

# **ADMINISTRATION OF JUSTICE IN MIZORAM: PROBLEMS AND PROSPECTS**



## **Ph.D THESIS**

**Submitted to**  
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# ADMINISTRATION OF JUSTICE IN MIZORAM: PROBLEMS AND PROSPECTS



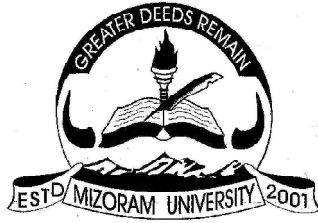
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SUBMITTED TO MIZORAM UNIVERSITY, AIZAWL  
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IN PUBLIC ADMINISTRATION  
( SCHOOL OF SOCIAL SCIENCES )

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**Dated Aizawl**

**the 27<sup>th</sup> November, 2007**

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## ACKNOWLEDGEMENT

Judicial activism has come to vogue to cure the administrative malady in India. It is the hue and cry of general masses, NGOs and even the Church in Mizo Society to detect crime and vice who deal with the society by usually inflicting unwelcome punishment rather than according to law. The Government also appears blenched to subjugate the *ultra vires* of social activists and whistle blowers. Thus, the empirical study of “Administration of Justice in Mizoram: Problems and Prospects” is a challenging task and exhorted.

The study articulated the walk of Judiciary and landmarks junctures towards improvement in the context of Mizoram as accurately as possible. Relevant precedent/leading cases are also cited to fructify the study more valuable. Moreover, the virus of Judiciary has been placed and concretely suggested key points for future strategy which is a *sine quo non* to implement. Indeed, Judiciary doesn't meant for itself but for the litigants, the study couldn't be completed without viewing the socio-econo-administrative ecology and hence included some vital findings to restore public faith in a Judiciary when dwindling of public cre- dence in administrative and legislative organs. It may be a yeoman when Mizoram Judiciary is at cross-roads plying to the fulfillment of Article 50 of the Constitution of India.

It is my esteemed Supervisor Dr.Srinibas Pathi and Joint Supervisor Prof. R.N. Prasad who carefully look into my endeavour through keen advice and suggestions in my study. They never run away from me at any times to lend their right hands in my day to day task. I shall never forget their zeal and efforts which encouraged me to pursue with my level best. Other faculty members in the Deptt. of Public Administration, Mizoram University also encouraged me in respect of my study. Therefore, I ought to pay respect to them.

Last but not least, the authority and staff of Central Library, Mizoram University, State Library of Mizoram, Library of Law & Judicial Deptt.Govt. of Mizoram, Library of Mizoram Legislative Assembly Secretariat and Officials like Secretariat Services, Police Services, Judicial Services, Lawyers etc. who usually welcome me for picking up a necessary books, informations, documents etc. were really appreciated and extremely happy for their untiring support of my studies.

Aizawl,

( H.T.C. LALRINCHHANA )

27<sup>th</sup> November, 2007

# PREFACE

It is impassionate to carry on the study of Administration of Justice in Mizoram which is towards distortion. Chapter one introduces Justice in Indian perspectives, geo topography of the land, the people and civil politico administration with the uniqueness of culture, tradition and ethos of Mizos. There was no institutional change in the matter of justice delivery system since independence till compliance of the order of the Hon'ble Supreme Court for separation of Judiciary from executive except abolition of chiefship and replaced by Village Council / Court at the lowest rank although nourishing civil administration. Evolution of Indian Judiciary matching with Constitutional changes also contemplated.

The second chapter deals with the administration of Justice in Mizoram during pre and post Independence period in general. Salient features of legal system during chiefship such as - cases of murder, molestation, assault, rape, adultery, marriage and divorce etc. were also traced out and even enumerated gradual modifications after independence for the improvement of legal system with its concise elements.

The third chapter concentrate in State Courts of Mizoram constituted before Independence. Background of Rules promulgated under section 6 of the Scheduled Districts Act, 1874 ( XIV of 1874 ) namely - the Administration of Justice Rules , 1937 and its entity was focused on elaborating the jurisdiction, powers and procedure of various courts under the said Rules of 1937 viz - Deputy Commissioner and his Assistants.

The fourth chapter elucidate that the State Courts in Mizoram constituted after Independence as promulgated the Lushai Hills Autonomous District ( Administration of Justice ) Rules, 1953 under Sixth Schedule to the Constitution of India. The District Council Courts and its subordinate and Village Court at a village level, their powers as a tribal cases in a civil and criminal justice barred on tribal laws and customs plus their respective jurisdictions along with a futuristic approach.

The fifth chapter further snap Courts established, functioned in the existing three Autonomous District Councils in Mizoram which is purely run and manned under sixth schedule to the Constitution of India, their powers, jurisdictions, working and their administrative ecology also analysed.

Gauhati High Court, Aizawl Permanent Bench, Special Courts, Tribunals and Forums under special Acts and Rules, their existence in the State, performance and efficacy were examined in chapter six.

In the next chapter, Acts, Rules, Manual etc. which were bound by the working of Judiciary in Mizoram are accurately examined. As a matter of fact, cosmopolitan outlook, free from parochial attitude in the matter of social legislations and adaptation of laws in the present age is deemed fit and necessary as Mizos were docile and new machinery in the walk of development has been imparted in Mizo traditions, daily life and needs.

In the concluding chapter, it is observed that insulation of judiciary from executive is the main issues to reform justice delivery system. And at the sametime, Special Courts, Tribunal etc. felt decentralisation by setting up in all administrative districts. Suggestion has also been made to reform policing for speedy and successful prosecution in a Court room as well as proposed to well equip Forensic Science Laboratory under a separate Directorate. A separate High Court for the State of Mizoram and State Human Rights Commission are also solicited.

Thus, the present study is required both for utilitarian and academic purposes. The inherited colonial administration even in a judiciary is infact needs to be reformed in the fast changing socio - economic scenario.

Aizawl,  
27<sup>th</sup> November, 2007

H.T.C. Lalrinchhana

## **ABBREVIATIONS**

APHLC	-	All Party Hill Leaders Conference
AIR	-	All India Reporter
ADC	-	Assistant to Deputy Commissioner
ASDCC	-	Addl. Subordinate District Council Court
Addl. DC	-	Additional Deputy Commissioner.
ADM(J)	-	Additional District Magistrate (Judicial)
APP	-	Assistant Public Prosecutor
AGA	-	Assistant Government Advocate
BEFR	-	Bengal Eastern Frontier Regulation, 1873.
Bar	-	Barrister (Association)
BC	-	Backward Class
C I	-	Circle Interpreter.
CEM	-	Chief Executive Member.
CrPC	-	Code of Criminal Procedure
CPC	-	Code of Civil Procedure
CADC	-	Chakma Autonomous District Council
CSW	-	Civil Service Wing
CA	-	Civil Appeal
CYMA	-	Central Y M A
DM	-	District Magistrate
DC	-	Deputy Commissioner
DCC	-	District Council Court



DP & AR	-	Department of Personnel and Administrative Reforms
DSP	-	Deputy Superintendent of Police
DGP	-	Director General of Police
EITU	-	Eastern India Tribal Union.
EM	-	Executive Member
EC Act	-	Essential Commodities Act, 1955
GLT	-	Gauhati Law Times
GA	-	Government Advocate
Gau L R	-	Gauhati Law Reports
GAD	-	General Administration Department
HC	-	High Court
HSS	-	Higher Secondary School
ICS	-	Indian Civil Service
ILR	-	Inner Line Regulation
INC	-	Indian National Congress
IPC	-	Indian Penal Code
IVRS	-	Interactive Voice Response System
I & B	-	Information & Broadcasting
JO	-	Judicial Officer
JJ Board	-	Juvenile Justice Board
JJ Act	-	Juvenile Justice (Care and Protection of Children) Act, 2000
LADC	-	Lai Autonomous District Council
MU	-	Mizo Union.

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MJS	-	Mizoram Judicial Service
MNF	-	Mizo National Front
MJD	-	Mizoram Janata Dal
MPC	-	Mizoram Peoples Conference
MLA	-	Member of Legislative Assembly
MDF	-	Mara Democratic Front
MDC	-	Member of District Council
MADC	-	Mara Autonomous District Council
MACT	-	Motor Accident Claims Tribunal
MLTP Act	-	Mizoram Liquor Total Prohibition Act, 1995
MSLSA	-	Mizoram State Legal Services Authority
MV Act	-	Motor Vehicles Act, 1988
MPSC	-	Mizoram Public Service Commission
MCS	-	Mizoram Civil Service
MP	-	Madhya Pradesh/Member of Parliament
ND & PS	-	Narcotic Drugs & Psychotropic Substances Act, 1985
NEJOTI	-	North Eastern Judicial Officers Training Institute
NIC	-	National Informatic Centre
NGO	-	Non-Governmental Organisation
OM	-	Office Memorandum
Ors	-	Others
PLTU	-	Pawi Lakher Tribal Union
PC	-	People Conference

PIL	-	Public Interest Litigation
PUCL	-	Peoples Union of Civil Liberties
PC Act	-	Prevention of Corruption Act, 1988
PP	-	Public Prosecutor
P-L	-	Pawi-Lakher
PADC	-	Police Act Drafting Committee
SDO(C)	-	Sub Divisional Officer(Civil).
ST	-	Schedule Tribe.
SC	-	Supreme Court / Scheduled Caste
SCC	-	Supreme Court Cases
SDCC	-	Subordinate District Council Court
SDO (S)	-	Sub. Divisional Officer (Sadar)
S Dy M	-	Sub Deputy Magistrate
SP	-	Superintendent of Police
UMFO	-	United Mizo Freedom Organisation.
UT	-	Union Territory
UP	-	Uttar Pradesh
U/S	-	Under section
VC	-	Village Council/Court
VIP	-	Very Important Person
Vs/V	-	Versus
WP(C)	-	Writ Petition (Civil)
<b>YMA</b>	-	<b>Young Mizo Association</b>
ZNP	-	Zoram Nationalist Party

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# CHAPTER - 1

## Introduction

### Introduction

- (i) **Brief profile of Mizoram**
- (ii) **Administration of Justice in India :  
Concept and evolution**

The preamble of the Constitution of India which may be based on the Universal Declaration of Human Rights, 1948 at its birth embodied that **Justice**, social, economic and political ; **Liberty** of thought, expression, belief, faith and worship ; **Equality** of status and of opportunity ; and to promote among them all, **Fraternity** assuring the dignity of the individual and the unity and integrity of the Nation. The Hon'ble Supreme Court in the case of S.S.Bola Vrs. B.B.Sardhana (1997 ) 8 SCC522 (para 82 ) verdict that liberty, equality and fraternity have to be secured and protected with social Justice and economic empowerment and political justice to all the citizens under the rule of law. Therefore, the study has been planned to reveal the past, present and strategy for future improvement of Judiciary of Mizoram and its related politico - administration.

## **Geo-topography of Mizoram**

Mizoram, one of the states of North Eastern Region, situated in the eastern border of the Country is characterized by hills with sparse to dense forests throughout. The physiography of Mizoram can broadly be divided into hills and valleys. The hills run north-south direction parallel to each other with valleys in between them. Valleys are found in Tiau Valley and Champhai in the east and Chemphai and Buhchangphai in extreme north and along the rivers - Serlui, Teirei, Tutphai etc. Dissected hills and hillocks are dominantly found in most of the river Valleys in the Western part of the State. The average rainfall in the state during 2005 is 2094 mm,<sup>1</sup> which occurs mainly due to south western monsoon during late Autumn. The climate is moderate and pleasant with temperature varying from 10°C to 21°C and 20°C to 30°C in winter and Summer respectively.

The area of the State is 21,087 Sq. km and inter state bordering with Assam by 123 kms., with Tripura by 66 kms, with Manipur by 95 kms and shares international border with Myanmar by 404 kms, with Bangladesh by 318 kms<sup>2</sup>. It is geographically located at 51.58° to 23.35°N latitude and 92.15° to 93.29°E longitude<sup>3</sup>. The population according to 2001 Census is 888,573 and the literacy rate is 88.8%

### **Origin, cultural heritage and racial identity of the Mizos :**

The Mizos are a close knit homogenous Society with no discrimination on grounds of sex or social status. Erstwhile, the Chiefs who were loving his people has taken all administrative decisions with the assistance of the Village elders in the Village life.

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1. *Statistical Handbook*; (2006), Mizoram. Directorate of Economics and Statistics, Government of Mizoram, p.12
  2. *Ibid.*
  3. *Statistical Abstract* (2002 - 2003), Department of Agriculture and Minor Irrigation, Government of Mizoram.

The Mizos belong to the Mongoloid Stock or a mixture of Sakas (Sythians) and Huns in Central Asia and China who subsequently migrated to upper Burma (Myanmar) from the Chamdo Region of Tibet through the eastern passes of the Great Himalayas, probably because of the Mongol invasion of the upper Myanmar from Yunnan side, they escaped in a hurry towards south-west and took shelter in the hills of Chin Hills of Myanmar. Later they migrated on the western side of river Tiau and pushed out the earlier immigrant living in Lushai Hills further North to Cachar (Assam) and Manipur State and to Tripura in the west, thus formed the present Mizoram.<sup>4</sup>

The most colourful and distinguished dances of Mizoram are ; Cheraw, Khuallam, Chheihlam, Sarlamkai etc. and the major festivals which are connected with jhum cultivation are Mimkut, Pawlkut and Chapchar Kut. The majority of the people of Mizos are Christian by faith. Since time immemorial, the unique code of ethics, which is praiseworthy and proud of value system is Tlawmngaihna (self sacrifice to others).

In the olden village planned, the Chief's house of the centre was surrounded by the house of the Village elders. The bachelor's dormitory known as 'Zawlbuk' which can be said as a training ground for patriotism was prominently located at the central place.<sup>5</sup>

### **Origin of Chieftainship in Mizoram :**

By naturally, a group of Mizos need a leader to administer them according to social norms and customs. Zahmuaka, a sturdy and brave minded person was invited to act as a chief for the first time during the period of migration. Thereafter, his sons as many as six persons namely Zadenga, Paliana, Thangluaha, Thangura, Rivunga and Rokhuma were called the names of the clans in their respective descendants.<sup>6</sup>

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4. *Mizoram Millenium Souvenir* (2000), Published by the Millenium Souvenir Committee, pp. 247 - 248
  5. *Mizoram at Cross - Roads* (2002) Published by Mizoram Public Administration Association (MIPAA) & edited by H.T.C. Lalrinchhana, p. 40
  6. L.B. Thanga (1978), *The Mizo's - A study in Racial Personality*, United Publishers, Guwahati, p. 9

The major Chief clans in Mizoram were Sailo, Fanai, Pawi, Lakher, Hmar, Hualngo, Ralte, Chawngthu, Zadeng, Paite, Zahau. Chenkual, Thangluah, Palian, Kiangte, Pang.<sup>7</sup>

Prior to enactment of the Assam Lushai Hills District (Acquisition of Chief's Right) Act 1954,<sup>8</sup> the Chief used to administer their Village to cope with their respective territorial jurisdictions. Each village was indeed completely controlled and managed by a Chief's as alleged as a benevolent ruler. In fact, Sailo's established themselves as the ruling clan much before the Britishers came to this territory. This was also done as a reward for the services rendered by many of them in the Lushai Wars. The other Chiefs were called as Hnamchawm Chiefs. Moreover, there were a few Hualngo and Pawi Chiefs. With the advent of the British control over this area these chiefs were recognised as independent ones. It is also to be mentioned that in southern part of Lushai Hills comprising the then Lunglei Sub-Division, there were many Pawi and Lakher Chiefs who had never fallen under the influence of the Sailos. Besides that, there also existed a few Fanai Chiefs who established customs of their own without following those of the Sailos.<sup>9</sup> The Chief in the olden days have infact a prerogative rights.

### **Civil administration under chieftainship:**

The Chief had a power to appoint a number of Village Officials, such as - Council of Elders, Tlangau (Village announcer), Puithiam (Village Priest), Thirideng (Blacksmith), Khawchhiar (Village Writer) and Ramhual (Expert jhum cultivators)<sup>10</sup>. Obligatorily, the

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7. F. Rongenga (2000), *Zofate lo khawsak chhoh dan* (In Mizo). Aizawl, p. 68
  8. Act. No. 21 of 1954.
  9. N. Chatterji (1975), *The Mizo Chief and his administration*, Aizawl: Tribal Research Institute, Mizoram, pp. 2 - 3
  10. R.N. Prasad (1998), *Public Administration in North-East India*, New Delhi: Vikas Publishing House, Pvt. Ltd., pp. 7 - 8

Chief was to get his house constructed by his villagers without paying any cost. He used to invite the villagers to do 'Hnatlang' (Community work) for the improvement and development of his village. The chief was also responsible for supervising the work of his village writer, maintaining inter-village paths and communication within his territory, construction and repairing 'Zawlbuk' (Bachelor's dormitory). To epitomise, he was the administrator, protector and guardian of his villagers. In the meantime, the villagers used to pay him 'Fathang' (a share of paddy or crops) and 'Sachhiah' (a share of killing wildlife animals).

### **British annexation and administration of the land :**

The first contact of the British with the Mizos was in 1824, when some people in the area administered by the East India Company of England who came to the Dhaleswari river to extract timbers and bamboos were ambushed and killed by the Mizos, known as Lushai Wild Tribes. By that time, the Company had established their rule over the Syhlet plain and the Chittagong Hill Tract with creating an outpost at Demagiri. After the treaty of Yandaboo was made with Burma, the Company extended their rule over the Assam Plain and Cachar District and then came into more contacts with the Mizos. The Mizos used to raid Villagers and Tea Garden settlement on the Foot Hills killing people or taking them away as slaves.<sup>11</sup>

The Company was reluctant to extend their rule over the Lushai Wild Tribes in the Hills as it would involve a huge expenditure without any tangible income. They send retaliatory expeditions as and when considered necessary. This policy was remain followed even after the Indian administration was taken over by the British Government from the Company consequent to the Sepoy Mutiny of 1856. When the expeditionary forces sent in 1872 to rescue Mary Winchester, an English girl captured by the Mizos on their raid to the Alexandrapur Tea Garden in 21<sup>st</sup> Jan. 1871,<sup>12</sup> returned to this bases after Mary was rescued.

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11. H.T.C. Lalrinchhana (2001) (Ed), S.R. Vala-*Mizoram under the British administration*, Zoram Kal Chhet Chhet, Aizawl, p. 29

12. Biakchhunga (1996), *Hnam Kalsiam* (in Mizo ), Aizawl, p. 27

However, the Lushai continued to raid Villages and killed people. One British officer Lieut. Stewart was also killed by Hausata Chinzah when he was doing a survey work in nearby Rangamati.<sup>13</sup> Therefore, the British decided to subdue and govern the Lushais. Two columns of Forces were sent from Cachar and the Chittagong in 1890 to occupy the Lushai Hills. By 1891, the two newly districts came into existence under Schedule District Act, 1874. According to this Act of 1874, the territory was declared as 'Schedule District'. The Forces sent from Chittagong established a fort at Lunglei and the area they occupied was called South Lushai Hills District under the Bengal province. It was administered by the incharge of Asst. Superintendent or Sub-Divisional Officer. The force sent from Cachar area established a fort at Aizawl and the area was called the North Lushai Hills District under the province of Assam. It was manned by the Superintendent with one Assistant Superintendent of Police.

It was only in 1897 after seven years of occupation that Mizoram was made into one Lushai Hills District under the Assam Province. But Lushai Hills was taken under the Assam Frontier Tract Regulation of 1880. Under the entity of the Scheduled District Act of 1874, the laws in force in India were not effective unless specifically notified by the Governor of Assam with or without modifications. When partial Self-Government was introduced in India in 1919, Lushai Hills was called as a 'Backward area' and excluded from the formal administration. Government of India Act, 1935 also enshrined as 'Excluded Area'. So, the then Lushai Hills was at that time administered by the Governor of Assam through the Superintendent of the territory as full dictators.

The British therefore made bridle paths, administrative buildings. They divided the territory into twelve Circles. In each Circle, a Circle Interpreter and a Circle Chaprasi were appointed to convey the orders of the Superintendent to the Chiefs and vice versa to report any important matters to the Superintendent. They were also to investigate the case and apprehend the culprit.<sup>14</sup>

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13. *Ibid*, p. 34

14. *op.cit*, S.R. Vala

By the permission of A. Macdonald, the then Superintendent, a Political Party called the Mizo Union was formed on 9<sup>th</sup> April 1946 founded by R. Vanlawma.<sup>15</sup> Due to the reason that Mizo Union did not support the Superintendent, Macdonald tried to subjugate the Mizo Union but quite well established and it continued as the only Political Party for quite some-times: Subsequently on 5<sup>th</sup> July, 1947, another Political Party called Zalen Pawl or United Mizo Freedom Organisation (UMFO) was founded by Lalbiakthanga.<sup>16</sup> Later, it was headed by Lalmawia, a retired Kings Commissioned Emergency Officer, Burma Affairs after Lalbiakthanga joined the Government Service. At the time of Indian Independence in 1947, these two political parties existed in Mizoram.

The main objective of the Mizo Union was to do away with chiefship and compulsory or conscripted Labour as ruled by the British. Every adult male should contribute six working days in a year for the Government impressed labour or cooley would also be given by the Chiefs to the Government officials on duty.<sup>17</sup> The prime objective of UMFO was for mergers of Mizoram with Burma Union as their leader felt that the people of Mizoram would have a better future with that Country than to remain within Indian Union after Independence. Further, since the adjoining area in Burma, the Chin Hills is predominantly inhabited by Mizo tribals, merger with Burma would amount to creating a greater Mizoram. But because of its enmity with the Mizo Union, the UMFO could not make much headway. It merged with Eastern India Tribal Union (EITU) which wanted formation of a separate Hill State for the Tribals of Khasi, Jaintia, Mizo and Garo carved out of Assam, but within Indian Union.<sup>18</sup>

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15. *op.cit*, Biakchhunga, p. 57

16. *Ibid*, p. 59

17. *op cit*, S.R. Vala, p. 30

18. *op cit*, J. Lalsangzuala - *Mizoram Politics: Achievement, Drawbacks and suggestion for its improvement*, p. 99



Before that, on 15<sup>th</sup> Jan. 1947 the Constituent Assembly appointed an Advisory Committee on minorities, tribals etc. under the chairmanship of Sardar Vallabhai Patel which appointed a Sub-Committee under the chairmanship of Gopinath Bordoloi for the tribals in the North Eastern Region. The Mizo Union submitted a Memorandum on 26<sup>th</sup> April 1947 to Bordoloi Committee demanding (1) All Mizo inhabited areas contiguous to Mizoram should be included in the Lushai Hills District (2) Lushai should be called Mizo (3) Internal administration in Mizoram should be provided liberal financial assistance for Mizoram.<sup>19</sup> This was replied by the Governor's Advisor on 10<sup>th</sup> Feb. 1948.

Pursuant to the above Memorandum, on 14<sup>th</sup> August 1947 a meeting of accredited Mizo Political leaders, representatives of Church, representatives of Government Servant, representatives of Chiefs, representatives of Women Front etc. as many as 50 people was held at Aizawl under the chairmanship of L.L. Peters, the then Superintendent of Lushai Hills District and as such, passed the following resolutions. (1) the Mizo customary law, land tenure etc. should be safeguarded (2) the rules and regulation relating to the Lushai Hills District to continue (3) the Mizo will be allowed to opt out of the Indian Union when they wish to do so subject to a minimum period of ten years.<sup>20</sup>

The aforesaid resolution was submitted to the Governor of Assam and thereafter, the Governor of Assam replied the same under Notification No. 1626 - 30G of 2.9.1947, which runs as follows : (i) There can be no question of the Lushai leaving the Indian Union as in law, the Lushai country being an excluded area was already part of Assam (ii) That the Lushai must remain with the Indian Union and cannot join either Pakistan or Burma (iii) That in view of the Constitutional position stated above, the question of opting out after 10 (ten) years doesn't arise.

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19. *op. cit*, Biakchhunga, pp 64 - 71

20. *Ibid*, pp. 72 - 74

## **Formation of Advisory Council and its election :**

According to the latest meeting of Constituent Assembly Advisory Sub-Committee for Assam held on 4<sup>th</sup> July 1947, it was convened to set a powerful and popularly elected District Council in Mizoram. As there would be a long time gap for establishment of such District Council decided. The Mizo Union and their leaders such as R. Thanhkira, . R. Dengthuama, Vanchuanga and H.K. Bawihchhuaka decided to meet the Governor of Assam and Assam Premier Sjt. G.N. Bordoloi on early Nov. 1947 in Shillong. The Governor and Assam Premier supported their agenda and called L.L. Peter, Superintendent, representative of Chief, representatives of UMFO and representatives of Ex. Service Association. A meeting was held on 10<sup>th</sup> Nov. 1947 at the Assam Governor's House. The agreement runs as - There should be a total of 87 seats of which 10 seats would be reserved for the Chief. There would be 20 (twenty) general seats for the rural areas, 3 (three) seats for the urban areas of Aizawl and 2 (two) seats for urban areas of Lunglei and 2 (two) seats for women, 1 (one) for Aizawl and 1 (one) for Lunglei under Lett. No. 48/47/C - 1383 - 87 Dated 17<sup>th</sup> Nov. 1947 to the General Secretary, Mizo Union, Aizawl. But, it wouldn't at that juncture initiate any legislative authority. The then Superintendent L.L. Peters issued a notification under No. 12524G of 7.1.1948 for the election of the District Advisory Council, Therefore on 23<sup>rd</sup> March 1948, the representatives of Chief were elected such were (i) Lalsailova, Kelsih Chief, (ii) Khawkunga, Bukpui Chief, (iii) Ch. Ngura, Durtlang Chief, (iv) Lalbuanga, Tukkalh Chief, (v) Awksarala, Phullen Chief, (vi) Taikhuma, Pukpui Chief, (vii) Lalthawvenga, Sailam Chief, (viii) Lalbuana, Thingsai Chief, (ix) Chhunmunga, Serkawr Chief, (x) Aichhuma, Tawipui Chief, On the otherhand, the elections of the representatives of the Commoners was held on 15<sup>th</sup> April 1948. Indeed, it was a party tug of war in between Mizo Union and UMFO.<sup>21</sup> The several seats for women were occupied by Remthangi from Lunglei in support of Mizo Union and Lalsangpuii from Aizawl in support of UMFO.<sup>21</sup>

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21. H. Vanthuama (2001) *Mizoram Politics Chanchin* (In Mizo), Aizawl, p.107

The first session of the District Advisory Council was held on 16<sup>th</sup> August 1948 at Superintendent's office Hall. After the finalisation of the skeleton form and entity of District Council, the District Advisory Committee was struck off on December 1951, whereof, the first election of the District Council was held on 4<sup>th</sup> Jan. 1952 with 18 elected seats and 6 nominated members. Mizo Union party occupied 15 seats out of 18, In a nutshell, 83% was occupied by Mizo Union.

