution may hinder this practice is the major area of apprehension.

There is a big chance that customary courts may ended up becoming ineffective, mechanical and non-performing symbol of tribunals. The relevance and essence of customary court are facilitated by the customary practices based on oral traditions of the tribe. Earlier the civil issues were resolved taking the spirit of Civil Proceeding Codes of India along with customary law but absolute synchronization of customary court into subordinate court may detrimental the whole crux of tribal system of dispute resolution.

There is no clarity of jurisdiction on civil matter between civil court and customary court. It allowed customary court to try civil suit without any limits and on the other hand the civil court also has same jurisdiction. Thus, parallel jurisdictions on civil suit will definitely create administrative confusion. As the Act allowed the customary court to try civil suits with any value limit, and it also gives senior or junior judges of the Courts of Judicial Magistrate the ability to try civil suits within their separate financial jurisdictions. So, the question here is, how would one go to an appellate court or how would one decide? According to India's Proceeding Codes, next appeal of the case has to be heard by the immediate upper court. However, what if an immediate upper court's pecuniary jurisdiction is below than that of case under trailed in customary court? What are the rules to deal with such exceptional cases? Nothing sort of provisions were given in the Act to deal with unforeseen externalities. In this condition, the interested party or parties get to select the court that they would like to deal with. The base for selection of courts will definitely be on the possibility of winning the case through court as it deemed fit. Thus, the weaker and innocent individuals would bear the brunt of the repercussions. The poor will continue to suffer as a result of wealthy and powerful individuals misusing the system as suits their needs. However, justice needs to be served and upheld regardless of distinctions, but it may be lacking in near future.



When handling an appeal from a customary court to a civil court, there is no established intermediate procedure. It does not provide any methods, procedure and resources that distinguish customary courts from regular civil courts. Furthermore, it makes no mention of the customary court's procedural jurisdiction. The case was simply left to the customary court to decide in accordance with customary law, and the party that was wronged might then appeal to a higher court. Besides no specific rules and regulation is mentioned in this Act. Apart from institutional synchronization there is no mentioned of any provision which can facilitate efficient and smooth operation of customary court under civil court. Along with above mentioned shortcomings most fundamental barrier to integrate indigenous people into contemporary systems is always a lack of understanding as maximum population remained within the state without exposure and experience of outside world. Thus, it is the duty of all stakeholders to inform citizens on contemporary law and the judicial system to have significant mechanism for dispute resolution.

1.5: Way Forwards:

The study yielded several significant recommendations after reviewing data, figures, comments from informants, and a general summary of the subject. It has needed the pursuit's observation and thorough examination of the results to reach a definitive shape. Some of the most significant way forwards are:

Oral traditions should be encouraged and maintained first. The stakeholder should think carefully about it and try to preserve the core elements of tribal civilization in the face of international modernity. To help the younger generation learn and pass on customs to the next generation, regular orientation programs regarding customs and their significance are required, thus are needed to be conducted. Second, there is a need of reviewing the Arunachal Pradesh Civil Court Act, 2021, with an emphasis on clarity and inclusivity. Section and clause referring to the customary court are particularly petty and unclear. For the system to function smoothly and effectively, there must have been a defined set of rules regarding roles and responsibilities. The customary court is constituted as the lowest subordinate court by the Act, therefore it should have been given a limited power of execution. If not, the court would turn irrelevant and inert. Seldom does the Act make reference to the *Gaon Burah* institution which is the crux of village administration. If the customary court were to become a part of the Modern Judiciary, then the functions, powers, and obligations of the *Gaon Burah* would presumably become more uniform; yet, this is not the case. The value of laws is zero if people are unable to use, access and afford the independent courts advantages. Thus, there should not be any apprehensive that civil court might end as complex legal systems for the tribal. Lastly, a thorough re-examination of the Act is required, with particular attention to any



procedural shortcomings. In particular, the lack of an intermediary procedure calls for a re-evaluation and restructuring of the Customary Court system.

1.6: Conclusion:

The native inhabitants of Arunachal Pradesh have had unique views and traditions on the dispensation of justice since the beginning of time. Tribes' distinct method of settling disputes is a reflection of their smooth transition from an antiquated to a modern system. The indigenous inhabitants of the state have not gone through the usual historical periods or transformations, in contrast to other cultures. Consequently, the unique historical development of tribal justice administration which directly combines traditional and modern systems is what accounts for its exceptionality. Tribal norms and practices did not organically give rise to the current judicial adjudication system; rather, it was imposed upon tribal culture. There are benefits and drawbacks for the subject of study associated with the choice to go directly from a tribal system to a modern one. This unique situation necessitates careful and efficient analysis and evaluation because it is the result of the blending of established practices with recently established systems. Thus, a new, more comprehensive research strategy can be used in the future to expand the study. On this topic, there is a lot of opportunity for further study and advancement. Numerous dimensions of the study could be used to guide future directions in research.

ⁱ John Rawls, *A Theory of Justice*, New Delhi, 2013. P.176

ⁱⁱ Tobi Lollen, *Administration of Justice in Arunachal Pradesh: A Study of Interface Between the Traditional and Modern Systems in Galo Society*, Shodh Ganga, 2021.

ⁱⁱⁱ Government of Arunachal Pradesh, *The Arunachal Pradesh Civil Court Act, 2021*.

^{iv} *Ibid*.

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