The Legislative election of Assam was also held on 5<sup>th</sup> Jan. 1952. Wherein, three seats were reserved for Mizos. The Mizo Union won the said three seats which were namely R. Thanhlira, R. Dengthuama and Ch. Saprawnga.<sup>22</sup>

### **Excluded and Partially Excluded Areas :-**

By virtue of Sec. 91, Chapter V of the Govt. of India Act 1935, the Crown of England have had a power to declare any part of India to be 'Excluded Areas' or Partially Excluded Areas'. In connection with this, Excluded and Partially Excluded in Assam Province were.<sup>23</sup>

- a) Excluded Areas
  - i) Lushai Hills District
  - ii) Naga Hills District
  - iii) North Cachar Hills
  - iv) Mikir Hills

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22. *Ibid.* H. Vanthuama, pp. 173 - 174

23. *Ibid.*, pp. 175 - 176

- b) Partially Excluded Areas :-
- i) Khasi and Jaintia Hills District
  - ii) Garo Hills District.

Pertinently, the whole of Excluded and Partially Excluded Areas were occupied by tribals. They were known as State Tribal Areas. However, Under Section 91(1) of the said Act of 1935, the Code of Criminal Procedure and Code of Civil Procedure are not applicable in the said areas. Whereof, it may not be wrong to say that such kind of exemption from law of the land may lead to ignorance of law among the Mizos. Under section 91(I) of the said Act of 1935, without the approval of the concerned Governor, the Provincial legislation will not be enforced in the said area.

### **Inner Line Regulation :-**

Isolation of Lushai Hills was complete when the Bengal Eastern Frontier Regulation, 1873 under Notification No. 13 Dt. 11<sup>th</sup> Oct 1875 published in the Gazette of India, 1857. Part - I, page 529 was extended or made applicable to the Lushai Hills. Under this Regulation, Inner Line were drawn on the boundaries and indigenous inhabitants of the Mizo District were only exempted from the prohibition against crossing the Inner Line under notification No. PLA. 393/70-pt/1 the 7<sup>th</sup> Sept. 1970. The erstwhile Inner Line of Cachar and Inner Lines of Eastern Bengal and Assam were deleted in 1930. Whereas, a new Inner Line had enacted for the Lushai Hills under Notification No. 9101 A.P. dated, the 28<sup>th</sup> Aug. 1930.<sup>24</sup>

The present guidelines for the enforcement of the Inner Line Regulation had chalked out under Notification No. F. 22015/54/94-HMP.Dt-11, the 1<sup>st</sup> Sept. 2006<sup>25</sup> and under the said new guidelines, the Deputy Commissioner of each eight Districts shall be competent to issue regular ILP for a period not exceeding 6(six) months, which is renewable for not more than two

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24. *The Assam Gazette*, Dt. 3<sup>rd</sup> Sept. 1930 Part-II, page - 1393.

25. *The Mizoram Gazette, Extra Ordinary*, Vol. XXXV, 8.9.06, Issue No. 230.

times. Further more, the Resident Commissioner, Government of Mizoram at New Delhi, the Laision Officer, Silchar, Shillong, Guwahati, Kolkata, the Deputy Superintendent of Police in-charge of Airport security at Lengpui, Officer in-charge of Kanhmun Police Station, Administrative Officer Bairabi and Sub-Divisional Officer (C), Ngopa are authorised to issue Temporary ILP in a prescribed form for a period not exceeding 15(fifteen) days to the bonafide visitors/tourists or business representatives with intimation to the concerned Deputy Commissioner. In respect of persons to be exempted, Notification No. PLA. 393/70-pt/dt. 7.9.1970 has been partially modified under the said new guidelines. It remain savings under clause 8 of the Memorandum of settlement signed on 30.6.86 in between the MNF and the Government of India that the Inner Line Regulation as now in force in Mizoram will not be amended or repealed without consulting the state Government.

### **Mizoram under District Council (1952 - 1972)**

The Mizo District Council was inaugurated on the 25<sup>th</sup> April, 1952 by the then Chief Minister of Assam. The first meeting of the District Council was held on June 23<sup>rd</sup> 1952 where Dr. Rosiama was elected as the first Chief Executive Member to the District Council, the general election of the District Council was held every five years. It was constituted under the Assam Autonomous District (Constitution of District Councils) Rules in 1951 and based on Art 244(2) of the Constitution of India. Which embodied that “The provision of the Sixth Schedule shall apply to the administration of the tribal areas in the state of Assam, Meghalaya, Tripura and Mizoram”

The Pawi - Lakher Regional Council with its headquarters at Saiha was inaugurated on April, 23<sup>rd</sup>, 1953. The Council consists of eight elected members, elected on the basis of adult franchise and four nominated members.<sup>26</sup>

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26. *Mizoram District Gazetteers* (1989), Aizawl: Director, Art & Culture, Government of Mizoram, p. 292

## Village Council

In 1954 the name of the District was changed from the Lushai Hills to the Mizo Hills District under the Lushai Hills District (Change of name) Act 1954 and the institution of chieftainship was abolished under the Assam Lushai Hills District (Acquisition of Chiefs Rights) Act, 1954. The new institution namely the Village Council was established to replace chiefship at a grass root level administration under the Lushai Hills District (Village Councils) Act, 1953 which was passed by the Lushai Hills District Council and received the assent of the Governor of Assam on the 19<sup>th</sup> November, 1953 published in the Assam Gazette, Dated the 19<sup>th</sup> December, 1953.

The composition of Village Council under the said Act<sup>27</sup> are as follows :-

- a) for villages not exceeding 200 houses, there shall be 3 members
- b) for villages between 200 and 500 houses, there shall be 4 members
- c) for villages between 500 and 800 houses, there shall be 5 members
- d) for villages exceeding 800 houses, there shall be 6 members

By virtue of section 25 of the Village Council Act of 1953, unless sooner dissolved, the Village Council shall continue for three years from the date appointed for its first meeting. Provided that the tenure of a Village Council may be extended or shortened by the District Council for a period exceeding eighteen (18) months in the aggregate.

A qualification of members of Village Council has been said as a person for being qualified to be elected and for being a member of a Village Council, he should be a member of Schedule Tribe, he should be a voter where he can contest in an election, he should be a member of a village where he seeks an election, qualification of vote is that every person who is a citizen of India and permanently a resident of Mizoram, he must not below the age of 18 years on the date of publication of Electoral Roll is entitled to cast a vote at any

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27. As amended in 2006 and notified under No. H. 12018/28/98-LAD/46, the 7<sup>th</sup> April, 2006

election to the Village Council. For the terminology of ‘a permanent resident of Mizoram’, the said Act of 1953 enshrined that ‘a permanent resident of Mizoram’ must have taken up his fixed or permanent home in any Village within the undivided Aizawl and Lunglei District and resided continuously therein for a period not less than 30 (thirty) years on the qualifying date.<sup>28</sup>

It is interesting to note that, the first election of Village Council in the Mizo Hills was held on 7<sup>th</sup> June 1954.<sup>29</sup> The first Village Council was thereby constituted on 16<sup>th</sup> August, 1954 and as such all the powers of the Chiefs were transferred to the Village Council.<sup>30</sup>

The functions of Village Council may be broadly divided into two viz : Executive and Judicial. The main Executive functions of the Village Council includes distribution of Jhum-land, enforcement of Hnatlang (Social Work), collection of land revenue, taxes etc. The President of a Village Council is responsible to carry out the instructions imposed by the District Council for the prevention of dangers such as - outbreak of fire or arson and epidemic etc. in the village, which is to be informed to the villagers by engaging the ‘Tlangau’ (Village Crier) as enumerated by the Village Council Act, 1953.

The Village Council is also to function as the Village Court constituted under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953. The Village Court which is the lowest rank in the Judiciary of the then Mizo District Council can try suits and petty cases in which both the parties belong to the Scheduled Tribes or tribes residing within its territorial jurisdiction in accordance with Mizo customary laws.

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28. H.C. Thanhranga (1994), *Village Councils in Mizoram*, p. 10

29. *Ibid*, p. 2

30. *Notification* under Memo No. D.C. 6/54/64, Dt. 11.8.1954, & L.H.D.C. *Notification*, Memo No. E/6534-64/C-II, Dt. 20.8.1954.

## **Functions of District Council**

The first election of the District Council was held in 1953. Two political parties namely - the Mizo Union and UMFO contested in that election, whereby, the Mizo Union won the election.

Powers and functions of District Council invested under Sixth Schedule to the Constitution of India are as follows :

### **Legislative Functions**

- a) The allotment, occupation, use and setting apart of land other than reserved forest for the purposes of agriculture, grazing, residential or other non-agricultural purpose likely to promote the interests of the inhabitants of any village or town.
- b) The establishment of the town and the Village Councils.
- c) Public health and sanitation
- d) Town or Village Civil defence.
- e) The appointment or succession of Chiefs or headman.
- f) The inheritance of property.
- g) Marriage and divorce.

In the sphere of the Legislative power of the District Councils, it may be noteworthy that the Hon'ble Apex Court held that para 3(1) of the Sixth Schedule does not empower the District Council to legislate with respect to transfer of land as reported in AIR 1972 SC 787.



## **Executive Functions**

It has the power to establish, construct and manage primary schools, dispensaries, markets, cattle ponds, fisheries, road and waterways and determination of the language.

## **Financial Power**

It has the power to assess and collect land revenue, lay a tax on lands and buildings, tolls on person residing in a District, tax on professions, trades, callings and employment, tax on the entry of goods into the market for sale, taxes for the maintenance of school, dispensaries and roads etc.

## **Judicial Power**

It has the power to constitute Village Courts, Subordinate District Council Courts and the District Council Court by virtue of the powers conferred under sub-paragraph (4) of paragraph 4 of the Sixth Schedule to the Constitution of India. Under Rule 17 of the Administration of Justice Rules, 1953, if any person on whom a fine or any payment has been imposed by a Village Court fails to deposit the amount at once or within such time as the Village Court may allow, the Court shall report the matter to the Chief Executive Member for necessary action to realise the fine or dues in such manner as it may deem fit unless the accused person gives notice to appeal against such decision.

Besides that, the state Government is empowered to entrust the District Council with some of its powers and functions, It is simply known as 'entrusted functions'

Under the aforementioned powers of the District Council. The Mizo District Council enacted Mizo Customary Laws, 1956 enforce with effect from 30<sup>th</sup> Nov. 1956 (Mizo Hnam Dan Operation Order 1957) and amended in 1960. At present, Mizo Customary Laws 2005 has been compiled and notified under No. H. 12018/119/03 - LJD/62, the 14<sup>th</sup> April, 2005.<sup>31</sup>

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31. *The Mizoram Gazette*, Extra Ordinary, Vol. XXXIV, Aizawl, Wed. 6.4.2005, Issue No. 66.

In exercise of the power bestowed under para 11 of the Sixth Schedule to the Constitution of India. The Mizo District (Inheritance of Property) Act, 1956 was also promulgated and received the assent of the Governor of Assam on the 13<sup>th</sup> May 1956.<sup>32</sup> These are the laws which guided the District Council Courts and its Subordinate Courts in respect of a 'will'.

## **Origin of Political Parties in Mizoram**

The first regional party as stated earlier namely Mizo Union was formed on 9<sup>th</sup> April 1946 and UMFO was subsequently formed on 5<sup>th</sup> July, 1947. The leader of the Hills Districts met in Shillong on 6<sup>th</sup> and 7<sup>th</sup> July 1960 formed a regional political Unit called All Party Hill Leaders Conference (APHLC), they resolved that the Eastern Frontier state should be formed outside the Assam. Earlier on November, 1954, the UMFO supported the Hill State movement of the Eastern India Tribal Union (EITU). In 1954, a branch of the EITU was thereby established in Mizoram under the Presidenship of Lalmawia. Later on 2<sup>nd</sup> Oct. 1956 the EITU and Mizo Union Right Wing were formally inaugurated in the Mizo Hills District and to which the UMFO was dissolved.<sup>33</sup>

The Mizo National Famine Front, which was formed during the near-gregarious bamboo flowering famine condition prevailing in Mizoram in 1960 as an NGO for a relief role was converted into a Political Party by deleting the word 'Famine'. The Mizo National Front was found on 28<sup>th</sup> Oct. 1961 by Laldenga. The main objectives of the party were :-

- a) Unification of all Mizos and to get the highest freedom/Independence.
- b) To uplift the status of Mizos and gear up development.
- c) To uphold and protect Christianity.<sup>34</sup>

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32. *The Assam Gazette*, Dated 23<sup>rd</sup> May 1956

33. V.V. Rao (et al) (1987), *A Century of Government and Politics in North-East India*, Vol - III, Mizoram, New Delhi: S. Chand & Company (Pvt) Ltd.pp. 141- 142

34. *op.cit*, Biakchhunga, p. 83

On 11<sup>th</sup> April 1961, A. Thanglura founded the Indian National Congress Party in by Mizoram. When Mizoram became an insurgency, the Congress Party split into two; Congress Ruling led by Dengthuama and National Congress led by Hrangchhuana. There was a serious conflict in between them although both of them were parentage as Congress. The Central Congress leaders Smt. Mukherji MP and her colleagues came and reconciliated the disputed two corners. Whereof, the leadership of Hrangchhuana was declared as the Right Wing. By 1971, when the Mizo Union and Congress merged they strongly won the election in the District Council.<sup>35</sup>

On 1<sup>st</sup> July, 1976 due to the ugly atrocity of the Army personnels upon the insurgent movement in Mizoram. The Human Right Committee was formed in Aizawl as founded by Brig. T. Sailo as a non-political body. The existence was warm welcome by the common man who were the victims of army atrocity. After gaining reputation and popularity, Brig. T. Sailo turned the Human Rights Committee into a Political Party called the Peoples Conference on 17<sup>th</sup> April, 1975.

Pawi-Lakher Tribal Union (PLTU) was founded in 1948 with Hengmanga as the President and Padara as Secretary. The Party aimed at integrating the Pawis and the Lakher into one administrative Unit by obtaining the Regional Council for the tribes and managing their local affairs independently from the Mizo District Council.<sup>36</sup>

### **MNF Insurgency :-**

The earlier Mizo National Famine Front converted into Mizo National Front (MNF) on 22<sup>nd</sup> Oct. 1961 as a Political Unit aimed at complete Independence from India. The reasons given were that Mizos were mongolian and not an Indian traits. Moreover, Mizo were allegedly authorised separate administration by the British as per the resolution adopted

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35. *Ibid*, Biakchhunga, p. 198

36. R.N. Prasad (1987), *Government and Politics in Mizoram*, 1947 - 1986, New Delhi: Nothern Book Centre, p. 261

the leading politicians on 14<sup>th</sup> August, 1947. The feeling of ‘neglect’ by the Government of India and Assam was also made an issue. An insurgency broke in early 1966 which continued till the statehood of Mizoram.<sup>37</sup>

### **15 Years of Union Territory of Mizoram :**

The then Mizo Hills District was elevated into Union Territory status on 21<sup>st</sup> January, 1972, under the North Eastern Areas (Reorganisation) Act, 1971 and the name had been re-christened as ‘Mizoram’. The first election in UT period was won by the merged parties of Mizo Union and Congress. Ch. Chhunga was the first Chief Minister hold on 2<sup>nd</sup> May 1972 - 10<sup>th</sup> May, 1977. In the election of 1978, Peoples Conference Party led by Brig. T. Sailo won the election. Because of the split of the ruling party, election was again held on 1979. The leadership of Brig. T. Sailo succeeded again uptill the end of the term on 4<sup>th</sup> May 1984.

The Congress Party led by Lal Thanhawla succeeded in the election of 1984. It was at the time, when peace negotiations was trying ahead in between the Government of India and MNF insurgent group. During the period of Congress Ministry, Memorandum of Settlement was signed by the Government of India and MNF insurgent group led by Laldenga on 30<sup>th</sup> June, 1986. At that point, the slogan of all and sundry ‘peace’ was realised.

To make an overview, UT period in Mizoram was in fact used for peace talking in between the MNF insurgent group and the Government of India. The period was therefore a good training period for Mizo politicians as well as bureaucrats. It enabled them to have more exposure to the outside world. Constant interactions with national level leaders and bureaucrats were beneficial for the future. Not much head way could be made in the aspects of economic developments because of the insurgency.

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37. *op. cit*, J. Lalsangzuala, p. 101

## **Mizoram, the 23<sup>rd</sup> State in India :-**

Under the Constitution (53<sup>rd</sup> Amendment) Act 1986 and under the State of Mizoram Act, 1986 (14<sup>th</sup> August, 1986), the Union Territory of Mizoram was conferred a statehood on 20<sup>th</sup> Feb. 1987. Its peculiarities embodied under Article 371 'G' of the Constitution of India is "no Act of Parliament in respect of religious, social practices and Customary Law of Mizo shall apply without the decision of Mizoram Legislative Assembly and the Legislative Assembly of the State of Mizoram shall consists not less than 40 members".

In compliance with one of the terms of the Agreement reached in the Peace Accord between the MNF and the Government of India, Lal Thanhawla 'the then Chief Minister stepped down and he became Deputy Chief Minister. In his place, Laldenga was the Chief Minister as envisaged in the agreement for an Interim Government, which was commenced from 21<sup>st</sup> August 1986 to 19<sup>th</sup> Feb. 1987. Zoramthanga, Rualchhina and Tawnluia were Ministers from the MNF side whereas Vaivenga, R. Thangliana, C.L. Ruala and Sainghaka were Ministers from the Congress side whilst Rokamlova, Hiphei and Liansuama sacrificed their Ministership for the above stated MNF Ministers. Thus, the Interim Mizoram Government was formed with five Congress Ministers and four MNF Ministers altogether nine including the Chief Minister.

The first Mizoram State Legislative Assembly began from 20.2.1987 to 6.9.1988. MNF Party under the Chief Ministership of Laldenga was collapsed due to declaration of President's Rule on 7.9.1988 to 23.1.1989 under Article 356 of the Constitution of India. At that time, Hiteshwar Saikia was the Governor of Mizoram. The first Mizoram Legislature passed 13 Bills.

The second Mizoram State Legislative Assembly started on 24.1.1989 to 6.12.1993 run by Congress Party led by Lal Thanhawla passed 62 bills. Twenty years of insurgency had left behind a big leeway in the field of economy. The Nations Seventh Five Year Plan was the first five year plan for Mizoram under peaceful situations.

The third Mizoram State Legislative Assembly was started on 7.12.1993 to 1.12.1998, the Congress (I) and Mizoram Janata Dal (MJD) formed a coalition Government, Lal Thanhawla again the Chief Minister of Mizoram. The Coalition Government did not go on the face of it to go well, Lalhmingthanga, Finance Minister and H. Thangkima, Minister of State were removed after few months of its inauguration, the other two Ministers namely C. Chawngkunga and Zosiana Pachuau were joined Congress (I). Thereafter, the remaining three MJD Ministers of state namely C. Vulluaia, Hrangthanga Colney and F. Lawmkima were also dropped from the Ministry.<sup>38</sup>

In the fourth Mizoram State Legislative Assembly elections, the MNF Party in collaboration with Mizoram Peoples Conference won the election and commenced from 8.12.1998. In that Ministry, Zoramthanga was the Chief Minister and Lalhmingthanga, President MPC was appointed as the Deputy Chief Minister. The MNF - MPC coalition Ministry came to an end on the 9<sup>th</sup> December, 1999. The lone MNF Ministry thus began with 21 MNF MLAs and one Independent MLA supporting MNF. The term of MNF Ministry lasted on the 30<sup>th</sup> Nov. 2003.<sup>39</sup>

The fifth Mizoram Legislative Assembly election was held on the 20<sup>th</sup> Nov. 2003 as desired by the Election Commission of India. The break up of seats secured by different parties in this election was MNF - 21, Congress - 12, MPC - 3, ZNP - 2 and MDF - 1, Later F. Lalthanzuala, MPC MLA and P.P. Thawla MDF MLA joined MNF Ministry.

### **Administration of justice in India - A concept :**

Justice is a matter of human nature and natural phenomenon, which cultivates a peaceful and constructive public life. Man made (legal) justice and natural justice (nature-tailored - embroidered law) are the foundation of Indian Judiciary. The quality of democracy

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38. P. Lalnithanga (2005), *Emergence of Mizoram*, Aizawl, p. 143

39. *Ibid.*

today relies on justice delivery system towards equality, liberty and fraternity. Amongst the three organs of democracy, Executive organ execute or realise the plans and programmes chalked out by the policy makers. Likewise, the legislature is the sole giant to make laws as legislators. Whereas, the role of judiciary is to deliver justice according to the laws and statute legislated by the legislators. Meanwhile, as the Guardian of the Constitution of India, the Supreme Court in some instances lend its hands to interpret the laws by a *doctrine of pith and substance* and *repugnancy*.

No doubt to say that, veracity is an essential attribute for successful democracy. In the literary sense, Justice denotes the quality of being just treatment, fairness or a moral (standard) or conduct of all men to one another, requiring them to perform their social and moral as well as legal obligations to each other and to grant to each other all that fairly should be granted. In short, Justice is based on law of the land pertaining to the removal of mental cobwebs which leads to crime and civil disputes or conflicts. Law is therefore includes - Constitution, Acts, Rules, Regulations, precedent or precept, Ordinance, Oder, Byelaws, Notifications, etc. According to Salmond, “the rule of Justice determines the sphere of Individual liberty in the pursuit of individual welfare, so as to confine that liberty within the limits which are consistent with the general welfare of mankind”. In brief, the pillars of the administration of Justice in India are :-

- 1) Judicature (Judges, Magistrates and Arbitrators) viz. Courts (Nyaya panchayat to Supreme Court of India).
- 2) Advocates, enrolled in the Advocates Act, 1961, who are the Officers in a Court room.
- 3) Laws in force in India and certain notorious facts for judicial notice.
- 4) Investigating Agency viz. Police Force who detect crime and painstakingly investigate into for prosecuting in the Judicature.

The Court system in India is based on Common Law system of England with Rule of Law and Constitutional Government as its basic features. The Court in India were established by the old English Rulers of India and after Independence, the same Court system continues under the new Constitution of India in 1950 with the addition of the principles of Democracy. Rule of Law postulates liberty within the confines of public order, without public order, liberty is imperilled. Rule of Law doesn't mean the protection of vested interest or unfair exploitation in society, nor is it inconsistent with economic regulation and social control. It contemplates a harmonious balance between individual liberty and social restraint and between change and stability.<sup>40</sup>

One unique features of Indian Judiciary rampant in the present society is 'Judicial Activism'. It can also be termed as the expanded role of the Judiciary. Under the espistolary jurisdictions, Public Interest Litigation (PIL) or Social Action Litigation was introduced by a dilution of the doctrine of '*Locus Standi*'. New Contents are being provided to criminal Justice resulting in prison reforms and humanitarian treatment of prisoners and under trials. The doctrine of equality has been employed to provide equal pay for equal work, ecology, public health and environment are receiving attention at the hands of the Courts. Exploitation of children, women and labour is receiving the concern it deserves, liberalisation of the traditional concept of *locus standi*, to make access to the courts easy, was undertaken.<sup>41</sup> These are two views regarding *Judicial Activism*, which are :- One Schools of thought is that it is anti-democratic as the authority or efficacy of the legislature and the executive is usurped by the judiciary which is not elected by the people, and that judicial activism is an encroachment by the Judiciary upon the Jurisdiction of the Executive, the Legislature and other independent and autonomous institutions. By Judicial Activism, the Judiciary enters in the area where it has no competence to undertake the regulation and management of the affairs of the State.

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40. L.M. Shingvi (1991), *Freedom on Trial*, New Delhi: Vikas Publishing House Pvt. Ltd., p. 47

41. G.C. Malhotra (Ed), (2002) *Fifty Years of Indian Parliament*. New Delhi: Lok Sabha Secretariat, p. 562



Whereas, Ex-Chief Justice of India, Hon'ble Justice, A.S. Anand opined that *Judicial Activism* is not an unguided missile, It has to be properly controlled and channelised. It is therefore, essential to remember that judicial restraint in the exercise of its functions is of equal importance for the judiciary while discharging its judicial obligations under the Constitution.<sup>42</sup> For Justice (Retd) H.R. Khanna, 'Judicial Activism is nothing but ensuring the rule of law in the Country. It is ascertained by the judiciary to uphold a basic principle that howsoever high one may be politically or administratively, the law is above him and he cannot avoid the penalties for the infraction of law '.

As experienced, No doubt to say that, judicial activism had arisen from the non-performance of the others organs of the government towards Constitutional obligations. judicial activism has reminded them of the Constitutional duties. Once the other organs begin to work according to the Constitution and uphold the rule of law, the cause for judicial activism will diminish. Till then, Judicial Activism will have significance for protection of the rights of the citizens, for the defence of Constitutionalism and conduct of a responsible and limited Government.

Briefly, the role of Indian Judiciary as practised as Judicial Review akin to USA has two prime functions (a) legitimising Government action and (b) to protect the Constitution against any undue encroachment by the Government.

### **Evolution of Indian judiciary :**

In India, before the existence of British, there was no well-organised judiciary as it is today. The law of torts as administered in India was also the English Law as found suitable to Indian conditions and modified by the Acts of Indian Legislature.<sup>43</sup> Queen Elizabeth's

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42. *Ibid*, p. 563,

43. Vidya Devi Vs. MP State Road Transport Corporation, AIR 1975 MP 89.

Charter of 160 granted permission to the Governor and Company to hold Court for the said Company and affairs thereof.<sup>44</sup> It was an epochmaking judgement that strengthened court system in India.

As enshrined under Charter Act of 1726 in each presidency towns, (Bombay, Calcutta and Madras) a Mayors Courts was established. Prior to 1726, the Court were mere the Courts of East India Company and authority derived from the British Crown directly. This was slightly modified by Charter of 1753. The Regulating Act, 1773 embodied that the establishment of Supreme Court of Culcatta and Charter of 1774 set up the said Court. It superseded the provisions of the Charter of 1753 and resulted in the abolition of the Mayor's Court at Calcutta. In 1801, the Supreme Court was established at Madras and in 1823, the Supreme Court was set up in Bombay by the Bristish Crown by issuing Charters.

The Indian High Courts Act, 1861 was another milestone of Indian Judiciary. It enacted the British Crown to establish one High Court in each presidency towns. Therefore, Civil Courts were set up in Bengal, Assam and North - Western Provinces as per the Civil Courts Act of 1887. The Criminal Courts also functioned according to the Criminal Procedure Code of 1898.<sup>45</sup>

The Federal Court of India came into existence only for the Constitutional matter on Dec. 6, 1937 under the provision of Government of India Act, 1935. But, the Federal Legislature could confer on the Federal Court the power to hear appeals in Civil matters decided by the High Courts. And at the same time, under section 208 of the Government of India Act, 1935 an appeal could be filed before the Privy Council against the judgment of the Federal Court. But the jurisdiction of the Privy Council was abolished by the Abolition of Privy Council Jurisdiction Act, 1949. Under the said Act, all appeal petitions pending before the Privy Council before October 10, 1949 were transferred to the Federal Court.

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44. V.N. Shukla (1995), *Constitution of India*, Lucknow: Eastern Book Company, p.A - 2

45. Kailash Rai (2003), *Public Interests Lawyering, Legal Aid and Para -Legal Services*, Allahabad: Central Law Publications, pp. 4 - 6

The Federal Court was therefore the highest Court of appeal till January, 1950 on which date, the Supreme Court of India came into being.<sup>46</sup>

After India's Independence, Clause (I) of Article 124 of the Constitution of India makes provision for the establishment of Supreme Court of India. At the threshold, the Supreme Court was established with a Chief Justice and not more than seven other Judges. In 1960 (Act XVII of 1960), the number of Puisne Judges had been raised to 13 and later to 17 by the Supreme Court (Number of Judges) Amendment Act, 1977. Again (Act XXII of 1986), it had been increased to 25. At present, the approved strength of judges in Supreme Court of India is 26 and in the High Courts, 726, Subordinate Courts - 14,412.<sup>47</sup>

### **Evolution of criminal jurisprudence in India :**

The Code of Criminal Procedure, 1973 which is in force at present repealed the 75 years old British enacted Criminal Procedure Code, 1898 (Act No. V of 1898), and thereby replaced with a newly formulated code, which seeks to modify, streamline, change and make clearer many provision of the Code of Criminal Procedure, 1898.

The 41<sup>st</sup> Report of Law Commission was presented in September, 1969 for pondering a fair trial in accordance with the accepted principles of natural justice: One of the prime recommendations of the Commission was to provide for the separation of judiciary from the executive on an all India basis in order to achieve uniformity in the matter.<sup>48</sup> The said Code of 1973 received the assent of the President and it came into force throughout India on 1<sup>st</sup> April, 1974.

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46. M.K. Michael (2000), Golden Years of the Supreme Court, *Law World*, 3 May to 13 June, p. 23 & 50

47. *Court News*, (2006) Vol I. Issue No.1. January -March, New Delhi: Supreme Court of India.

48. M.P. Tandon (1998), *Criminal Procedure Code*, 11<sup>th</sup> Edition, pp 1- 2

It may be relevant to say that Section 1 of the Code of Criminal Procedure, 1973 embodied that it extends to the whole of India except the state of Jammu and Kashmir, provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply (a) to the state of Nagaland and (b) to the tribal areas, but the concerned state Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be with such supplemental, incidental or consequential modifications as may be specified in the notification.

### **Evolution of civil jurisprudence in India :-**

Before 1859, there was no codified law of Procedure for Civil Courts applicable to the whole of India. The Courts in the Presidency towns were governed by their own rules and orders and certain Acts (Act XVIII of 1852 and Act VI of 1853), the Provincial Courts had certain Regulations and Acts applicable to them. The first Civil Procedure Code (Act VIII of 1859) was passed in 1859. It did not, however apply to Courts established by Royal Charter viz - the Supreme Court and the Sudder Dewany Adalats. In 1862, with the abolition of the Supreme Court and the Sudder Dewany Adalats, the Code was made applicable to the High Courts as well. After several amendments in 1860, 1861 and 1871, a second code was enacted in 1877. The Code of 1877 was further amended in 1878 and 1879. In 1882, the third Code was enacted. By passing through several amendments, the present Code was passed in 1908. The Act of Civil Procedure Code (Act V of 1908) received the assent of the Governor General on the 21<sup>st</sup> March, 1908. The Code of Civil Procedure Amending Act XX XII of 1949, Act II of 1951 and Act XIX of 1951 have further amended the Act of 1908.<sup>49</sup>

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49. S.N. Singh (2001), *The Code of Civil Procedure*, Allahabad: Central Law Agency, 18<sup>th</sup> Edition p. 1

The Code extends to the whole of India, except (a) the State of Jammu and Kashmir (b) the State of Nagaland and the Tribal Areas; Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the state of Nagaland or such Tribal Areas, as the case may be, with such supplemental, incidental or consequential notifications as may be specified in the notification.<sup>50</sup>

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50. *Ibid*, p. 4

# **CHAPTER - 2**

## **Administration of Justice in Mizoram**

### **Administration of Justice in Mizoram**

**(i) Pre Independence period**

**(ii) Post Independence period**

### **Pre Independence period**

Judiciary plays a vital role in the day to day life and means of livelihood in Mizo society since chieftainship, reiterated that prior to annexation of the territory by the British in 1890, there was no proper administration in the territory.

Before entry of British into the Lushai Hills, the chief in a Village used to administer justice according to the unwritten customary laws without any superior or higher authority to prefer an appeal. In other words, the Court of chiefs was the Apex Court for the people living in his jurisdiction. After the territory was occupied by the Britishers, it was under Scheduled Districts Act of 1874. The ruling chiefs continue to administer justice in

all civil and criminal cases except heinous offences like murder, rape,unnatural offences. The same had been directly taken cognizance by the Superintendent and his Assistants. In November,1906, the British Government in exercise of the powers conferred under section 6 of the Schedule Districts Act,1874, promulgated the rules for the first time, namely “the rules for the regulation of the procedure of officers appointed to administer justice in the Lushai Hills,1906” under notification No. 12522 J Dt 29.11.1906. Under these rules of 1906, civil and criminal justice use to be administered ordinarily by the Superintendent and his Assistants. Wherein, a sentence of death or transportation required confirmation by the Lt. Governor under “Rules regarding sentence of Death in the Lushai Hills-1915” whereas a sentence of imprisonment for seven years and above required confirmation by the Commissioner of the Surma Valley and Hill Districts under rule 9 of the “Administration of justice Rules,1906”.

The salient features of legal system during chiefship can be summarized as follows-

### **1. Murder :-**

If a man murdered a person, the relatives of a murder could take a revenge, so that the murderer went to the chief’s house for his safety known as ‘*Lal sutpui dawn*’. whereof, revenge against the murderer could not be taken, but, the murderer and his family became slaves of chiefs for his safety and protection from revenge. When a man couldn’t reach his safety to the house of chiefs, he had ordinarily moved to a distant village for his safety.

After the advent of the British, the case of murder was tried by the Superintendent without a retribution upon the murderer. The said incident used to be reported to the Superintendent as soon as possible by the chief. It may not be wrong to say that, there were rare cases of murder in the olden days in Mizo society.

### **2. Adultery :-**

There were two kinds of adultery, the first kind was adultery committed by the wife during the lifetime of her husband. If a women commits adultery during the lifetime of her husband, the whole of the marriage price paid must be returned to her husband and her

husband was entitled to keep his wife's dowry and other properties such as cloths, beads etc. A women who commits adultery after her husband's death while living in her husband's home is equally adultery but the punishment is lesser.<sup>1</sup>

### **3. Rape :-**

After the British occupied the administration, all genuine cases of rape have to be reported to the Superintendent. A genuine case of rape is unmistakable, the victim girl would at once rush to the chief and make a complaint and he would send her straight into Court. The other sex related crimes rarely happened in the society that had been dealt as below-

- i) Co-habitation by personation of husband is known as 'Lawithlem'. In the past event, a man caught at this game would have had his ears and nose slit, later practised that he has to pay to the women's husband the whole of her marriage price.
- ii) If when her husband is away, another man comes while she is asleep at night and sleeps with a woman, the offence is known as 'Thlim'. The fine is the same as for 'Lawithlem' and 'Thlim' were very rare occurrence and was regarded as disgraceful to the man concerned.

### **4. Modesty of women and Assault :-**

#### a) Sexual Assault -

- i) A man found guilty of touching the breasts of a married woman is liable to pay a fine of a 'sepui' (a full grown mythun) or Rs 50/- and 'salam' (equivalent to Rs 5/- or a pig)

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1. N.E. Parry (1928), *A Monograph on Lushai Customs and Ceremonies*, Aizawl: Tribal Research Institute, Govt. of Mizoram, pp 47 – 48



- ii) A young man with loose character by touching of the women's breasts is liable to pay a fine of Rs 20/- or 'tlaisial' (mythun) and 'salam'.
- iii) When a young man visits by night the home of a girl whom he has not courted previously and come to an understanding with and tries to sleep with her, the offence is known as 'zen'. It is not rape nor does it even amount of attempt to rape but according to custom, it is an offence and punishable with a fine of Rs 20/- and 'salam'.

b) Assaults between or on children -

The quarrel between the children does not amount to offence, but if the father or some other relatives of one child interfere to beat the other is liable to pay a fine of Rs 10/- and 'salam' which may extend to Rs 40/- and 'salam' according to the nature of the offence.

c) Assaults among the adults:-

Assault is not at all a common offence in the erstwhile Mizo society. When people have been drinking, they occasionally quarrel and assault each other. If anyone assaults another man and draws blood, he would be fined of Rs 5/- or 'salam', but if it is only the nose that bleeds, no fine is inflicted. If more serious damage is caused by the assault, the chief can inflict a fine up to Rs 40/- and 'salam according to the nature of the assault.

**5. Defamation :-**

It is only a matter of common sense to decide what is defamatory and what is not. If anyone found guilty of defamation, he is liable to pay a fine which may extend to Rs 40/- and salam.

**6. Marriage :-**

When a man wants to get married, he must first of all approach the girl's parents and

settle with them about their daughter's price. In a marriage, the marriage agreement must be put into writing by the village writer and he must record the total amount still due in the presence of two witnesses and a copy must be given to each party. A marriage price falls into two parts - the 'Manpui' (main price) and the 'Mantang' (subsidiary prices)<sup>2</sup>. A dowry of bride's are-

- (a) At least three strings of old 'Thival' beads or
- (b) At least one string of 'Thifen' beads and one string of 'Thival' or
- (c) At least one string of old amber beads worth not less than Rs. 20/- or
- (d) At least Rs. 20/- cash

A dowry belongs to the women and not to her husband. Therefore, he may not dispose of it without her consent<sup>3</sup>

## 7. Divorce :-

There are eleven ways or means of divorce in Mizo customs which are as follows :

- a) Divorce by husband and thereby pays up all the marriage price known as 'Ma' or 'Mak'.
- b) Divorce by wife and thereby returns all her marriage price that has been paid known as 'Sumchhuah'.
- c) Divorce by mutual agreement and thereby shared the marriage price equally into half known as 'Sumlaitan'.

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2. *Ibid*, pp 23 – 24

3. *Ibid*, pp 28 -29

- d) Divorce by husband, in which he will not claim back the marriage price that has been paid ; nor will have to pay the unpaid balance known as ‘Peksachang’.
- e) Leaving husband’s house during his absence known as ‘Pasal awmlloh hlana chhuak’.
- f) Divorce and simultaneous marriage to another woman known as ‘Kawngka sula mak’.
- g) Divorce on account of impotency known as ‘zangzaw’.
- h) Divorce on account of a narrow passage of woman’s vagina known as ‘Chhuping’.
- i) Divorce on account of madness known as ‘Atna vanga inthen’.
- j) Abandonment of family by a husband known as ‘Nupui fanau tlanbosan’.
- k) Adultery known as ‘Uire’.

**8. Theft :-**

The customary punishment for theft varies according to the nature of the articles stolen. Theft of paddy is punishable with a fine of Rs 40/- and salam. The paddy however doesn’t have to be returned, the fine of Rs 40/- covers the whole thing. Theft of maize, millet, kochus and such other like crops is punishable with a fine of Rs 20/- and salam.

Theft of properties such as cloths, necklaces and cash is punishable with a fine of Rs 40/- and salam and the articles stolen or its value must be returned to its owner in addition to the fine, theft of eggs and vegetables is punishable with a fine of salam only. Persons habituated to theft are sometimes found in villages, these people are known as

‘Kutkem nei’ and are generally eventually turned out by the chief. Serious cases of theft are dealt with by the court and punished in the ordinary way<sup>4</sup>.

In the past, the chief used to administer justice with the assistance of his village elders, the chief alone never tries a case without consulting his council of elders. A weak chief in some instances almost entirely was guided by his elders. The chief and his Council of elders therefore constituted as village court. The chief was used to make trial any cases in his home itself, there was neither a separate court room nor procedure as it exist today. After the Superintendent administered the district, the cases of murder and rape were reported to the Superintendent for trials, an appeal against the decision of the chief was preferred to the Superintendent<sup>5</sup> subject to a time-barred for two months. The chief and his village elders also get remuneration as they tried the case which is known as ‘salam’. The chief’s court also fixed a time to pay a fine from the judgement debtor, when it had failed to pay during the fixed time, the action was referred to the Superintendent to enforce. If the case was compromised by amicable manner, the salam was shared equally by both the disputed parties.

The British at that time inclined not to interfere deeply in the village disputes except on murder, rape and heinous offences or two or more villages involved in the case. it means that, the chief’s courts had a free and fair hands to administer justice according to Mizo customary laws.

The chief had in the beginning, the traditional rights to inflict the capital punishments, to seize food stores and property of his villagers, wishing to migrate to another village as ex-communication or banish, to own the lands, to tax traders within his jurisdic

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4. *Ibid*, pp 58 – 59

5. R.N. Prasad (1987), *Government and Politics in Mizoram 1947 – 1986*, New Delhi: North Eastern Book Centre, p. 57

tion, to appoint his son as chief within his own lands, and to attach the property of villagers when he deemed fit or wished, with or without fault on the part of the villagers.<sup>6</sup>

On 25<sup>th</sup> March, 1937 under No. 2530(a) KP, the Governor of Assam in exercise of the power conferred by section 6 of the Scheduled District Act, 1874 (XIV of 1874) promulgated the revised rules for the Regulation of the Procedure of Officers appointed to administer justice in the Lushai Hills, 1937, when the then Lushai Hills entered into Excluded Area under the Government of India Act, 1935.

According to the said Rules of 1937, criminal justice should be ordinarily administered by the Deputy commissioner and his Assistants.<sup>7</sup> Whereas, the administration of civil justice in the Lushai Hills is also entrusted to the Deputy Commissioner and his Assistants who shall take special cognizance of well established Lushai Customs.<sup>8</sup> In a Criminal case, Assistant to the Deputy Commissioner shall exercise such powers as they may be invested with by the Administrators (now replaced Governor of Mizoram or the State Government<sup>9</sup>) not exceeding those of a Magistrate of the first class, as defined in the Criminal Procedure Code.

In connection with the resolution adopted by the Assam Legislative Assembly on the 9<sup>th</sup> Sept. 1947, the Governor General under S.O.4, dated 1<sup>st</sup> March 1948 make the Assam High Court Order, 1948 by virtue of sub-section(1) of section 229 of the Government of India Act, 1935 as adapted by the Indian Provisional Constitution (Amendment) Order, 1948. It shall have, in respect of the territories for the time being including in the Province of Assam, all such original, appellate and other jurisdiction as, under the law in force immediately before the prescribed day, is exercisable in respect of the said territories or any part thereof by the High Court in Calcutta, or by the Governor of Assam exercising the functions of the High Court .

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6. P. Chakraborty.(1995), *Mizoram Compendium of Laws*, Titagarh: Linkman Publication, Vol-II, p. 19

7. Rule 8 of the *Administration of Justice Rules, 1937*.

8. *Ibid*, Rule 15

9. Substituted for the word 'Administrator' by *the State of Mizoram Adaptation of Laws Order (No.2) 1987*.

## **Post Independence period :**

The Court's of Chiefship remain functioned till the enactment of the Assam Lushai Hills District (Acquisition of Chief's Rights) Act, 1954. (Act No. 21 of 1954) which is replaced by Village Council/Court established under the Lushai Hills District (Village Councils) Act, 1953 (Act No. V of 1953)

Rules for the Regulation of the procedure of Officers appointed to administer justice in the Lushai Hills, 1937 remains continued after Independence. The procedure of the High Court, Deputy Commissioner and all Magistrates shall be in the spirit of the Code of Criminal Procedure as far as it is applicable to the circumstances of the Lushai Hills and consistent with these rules of 1937. The administration of justice is always to be conducted in the most expeditious and most simple manner compatible with the attainment of the object in view.<sup>10</sup>

On 7<sup>th</sup> April, 1953, in exercise of the powers conferred under sub-paragraph (4) of Paragraph 4 of the Sixth schedule to the Constitution of India, the Lushai Hills District Council, with the previous approval of the Governor of Assam promulgated the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 Under No. DLC.14/53. There are three classes of Courts under these Rules of 1953 such as-

i) Village Courts-

The Village Court of each village or a smaller body consisting of not less than three members of the Council as elected by the Council in this behalf shall sit as the Village Court.

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10. *op.cit*, Rule 11

ii) Subordinate District Council Court-

Under rule 7(1) of the rules of 1953, there shall be one Subordinate District Council Court at Aijal and another at Lunglei. The District Council may also constitute by order notified in the Gazette one or more Additional Subordinate District Council Court or Courts presided over by a Judicial Officer to be designated as Magistrate<sup>11</sup>.

iii) District Council Court-

There shall be one District Council Court for the Lushai Hills Autonomous District. It shall ordinarily sit at Aijal.

The Assam High Court (Jurisdiction over District Council Courts) order, 1954 was chalked out on the 16<sup>th</sup> January, 1954 under No.TAD/R. 11/53/23. in respect of appeals from the decision of the District Council Court and supervision of the Courts under the Administration of Justice Rules, 1953.

Pertaining to transfer of certain cases to the Courts constituted under the paragraph 4 of the sixth schedule to the Constitution of India in the Autonomous District of Assam, the Assam Autonomous District Administration of Justice (Miscellaneous Provisions) Act, 1957<sup>12</sup> (Assam Act No. XXII of 1957) had enacted on 29<sup>th</sup> November, 1957, whereof, the Deputy Commissioner and his Assistants shall have no power to try a case which is exclusively triable by any Court constituted under paragraph 4 of the sixth schedule to the Constitution of India; and any case which at any stage after the Deputy Commissioner or an Assistant to him has taken cognizance of, transpires to be so triable, shall be transferred to a competent Court as soon as it so transpires.

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11. Rule 8 of the *Administration of Justice Rules, 1953*.

12. Notification No. L.J.L. 32/57/12, Dt. 29<sup>th</sup> Nov, 1957 *The Assam Gazette* dt. 14<sup>th</sup> Dec, 1957.

Mizo Customary Laws 1956 effective on 30<sup>th</sup> November, 1956 under Mizo Hnam Dan (Operation) Order, 1957 was made by the Mizo District Council to be used together with the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953. The Mizo District (Inheritance of Property) Act, 1956 also made on 18<sup>th</sup> May, 1956 under No. TAD/R/123/53 in pursuance of the paragraph 11 of the sixth schedule to the Constitution of India and published the same in the Assam Gazette, dt. 23<sup>rd</sup> May, 1956. The said Act of 1956 was also made to cope with the Administration of Justice Rules, 1953.

The Pawi-Lakher Autonomous Region Administration of Justice) Rules, 1954 was also made in pursuance of paragraph 11 of the Sixth Schedule to the Constitution of India under No. RCE 11/54/9/351, dated 1<sup>st</sup> March, 1954. It was created Courts for the said region namely Village Court and Regional Council Courts constituted under sub paragraph 6 and paragraph 7 of the said Rules of 1954 respectively. In respect of appeal and superintendents of the said Courts, the Assam High Court (Jurisdiction over Regional Council Courts) order, 1959 was made under Notification No. TAD/R/11/53/32, dated. 8<sup>th</sup> August, 1959 by the Governor of Assam as the powers vested under sub-paragraph (3) of paragraph 4 of the sixth schedule to the Constitution of India.

The Assam Autonomous District (Administration of Justice) Act, 1960 was also made on 15<sup>th</sup> April 1960 for the appointment of Additional Deputy Commissioner for an Autonomous District either generally, or for the trial of the particular case or a 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.

After elevated into Union Territory of Mizoram on 21<sup>st</sup> Jan. 1972, (i) Rules for the Regulation of the Procedure of Officers appointed to administer justice in the Lushai Hills, 1937 (ii) The Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 and (iii) The Pawi-Lakher Autonomous Region (Administration of Justice) Rules, 1954 still continued according to the North Eastern Areas (Re-organisation)(Mizoram), Adaptation of Laws Order, 1972 under Notification No. F.19(2)72-L-1 Dt. 25.3.1972.



When Mizoram attained full fledged statehood on 29<sup>th</sup>Feb, 1987, all Courts and Tribunals and all authorities discharging lawful functions throughout the existing Union Territory of Mizoram or any part thereof immediately before statehood shall continue to exercise their respective functions as envisaged by section 45 of the State of Mizoram Act, 1986 (No. 34 of 1986).

To match with separation of judiciary in Mizoram, The Mizoram Civil Courts Act, 2005 (Act No. 11 of 2005) was enacted under Notification No. H.12018/155/05-LJD/7, the 19<sup>th</sup>Oct, 2005. The effective date order also issued under Memo No.A.36016/5/2001 – P&AR(CSW), Aizawl, the 26<sup>th</sup>April, 2006. The said Act has been amended under Notification No. H. 12018/155/05-LJD/23, dated Aizawl, the 30<sup>th</sup> October, 2007. The established Civil Courts in the State under this Act are:-

- a) Court of a District Judge.
- b) Court of a Senior Civil Judge.
- c) Court of a Civil Judge.
- d) Court of Small Causes.

The pecuniary as well as territorial jurisdictions was also specified in the said Act, whereas the Courts constituted under the Administration of Justice Rules, 1953 doesn't emphasise any specific pecuniary jurisdiction.

# **CHAPTER - 3**

## **State Courts in Mizoram constituted before Independence**

### **State Courts in Mizoram constituted before Independence**

**(i) Governor**

**(ii) Deputy Commissioner and his Assistants**

Since there was no separate Judiciary during the British regime particularly for the backward areas like in the then Lushai Hills, the Executive personnel also dealt administration of Justice.

#### **Court of Governor :-**

Prior to the establishment of the Assam High Court on 5.4.1948 under the Assam High Court Order, 1948. The Governor of Assam used to exercise the power of an appellate Court as well as Court of revision under rule 9 of the Rules for the regulation of the Proce-

dure of Officers appointed to Administer Justice in the Lushai Hills, 1937. The Governor in exercise in such powers could call for the proceeding of any officers subordinate to him and reduce, enhance or cancel any sentence passed, or remand the case for retrial.<sup>1</sup>

As soon as the enactment of the Assam High Court Order, 1948, the High Court started exercising such original, appellate or other jurisdiction exercisable by the Governor immediately before the prescribed day i.e. 5.4.1948 as enshrined under section 4 of the Assam High Court Order, 1948<sup>1</sup>.

In the light of rule 10B of the said Rules of 1937, the Governor of Mizoram or the State 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. Under Rule 14B(a) of the said rules of 1937, the President or the Governor of Mizoram or the State Government may either upon conditions or without conditions, suspend the execution of any sentence or remit any punishment. Further, the President or the Governor of Mizoram or the State Government may commute any one of the following sentences for any other mentioned after it; death, confiscation of property, imprisonment, fine. After the Independence of India and was adopted the Constitution, Article 161 of the constitution of India embodied that the Governor of a state shall have the power to grant pardons, reprieves, respites, or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extends.

### **Court of Deputy Commissioner and his Assistants in a Criminal Justice :-**

As per Rules 8 & 9 of the Rules for the Regulation of the Procedure of the Officers Appointed to Administer Justice in the Lushai Hills, 1937, Criminal Justice shall be ordinarily administered by the Deputy Commissioner and his Assistants. The Deputy Commissioner shall be competent to pass sentence of death, transportation or imprisonment upto the maximum amount provided for the offence and of fine upto any amount. It is further

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1. P. Chakraborty (1995), *Mizoram Compendium of Laws*, Titagarh: Linkman Publication, Vol – II, p. 42

death, transportation or imprisonment of seven years and upwards shall be subject to the confirmation by the Gauhati High Court. The Gauhati High Court or the Deputy Commissioner may call for the proceedings of any officer subordinate to him, and may reduce, enhance or cancel any sentence passed, or remand the case for retrial, but no offence shall be punished by a sentence exceeding that is award able under the Indian Penal Code.

Assistant to the Deputy Commissioner shall exercise such power as they may be invested with by the Governor of Mizoram or the State Government not exceeding those of the Magistrate of the first class, as defined in the Criminal Procedure Code.

In vogue, the Governor of Mizoram appointed the Deputy Commissioner as Executive Magistrate and shall also exercise all powers of District Magistrate as per provision of section 20 Cr PC, 1973 (Act No.2 of 1974) and under the said Code and under all other laws for the time being in force. In judicial matters, the Governor of Mizoram invested the Deputy Commissioner or District Magistrate to try session cases falling within his territorial jurisdiction as per provision of sub-section(5) of section 3 of Cr PC1973(Act No. 2 of 1974)

Whereas, the Assistant to Deputy Commissioner are appointed as Executive Magistrate in their respective territorial jurisdiction as per provision of section 20 Cr PC 1973. In a Judicial purpose, the Assistant to Deputy Commissioner including the Judicial Officers I&II manned from Mizoram Judicial Service appointed or recruited from the time to time Mizoram Judicial Service Rules are invested the powers of Judicial Magistrate of the first class or second class under Rules 8 & 9 of the Administration of Justice Rules 1937 by the Governor of Mizoram as defined in the Code of Criminal Procedure, 1973 before realizing separation of judiciary in Mizoram.

Sub-section(5) of section 3 of the Code of Criminal Procedure, 1973 was still upheld as valid by the Hon'ble Gauhati High Court in the Case of Jodhraj Baid & Ors Vs. State of Mizoram & Ors reported in 2006(2) GLT 673. The aforesaid section runs as any reference in such of the provisions of this code, as applied to the Union Territories of Arunachal Pradesh and Mizoram, to the courts mentioned in column (1) of the table below

shall, until the Courts of Session and Courts of Judicial Magistrate are constituted in the said Union Territories, be constructed as reference to the Court of Magistrate mentioned in the corresponding entry in Column (2) of that table.

**Table 3.1**  
**Special provision under CrPC in respect of Judicial powers**

1	2
Court of Session or sessions Judge or Chief Judicial Magistrate	District Magistrate
Magistrate or the Magistrate of the first class or Judicial Magistrate of the first class	Executive Magistrate

Source : Sub – section (5) of section 3 of CrPC, 1973

Under Rule 11 of the Administration of Justice Rules, 1937, the procedure of the High Court, Deputy Commissioner and all the Magistrates shall be in the spirit of the Code of Criminal Procedure as far as it is applicable to the circumstances of the Lushai Hills and consistent with the said Rules of 1937. The administration of Justice is always to be conducted in the most expeditious and most simple manner compatible with the attainment of the objective in view.

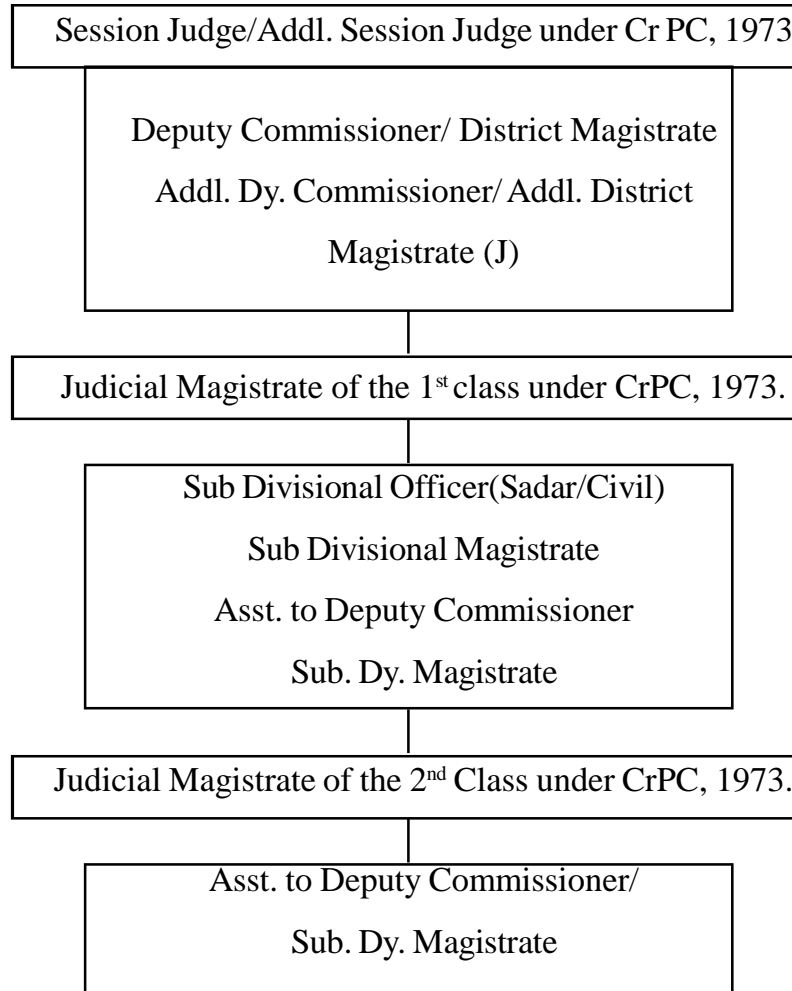
The Assam Autonomous District Administration of Justice Act, 1960 has specifically provided that Additional Deputy Commissioner so appointed under the said Act shall, in general or even when appointed for trial of any particular criminal cases or case, exercise all or any of the powers of the Deputy Commissioner. He shall also for the general or special purpose, exercise all or any of the powers of the Deputy Commissioner is wide enough to encompass the power of the Deputy Commissioner. Thus, the Deputy Commissioner will include the Additional Deputy Commissioner. It therefore, has jurisdiction to decide an appeal when referred to him by the Deputy Commissioner.<sup>2</sup>

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2. Shri Monmatha Nath Vyakaran Shastri Vs. The State of Meghalaya & Ors. (1993)  
1 Gau L.R (VOC) 53.

**Table:3.2**

**Nomenclature of Deputy Commissioner & his Assistants in Court matters**



Source: Data collected during the study, 2007

The post of Addl. District Magistrate (Judicial) holds Grade – II of Mizoram Judicial Service (MJS) recruited/appointed from time to time Mizoram Judicial Service Rules. Some of the Judicial Officer – I&II were also invested the power of Judicial Magistrate of the first class and second class under the said Rules of 1937. Investiture of 1<sup>st</sup> class and 2<sup>nd</sup> class Magistrate's has been made according to the experience and ability of the personnel hold the post in district administration.

Subject to the aforesaid Judicial Service personnel, the Court of Deputy Commissioner and his Assistants were manned by the Civil Service personnel.

Status of criminal cases in various District Courts in Mizoram under Gauhati High Court, Aizawl Permanent Bench during 2005 and 2006 are as below :-

**Table – 3.3**  
**Status of Criminal Cases in various District Courts in Mizoram during 2005 - 2006**

1	2	3	4	5
YEAR	Opening balance	Institution	Disposal	Pendency
2005	393	448	573	600
2006	2430	788	882	2336

Source- Registrar, Gauhati High Court-Aizawl Permanent Bench.

In view of the above table, the District Courts usually fail to comply Rule 14 of the Administration of Justice Rules, 1937 which stated that “The Deputy Commissioner and all the Magistrates shall keep such registers of criminal cases and submit such returns as the High Court shall from time to time prescribe”. It may lead to some misconception to supervise the subordinate Courts by the High Court which is the Constitutional mandate under Article 227 of the constitution of India. It is also the duty of the High Court under section 483 of CrPC, 1973 to exercise continuous superintendence over the courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrate is valid in spirit.

### **Judicial powers of Deputy Commissioner and his Assistants under the Code of Criminal Procedure, 1973 :-**

As invested under section 28(2) of CrPC, 1973, A sessions Judge or Additional Sessions Judge may pass any sentence authorized by laws; but any sentence of death passed by any such judge shall be subject to confirmation by the High Court. Under Section 29(2) of CrPC, 1973, the Court of Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees or of both. Under section 29(3) of CrPC, 1973, the Court of a Magistrate of the second class

may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees or of both.

### **Civil Justice :-**

Under Rule 15 of the Administration of Justice Rules, 1937, the administration of civil justice in the Lushai Hills is entrusted to the Deputy Commissioner and his Assistants who shall take special cognizance of well-established Lushai customs. Thereafter, by virtue of section 2 of the Assam Autonomous District Administration of Justice (Miscellaneous Provision) Act, 1957, the Deputy Commissioner and his Assistants have no power to try a case which is exclusively triable by any Court constituted under paragraph 4 of the Sixth Schedule to the Constitution of India ; and any case which at any stage after the Deputy Commissioner or an Assistant to him has taken cognizance of, transpires to be so triable shall be transferred to a competent Court as soon as it so transpires as repealed under Rule 59 of the Administration of Justice Rules, 1953. The said Act of 1957 has made effective on 15<sup>th</sup> Feb. 1958 under Notification No. TAO/R/51/80, Shillong, the 7<sup>th</sup> Feb., 1958. Wherein, under Rule 23(b) of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953, in which one of the parties is a person not belonging to a Scheduled Tribe remains triable by the Deputy Commissioner and his Assistants.

The provision of Rules for the regulation of the Procedure of Officers appointed to administer justice in the Lushai Hills, 1937 became vague although several amendments had been made. Whilst Rule 9 of the said Rules of 1937 particularly mentioned the judicial powers of a Deputy Commissioner. A separate investiture of judicial power as a session judge has been usually made. It reveals that the interpretation or usages of the said Rules of 1937 is debatable.

The Deputy Commissioner is also appointed as Collector under Clause (c) of Section 3 of the Land Acquisition Act, 1894 (Act No. 1 of 1894), the verification, measurement and calculation of award for the same has been dependent on Deputy Commissioner for the purpose of the said Act by virtue of Section 11 of the said Act . Meanwhile, the Deputy Commissioner and his Assistants has been still functioned as a civil court under



the said rules of 1937. The basic legal maxim “No one can be a judge in his own cause” could not be realized for the litigants who seek redressal upon the fault of the Government in the matter of land acquisition. It is inimical to laws.

After the creation of a separate Mizoram Judicial Service Rules, 1986, the position and functions of the judicial service personnel was incubus and without proper administration under the line up with Deputy Commissioner. The village court is also competent to try some petty offence under Indian Penal Code whereas the Subordinate District Council Court / Additional Subordinate District Council Court is competent to try some offences under Indian Penal Code which punishment is less than five years imprisonment under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953. In experience, the said judicial powers had never been exercised by the Courts constituted under the Said Rules of 1953 due to the hodgepodge administration of Justice in Mizoram. It needs overhauling the system.

Rules 5 and 6 of the Administration of Justice Rules, 1937 provides about taxes, tribute and labour whereas Rule 7 of the said Rules of 1937 provides arms and ammunitions whereas a separate Rule and Act is being promulgated at present in the aforesaid matter. Hence, these Rules of 1937 is outmoded, archaic and needs to abrogate in view of the administration of Justice in Mizoram appurtenant to the dynamic society.

The doctrine of separation of judiciary is of ancient origin. During the 16<sup>th</sup> and 17<sup>th</sup> centuries, Aristotle, John Bodin and Locke formulated this doctrine. Later, it was Montesquieu, a French Jurist, who for the first time gave it a systematic and scientific formulation of this doctrine in his book “*Espirit des Lois*” ( The Spirit of the Laws). He found that one person or a body of persons shouldn’t exercise all the three types of powers of Government such as – executive, legislative and judiciary. He further opined that, the legislature should make law and should not administer or enforce it. The executive should also neither control the legislature for getting laws it wants, nor should it take over the

functions of the judiciary, the judiciary should be independent both from the executive and the legislature.<sup>3</sup>

In the Indian context, Article 50 of the Constitution of India (Directive Principles of State Policy) states that “The state shall take steps to separate the judiciary from the executive in the public services of the State”. The expression therein has to be construed in the distributive sense as including the Government and the Parliament of India and the Government and the Legislature of each state and all local or other authorities within the territory of India or under the control of the Government of India.<sup>4</sup> The Supreme Court of India upheld that independence of judiciary is an essential attribute of rule of Law which is a basic feature of the Constitution in the case of *C. Ravi Chandran Iyer Vs. A.M. Battacharjee*<sup>5</sup>.

For erecting the first milestone in Mizoram, a meeting of the “State Level Committee on a Pendency of Criminal cases” was held on 1/8/1978 and 17/12/1979, which was presided over by the then Chief Minister of Mizoram. In that Committee meeting, separation of judiciary was one of the items discussed with a note that a paper should be prepared by the Law Department to examine the various legal and practical aspects relating to the separation of judiciary from the executive.<sup>6</sup> Subsequently in the meeting of the Council of Ministers on 11/4/1983, the agenda item no.1 was separation of judiciary from the executive in Mizoram. In pursuance to the said meeting’s decision, a cabinet Memorandum on

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3. UPD Kesari (2000), *Lectures on Administrative Law*, Allahabad: 13<sup>th</sup> Edition, p. 18
  4. Supreme Court Advocates-on-Record Association Vs. Union of India (1993) 4 SCC 411 (530).
  5. (1995) 5SCC 457 (para 10).
  6. *Minutes of the meeting of the state level committee on Pendency of Criminal Cases* held on 1/8/1978 and 17/12/1979.

Separation of judiciary from the executive in Mizoram was prepared by the then Law Secretary. Therein, it was proposed to insulate judiciary through the following phases :-

- (1) Phase No. 1 – The administration of justice will continue by the Deputy Commissioner and his Assistants. However, separate court building should be constructed. Separate Deputy Commissioner (Judicial) may be appointed if necessary. At this stage, the existing rules and procedures will continue to operate.
- (2) Phase No. 2 – Executive control over Judicial Officers may be slowly removed and they may be brought under the administrative control of the High Court or a Judicial Commissioner. But the simple procedure will continue except some amendments to the extent of removing the executive control over Judicial Officers.
- (3) Phase No. 1 – Separation of judiciary may be effective in full by applying the provision of Code of Criminal Procedure and Code of Civil Procedure etc.

On 15<sup>th</sup> January, 2002, the Council of Ministers meeting, Mizoram, decided to realize separation of judiciary in Mizoram. In connection with the said resolution, Notification No. A 48011/2/92 – LJE/290. Dated the 22<sup>nd</sup> January, 2002 was issued for the operation of separation of judiciary in Mizoram. But, the said order was seceded on 1<sup>st</sup> April 2002 under Notification No. A 48011/2/92 – LJE/294 due to the pessimistic pressures from NGO's in Mizoram and their fallacious mindset.

It may be relevant to note that the Gauhati High Court also verdict two precedents in the case of Dingliana Vs. Union Territory of Mizoram & Ors. under Civil Rule (HC) No. 30 of 1985 and in the case of PUCL, Mizoram Vs. State of Mizoram & Ors. under Civil Rule No. 4/91 (MB). (Civil Rule No.3626 of 1991) for the imperative needs of separation of judiciary in Mizoram.

As it becomes a constitutional mandate, the Hon'ble Supreme Court of India on the 17<sup>th</sup> January 2005 urged the States of Mizoram, Meghalaya and Nagaland to operate separation of judiciary in the case of All India Judges Association & Ors. Vs. Union of India & Ors under Writ Petition (Civil) No. 1022/1989. In the efforts of the above, the Council of Minister, Mizoram resolved insulation of judiciary on 21<sup>st</sup> February, 2005; Consequent upon the said decision conveyed Vide No. J. 11012/2/2005. POL dated 25<sup>th</sup> February, 2005. Wherein, the Cabinet of Mizoram including the Autonomous District Council area and in exercise of the powers conferred by Article 237 of the Constitution of India, the Governor of Mizoram is directed that the provisions of Articles 233, 234, 235 and 236 of the Constitution shall apply in relation to the judicial Officers of the State appointed and governed under the Mizoram Judicial Service Rules, 1989 with immediate effect viz. – 16<sup>th</sup> June, 2005 under Notification No. A. 36016/5/2001 – P&AR (CSW).<sup>7</sup>

The Governor of Mizoram whereof, in exercise of the powers conferred by Article 235 of the Constitution of India further order that the control over the existing courts of Addl. District Magistrate (Judicial), Special Courts constituted under various Acts, and the Sub-Divisional Magistrate (Judicial), Mizo District Council Court at Aizawl with its Subordinate Courts including the posting and promotion of, and the grant of leave to, persons belonging to the Judicial Service of the State and holding any post inferior to the post of District Judge is vested to the Gauhati High Court (High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh).

However, The Mizoram Judicial Service Rules, 2005 was notified under No. A. 12018/1/2003 – DP & AR (CSW), the 29<sup>th</sup> July, 2005 and published the same in the Mizoram Gazette.<sup>8</sup> But, the Gauhati High Court couldn't covenant the said Rules of 2005 and adversely informed the Government of Mizoram to notify the Draft Mizoram Judi

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7. *The Mizoram Gazette*, Extra Ordinary. Vol. XXXIV, 20.6.2005, S.E. 1927, Issue No. 139.

8. Vol.- XXXIV 1.8.2005, S.E. 1927. Issue No. 167.

cial Service Rules. 2002 as approved by the Gauhati High Court under No. HC-VII-09/97 (pt)/5247/A dated 13.10.2006.

Since the administration of justice in Mizoram is in hazy position due to the foregoing circumstances. With viewing the said position, the Government of Mizoram had issued Office Memorandum under No. A. 60012/2/96-LJE/339, the 4<sup>th</sup> Oct.2006 that there is laxity for quite sometime in the Judicial administration in the Districts, particularly in Aizawl district, characterized by chaos in punctuality, day to day administration, financial and other disciplines etc. thereby underlying an urgent need for streamlining the same as a stop-gap or transitional measure, until the control is fully taken over by the Hon'ble Gauhati High Court. Therefore, P. Singthanga, Special Judge under Prevention of Corruption Act, 1988, who is the senior-most Judge in the District Judiciary of Aizawl District is thereby designated as the officer responsible for overall judicial administration and day to day functioning of District Courts and Judicial Offices in the Aizawl District. All administrative matters pertaining to Aizawl District shall be dealt by him for the time being. The same was issued with the approval of the Hon'ble Minister, Law and Judicial Department, Govt. of Mizoram dated 3/10/2006.

The problems in respect of consensus between the Govt. of Mizoram and Gauhati High Court couldn't reach as expected. The Govt. of Mizoram therefore issued Notification under No.A.36016/5/2001-P&AR (CSW) 10<sup>th</sup>November, 2006.<sup>9</sup> With a view to solving problems of members of the Mizoram Judicial Service requiring immediate attention, hence keep in abeyance the notification issued under No. A. 36016/5/2001-P&AR (CSW) Dt. 16.6.2005 in the matter of separation of judiciary in Mizoram. The Govt. of Mizoram by taking advantage issued transfer and posting order of some MJS personnel under Notificaton No. A. 22012/51/2004-P&AR(CSW)/Dated, the 13<sup>th</sup>November, 2006.<sup>10</sup>

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9. *The Mizoram Gazette*, Extra Ordinary, Vol-XXXV, 10.11.2006. S.E, 1928. Issue No. 291

10. *The Mizoram Gazette*, Extra Ordinary. Vol.- XXXV, 17.11.2006, S.E. 1928. Issue No. 46. (Part-1)

The Mizoram Judicial Service Rules, 2006 has been under Notification No. A. 12018/1/2003- DP&AR (CSW), the 12<sup>th</sup>December, 2006.<sup>11</sup> Under sub-rule (2) of rule 1 of the Said Rules, 2006. It will be effective from the date of publication in the Mizoram Gazette. Under Rule 4 of the said Rules of 2006, any member of the Mizoram Judicial Service shall be under the exclusive control of the Gauhati High Court except during the period, such a member of the service is holding any post other than the cadre post on deputation.

The Govt. of Mizoram allocated the subject “separation of judiciary from the executive” to Department of Personnel & Administrative Reforms (DP & AR) by virtue of clause (3) of Govt. of Mizoram (Allocation of Business) Rules, 1987 under Notification No. A. 46011/1/98 GAD/pt. 111, the 16<sup>th</sup>Oct, 2002.<sup>12</sup> Therefore, the Government issued necessary notifications and order in respect of separation of judiciary by the DP & AR as highlighted earlier. It adversely created lacunae for speedy persuasion for the same. The concerned Deptt. viz, Law and Judicial Deptt. is expected to deal the matter smoothly and at that point suggested to re-allocate business for this purpose.

The points for disparaging of judiciary is always delayed justice, qualities of fairness, inefficiency, incredibility, costly processes and procedures and blind adherence thereto, ever widening and growing tentacles of corruption in the judicial system. In view of these, one urgent remedy is separation of judiciary from executive in Mizoram. An independent and strong judiciary is the essence of civilization. The civil service personnel who are presently dealing with public on the spot in their executive works can't be able to maintain impartiality in their judicial work and can't be able to strong enough to uphold law as their services rendered for unusual leniency and diplomatically as the local ruling political party leader can also control them . Whereas the field of judicial work is meant for

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11. *The Mizoram Gazette*, Extra Ordinary, Vol. XXXV, 12.12.2006, S.E. 1928, Issue No.321.

12. *The Mizoram Gazette*, Extra Ordinary, Vol.- XXXI, 21.10.2002, S.E.- 1924. Issue No. 343.

professionalism, the general people like civil service man acting as a Judge/Magistrate leads to inefficiency and delaying justice due to handling of so many other executive business such as district revenue administration, disaster management and rehabilitation, Sainik welfare and Resettlement, Law and Order, celebration of important days and receiving VIPs, etc. Judicial works is therefore regarded as one of the small items to execute. In view of the aforesaid discussion, it is not feasible to restore public faith in a judiciary and rather etched the judiciary into less expertise and inefficiency.

The hindrances of Judiciary in Mizoram can only be solved through the implementation of Separation of Judiciary in toto. Otherwise, the judiciary and its personnel alone are not affected by the disease but the public at large.

Silly doubt which had arisen amongst the Mizo is apprehension of dilution of the unique culture and tradition of Mizos. On meticulously examining the logic of the Indian Constitution, unless and until implementation of Article 44 of the Constitution, (vis- Uniform Civil Code), it is not possible to assimilate the cultural heritage and customs of Mizos by separation of judiciary. 'Unity in Diversity' is the basic of fundamental rights. Article 371 'G' of the Constitution also provides special savings for the Mizos. The Hindu Community also enacted special laws which extends to the whole of India except Jammu & Kashmir like- Marriage Act, 1955, Succession Act, 1956, Minority and Guardianship Act, 1956, Adoptions & Maintenance Act, 1956, Disposition of Property Act, 1956. Hence there is no harm to introduce one important element of Good Governance viz- separation of judiciary, the people will be more benefited rather than the personnel in court room. It is hocus pocus and namby - pamby about the suspicious minded.

The Deputy Commissioner functioning and acting as the District Collector and District Officer can try both civil and criminal cases is violative of the maxim of 'Nemo Judex in Causa Suo (No one can be a judge in his own cause) as witnessed by the Supreme Court in the case of Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram H.S.S. reported in AIR (1993) SC 2155. As a matter of fact, the ray of justice could not be expected without ousting the Administration of Justice Rules, 1937. Moreover, the Executive Magistrates

who dealt with law and order maintenance in a street and some occurrences arrested the accused can try a criminal case is also not healthy towards natural Justice.

The country and the social activist were concerned about the virus of corruption. Rampant corruption could not be tackled without separation of judiciary. As experienced, in the case of Jodhraj Baid Vs. State of Mizoram & Ors. as reported in 2006 (2) GLT 673, some accused before the Special Judge, Prevention of Corruption Act, 1988 in Aizawl filed a case against the said Special Judge about his competency to try the case of corruption. Separation of judiciary is the need of the hour to combat or mitigate corruption as per the wishes of social activists.

Rules for the Regulation of the Procedure of Officers Appointed to administer Justice in the Lushai Hills, 1937 is only meant for the people living in the Excluded area to avoid the technicalities of laws in force in the land due to the backwardness of the people in the field of economic, political, social and education. At the time of enactment of the said rules of 1937, there was neither advocates nor law graduates among the Mizos. At the era of 21<sup>st</sup> century, the law graduates are numerous who are highly qualified and learned in law to appoint for the bench side as well as fit for the side of bar. The clue of rule of law for social harmony and security of the environment could not be found without separation of judiciary.

With regards to maintaining the sanctity of Courts/Judiciary, the experts who are judicial personnel recruited under the guidance and supervision of High Court are essentially required to restore public faith in a judiciary, the civil service personnels who manned subordinate judiciary under the Administration of Justice Rules, 1937 is susceptible as they also performed so many executive functions. It also imparted groundless court adjournments and further delayed justice. It is a must to cure the unwholesome subordinate judiciary before the society enters into more darkness as it is the edifice of the whole judicial system.



In order to streamline the Judicial Officers presently posted in various administrative districts, separation of judiciary from the executive is the only mechanism to abide by the Code of ethics and to maintain service discipline in proper manner. It is also required in the sense of submission of Annual Property Return, Annual Confidential Report (ACR), grant of leave etc., which they ought to do.

With reference to No. A. 12018/1/2005, Dated 14.12.2006 issued by DP&AR (CSW), Govt. of Mizoram, the Gauhati High Court absorbed or inducted all the existing 22 Judicial Officers in the Mizoram Judicial Service under No. HC-VII-14/2007/2499/A, Dated Guwahati, 24<sup>th</sup> May, 2007.<sup>13</sup> The Government of Mizoram also complied the said absorption as notified under No. A.32022/3/07-LJE, the 6<sup>th</sup> Sept. 2007<sup>14</sup> that all the existing 22 Judicial Officers under Mizoram Judicial Service Rules, 2006 with effect from 12<sup>th</sup> Dec. 2006. The four Judicial Officers incumbent under the government of Mizoram in the Deptt. of Law & at that time should remain treated to be on deputation to state government under sub-rule (3) of the rule 6 of the Mizoram Judicial Service Rules, 2006.

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13 Subsequently issued a letter no. H.C. VII. 291/93/3356/A dt 30.6.2007

14. *The Mizoram Gazette*, Extra Ordinary, Vol.-XXXVI, 7.9.2007, SE 1929, Issue No. 233

# **CHAPTER - 4**

## **State Courts in Mizoram constituted after Independence**

### **State Courts in Mizoram constituted after Independence**

#### **(i) Village Courts**

#### **(ii) Subordinate District Council Courts**

#### **(iii) District Council Court**

After India attained Independence, the Mizo District Council was inaugurated on the 25<sup>th</sup> April, 1952. In exercise of the power conferred under sub-paragraph 4 of paragraph 4 of the Sixth Schedule to the Constitution of India, the Lushai Hills District Council with the previous approval of the Governor of Assam promulgated the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 under No. 19/53, Aijal the 7<sup>th</sup> April, 1953. As provided under Rule 59 (1) of the said Rules of 1953, the provision of the Administration of Justice Rules 1937 as subsequently amended and adopted, in so far as they relate to the matters dealt with in these Rules are thereby repealed with effect from the appointed day. The Union Territory of Mizoram inherited the said rules as elucidated in the North Eastern Areas (Reorganisation) (Mizoram) Adaptation of laws Order, 1972. Furthermore, the State of Mizoram continues the functions of courts under these Rules as contemplated under section 45 of the State of Mizoram Act, 1986. The hierarchy of courts

as enshrined under Rule 5 of the said Rules falls into three classes namely :-

- (i) Village Courts.
- (ii) Subordinate District Council Courts.
- (iii) District Council Court.

Courts under these Rules of 1953 is meant for the trial of suits and cases between the parties all of whom belongs to a Schedule Tribe or tribes within such areas, other than suits and cases to which the provisions of sub-para (I) of para 5 of the Sixth Schedule to the Constitution apply as embodied under Rule 5 of the said Rules. The structure, personnel and power of the above said various Courts are as follows :-

### **1. Village Court :-**

The Village Council for each village or a smaller body consisting of not less than three members of the council as elected by the Council in this behalf shall sit as the village court, Provided that where the Village Council sits itself as a Court, the quorum to constitute a court, shall be three members or half of the total numbers of members of such council, whichever is greater.<sup>1</sup>

The President of the village courts, shall be responsible for the general supervision of the work of the court. He shall conduct the proceedings and will be responsible for the execution of the orders passed by the court.<sup>2</sup> The record shall be prepared by the Village Court Secretary approved and authenticated by the President's signature.<sup>3</sup> The Secretary will maintain under the direct supervision of the President, registers, prescribed from time to time, and also prepare necessary reports and returns.<sup>4</sup> The President and the Secretary

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1. para 11, part III of *Court Manual of the Mizo District Council*.

2. *Ibid*, para. 16.

3. *Ibid*, para. 15.

4. *Ibid*, para. 17.

will conjointly be responsible for the safe custody of Courts records, exhibits, money etc. and secrecy of the contents of the confidential records.<sup>5</sup>

### **Powers :-**

In civil cases, a village court shall try suits and cases in which both the parties belong to a Scheduled tribe or tribes resident within its territorial jurisdiction, like cases of civil and miscellaneous nature falling within the purview of Village or Tribal laws and customs.<sup>6</sup> In pecuniary matters, a Village Court shall have power to award all costs, as also compensation to those against whom unfounded or vexatious suits and cases have been instituted before the court in a civil case.<sup>7</sup>

In criminal cases, a village court is competent to try criminal cases, falling within the purview of tribal laws and customs and offences of petty nature, such as petty theft and pilfering, mischief and trespass of petty nature, simple assault and hurt, affront and affray of whatever kind, drunken or disorderly brawling, public nuisance and simple cases of wrongful restraint. Provided that the village court shall not be competent to try offences in respect of which the punishment of imprisonment is obligatory under the Indian Penal Code.<sup>8</sup> Moreover, a village court shall not be competent to pass a sentence of imprisonment in any criminal case. It shall have a power to impose a fine for any offence it is competent to try, up to a limit of Rs. 500/- (five hundred)<sup>9</sup>. It may award payment in restitution or compensation to the aggrieved or injured party in accordance with the customary law.<sup>10</sup>

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5. part III of *Court Mannual of the Mizo District Council*, para. 18

6. Rule 14 (a) of the *Administration of Justice Rules, 1953*.

7. *Ibid*, Rule 15(2).

8. *Ibid*, Rule 14(b).

9. Rs. 50/- has been increased to Rs. 500/- under *The Mizoram Administration of Justice (Amendment) Rules, 1996*.

10. *op.cit*, Rule 15(1).

A village court shall also have power to order attendance of the accused and the witnesses to be examined in the case and to impose a fine not exceeding Rs. 50/- (Rupees fifty)<sup>11</sup> on any person willfully failing to attend when so ordered.<sup>12</sup>

Where a village court is of opinion that the sentence it is competent to pass is insufficient in the circumstances of the case, it shall without delay refer the case to the competent court.<sup>13</sup> An appeal shall lie to the Subordinate District Council Court or Additional Subordinate District Council Court, as the case may be, from Village Court within the jurisdiction of the Subordinate District Council Court or Additional Subordinate District Council Court concerned within sixty days.<sup>14</sup>

Number of Village Councils and its members as on 1.4.2006<sup>15</sup> are hereby appended in Table 4.1.

**Table 4.1**

**No. of Village Councils and its Members in Mizoram**

Sl. No	District	No. of Village Council	No. of V.C. Members
1	2	3	4
1	Mamit	72	244
2	Kolasib	44	168
3	Aizawl	166	664
4	Champhai	100	350
5	Serchhip	42	153
6	Lunglei	132	457
7	Lawngtlai	160	471
8	Saiha	70	279
	<b>Total</b>	<b>786</b>	<b>2786</b>

Source - *Statistical Handbook* (2006), Mizoram

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11. Rs. 25/- has been increased to Rs. 50/- under the *Mizoram Administration of Justice (Amendment) Rules, 1996*.
  12. *op.cit*, Rule 16.
  13. *op.cit*, Rule 18.
  14. *op.cit*, Rule 19.
  15. *Statistical Handbook* (2006) Mizoram, Aizawl: Directorate of Economics & Statistics, Government of Mizoram, p. 110

As per the past experiences revealed so far, Village Court plays a significant role towards justice delivery system in a geo-isolated terrain like Mizoram both for civil and criminal justice. But, at the present era, rare cases have been instituted before the Village Court especially in the urban areas as notified towns. At the outcome of the Constitution (53<sup>rd</sup> Amendment) Act 1986, special provisions under Article 371 'G' of the Constitution of India was enacted. Whilst, the administration of Mizoram is at cross-roads, decentralised judiciary for litigant friendly system is indispensable even after introduction of 73<sup>rd</sup> Constitution (Amendment) Act 1992 akin to Nyaya Panchayats in the plain region as unique custom and usage is being prevalent in the society of Mizos.

Due to the hilly landlock geo of the land, the Village Courts in rural areas is more important, whereof, to meet the dynamic socio-legal system. The Village Councils should be well-trained and efficient for the adjudication of the disputes arising in their respective jurisdictions.

## **Subordinate District Council Courts**

### **Structure and Personnel :-**

Under the Administration of Justice Rules, 1953, there shall be one Subordinate District Council Court at Aijal and another at Lungleh. Each Court shall be presided over by a Judicial Officer to be designated as Magistrate and such Judicial Officer shall also act as Recorder of the Court.<sup>16</sup> However, it can be constituted as one or more Additional Subordinate District Council Court or Courts presided over by a Judicial Officer to be designated as Magistrate within the jurisdiction of a Subordinate District Council Court. The Magistrate therein shall also act as Recorder of the Court and presides over by virtue of Rule 8 of the Administration of Justice Rules, 1953.

In the light of Mizoram Judicial Service Rules, 1989, Subordinate District Council Court is the cadre post of judicial officer-I and the Additional Subordinate District Council

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16. *op.cit*, Rule 7(1).

Court is the cadre post of judicial officer-II . At present, besides Subordinate District Council Courts at Lunglei and Aizawl, seven other Additional Subordinate District Council Courts at Champhai, Kolasib one each and two Courts for Lunglei and three Courts for Aizawl has been established by virtue of Rule 8 of the Administration of Justice Rules 1953 under Notification No. 12023/1/88-LJE/Pt. Aizawl, the 4<sup>th</sup> Oct. 2006 for expeditious disposal of court business. The rules prescribed for the conduct of work in the District Council Court, shall apply *mutatis mutandis* to the Subordinate District Council Courts.<sup>17</sup>

### **Power :**

A Subordinate District Council Court (SDCC) or an Additional Subordinate District Council Court (ASDCC) or Courts shall have original jurisdiction in all suits and cases in which both the parties do not fall within the local jurisdiction of the same Village Courts, but within the areas under the jurisdiction of the SDCC or ASDCC or Courts and also in cases and suits referred to it by a Village Court under Rule 18 of the Administration of Justice Rule, 1953. An ASDCC shall try such suits or cases, or such class or classes of suits or cases arising within its jurisdiction, as the District Council may direct.<sup>19</sup>

In criminal cases, offences with punishment less than 5 years of imprisonment is under the jurisdiction of SDCC.<sup>20</sup>

### **Limitation :**

A Subordinate District Council Court or an ASDCC shall not be competent to try suits and cases.<sup>21</sup>

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17. Part - II of *Court Manual of the Mizo District Council*, para 10

18. *op.cit*, Rule 21.

19. *op. cit*, Rule 22(2)

20. P. Charaborty(1995), *Mizoram Compendium of Laws*. Titagarh: Linkman Publication, Vol - II, p. 104

21. *op.cit*, Rule 23(1)

a) to which the provisions of sub-paragraph (I) of paragraph 5 of the Sixth Schedule to the Constitution apply, unless the Court has been authorised by the Governor to exercise such powers for the trial of particular class or classes of cases and suits, specified in that behalf by the Governor as required under the said sub-paragraph (I) of paragraph 5 of the Sixth Schedule

(b) in which one of the parties is a person not belonging to a Scheduled Tribe. and offences under IPC, for which sentence is imprisonment for five years or more or life imprisonment or death,<sup>22</sup> and also not triable cases under sections, 107, 108, 109, 110, 144, 145 of the Code of Criminal Procedure 1973.<sup>23</sup> The order passed by ASDCC is not appealable before SDCC as they have an equal judicial powers.

## **District Council Court :**

### **Structure and personnel ;**

There shall be one DCC for the Lushai Hills Autonomous District, which shall be called the Lushai Hills District Council Court. The court shall consists of 3 (three) judicial officers. One of the Judicial Officers shall be nominated by the District Council as the President and the Recorder of the Court. Any two or more Judicial Officers shall sit together as a Bench. The District Council shall appoint JOs of the DCC subject to the approval of the Governor. The DCC shall ordinarily sit at Aizawl. Cases, suits and appeals triable by the District Council Court shall be tried generally conjointly by two or more judicial officers sitting together as a Bench. The proceedings in the District Council Court, may be recorded either in English or in any of the languages spoken in the district.

The President and Recorder of the Court shall be responsible for the general supervision of the work of the Court and he may distribute the office work to the other two

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22. *op.cit*, p. 105.

23. *op. cit*, Rule 23(2).



Judicial Officers, which shall include issue of process, execution of orders, decrees etc. maintenance of registers, preparation of prescribed returns etc. The President of the Court shall see that a record of the attendance of Judicial Officers as well as of the staff of the judicial office is maintained.

One of the Judicial Officers of the District Council Court to be Magistrate of the First Class as defined in the Code of Criminal Procedure Code, who shall have original jurisdiction throughout the Lushai Hills Autonomous District excluding the Pawi-Lakher Autonomous region in cases triable by such Magistrate of the First Class. In civil cases, the procedure of the District Council Court or the Subordinate District Council Court, shall be guided by the spirit, but not bound by the letters, of the Code of the Civil Procedure, 1908 in all matters not covered by recognized customary laws or usages of the District.

It may be relevant to say that under Scheduled 'C' of the Mizoram Judicial Service Rules, 1989, the President and Recorder of District Council Court is the cadre posts of Grade - III of MJS and Judicial Officer-I who are members of the District Council Court is also the cadre posts of Grade-III of MJS.

### **Powers :**

The District Council Court shall be a Court of appeal in respect of all suits and cases triable by Subordinate District Council Courts and Additional Subordinate District Council Courts. Moreover, the appeals against the orders of the Judicial Officers who is so appointed as Magistrate under the Code of Criminal Procedure and under Rule 31 of the Administration of Justice Rules, 1953 shall lie to, and be heard by the District Council Court sitting as a Bench of two other Judicial Officers. In case of difference of opinion in the Bench, the orders of the lower court shall prevail.

The District Council Court may call for and examine the record of any proceeding of a Subordinate District Council Court or an Additional Subordinate District Council Court or a Village Court and may enhance, reduce, cancel or modify any sentence or finding passed by such court or remand the case for retrial. The appellate Bench of the District

Council Court may take similar action in any proceedings of the Judicial Officers who is appointed as Magistrate of the First class under the first provision to Rule 31 of the Administration of Justice Rules 1953.

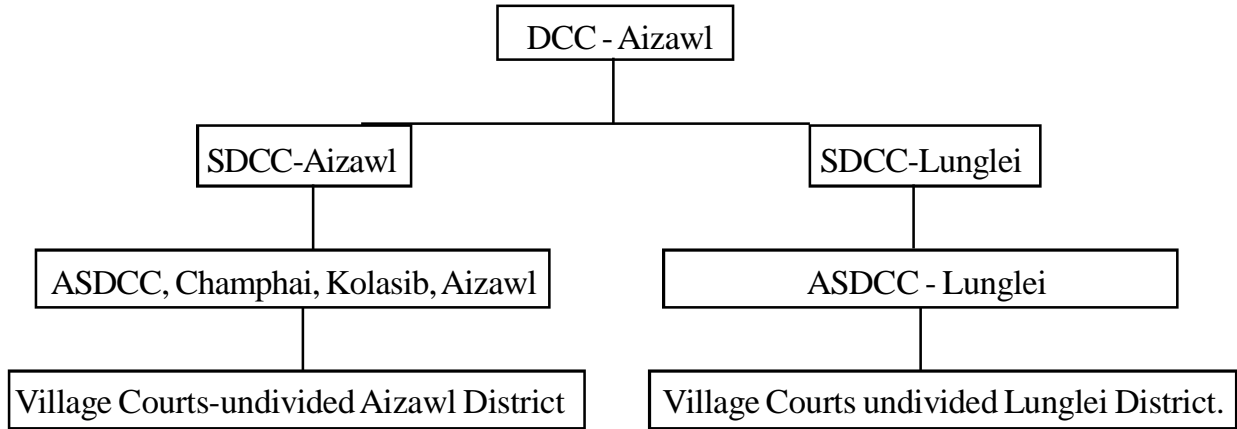
If it appears to the District Council Court that a fair and impartial enquiry or trial cannot be had in any Village Court or Subordinate District Council Court or an Additional Subordinate District Council Court or that some question of law, tribal or otherwise, of unusual difficulty is likely to arise, it may order that any offence be inquired into or trial by another Village Court or Subordinate District Council Court or Additional Subordinate District Council Court and that any particular case or class of cases be transferred from one Village Court to another Village Court or from one Village Court to a SDCC or ASDCC or from one SDCC or ASDCC to another SDCC or ASDCC and that any particular cases be transferred to and tried before itself.

In criminal case, the DCC or the Governor may direct an appeal to be presented to the DCC from any order passed by a Village Court or a SDCC or an ASDCC, the same shall be presented within 90 days from the date of order appealed against, excluding the time needed for obtaining a copy of the order.

SDCC or ASDCC or the DCC shall cause a sentence, order or decree passed by it, to be called into effect in accordance with the procedure, prescribed by the Code of Criminal Procedure or the Code of Civil Procedure, 1908, as the case may be, references therein to the 'Collector of the District' being constructed as referring to the Chief Executive Member of the District Council.

Table 4.2.

Various Courts under the Administration of Justice Rules, 1953.



Source: Data collected during the study, 2007

To meet the fast changing socio-economic status, the Mizoram Civil Courts Act, 2005, (Act No. 11 of 2005) was enacted under Notification No. H. 12018/155/05 LJD/7, the 19<sup>th</sup> Oct. '05<sup>24</sup> and received the assent of the Governor of Mizoram on 30<sup>th</sup> Sept. 2005. It is also order to be effective from 26<sup>th</sup> April 2006 under No. A. 36016/5/2001 - P&AR (CSW), Aizawl the 26<sup>th</sup> April, 2006. It extends to the whole of the state of Mizoram excluding the Autonomous District Councils of Chakma, Mara and Lai. As embodied by section 3 of the said Act in addition to the Courts established under any other law for the time being in force, there shall be following classes of civil courts in the state :-

- a) Court of a District Judge.
- b) Court of a Senior Civil Judge.
- c) Court of a Civil Judge.
- d) Court of Small Causes.

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24. *The Mizoram Gazette*, Extra-Ordinary, Vol. XXXIV, Aizawl, 24.10.2005 Issue No. 291.

As discussed earlier, the Courts established under the Administration of Justice Rules, 1953 are concurrent with Mizoram Judicial Service Rules, 1989, wherein, section 26 of the Mizoram Judicial Service Rules, 2005 as notified under Notification No. A 12018/1/2003-DP&AR (CSW), the 29<sup>th</sup> July 2005<sup>25</sup> repealed the Mizoram Judicial Service Rules 1989. Further, The Mizoram Judicial Service Rules, 2006 has been enacted under Notification No. A. 12018/1/2003 - DP&AR(CSW), the 12<sup>th</sup> December, 2006<sup>26</sup> with effect from 12<sup>th</sup> December, 2006 as approved by the Gauhati High Court. However, the aforesaid Courts to be established under the Mizoram Civil Courts Act, 2005 are tally with the said newly promulgated Mizoram Judicial Service Rules of 2006. In otherwords, the Courts established under the Administration of Justice Rules, 1953 could not be manned by the Judicial Officers so appointed under the Mizoram Judicial Service Rules, 2006. Thus, it may not be wrong to predict that the various Courts under the Administration of Justice Rules 1953 may become defunct after full fledged separation of judiciary should be effective in Mizoram except in the three Autonomous District Councils viz Chakma, Mara and Lai.

The criminal judicial powers of courts under the Administration of justice Rules, 1953 has not been actually practised. The Judicial Officers were also invested criminal judicial powers under Rules 8, 9 and 15 of the Administration of Justice Rules, 1937.

By virtue of Rule 46(2) of the Administration of Justice Rules, 1953, it is the discretionary powers of courts to examine witnesses on oath or affirmation in any form whilst Rule 44(8) of the said Rules of 1953 exempted to examine witnesses upon oath or affirmation. In connection with this, after the people were aware of their rights to file appeal petition even in a High Court, the Oaths Act, 1969 plays a vital role to have evidentiary value of the depositions of witnesses so examined.

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25. *The Mizoram Gazette*, Extra-Ordinary, Vol. XXXIV, Aizawl, 1.8.2005, Issue No. 167.

26. *The Mizoram Gazette*, Extra-Ordinary, Vol. XXXV, Aizawl, 12.12.2006, Issue No. 321.

The number of cases inherited in District Council Court Aizawl as on 1st January 2007 is 46 and during January and February 2007, cases newly instituted is 8, whereas the disposal rate for the said two months is only two and pendency as on Feb. 2007 is 52 cases.<sup>27</sup>

The figures of status in civil cases before the District Council Court and its subordinates during 2005 and 2006 are given below :-

Table 4.3

Status of civil cases in DCC & its subordinates during 2005 - 2007

Year	Opening Balance	Institution	Disposal	Pendency at the end
2005	832	25	23	34
2006	1426	270	211	1482

Source : Registrar, Gauhati High Court, Aizawl Permanent Bench.

It is found that to examine the subordinate judiciary accurately, due to lack of periodical reports from the concerned courts, there is a big hindrance to thoroughly pursue according to the data available. As right to know<sup>28</sup> is included under the interpretation of Fundamental Rights and where the Right to information Act, 2005 has been implemented, the Court shall also prepare themselves about the accurate court up to date news and submit periodically to the High Court for successful superintendence as per the spirit of the Constitution of India for making judiciary into accountability.

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27. Statistics collected from the Department of Law & Judicial, Government of Mizoram on 12th March 2007.

28. Secretary, Ministry of I&B Vs. Cricket Association Bengal, AIR (1995) SC 1236.

In the light of the Assam High Court (Jurisdiction over District Council Courts) Order, 1954<sup>29</sup>. The High Court may, on application or otherwise, call for the proceedings of any civil or criminal cases decided by or pending in any court in the autonomous district constituted under the provisions of sub-para (1) and (2) of paragraph 4 of the Sixth Scheduled to the Constitution viz - the Court of the District Council and passed such orders as it may deem fit.<sup>30</sup> In criminal case, an appeal shall lie to the High Court from an order of conviction of the District Council Court awarding a sentence of six months imprisonment or upwards and the same shall be presented within sixty days of the date of order of appeal excluding the time needed for obtaining a copy of the orders. In civil case, when filing appeal, the High Court may before admitting the appeal, order the deposit by the appellant of all reasonable expenditure likely, in the opinion of the Court, to be incurred by the respondent in the hearing of the appeal or may order security to be given for such expenses, and if the appellant be a judgement debtor may also order security to be given for part of the whole of the decretal amount.

The decree of the High Court in a civil case shall be transferred to the court passing the original order for execution as a decree of its own.<sup>31</sup>

The High Court may act either on the report of the lower court or on the application of a party interested or on its own initiative.<sup>32</sup>

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29. Notification No. TAD/R-II/53/23 Dated 16-1-1954, published in the *Assam Gazette*, Part - 11-A, dated 20-1-1954, p.61.

30. Kaldis Mary Khar Kangor Vs. Ka Theirit Lyngdoh. AIR 1969 A&N 92.

31. Order 7(9) of the *Assam High Court (Jurisdiction over District Council Courts) Order, 1954*.

32. *Ibid*, Order 7(2).

The High Court also has powers to supervise the District Council Court and its subordinates as embodied under order 7(1) of the Assam High Court (Jurisdiction over District Council Courts) order, 1954. It is enumerated that whenever it is made to appear to the High Court.

- a) that fair and impartial inquiry, trial or adjudication cannot be had in any court of District Council; or
- b) that some question of law, tribal or otherwise of unusual difficulty is likely to arise; or
- c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same ; or
- d) that an order under this clause will tend to the general convenience of the parties or witnesses; or
- e) that such an order is expedient for the end of justice or is required by the provision of any law applicable to the case;

The High Court may order that (i) any offence be inquired into or tried or a suit be adjudicated by any court other than the court of origin (ii) any particular case or appeal, or class of cases or appeals, be transferred from any one court to any other court of equal or superior jurisdiction (iii) any particular appeal be transferred to be heard itself. Therefore, suggested that the Gauhati High Court should ventilate and vigilant as per the aforesaid provision towards constructive supervision according to law even by a '*suo motu action*'.

The Assam Autonomous District Administration of Justice (Miscellaneous Provisions) Act, 1957, (Assam Act No. XXII of 1957) read with Rule 59 of the Administration of Justice Rules, 1953 contemplated that the Deputy Commissioner and an Assistant to him have barred to try cases triable by the court constituted under the Lushai Hills Autono-

mous District (Administration of Justice) Rules 1953. It is also commonly known as customary law court. The Mizo customs and usages are interpreted and verdict in the courts established under the said Rules of 1953. Briefly, it is Mizo tribes friendly law Courts till the era of 21<sup>st</sup> Century.

The Mizoram Municipalities Act, 2007 was legislated and notified under No. H. 12018/120/03-LJD/28, the 20th April, 2007.<sup>33</sup> Under Section 388 of the said Act, the Lushai Hills District (Village Council) Act, 1953 shall stand repealed in such area or areas as declared for the operation of this Act of 2007. However, no provision to replace Village Court as constituted under the Lushai Hills Autonomous District (Admn. of Justice) Rules, 1953 was stipulated in the Mizoram Municipalities Act, 2007. Under Rule 6(2) of the Administration of Justice Rules, 1953. “The jurisdiction of a Village Court shall extend to the hearing and trial of suits and cases arising within the territorial limits of the village”.

In the meantime, under Rule 21 of the Administration of Justice Rules, 1953, the original jurisdiction of Subordinate District Council Court or Addl. Sub. District Council Court is barred to entertain suits and cases falling within the territorial jurisdiction of Village Court. It is also adduced by section 15 of CPC, it purports that, “Every suit shall be instituted in the court of the lowest grade competent to try it”. Hence, found serious lapse which couldn’t avoid after enactment of the Mizoram Municipalities Act, 2007 in the urban areas at the grass root jurisprudence.

In the circumstances, Courts under the Administration of Justice Rules, 1953 and the Mizoram Civil Courts Act, 2005 were not enough. It may be suited to implement the Family Courts Act, 1984 to deal with customary laws, traditional practices, community ethos etc. which is beyond the purview of the Mizoram Civil Courts Act, 2005.

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33. *The Mizoram Gazette*, Extra Ordinary, Vol. XXXVI, 24.4.2007, S.E. 1929, Issue No. 123.



# CHAPTER - 5

## Courts in Autonomous District Councils in Mizoram

### **Courts in Autonomous District Councils in Mizoram**

- (i) Tribal to tribal Courts in Chakma Autonomous District Council**
- (ii) Tribal to tribal Courts in Lai Autonomous District Council**
- (iii) Tribal to tribal Courts in Mara Autonomous District Council**

Article 244(2) of the Constitution of India provides that the provisions of the Sixth schedule shall apply to the administration of the tribal areas in the State of Assam, and that means the tribal areas in Assam would be governed not by the other relevant provision of the Constitution which apply to the other constituent states of the Union of India, but by the provisions contained in the sixth schedule.<sup>1</sup> Thus, the Mizo District Council has been

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1. Edwingson Barch Vs. State of Assam & Ors.,AIR, 1966 SC 1220;

functioned w.e.f. 25<sup>th</sup> April, 1952, the Pawi-Lakher Regional Council with its headquarters at Saiha was inaugurated on April 23, 1953.

Thereafter, as soon as the then Lushai Hills was emerged to Union Territory on 21<sup>st</sup> Jan, 1972, the first Chief Commissioner in the Union Territory period S.J. Das promulgated Pawi-Lakher Autonomous Region (Re-organisation) order 1972, dated 1<sup>st</sup> April 1972<sup>2</sup> by virtue of para 1(2) of the sixth schedule to the Constitution of India. It resulted trifurcation of the existing Pawi-Lakher Autonomous Region into Pawi Autonomous Region with its headquarter at Lawgtlai, Lakher Autonomous Region with its headquarter at Saiha and Chakma Autonomous Region with its headquarter at Kamalanagar(Chawngte). The then administrator of Mizoram framed Regional Council Rules, 1972<sup>3</sup> in exercise of the powers conferred under para 2 (6) read with para 20A of the sixth schedule to the Constitution of India. The said rules declared that the three Autonomous Regions as the Autonomous Regional Councils .After a short span of time, the administrator of Mizoram turned the said three Autonomous Regions into Autonomous District Councils under para 20(B) of the sixth schedule to the Constitution of India which is embodied under the Mizoram District Council(Miscellaneous Provisions) Order, 1972 dated 29<sup>th</sup>April, 1972.<sup>4</sup> The present status of the three Autonomous District Council as on 12.7.2006 were tabulated as follows<sup>5</sup>;

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2. Notified under No. CCMP-3/72/70-77, Dated 1<sup>st</sup>April, 1972 and published in the *Mizoram Gazette*, Vol-I, Issue No. 5, pp 3-7
  3. Notified under No. CCMP-3/72/78-79 Dated 2.4.1972 and published in the *Mizoram Gazette*, Issue No. 5 Dt. 14.4.1972 pp 2-3
  4. Lalthara(1998), *Ram leh Hnam humhalh* (In Mizo), Aizawl: Central YMA, pp 4-6
  5. *Statistical Handbook* (2006) Mizoram, Aizawl: Directorate of Economics & Statistics, Govt of Mizoram, p112

**Table – 5.1**  
**Current status of Autonomous District Councils in Mizoram**

Sl. No	Particulars	LADC	MADC	CADC
1	Area in sq. Kms	1870.75	1445.00	1500
2	Population	58700	51073	34528
3	No.of Voters	35808	31763	18062
4	Villages	77	70	64
5	Sub. Villages	Nil	Nil	Nil
6	MDC	23 (elected)	22 (elected)	13 (elected)
		4 (nominated)	4(nominated)	3 (nominated)
7	Executive Committee	1-CEM	1-CEM	1-CEM
		9-EMs	7-EMs	5-EMs
8	No. of Employees	422(Plan)	321(Plan)	295(Plan)
		1294(NP)	1147(NP)	714(NP)
9	Percentage of ST	98.70%	97.78%	100%

Source : *Statistical Handbook, Mizoram*, 2006, Directorate of Economics & Statistics, Mizoram – Aizawl.

The Chakmas have already taken action in compiling their Customary laws whereas the Lais and Maras still follow the Pawi-Lakher Region Cutomary Laws of 1959.

### **Tribal to tribal Courts in the Chakma Autonomous District Council**

By virtue of paragraph 5 of the Mizoram District Councils (Miscellaneous Provisions) Order, 1972, the Pawi-Lakher Autonomous Region(Admn. of Justice) Rules, 1954 under No. RCE. 11/54/9/351, the 1<sup>st</sup>March, 1954 duly promulgated in pursuance of paragraph 11 of the sixth schedule to the Constitution of India with previous approval of the Govt. of Assam under sub-paragraph (4) of the paragraph 4 of the said sixth schedule, continued to apply to the newly formed Chakma Autonomous District until enactment of the Chakma Autonomous District Council (Admn. of Justice) Rules, 2001. Under the said old Rules of 1954, there were two classes of Courts namely Village Courts and District Council Courts. Administration of Justice under the new Chakma Autonomous District Council (Administration of Justice) Rules, 2001 are as follows;

There are three classes of Courts under the new Rules of 2001 which extent to the whole of Chakma Autonomous District Council, the hierarchy of Courts are :-

1. Village Courts
2. Subordinate District Council Courts
3. District Council Court

The Village Courts in Chakma Autonomous District Council as on Nov, 2005 are as many as 69.<sup>6</sup> The Village Council for each village shall sit as the Village Court, when the Village Council sit itself as a Court, the quorum to constitute a Court should not be less than three members. The jurisdiction of a Village Court shall extend to the hearing and trial of suits and cases arising within the territorial limits of the Village and shall try suits and cases in accordance with the Chakma Customary Laws, in which both the parties belongs to a schedule tribe or tribes within its jurisdiction. Briefly, the powers and functions of various Courts established under the Chakma Autonomous District (Admn. of Justice) Rules, 2001 is analogous to the provisions of the Lushai Hills Autonomous District (Admn. of Justice) Rules, 1953 as enumerated before.

### **Tribal to tribal Courts in the Lai Autonomous District Councils:-**

Under No. LAD/31/A/73/115, Dated 26<sup>th</sup> July, 1976,<sup>7</sup> The Pawi Autonomous District Council (Admn. of Justice) Rules, 1974 was promulgated for the Lai Autonomous District Council by virtue of paragraph 11 of the Sixth Schedule to the Constitution of India. Under the said Rules of 1974, there shall be three classes of Courts namely:-

- 1) Village Courts
- 2) Intermediate District Council Courts
- 3) District Council Court

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6. Statistics available in Directorate of Local Admn. Deptt., Govt of Mizoram

7. *The Mizoram Gazette*, Extra-Ordinary, Issue No. 22, Dt. 30.7.76, page.1-24

## **Village Courts:**

### **Structure and personnel**

Village Councils for each village shall sit as the Village Court provided that when the Village Council sits itself as a Court, the quorum to constitute a Court shall be not less than two members. The numbers of Village Courts in Pawi Autonomous District as on Nov, 2007 are as many as 86<sup>8</sup> The village council in that area has been governed by the Lai Autonomous District Council (Village Councils) Act,2007 at present as notified under No.C.31012/2/05-DCA,the 23th Sept.2007.<sup>9</sup>

### **Powers and procedures:**

A Village Court shall try suits and cases in which both the parties belong to schedule tribe or tribes residing within its jurisdiction. In fact, the powers and procedures adopted by the Village Courts under these rules is analogous to the Admn. of Justice Rules, 1953 as discussed earlier.

## **Intermediate District Council Courts:**

### **Structure and Personnel**

There shall be one Intermediate District Council Court at Lawngtlai and the other at Bualpui (Ng). Each Court shall be presided over by a Judicial Officer to be designated as Magistrate and to be appointed by the Executive Committee with the approval of the State Govt. and such Judicial Officer shall also sit as the Recorder of the Court, provided that any member of the District Council shall not be entitled to hold office as Judicial Officer.

The conditions of service of the Judicial Officer in the Intermediate District Council Courts and the staff appointed thereof, shall be regulated by the rules or orders made or

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8. Notification No. V-12011/2/2007- LADC/ LAD, the 7th Sept., 2007 vide. The *Mizoram Gazette*, 17.9.2007, Issue No. 238

9. *The Mizoram Gazette*, 14.9.2007, Issue No.237.

issued in this behalf by the District Council. The jurisdiction of the Courts at Lawngtlai and Bualpui (Ng) shall extend to the hearing and trial of suits and cases including appeals arising respectively within Block II and I of Pawi Autonomous District.

### **Powers and Procedure:-**

The Judicial Officer appointed as Magistrate in the Intermediate District Council Court shall execute such powers as defined in Chapter III of the Code of Criminal Procedure, 1898, as may be invested by the Executive Committee with the approval of the State Government. In short, the powers and procedure of the Intermediate District Council Court is analogous to the powers and procedure invested and adopted in the Subordinate District Council Courts under the Lushai Hills Autonomous District ( Admn. of Justice) Rules, 1953 as already mentioned.

### **District Council Court:-**

There shall be one District Council Court for the Pawi Autonomous District which shall be called the Pawi District Council Court. The Court shall consist of three Judicial Officers one of whom shall be appointed by the District Council as the President and recorder of the Court.

The District Council Court shall ordinarily sit at Lawngtlai. The Court may also sit at such other place or places as may be directly by general or special order of the District Council for the disposal of the particular case or cases, class or classes of cases specified in the order.

Any two or more Judicial Officers shall sit together as a Bench and the District Council may, by order, invest such Bench with any of the powers conferrable by or under these rules on a Judicial Officer and direct it to exercise such powers in such class or classes of cases as the District Council thinks fit. It is further provided that in case of difference of opinion between the two Judicial Officers sitting together as a Bench, the case shall be referred to the third Judicial Officer and the opinion of the majority shall prevail. It is the Executive Committee who shall appoint Judicial Officer of the District Council Court subject to the approval of the State Government as contemplated in the State of Mizoram Adaptation of Laws Order (No 2), 1987.

## **Powers and procedure:-**

The District Council Court shall be a Court of appeal in respect of all suits and cases triable by an Intermediate District Council Court. In criminal case, the District Council or the State Government<sup>10</sup> may direct an appeal to be presented to the District Council Court against any order passed by a Village Court or an Intermediate District Council Court, and the same shall be presented within ninety days from the date of order to be appealed against, excluding the time needed for obtaining the copy of the order.

The District Council Court may also call for and examine the record of any proceeding of the Intermediate District Council Court or of a Village Court and may enhance, reduce, cancel or modify any sentence or finding passed by such Court or demand the case for retrial.

The District Council Court also have vast power if it appears to it that (a) a fair and impartial inquiry or trial cannot be had in any Village Court or Intermediate District Council Court or (b) some question of law, tribal or otherwise of unusual difficulty is likely to arise, it may pass an order that (i) any offence be inquired into or tried by another Village Court or an Intermediate District Council Court. (ii) any particular case or classes of cases be transferred from one Village Court to another Village Court or from one Village Court to an Intermediate District Council Court or from one Intermediate District Council Court to another Intermediate District Council Court (iii) that any particular case or cases be transferred to be tried before itself.

The District Council Court may also act either on the report of the lower Court or on the application of a party interested or on its own initiative.

## **Tribal to tribal Courts in Mara Autonomous District Council.**

As the power invested under sub-paragraph (4) of the paragraph 4 of the sixth schedule to the Constitution of India, the Lakher Autonomous District Council with the previous

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10. Substituted by the *State of Mizoram Adaptation of Laws Order ( No. 2) 1987*

approval of the Administrator of the then Union Territory of Mizoram made the Lakher Autonomous District (Administration of Justice) Rules, 1981.<sup>11</sup> Three classes of Courts were constituted by these Rules of 1981 namely (a) Village Courts (b) Subordinate District Council Courts and (c) District Council Court.

### **Village Courts :-**

Every Village Council constituted under section 3 of Lakher Autonomous District (Village Council) Act, 1974 shall be a Village Council for the purpose of these Rules of 1981, the President of a Village Council elected under section 8 of the Lakher Autonomous District (Village Councils) Act, 1974 shall be the President of the Village Court for the purpose of these Rules of 1981.

The Village Council for each Villages, shall therefore sit as the Village Court. It is also further provided that when the Village Council sits itself as a court, the quorum to constitute a Court shall be nearly as may be, one half of the total number of members of such Courts, subject to the minimum of two. As such that the jurisdiction of a Village Court shall extend to the hearing and trial of suits and cases arising within the territorial limits of the village.

### **Powers and procedure :-**

In civil case, the Village Court shall try cases of civil and Miscellaneous nature falling within the purview of village or tribal laws and customs. It shall have power to award all costs, as also compensation to those against whom unfounded or vexatious suits and cases have been instituted before the Court.

In criminal case, it is competent to try cases falling within the purview of tribal laws and customs and offences of petty nature, simple assault and hurt, affront and affray of whatever kind, drunken or disorderly, browling, public nuisance and simple cases of wrong

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11. *The Mizoram Gazette*, Extra-Ordinary Issue No. 29, Dt19/8/81, pp 1-16



ful restraint but provided that the Village Court shall not be competent to try offences in respect of which the punishment of imprisonment is obligatory under the Indian Penal Code.

The fines and payments imposed and order of the Village Court may be enforced by distraint of the property of the offender or defaulter.

### **Subordinate District Council Courts :-**

There shall be one Subordinate District Council Court at Saiha and another at Tuipang, each court shall be presided over by a Judicial Officer to be designated as Magistrate and to be appointed by the Executive Committee with the approval of the State Government and such Judicial Officer shall also act as Recorder of the Court. It is also provided that the Chief Executive Member or a Member of the Executive Committee or any member of the District Council shall not be entitled to hold office as Judicial Officer and the Executive Committee or any Member of the District Council shall not interfere in any judicial matters.

The jurisdiction of the courts at Saiha and Tuipang shall extend to the hearing and trial of suits and cases including appeals arising within their respective territorial jurisdiction as fixed by the Executive Committee. The conditions of service of the Judicial Officer in the Subordinate District Council Courts and the staff appointed thereof, shall be regulated by the rules or orders made or issued, as the case may be, in this behalf by the District Council under rule 16 of the Mizoram Autonomous District Councils (Constitution and Conduct of Business of the District Councils) Rules, 1974. It is now repealed by the Mara Autonomous District Council (Constitution Conduct of Business etc) Rules, 2002.<sup>12</sup>

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12. *The Mizoram Gazette*, Extra Ordinary Vol. XXXVI, 14.3.2007 S.E. 1928, Issue No. 76.

## **Powers and Procedure :-**

The Judicial Officer appointed for this Court shall exercise such powers as defined in chapter-III of the Code of Criminal Procedure, 1973 as may be invested with by the Executive Committee with the approval of the State Government. It shall have original jurisdiction in all suits and cases in which both parties do not fall within the local jurisdiction of the same Village Court, but within the areas under the jurisdiction of the Subordinate District Council Court and also in suits and cases referred to it by a Village Court under Rule 17 of the Lakher Autonomous District (Administration of justice) Rules, 1981. The powers of the Subordinate District Council Courts is also in fact analogous with the powers of Subordinate District Council Courts under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 in respect of limitation of powers based on laws in force in the land.

## **District Council Court :-**

There shall be one District Council Court for the District which shall be called Lakher District Council Court. It shall consist of three Judicial Officers, one of whom shall be appointed by the District Council as the President and the recorder of the court, wherein, any two or more Judicial Officers shall sit together as a Bench and the District Council may, by order, invest such Bench with any of the powers conferrable by or under these rules on a Judicial Officer and direct it to exercise such powers in such class or classes of the cases as the District Council thinks fit.

The Executive Committee shall appoint Judicial Officers of the District Council Court subject to the approval of the State Government. The conditions of service of the Judicial Officers of the District Council Court shall be regulated by the rules or orders made or issued, as the case may be, in this behalf by the District Council under rule 16 of the Mizoram Autonomous District Councils (Constitution and Conduct of Business of the District Councils) Rules, 1974. The said Rules was repealed by The Mara Autonomous District Council (Constitution, Conduct of Business etc) Rules, 2002.<sup>13</sup> It shall ordinarily sit at Saiha.

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13. *The Mizoram Gazette* Vol. XXXVI, 14.3.2007, S.E. 1928, Issue No. 76.

## **Powers and Procedure :-**

The District Council Court shall be a Court of appeal in respect of all suits and cases triable by the Subordinate District Council Courts and the same shall be filed within sixty days from the date of the order, excluding the time required for obtaining a copy of the order. The District Council Court may call for and examine the record of any proceedings of the Subordinate District Council Court or of a Village Court and may enhance, reduce, cancel, modify any sentence or finding passed by such Court or remand the case for retrial.

If it appears to the District Council Court that (a) a fair and impartial inquiry or trial cannot be had in any Village Court or Subordinate District Council Court or (b) some questions of law, tribal or otherwise of unusual difficulty is likely to arise and it may order that (i) any offence be inquired into or tried by another Village Court or Subordinate District Council Court (ii) any particular case or classes of cases be transferred from one Village Court to another Village Court or from one Village court to the Subordinate District Council Court or from one Subordinate District Council Court to another Subordinate District Council Court (iii) any particular case or cases be transferred to and tried before itself. The District Council Court may act either on the report of the lower Court or on the application of a party interested or on its own initiative.

Before trifurcation of the then Pawi-Lakher Regions, the Pawi-Lakher Autonomous Region (Administration of Justice) Rules, 1954 was framed for judicial administration in the said region. In respect of superintendents of the Courts under the said Rules of 1954, the Assam High Court (Jurisdiction over Regional Council Courts) Order, 1959 under Notification No. TAD/R/11/53/32, dated 8<sup>th</sup> August, 1959 was promulgated by the then Governor of Assam in exercise of the powers conferred by sub paragraph (3) of paragraph 4 of the sixth schedule to the Constitution of India. Under this order, an appeal against a final order or decision of the Regional Council Court in a civil suit where the valuation of the suit is Rs 1,000/- or more lies to the High Court and the same shall be presented within ninety days from the date of the order or decision appealed against. In criminal cases, an

appeal also lies to the High Court from any order of conviction or acquittal of the Regional Council Court, and in a conviction order awarding a sentence of sixth months imprisonment or upwards and shall be presented within sixty days of the date of conviction or acquittal order appealed against. After trifurcation of the said Pawi and Lakher Region into Lai, Mara and Chakma and also established District Council Courts and its Subordinate Courts, the Assam High Court (Jurisdiction over District Council Courts) Order, 1954 was applicable in respect of appeal and superintendence of the District Council Courts and its subordinates. Hence, the Gauhati High Court should also be more active over the Courts of Districts Councils in respect of procedure and legality of proceedings as per the said Order of 1954 although no separation of Judiciary has been existed in the three Autonomous District Councils area.

The Chakmas have compiled a separate customary law whereas the Lai's and Maras are still under the Pawi-Lakher Region Customary laws of 1959. In this regard, Customary laws and usages although in compiled form becomes vague and easily going to be outmoded in the hand of the Courts. However, each District Councils is competent to enact new laws under sixth schedule to the Constitution of India. It is therefore proposed to legislate a separate Acts in respect of Marriage and Divorce, Inheritance of Property, Maintenance of wives, children and parents, Adoption and Guardianship etc. based on their respective traditions, customs to be amendable in the light of rapid advances in the socio-economic field which should be more gender friendly and reach the welfare of the down-trodden sections in a society. Obviously, Special Acts and laws will have more reliability and efficacy in the Court rooms and even in case of appeal in the High Court also.

Where the State Government of Mizoram marching ahead on full fledged separation of judiciary and establishment of new Civil Courts in line with the Gauhati High Court, the three Autonomous District Councils as enumerated under sub-paragraph (3) of paragraph

20 of the sixth schedule to the constitution of India and as the Chakma District,<sup>14</sup> the Mara District<sup>15</sup> and the Lai District<sup>16</sup> shall run ahead as exclusion of separation of judiciary. It needs more restructuring on personnel and clear-cut procedure to meet the new changes in a globalization era.

The Mizoram Autonomous District Councils (Constitution and Conduct of Business of the District Councils) Rules 1974 was repealed by the Mara Autonomous District Council (Constitution, Conduct of Business etc) Rules, 2002 under Notification No. C.11018/1/2001-DCA, the 12<sup>th</sup> March, 2007<sup>17</sup> for the Autonomous District Council area of Mara which appears more suitable and relevant in view of timely interpretation of sixth schedule to the Constitution of India through the judgement delivered by the Hon'ble Supreme Court of India. Whereas, the Lai Autonomous District Council (Constitution, Conduct of Business etc) Rules, 2002 under notification No. C.11018/1/2001-DCA the 12<sup>th</sup> March, 2007, S.E 1928, Issue No. 75) and the Chakma Autonomous District Council (Constitution, Conduct of Business etc) Rules 2002 as Notified under No. C.11018/1/2001-DCA, the 12<sup>th</sup> March, 2007<sup>18</sup> was made effective to overlap the old Rules and to ponder better governance at par with the passage of time.

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14. *The Mizoram District Councils (Miscellaneous Provisions) Order, 1972, Dated 5/5/1972 (w.e.f 29/4/1972)*
  15. *The 6<sup>th</sup> Schedule to the Constitution (Amendment) Act 67 of 1988*
  16. *Ibid*
  17. *The Mizoram Gazette, Extra-Ordinary Vol.XXXVI, 14/3/2007, S.E. 1928, Issue no. 76.*
  18. *The Mizoram Gazatte, Extra Ordinary Vol. XXXVI, 14.3.2007 SE-1928 Issue No.77*

# **CHAPTER – 6**

## **Judiciary in Mizoram in relation to Gauhati High Court and Special Courts, Tribunals and Forums in Mizoram**

### **Judiciary in Mizoram in relation to Gauhati High Court and Special Courts, Tribunals and Forums in Mizoram**

- (i) Court of Special Judge under Prevention of Corruption Act, 1988.**
- (ii) Special Court under ND&PS Act, 1985.**
- (iii) Special Court under EC Act, 1955.**
- (iv) Juvenile Justice Board - Aizawl and Lunglei.**
- (v) Lok Adalat.**
- (vi) Motor Accident Claims Tribunal.**
- (vii) State Commission and District Forums under the Consumer Protection Act, 1986.**
- (viii) Commissioner for Workmen's Compensation.**

The Supreme Court at the apex in India has been constituted under Article 124 of the Constitution of India. High Court for each State is embodied under Article 214 of the Constitution of India. But, under Article 231 of the Constitution, Parliament may by law establish a common High Court for two or more States and a Union Territory. The jurisdiction of Gauhati High Court also still extended even to the state of Mizoram and is being termed as Gauhati High Court - Aizawl Permanent Bench. Each Judge in a High Court is appointed to a particular High Court and may be transferred to another High Court only by virtue of the express provision in Article 222 of the Constitution. A High Court Judge is a holder of a Constitutional office and not a Government servant as held by the Hon'ble Supreme Court in the case of Union of India Vrs. Pratibha Bonnerjea (1995) 6 SCC 765 ( para.4). Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint as enshrined under Article 216 of the Constitution.

The Supreme Court of India under Articles 32, 71, 131 of the Constitution, section 25 of Code of Civil Procedure and section 406 of Court of Criminal Procedure have original jurisdiction. Moreover, under Articles 132, 133, 134 'A' and 147 of the Constitution, it have appellate jurisdiction and also have advisory jurisdiction under Articles 143 and 317 of the Constitution of India, jurisdiction in respect of Public Interest Litigation is termed as *epistolary* jurisdiction and can also review the judgements or orders delivered by itself as bestowed under Article 137 of the Constitution.

However, the jurisdiction of a High Court were - original, appellate, revisional and reference, which shall be the same as immediately before the commencement of the Constitution of India as contemplated under Article 225 of the Constitution. The writ jurisdictions of Supreme Court and High Court under Articles 32 and 226 of the Constitution were such as - *habeas corpus, mandamus, prohibition, quo warranto and certiorari*. As on 1st April, 2006, there were 21 High Courts in India.<sup>1</sup>

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1. *Court News (2006)* New Delhi: Supreme Court of India, Vol. 1. Issue No. 1 January - March, p.5

Thus, the Gauhati High Court was inaugurated on 5-8-1948 by Harilal J. Kania, the first Chief Justice of India. The foundation laying ceremony of the present building of the said High Court was performed on 21-2-1954 by Dr. Rajendra Prasad, the first President of India.<sup>2</sup> The said High Court was established and started functioning under the Assam High Court Order, 1948.<sup>3</sup> Under sub-clause (1) of clause 3 of the said order of 1948, the skeleton form of the then High Court of Assam runs as “ As from the fifth day of April, 1948, there shall be a High Court for the Province of Assam which shall be a Court of record, and shall consist of a Chief Justice and such other Judges as the Governor General may from time to time, whether before or after the prescribed day, appoint in accordance with the provision of section 220 of the Government of India Act, 1935”. However, in respect of territorial jurisdiction, clause 4 of the said Order of 1948 emphasised that “The High Court of Assam shall have, in respect of the territories for the time being including in the Province of Assam, all such original, appellate and other jurisdiction as, under the law in force immediately before the prescribed day, is exercisable in respect of the said territories or any part thereof by the High Court in Calcutta, or by the Governor of Assam exercising the functions of a High Court”.

When Mizoram attained statehood, there were some provisions relating to High Court under the State of Mizoram Act, 1986<sup>4</sup> (Act No. 34 of 1986). By virtue of Section 15 (1) (a) of the Said Act, 1986,” there shall be common High Court for the states of Assam, Nagaland, Meghalaya, Manipur, Tripura and Mizoram”. As such that under section 16 (1)(b)(1) of the said Act of 1986, “ The Bar Council of Assam, Nagaland, Meghalaya, Manipur, and Tripura shall be deemed to be the Bar Council of Assam, Nagaland, Manipur, Tripura and Mizoram ”. Within the ambit of section 20 of the said Act of 1986, the law in

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2. (2004) 6 SCC. Viz- Speech delivered by the Hon’ble the Chief Justice, R.C. Lahoti at the Foundation Stone-laying ceremony of the Addl. Building of the Gauhati High Court on Saturday, August, 7, 2004, p. 66
  3. Under S.O. 4 dated 1<sup>st</sup> March 1948, of the Govt. of India, Ministry of Law (Reforms), in the *Gazette of India*, Extra-Ordinary, dated 1<sup>st</sup> March 1948, page 399.
  4. Dated 14<sup>th</sup> August, 1986



force immediately before the appointed day with respect to the powers of the Chief Justice, Single Judges and Division Courts of the High Court of Assam, Nagaland, Meghalaya, Manipur and Tripura and with respect to all matters, ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the said new common High Court.

In exercise of the powers conferred by sub-section (2) of section 21 of the State of Mizoram Act, 1986 (34 of 1986), the President of India, after consultation with the Chief Justice of the Gauhati High Court and the Governor of Mizoram promulgated the Gauhati High Court ( Establishment of a Permanent Bench at Aizawl) Order, 1990. It came into force on the fifth day of July, 1990.<sup>5</sup> The said Order of 1990 provides that “ There shall be established a permanent Bench of the Gauhati High Court at Aizawl and as such Judges of the Gauhati High Court, being not less than two in number, as the Chief Justice of that High Court may, from time to time nominate, shall sit at Aizawl in order to exercise the jurisdiction and powers for the time being vested in the Gauhati High Court in respect of cases arising in the state of Mizoram”. It also further provides that the Chief Justice of that High Court may in his discretion, order that any case or claim of cases arising in the State of Mizoram shall be heard at Gauhati.

Cogently, the administration of Gauhati High Court, Aizawl Bench is also governed by the Gauhati High Court Rules, which was initially framed in 1954. Numerous amendments, correction slips and notifications were chalked out to meet dynamism of socio-legal administration. Under Rule 3A(Chapter-I) of the said rules, the Chief Justice of Gauhati High Court nominated Judge in charge is also known as ‘Portfolio Judge’ and rechristened as ‘Administrative Judge of the Judgeship’<sup>6</sup> for the Aizawl Permanent Bench.

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5. Notification No. G.S.R. 599 (E), dated 22<sup>nd</sup> June, 1990 (Vide- the *Gazette of India*, Extra-Ordinary, Part-II, S. 3 (a) dated 25.6.1990, pp.2-3).

6. Memo No. HC-XI-06/96 (pt)/3133-3183 Dt. 13.6.'05. Substitute the word (Portfolio Judge “by the words “Administrative Judge of the Judgeship”.

The duties and responsibilities of the said 'Portfolio Judge' shall be as follows:-

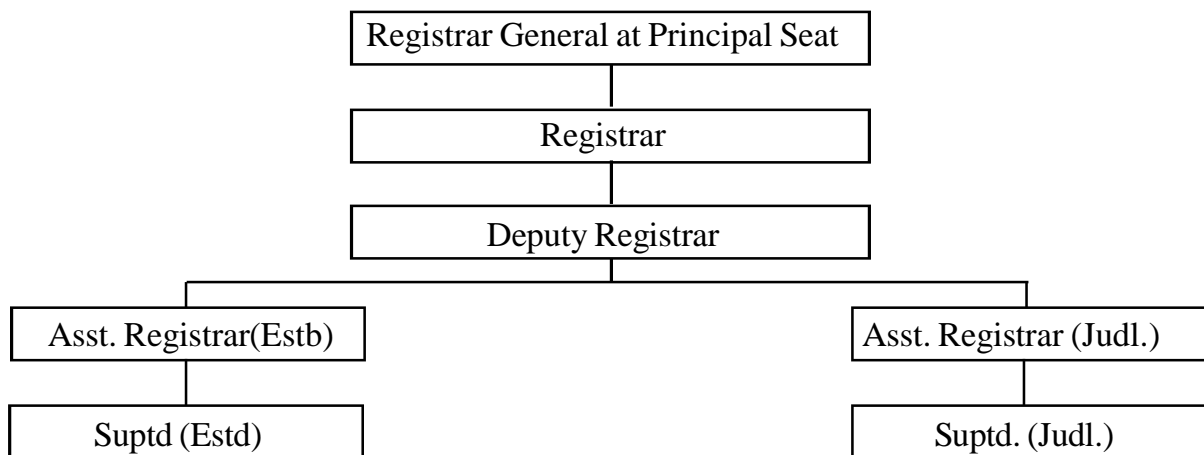
1. To inspect all Courts including the Courts of Executive Magistrates and District Council at least once in a calendar year. In case, however, the concerned 'Portfolio Judge' is unable to inspect any Court, the same may be entrusted to any other Judge by the Chief Justice.
2. All administrative matters including transfer and posting of officers shall be routed through the 'Portfolio Judge' of the concerned district, and
3. All administrative problems of the district shall be attended to by the Portfolio Judge concerned.

Moreover, there is a "Station Judge" even for Aizawl Permanent Bench, who is supposed to deal judicial matters only.

The services and employees of the Gauhati High Court are governed by the Gauhati High Court Services (Appointment, Condition of service and Conduct) Rules 1967.

**Table 6.1**

Administrative hierarchy of Gauhati High Court, Aizawl Bench.



Source : *Gauhati High Court Services (Appointment, Condition of Service and Conduct) Rules, 1967*

It may be pertinent to say that there shall be a Standing Committee consisting of the Chief Justice and such other Judge or Judges appointed from time to time by the Chief Justice, which shall be called the Administrative Committee<sup>7</sup> in the Gauhati High Court. The Administrative Committee shall be charged with the control and direction of the Subordinate Courts, so far as such control and direction are exercised otherwise than Judicially.<sup>8</sup>

**Table 6.2**

**Yearly wise status of cases in Gauhati High Court, Aizawl Bench.**

Year	Institution	Disposal	Pendency
1	2	3	4
2000	316	303	357
2001	273	284	353
2002	441	380	426
2003	458	400	493
2004	402	391	507
2005	621	759	383

Source : Memo No. J. 13108/1/2006-HC (AB)/16: Dated Aizawl, the 9<sup>th</sup> Feb. 2006.

In more details, during 2006, the status report of Gauhati High Court, Aizawl Permanent Bench is given as follows :

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7. *Correction slip* No. 54, Notification No. HC XI-4/65-70/443/RC, dated the 17<sup>th</sup> January, 1972.
  8. Rule 2 of the *Gauhati High Court Rules*. (Vide *Correction slip* No. 38, Dated the 19<sup>th</sup> Feb. 1970).

**Table 6.3**

**Status of cases in Gauhati High Court, Aizawl Bench during 2006.**

Year	Civil	Criminal
1	2	3
Opening balance as on 1.1.2006	360	23
Institution from 1.1.2006 to 31.12.2006	378	44
Disposal from 1.1.2006 to 31.12.2006	304	38
Pendency at the end of 31.12.2006	434	29
Total No. of pendency	463	

Source: Registrar, Gauhati High Court, Aizawl Permanent Bench.

In view of the above, separated High Court for the State of Mizoram is highly solicited as per the Memorandum of Settlement signed between the then insurgent MNF and the Government of India on 30.6.1986. Sub-clause (iii) of Clause 12 of the said Memorandum of Settlement also elucidated that “in the light of the Prime Minister’s statement at the joint Conference of the Chief Justices, Chief Ministers and Law Ministers held at New Delhi on the 31<sup>st</sup> August, 1985, Mizoram will be entitled to have a High Court of its own, if it so wishes’

**Court of Special Judge- Prevention of Corruption Act,1988 :-**

In exercise of the power conferred under sections 3 & 4 of the Prevention of Corruption Act, 1988 (No. 49 of 1988) as amended from time to time, and with prior concurrence of the Hon’ble Chief Justice of the Gauhati High Court conveyed under letter No. HC VII- 48/95/3156/A, Dt. 4.8.1997, the Governor of Mizoram constituted the Court of Special Judge at Aizawl for the whole of Mizoram for speedy trial of offences under the

said Act on 19<sup>th</sup> August, 1997.<sup>9</sup> Prior to constituting the said Court, the Court of Special Judge at Silchar under the Prevention of Corruption Act, 1988 was also extended to Mizoram in respect of jurisdictions.

P. Singthanga MJS was the first Special Judge,<sup>10</sup> under the Prevention of Corruption Act, 1988, Mizoram, Aizawl and started functioning on 17<sup>th</sup> Nov, 1997.<sup>11</sup>

Qualification to appoint as Special Judge under the Prevention of Corruption Act, 1988 as enumerated under section 3(2) of the said Act is that “a person shall not be qualified for appointment as a Special Judge under this Act unless he is or has been a Session Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973”.

The Hon’ble Gauhati High Court also upheld in the case of Jodhraj Baid & Others, Vs. State of Mizoram & Others as reported in 2006(2) GLT 673 that in view of the provision of section 3(2) of the Code of Criminal Procedure, P. Singthanga being an Addl. Sessions Judge under the Code of Criminal Procedure was qualified for appointment as a Special Judge under the Prevention of Corruption Act, 1988 and hence his appointment as Special Judge cannot be fault with although he may not be a Session Judge under the Constitution of India.

Special Judge is therefore triable any offence punishable under the said Act and any conspiracy to commit or any attempt to commit or any abetment of any of the offences under the Prevention of Corruption Act, 1988<sup>12</sup>. The Prevention of Corruption Act (Act

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9. Memo No.A. 450/2/10/93-LJE; Dated Aizawl, the 19<sup>th</sup> August, 1997.

10. Memo No.A. 22012/51/95-P&AR (CSW)/47. Dated Aizawl, the 4<sup>th</sup> Sept. ’97.

11. Memo No. A. 12011/1/97-SC (PCA); Dated Aizawl, the 17<sup>th</sup> Nov. 1997.

12. Clause (a) & (b) of Section 3 (1) of the *Prevention of Corruption Act, 1988*.

No. 49 of 1988, Dated 9.9.1988) is a social legislation defined to curb illegal activities of the public servants and is designed to be liberally construed so as to advance its objects.<sup>13</sup>

Opening balance of cases under the Court of Special Judge, Prevention of Corruption Act, 1988, Mizoram as on 1.10.06 falls 8 (eight) cases and pendency at the end of 31.12.2006 falls 8 (eight) as per information available in the Department of Law & Judicial, Govt. of Mizoram.

The country as well as the State is alarming on corruption menace and when the public at large also criticized the government upon embezzlement, few cases had been taken up in the Court of Special Judge. Moreover, the said Court doesn't set an example to make the people aware for mitigating corruption uptill this stage. The people also never heard the conviction rate in the said Court of Special Judge. Therefore, due to no separation of judiciary or retardation of the Court and Corruption laws, the social activist directly wanted High Court and Supreme Court to tackle vicious circle corruption. It is relevant to point out that prosecution branch should also move effectively. Whilst the other limbs judges and the government are suggested to maintain one legal maxim '*Boni Judicis est ampliare jurisdictionem*' (Law must keep pace with society to retain its relevance).

### **Special Court under ND & PS Act, 1985**

By virtue of the powers conferred by Sub-Section (2) of Section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 as amended by the ND & PS (Amendment) Act, 1988 (Act No. 2 of 1989), the Governor of Mizoram with the concurrence of the Hon'ble Chief Justice of Gauhati High Court appointed P. Singthanga as the Judge of the Special Court, Aizawl District, Aizawl on 11<sup>th</sup>. August, 1995<sup>14</sup> which is constituted under Notification No. A.48011/22/93-LJE dt. 8.8.95 with immediate effect.

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13. State of MP Vs. Ram Singh 2000 (5) SCC 88.

14. Memo No. A. 45011/1/95-P&AR (CSW) (L), Dated Aizawl, the 11<sup>th</sup> August, 1995.

The jurisdiction of the above stated Special Court has been extended also to the districts of Champhai, Mamit, Kolasib and Serchip under Notification No.A.48011/22/93-LJE/327, dated Aizawl, the 20<sup>th</sup> August, 1999 with immediate effect.

Under Clause (a) of sub-section (1) of Section 36'A' of ND & PS Act, 1985, all offences under the said Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government.

**Besides the said Act of 1985, the Court is governed by the followings :**

- (a) The Narcotic Drugs & Psychotropic Substances Rules, 1985
- (b) The Narcotic Drugs & Psychotropic Substances (Authentication of Documents) Rules, 1992
- (c) The Narcotic Drugs & Psychotropic Substances (Regulation of Controlled Substances) Order, 1993
- (d) Notification in respect of Specification of Small Quantity and Commercial quantity for the purpose of Section 2(viia) and 2(xxiiia) of ND & PS Act, No. S.O. 1055(E), dated 19<sup>th</sup>. October, 2001.

Pending of cases under Special Court, ND & PS Act, Aizawl as on February, 2007 is 135 as available with the Department of Law & Judicial, Govt. of Mizoram.

**Special Court under the Essential Commodities Act, 1955 :-**

It started functioning in Aizawl on 17<sup>th</sup>. February, 1997 and T. Saikunga was the first Judge in the said Court<sup>15</sup>. It is also constituted under Section 12A(1) of the said Act, 1955.

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15. Memo No.F.23014/1/97-SCE(A), Dated, Aizawl, the 12<sup>th</sup> March, 1997

Qualification for appointment as Judge in this Court as enshrined under section 12A(3) of the Essential Commodities Act, 1955 run as “a person shall not be qualified for the same unless he is qualified for appointment as a Judge of a High Court, or he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.”

All offences under the said Act of 1955 shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court.

### **Juvenile Justice Board – Aizawl and Lunglei**

As per power conferred under sub section (1) of section 4 of the Juvenile Justice (Care and Protection of Children) Act,2000, the Governor of Mizoram constituted for the first time, Juvenile Justice Board with Marli Vankung ADM(J), Aizawl District as the Principal Magistrate, V. Vanlalruati, Teacher and Lalruatkima, Asst. Secretary CYMA as members for exercising powers and discharging the duties conferred or imposed on such Board. Under the said Act of 2000 and the Mizoram Juvenile Justice (Care and Protection of Children) Rules,2003 in relation to the cases of children in conflict with law on 31<sup>st</sup>May, 2005 under Notification No.B 12019/2/04-SWD, the said Board have a jurisdiction over the districts of Aizawl, Champhai, Kolasib, Serchhip and Mamit. Later on 6<sup>th</sup> February, 2007 R.Vanlalchami, Magistrate 1<sup>st</sup>Class, Aizawl has been appointed as Principal Magistrate vice to Marli Vankung under Notification No.B 12019/3/92-SWD<sup>16</sup>

In Lunglei, for the first time on 6<sup>th</sup>Feb, 2007, a separate Juvenile Justice Board has been constituted for the districts of Lunglei, Saiha and Lawngtlai under Notification No. B 12019/3/92-SWD<sup>17</sup> with M. Lallianmawii 1<sup>st</sup>Class Magistrate as Principal Magistrate,

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16. *The Mizoram Gazette*, Extra Ordinary, Vol.XXXVI, Aizawl, 9.2.2007, Issue No.22.

17. *The Mizoram Gazette*, Extra Ordinary, Vol.XXXVI, Aizawl, 9.2.2007, Issue No.19.



Zosangi, Headmistress(Rtd.) and C. Zairemthanga, Lecturer, Govt College Lunglei as members.

In accordance with the provision of Juvenile Justice (Care and Protection of Children) Act, 2000(Act No.56 of 2000) and in the light of section 27 of the Code of Criminal Procedure, 1973, a children in conflict with law who is below 18(eighteen) years of age is triable by the said Juvenile Justice Board to cope with the Mizoram Juvenile Justice(Care and Protection of Children) Rules,2003 as notified under No. B 12019/2/92-SWD, the 30<sup>th</sup> July, 2003. <sup>18</sup>

Number of Remand Home inmates(Juvenile delinquent) under the judicature of Juvenile Justice Board, Aizawl are as follows :-

**Table 6.4**

**Status of Remand Home inmates, Durtlang ; Aizawl**

Sl. No.	Category	1 <sup>st</sup> April, 2004 to 31 <sup>st</sup> March,2005	1 <sup>st</sup> April 2005 to 31 <sup>st</sup> March, 2006
1	2	3	4
1	No of boys	81	99
2	No of Girls	7	3
	Total	88	102

Source: *Statistical Handbook, Mizoram-2006*, Directorate of Economics & Statistics, Govt. of Mizoram.

The territory of Mizoram is divided into eight districts with having a separate administrative set up in each district, wherein, there are only two Juvenile Justice Board equipped with other necessary infrastructures. Having experienced, akin to administrative avenue, judiciary also felt decentralization where the rural people may also be able to get

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18. *The Mizoram Gazette*, Extra Ordinary, Vol.XXXIII, Aizawl, 1.8.2003, Issue No.170.

justice with low costs and also for peace and tranquility even in the nook and corner of the territory. Otherwise the rights of childrens and their parents are victimized and adversely affected the social environment hampering safety and security. Law shouldn't be implemented only in the urban area but should also be for the needy who are in the isolated land lock to ensure equality for all citizenry.

### **Lok Adalat:-**

The Legal Services Authority Act, 1987 (No. 39 of 1987) was enacted on 11<sup>th</sup> Oct, 1987. The National Legal services Authority Rules 1995 and the Mizoram State Legal Services Authority Rules 1996 & Regulations, 1998 were also framed under the said Act of 1987.

The main objectives of the said Act can be summarized as (a) free legal aid to the needy (b) access to legal awareness among the citizens (c) Lok Adalat for pondering justice towards amicable settlement in a cheap and speedy manner.

In compliance with sub section (1) of section 19 of the Legal Services Authorities Act, 1987, the state authority of Mizoram also set up Lok Adalat in every districts. As enjoined in Rule 17 of the Mizoram State Legal Services Authority Rules, 1996, a person shall not be qualified to be included in the Bench of Lok Adalat unless he is –

(a) an eminent social worker who is engaged in the upliftment of the weaker section of the people, including schedule caste, schedule tribe, women, children, rural and urban labour, or (b) a lawyer of good standing; or (c) a person of repute who is specially interested in implementation of the legal services schemes and programmes. The performance of Lok Adalats in Mizoram as on 30.9.2006 can be shown below :

**Table 6.5****Performance of Lok Adalats in Mizoram**

Sl No.	1	2
1	No of Lok Adalats held	477
2	No of MACT Cases settled	240
3	No of Cases settled (including MACT Cases)	686
4	Compensation paid in MACT Cases	Rs. 6,094,080.00

Source: *Nyaya Deep*, the Official Journal of NALSA, Vol-VII, Issue 4, Oct 2006

The Constitution(42<sup>nd</sup> Amendment) Act, 1976 inserted new provision under Article 39 A. It envisaged that “The state shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”. Therefore, criteria for giving legal services are laid down under section 12 of the Legal Services Authorities Act, 1987. The Hon’ble Supreme Court has also issued directions to concerned District Judge to arrange legal aid in the case of Bajiban Salanbhai Chauhan Vs. UPSRTC as reported in (1990) Supp. SCC 769. The number of beneficiaries through legal aid and advice under the Act of 1987 and the rules made thereunder in Mizoram were stated below.

**Table 6.6**

**No. of beneficiaries of legal aid under the Legal Services Authority Act,1987 as on  
30.09.2006**

Categories	SC	ST	BC	Women	Children	In custody	General	Total
No of benefited persons	147	11,955	2,447	1,201	275	1,277	4,713	22,015

Source: *Nyaya Deep*, the Official Journal of NALSA, Vol-VII, Issue – 4, Oct, 2006

In respect of the nature and functions of Lok Adalats, to meet the burdensome workload of Judiciary, more and more enthusiastic effort should be paid in view of growing complexity in the society. Implementation of the Arbitration and Conciliation Act, 1996(Act No 26 of 1996) and alternative means of settlement of disputes is further suggested. Even in the United States, the alternative dispute resolution process has grown tremendously in the past decades, and not in the big, complicated commercial cases, it reduces the burden of Courts.

### **Motor Accident Claims Tribunal :-**

Before 5<sup>th</sup>Jan, 1996, Motor Accident Claims Tribunal was taken up by Transport Department and Secretariat Administration Department (SAD), Government of Mizoram. As the power conferred by Rule 3 of the Government of Mizoram (Allocation of Business) Rules, 1987, the Government of Mizoram re-allocated the matter to the Law and Judicial Department.<sup>19</sup> Thereafter on 3<sup>rd</sup> Jan, 2000, the Government of Mizoram constituted the Motor Accident Claims Tribunals (MACT) Lunglei with the Court of Additional District Magistrate (Judicial), Lunglei for the District of Lunglei, Lawngtlai and Saiha, the existing Presiding Officer therefore and henceforth comprised of the Districts of Aizawl, Champhai, Serchhip, Kolasib and Mamit. The ADM(J) Lunglei also functions as Presiding Officer in addition to his own duties.<sup>20</sup> Thus, there are two Presiding Officers in MACT as on 2007 for the whole of Mizoram.

Justice should be made for the litigants and needy but not for the judiciary itself, decentralization of judiciary is one parameter to reform State Judiciary. MACT has been established under Section 165 of The Motor Vehicles Act, 1988 (Act No. 59 of 1988). Whereas, it is the State Govt. who is responsible and authorised to make notifica

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19. No.A.40011/1/94-GAD/Loose-1, the 5<sup>th</sup> January, 1996.

20. Notification No.A.51011/1/96-L&J (CWS), the 3<sup>rd</sup> January, 2000. Vide.

The *Mizoram Gazette*, Extra Ordinary, Vol.XXIV, 28.1.2000, SE 1921, Issue No.10.

tion in the Official Gazette to constitute one or more MACT. In view of the bottleneck of road and other means of communication in the territory of Mizoram, extra expenditure to file an application thereof and to have a journey for attending the tribunal is a big obstacle to approach appropriate Court of Law for justice amongst the rural people. In each and every administrative districts , constitution of MACT or its alternative mode of arrangement is the prime needs of the day.

### **State Commission and District Forums under Consumer Protection Act, 1986.**

State Commission at state level and District Forums at various districts were constituted under the Consumer Protection Act, 1986 in Mizoram. The Central Govt. also enacted the Consumer Protection Rules, 1987, whereas the Govt. of Mizoram also formulated the Mizoram Consumer Protection Rules, 1987 for the first time. The jurisdiction of various Courts under this Act were given below :-

**District Forum** - In a full form, it is known as 'Consumer Disputes Redressal Forum'. It shall have jurisdiction to entertain complaints while the value of the goods or services and the compensation, if any claimed doesn't exceed rupees twenty lakhs. A complaint shall be instituted in a District Forum within the local limits of jurisdiction.

**State Commission** - The State Commission shall have jurisdiction to entertain complaint while the value of the goods or services and compensation, if any claimed exceed rupees twenty lakhs but doesn't exceed one crore and appeals against the orders of any District Forum within the state and to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the state.

**National Commission** - The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.

In Mizoram, on 5<sup>th</sup> Jan. 1996, District Forums and State Commission was allocated to Law and Judicial Deptt.,<sup>21</sup> Later, the matter was re-allocated to Food, Civil Supplies & Consumer Affairs Deptt. The existing rules under the said Act in Mizoram is the Mizoram Consumer Protection Rules, 2000. Whereas section 10 (1)(a) of the said Act imposed that to appoint as the President in District Forum, a person who is or has been, or is qualified to be a District Judge, the Deputy Commissioner of each Districts except Aizawl District are entrusted with the President for the same. The colonial Deputy Commissioner's Office is very busy with other works or business and isn't qualified as District Judge. Qualified President who can spare a time for running smoothly District Forum is onerous desired.

**Table 6.7**

**Status of District Forums and State Commission as on Feb., 2007**

a)	Total cases filed since inception	State Commission			District Forums	
		112			2173	
b)	(i) Cases disposed of (No. & %)	No. 100	% 89.28	1997	91.85 %	
	(ii) cases disposed of within prescribed norms	No. 12	12.00%	N.A.	N.A.	
	(iii) No. of cases disposed of by Lok Adalat method	1		1		
c)	Cases pending	12			176	

Source: Secretariat, Food, Civil Supplies and Consumer Affairs, Govt. of Mizoram on February, 2007.

The Preamble of the Indian Constitution declared its objective to secure 'Social Justice' to all its citizens, Article 38 (1) of the constitution imposes a duty on the state 'to

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21. *op.cit*, 1996.

promote the welfare of the people' and. Article 39 (b) and (c) embodied the duty of the state to do direct its policies towards securing distribution of the ownership and to control the material resources of the community in such a way to subserve. The common good. The operation of the economic system should not result in the concentration of wealth and means of production to common good. Thus, it is clear to see that consumer protection is one of the duties entrusted on the state.

### **Commissioner for Workmen's Compensation :-**

Commissioner to adjudicate the cases falling as a workmen has been appointed under section 20 of the Workmen's Compensation Act, 1923. Commissioner for workmen's compensation has been allocated to Law and Judicial Deptt. on 5<sup>th</sup> January, 1996<sup>22</sup> to realize the contents of the Workmen's Compensation Act. 1923. It is no doubt that the outcome of the growing complexity of the machine age of the increasing use of machinery and the consequent changes to workman, along with this, the comparative poverty of the worker and the advanced social developments makes it necessary to protect the worker and his dependants from hardship arising out of accidents. It has its roots in charity, sympathy and the advancement of socialistic ideas. It may not be a wrong connotation to say that it attempts to effectuate the principle of social justice as declared by the International Organization and also contemplated in the Preamble of the Constitution of India. The Universal Declaration of Human Rights also proclaimed the importance of social security and assistance. It ensured social security to industrial workers.

For the whole of Mizoram, only one Commissioner for the same who is Grade – I (Junior) of MJS has been appointed and functioned which ordinarily sits at Aizawl. As Mizoram remains known as 'no industry area' till date, the people are not aware of the said Court's and meagre cases has been instituted since inception. To fructify the constitutional goals and objectives, social welfare judicature like Commissioner for Workmen's Compensation is the guardian of workmen's who generally earn low income and are vulnerable sections in a society.

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22. *Ibid*,1996

# CHAPTER – 7

## Judicial Acts, Rules, Regulations and its usages in Mizoram

### Judicial Acts, Rules, Regulations and its usages in Mizoram

- (i) Assam Jail Manual
- (ii) Mizo Customary Laws
- (iii) Prohibitory order promulgated under section 144 Cr PC
- (iv) Mizoram Judicial Service Rules.
- (v) The Mizoram ( Appointment, duties, fees etc. of Govt. Advocates ) Rules, 1995 ( As amended in 2007 )

On 25<sup>th</sup> March, 1972, the North-Eastern Areas (Reorganisation) (Mizoram) Adaptation of Laws Order, 1972<sup>1</sup> was promulgated. Under this order, the following Rules with some modifications were adapted with effective from 21<sup>st</sup> January 1972.

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1. Notified under No. F 19(2) Dt. 25.3.1972 and published in the *Mizoram Gazette*, Vol – I, Issue No. 7 Dt. 28.4.1972, pp. 12 – 14



- a) Rules for the Regulation of the Procedure of Officers appointed to administer Justice in the Lushai Hills, made on the 25<sup>th</sup> March, 1937 u/s 6 of the Scheduled Districts Act, 1874.
- b) The Assam Autonomous District Constitution of District Councils Rules, 1951.
- c) The Lushai Hills Autonomous District (Administration of Justice) Rules, 1953.
- d) The Pawi-Lakher Autonomous Region (Administration of Justice) Rules, 1954.
- e) The Pawi-Lakher Autonomous Region (Constitution and Conduct of Business of the Regional Council) Rules, 1963.

On 13.9.1972, the North Eastern Areas (Re-organisation) (Mizoram and Arunachal Pradesh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1972,<sup>2</sup> was again made with effective date on 21<sup>st</sup> January, 1972. Wherein, in its application to the Union Territories of Mizoram and Arunachal Pradesh, the Motor Vehicles Act, 1939 (4 of 1939) shall, until altered, repealed or amended by a competent legislature or other competent authority, have effect subject to the adaptations and modifications specified in the schedule to that order. But, the said Act. of 1939 was repealed under section 217 of the Motor Vehicle Act, 1988 (Act No. 59 of 1988) and thereby enacted the Central Motor Vehicles Rules of 1989.

Earlier, the North Eastern Areas (Reorganisation) Adaptation of Laws on Union Subjects) Order, 1974 was enacted during Union Territory status of Mizoram, the Acts in force in the territory was circulated under Circulation No. LJD 70/73/Vol. 11/31. Dt. 11<sup>th</sup> April, 1974.

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2. Notified under Memo No. MV/XI – I/72/22 Dt. 13.9.1972 and published in the *Mizoram Gazette*, Vol – I, Issue No. 23. Dt. 15.9.1972. pp 4 – 5.

After attaining statehood, under the provision of Article 371 'G' of the Constitution of India, any Central Act in force in the Union Territory of Mizoram immediately before the commencement of the Constitution (fifty-third Amendment) Act, 1986 has been applied to the State of Mizoram. In connection with the matter, the State of Mizoram Adaptation of Laws Order (No.2) 1987 was made under No. LJD. 10 the 20<sup>th</sup> March, 1987 by virtue of sub-section (2) of section 43 of the State of Mizoram Act, 1986.

Some Acts, Rules and Regulations relating to Administration of Justice in Mizoram may be extracted with a critical appraisal as follows :

### **Assam Jail Manual :**

Complete law relating to Jail administration in Assam was published by GLR Publishing House, Sikaria Building, Guwahati – 781 001, the same was compiled by Dr. B.P. Saraf (et.al) in 1987. Which is the only books available in the matter of prison administration even in Mizoram, the below mentioned Rules appears still in force as per the said Jail Manual:

- 1) Rules under the Prisons Act, 1894 made by Government for the inspection, Superintendence and Management of Jails in the State of Assam.
- 2) The Assam Prison (Leave and Emergency Release) Rules, 1968 (Furlough Rules).
- 3) The Assam Superintendence and Management of Jails (Supplementary Provisions) Rules, 1968 (Open Prison Rules).
- 4) The Assam Detention Order, 1980 (Rules framed under the National Security Act, 1980 and Section 3 of the Assam Preventive Detention Act, 1980 for regulating the places and condition of detention of persons ordered to be detained under Section 5 of the Central Act and Section 5 of the Assam Act).
- 5) The Assam Probation of Offenders Rules, 1963.

- 6) Assam Children Rules, 1976.
- 7) Rules made under the Indian Lunacy Act.
- 8) Rules under the Government Conduct Prisoners Probational Release Act, 1938.

The Supreme Court of India held the followings as rights under Article 21 of the Constitution of India in respect of prisoner status and maintenance:

- a) The right against solitary confinement<sup>3</sup>
- b) The right against bar fetters.<sup>4</sup>
- c) Providing human conditions in prisons.<sup>5</sup>
- d) Even convicts, prisoners and under-trials also have right under Article 21, and only such restrictions can be imposed as are permitted by law.<sup>6</sup>
- e) Non-criminal mentally ill persons cannot be confined in a jail.<sup>7</sup>

For instances, the Indian Lunacy Act was repealed by the Mental Health Act, 1987 and Rules 1990 was also made thereunder. In respect of child welfare, the Juvenile Justice (Care and Protection of Children) Act 2000 was already being implemented and the rules of 2003 also made there in Mizoram. Akin to the Mizoram Police Manual 2005 and the Mizoram Police Special Branch Manual 2005 which was published in the Mizoram Gazette,

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3. Sunil Batra Vs. Delhi Admn. (1978) 4 SCC. 494

4. Charles Sobhraj Vs. Supdt. Central Jail, New Delhi. (1978). 4 SCC 104.

5. Sher Singh Vs. State of Punjab (1983) 2 SCC 344.

6. Nilabati Behera Vs. State of Orissa (1993) 2 SCC 746.

7. Sheela Barse Vs. Union of India (1993) 4 SCC 204.

Extra Ordinary, Vol. XXXV, 1.5.2006, SE 1928, Issue No. 109. and repealed the outdated Assam Police Manual in Mizoram, the Assam Jail Manual needs to annihilate in view of legislative changes and dynamic socio-economic perspectives even to be purposeful for psycho-therapy of hardened criminals and in the light of the rising expectations, of a demanding and conscious society.

### **Mizo Customary Laws :-**

A part from the plain people, the Mizo's have a racial identity, close knit homogeneous society, unsophisticated lifestyle and unique traditions. Therefore, it is essential to set a vibrant Customary Laws having applicability in a law court. The Supreme Court in the case of Sirmomani Vs. Hemkumar reported in AIR 1968 SC 1299 held that a local custom to be legally valid and to operate as a source of law must satisfy the tests of reasonableness, conformity with statute law, observance as of right, certainty, consistency and immemorial antiquity. In another case, the Supreme Court observed that a custom is a usage by virtue of which a class of persons belonging to a defined section in a locality are entitled to exercise specific rights against certain others persons or property in the same locality. But to be valid, a custom must be ancient, certain and reasonable and being in derogation of the general rules of law, must be construed strictly.<sup>8</sup>

A Monograph on Lushai Customs and Ceremonies was compiled by N.E. Parry, ICS.<sup>9</sup> Thereafter, the Mizo Customary Laws 1956 was enacted by the then Mizo District Council with effect from 30<sup>th</sup> November, 1956 Vide Mizo Hnam Dan (Operation) order, 1957, which is mostly based on the compilation of N.E. Parry as stated above. The Mizo District (Inheritance of Property) Act, 1956 was also notified under No. TAD/R/123/53 on the 18<sup>th</sup> May 1956 in respect of deposition or making of 'Will' and its execution.

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8. State of Bihar Vs. Subodh Gopal, AIR (1968) SC 281.

9. N.E. Parry (1928), *Lushai Customs and Ceremonies*, Aizawl: Tribal Research Institute.

An attempt has also been paid to re-draft the Mizo Customary Laws by setting up of the Committee on Mizo Customary Laws, the Draft Mizo Customary Laws 2000 was published by Law and Judicial Department (Customary Law Cell), Government of Mizoram. Later, Mizo Customary Laws Draft compilation 2002 was again published by Law and Judicial Department (Customary Law Cell), Government of Mizoram. Finally, Mizo Customary Laws compiled by the Committee on Mizo Customary Laws has been notified under Notification No. H. 12018/119/03 – LJD/62, the 4<sup>th</sup> April, 2005<sup>10</sup>. After publication of Mizo Customary Laws 2005, there remained two schools of thought, one school of thought opined that Mizo Customary Law can be changed, amended from time to time alongwith the fast changing socio-economy. Another school contended that Customary Law can not be notified, altered and changed as it is solely based on customs. Thus, Mizo Customary Laws 2005, compiled by the Committee on Mizo Customary Laws became like a white elephant, costly but useless or purposeless in law courts. The main issues regarding Customary Laws is marriage, divorce and inheritance of property. It may be relevant to mentioned some of the Acts in force in India, such as :-

- a) The Divorce Act, 1869.
- b) The Special Marriage Act, 1954.
- c) The Indian Christian Marriage Act, 1872.
- d) Indian succession Act, 1925.
- e) The Married Womens Property Act, 1874.

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10. *The Mizoram Gazette*, Extra Ordinary Vol. XXXIV, 6.4.2005, S.E. 1927. Issue No. 66.

The Mizoram Special Marriage (Registration) Rules 2006 was also made as the powers bestowed by Section 50 of the Special Marriage Act, 1954 (Act No. 43 of 1954) and notified under No. C. 18015/148/2005 – LJC/131, the 9<sup>th</sup> February, 2007,<sup>11</sup> and in compliance with the directions given by the Hon’ble Supreme Court on 14<sup>th</sup> Feb. 2006 in Transfer Petition (C) No. 291 of 2005 titled ‘Seema Vs. Ashwamin Kumar’.

Thus, instead of compiling Mizo Customary Laws, a separate Special Acts to be passed by the Mizoram Legislative Assembly. It is strongly recommended that this special Act may be used effective and binding in the law courts. Other tribes and communities also had enacted a Special Acts based on their own customs and usages such as :-

- a) Hindu Succession Act, 1956.
- b) Hindu Minority and Guardianship Act, 1956.
- c) Hindu Adoptions & Maintenance Act, 1956.
- d) Hindu Disposition of Property Act, 1956.
- e) The Muslim Women (Protection of Rights on Divorce) Act, 1986 with Rules, 1986.
- f) The Parsi Marriage & Divorce Act, 1936.
- g) The Dissolution of Muslim Marriages Act, 1939 with Rules, 1975.
- h) The Anand Marriage Act, 1909 etc.

Further, implementation of the Family Courts Act, 1984 is also suggested, the objects and reason of the said Act is that several associations of women, other organizations

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11. *The Mizoram Gazette*, Extra Ordinary Vol. XXXVI, 23.3.2007. SE 1928, Issue No. 47.

and individuals have urged, from time to time, that Family Court be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. The Law Commission in its 59<sup>th</sup> Report (1974) also stressed that in dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceeding and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family.

The Family Courts Act, 1984 aimed to :-

- a) provide for establishment of Family Courts by the State Governments.
- b) make it obligatory on the state Governments to set up a Family Court in every city or town with a population exceeding one million.
- c) exclusively provide within the jurisdiction of the Family Courts the matters relating to –
  - i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage or as to the matrimonial status of any person;
  - ii) the property of the spouses or of either of them;
  - iii) declaration as to the legitimacy of any person.
  - iv) guardianship of a person or the custody of any minor;
  - v) maintenance, including proceedings under Chapter IX of the Code of Criminal Procedure.

- d) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute.
- e) provide for only one right of appeal which shall lie to the High Court. etc.

The Family Courts Act, 1984 is also found as a concrete remedy to replace the misnomer and archaic courts which is simply known as Mizo Customary Law Courts established under the Lushai Hills Autonomous District (Administration of Justice) Rules 1953. viz District Council Courts and its Subordinate Courts when Mizoram ceased to have District Council status since 21<sup>st</sup> January 1972.

Having appetite for Mizo Customary Laws compilation, the Compulsory Marriage Registration Act, 2007<sup>12</sup> was also passed by the Mizoram Legislative Assembly in compliance with the orders of the Hon'ble Supreme Court on 14<sup>th</sup> Feb. 2006 in Transfer Petition (C) No. 291 of 2005 titled 'Seema Vs. Ashwamin Kumar'. It is also evident that the need and importance of separate Special Acts for the Mizos as suggested earlier in lieu of book form compilation of Mizo Customary Laws.

### **Prohibitory order promulgated under Section 144 of CrPC and its usages:**

Section 144 Cr PC is solely apt for urgent cases of nuisance or apprehended danger. Under sub-section (2) of Section 144 Cr PC, an order under this section may in cases of emergency or in cases where the circumstances do not admit of the serving in due time of or notice upon the person against whom the order is directed, be ex-parte. The said order shall remain in force not more than two months from the making thereof. Wherein, the legislative intention or tends to prevent is for urgent cases and emergency situation to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquility, or a riot, or an affray.

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12. *The Mizoram Gazette*, Exrtra Ordinary Vol. XXXVI, 24.4.2007, S.E.  
1929 Issue No. 124



It is the District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf who can promulgate an order under this Act by a written order stating the material facts of the case and served in the manners provided by section 134 of CrPC. It enshrined that (1) the order shall, if practicable, be served on the person against whom it is made, in the manner herein provided for service of a summons (2) If such order cannot be so served, it shall be notified by proclamation may, by rules, direct and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Unlike the manner provided as above, in respect of conveyance or notification of order, the authority merely served the order so promulgated sometimes in camera among the law enforcers viz – Magistrates, Police force. It violates section 134 of CrPC.

Violation of order promulgated under Section 144 CrPC is punishable under section 188 IPC which may extend to six months simple imprisonment, or with fine which may extend to one thousand rupees, or with both. Whereof, the explanation provided under section 188 IPC is that “it is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm”. Therefore, wide publicity, especially by focusing the concerned people is a must unlike the present practice.

In democratic form of governance, legislative organ alone is competent to make laws, section 144 CrPC isn't empowered to make laws. In some occurrences, misuse of section 144 CrPC has been experienced in the state. Some of the orders promulgated under section 144 CrPC were as follows :

- a) Although extortion, criminal intimidation entails punishment under Indian Penal Code, asking, demanding or collection of money from others is prohibited under Section 144 CrPC.<sup>13</sup>
- b) Whilst creating public nuisance is punishable under Indian Penal Code and a state of intoxicants for being drunk or behaves in disorderly manner under the influence of liquor is punishable under the Mizoram Liquor Total Prohibition Act, 1995, an order for the same was promulgated under section 144 CrPC.<sup>14</sup>
- c) Whilst the Arms Act, 1959, the Explosives Act, 1884 and Explosives Substances Act, 1908 is in force, an order for the same was promulgated under section 144 CrPC.<sup>15</sup>

In view of the above, it needs to re look the enforcement of laws at a district level, It may not be wrong to say that, doubling prohibitory order is anti-democratic in a system where the elected representatives alone are recognized to enact the laws. It may not be exaggerated to say that some prohibitory orders repugnant or override some statutory laws and also deprive the right to life and personal liberty of the individual(s). It is rather appropriate and suitable to reiterate existing laws in force in the land through circulars to all concerned persons and authorities as a district head for keeping peace and security instead of prohibitory orders when there is a law for dealing the situations. The Superintendent of Police in a district may also direct and urge as a District Magistrate to enforce the laws which may be required in some occurrences and to flee from misuse or misinterpretation of section 144 of CrPC.

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13. Memo No. J. 32019/1/2004 – DC(K)/37, the 7<sup>th</sup> June, 2006, promulgated by District Magistrate – Kolasib.
  14. Memo No. J. 32019/1/2004 – DC(K)/39, the 7<sup>th</sup> June, 2006, promulgated by District Magistrate – Kolasib.
  15. Memo No. J. 32019/1/2004 – DC(K)/38, the 7<sup>th</sup> June, 2006, promulgated by District Magistrate – Kolasib.

As it is the responsibility of the legislative organ, the legislators should not neglect the matter of misuse of section 144 CrPC for the wholesome safety of the social environment. And as such, the legislature should have retrospective as well as prospective approach about the vacuum in their legislation for plying to smooth law enforcement.

## **Mizoram Judicial Service Rules**

The judicial personnel is the linchpin of justice delivery system. Laws are not enough to ensure justice. ‘Law without justice is blind and justice without law is lame’ is the prime criteria to pursue justice. The judicial personnel therefore play a sound and effective law implementation with aiming justice. The essential qualities of Judge may be (i) initiative (ii) intelligence (iii) industry (iv) integrity (v) inobtrusive towards modesty and humility. Excellency pertaining to the above qualities can be done through (a) excellence in appointment (b) excellence in a judge (c) excellence in performance (d) excellence in Bench and Bar relationship (e) excellence in relationship with other wings of governance.

Thus, the Service Rules is important for excellence in administration of justice. An imperatives and futuristic approach to Mizoram Judicial Service may enhance the richness of Subordinate Courts in Mizoram.

For the first time, Mizoram Judicial Service Rules, 1986 was framed and repealed the same by the Mizoram Judicial Service Rules, 1989 enacted by the Government of Mizoram under a provision to Article 309 read with Article 233 and 234 of the Constitution of India in consultation with the Gauhati High Court. The strength of Mizoram Judicial Services as per the said Rules of 1989 was as many as sixty five.

Before the existence of Mizoram Public Service Commission, which is established on 1<sup>st</sup> May 1991 under Notification No. A. 11020/1/87 P&AR (CSW) Dated 11<sup>th</sup> May 1989,<sup>16</sup> a Committee constituted by the Governor is assigned to conduct the competitive

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16. R.N. Prasad (1998), *Public Administration in North East India*, New Delhi: Vikas Publishing House Pvt. Ltd. p. 34

examination and do all other necessary exercise as may be required to be done by the Commission for the purpose of direct recruitment to the Service in the Grade – IV<sup>17</sup>. The Committee consists of the followings.<sup>18</sup>

- a) Chief Secretary to the Government of Mizoram – Chairman.
- b) Principal Secretary to the Government – Member.
- c) Special Secretary, DP&AR – Member.
- d) Legal Remembrancer – cum – Secretary to the Government, Law, Judicial and Parliamentary Affairs Department – Member – cum-Secretary.

The post which can be occupied by MJS as envisaged by Schedule ‘C’ of the said Rules of 1989 are indicated below :-

**Table 7.1**

**Sanctioned post of MJS under MJS Rules, 1989**

<b>Sl, No.</b>	<b>Name of Post</b>	<b>Grade</b>
1.	Secretary – Law, Judicial and Parliamentary Affairs	I
2.	Joint Secretary – Law, Judicial and Parliamentary Affairs.	I
3.	Deputy Secretary – Law Judicial and Parliamentary Affairs.	II
4.	Additional District Magistrate (Judicial)	II
5.	Under Secretary – Law, Judicial and Parliamentary Affairs.	III
6.	President and Recorder, District Council Court – Aizawl.	III
7.	Sub-Divisional Judicial Magistrate	III
8.	Judicial Officers – I, District Council Court and Subordinate District Courts.	III
9.	Judicial Officers – II/Magistrate, Additional Subordinate District Council Courts.	IV
10.	Special Officer, Law, Judicial and Parliamentary Affairs.	IV

Source : *Schedule ‘C’ of MJS Rules, 1989.*

17. Rule 12 (1) of *MJS Rules, 1989.*

18. Rule 12 (5) of *MJS Rules, 1989.*

Thereafter, the Mizoram Judicial Service Rules 2002 was framed by the Government of Mizoram in consultation with the Gauhati High Court. Advertently, the Government of Mizoram notified the Mizoram Judicial Service Rules, 2005 under No. A. 12018/1/2003 – DP&AR (CSW), the 29<sup>th</sup> July, 2005.<sup>19</sup> Due to the discrepancy between the Government of Mizoram and the Gauhati High Court, the Mizoram Judicial Service Rules 2006 was later enacted and notified under No. A. 12018/1/2003 – DP&AR (CSW), the 12<sup>th</sup> December, 2006.<sup>20</sup>

**Table 7.2**

**Composition, strength and duty posts of MJS under MJS Rules, 2006**

Sl. No.	Name of Posts	No. of Posts	Remarks
	<b><u>I. DISTRICT JUDGE CADRE</u></b>		
1.	District & Session Judge	2	Deemed to be created vide Cabinet decision issued under Memo No. J.11012/2/97 – POL/Part. Dt. 29.7.97
2.	Additional District & Session Judge	4	
3.	Special Judge (P.C. Act, 1988)	1	
4.	Presiding Officer (MACT Act)	1	
5.	Judge, Special Court, ND & PS Act	1	
6.	Judge, Special Court, EC Act.	1	
7.	Member Secretary, MSLSA	1	
	Total	11	
	<b><u>II. CIVIL JUDGE (SENIOR DIVISION CADRE)</u></b>		
1.	Chief Judicial Magistrate	4	ADM (J) re-designated vide Mizoram Judicial Service Rules, 1989
2.	Principal Civil Judge	1	President DCC(A) may be re-designated.
3.	Senior Civil Judge	4	Equivalent to JO-II i.e. Redesignated as such
	Total	9	

contd...

19. *The Mizoram Gazette*, Extra Ordinary Vol. XXXIV, 1.8.2005. SE 1927, Issue No. 167.

20. *The Mizoram Gazette*, Extra Ordinary, Vol. XXXV, 12.12.2006, S.E. 1928, Issue No. 321

<u>III. CIVIL JUDGE CADRE</u>			
1.	Sub-Divisional Judicial Magistrate.	6	
2.	Judicial Magistrate	4	4 post of JO-II redesignated
3.	Senior Munsiff	2	10 post of Munsiff / Judicial Magistrate
4.	Upper Munsiff	2	First class deemed to have been created
5.	Munsiff	2	May be redesignated as Judicial Magistrate, Senior
6.	Special Judicial Magistrate	4	Munsiff, Upper Munsiff, Munsiff and Special Judicial Magistrate
Total		20	
Grand Total		40	

Source : *Schedule - A of MJS Rules, 2006.*

In view of Rule 30 of the Mizoram Judicial Service Rules, 2006, the Judicial Officers are bound to follow the Code of Conduct as provided in Appendix-A to these Rules.

Such as :-

- 1) Should uphold the integrity and independence of Judiciary.
- 2) Should avoid impropriety.
- 3) Performance of duties impartiality and diligently.
- 4) Extra judicial and quasi-judicial like creating of legal awareness in a suitable form and also to contribute for the improvement of law, legal system and administration of justice etc.

In this regard, criteria on merit may be duly graded according to the performance of judge in compliance with the said Code of Conduct, and vice versa, misconduct and disciplinary action may be drawn or taken at par with the Code of Conduct as provided under Rule 30 of Mizoram Judicial Services Rules, 2006. Moreover, the Government of Mizoram adopted MCS (Departmental Examination) Regulation 1991 for conducting Departmental Examination in respect of MJS officers appointed on Probation under Notification No. A. 31013/1/95 – P&AR (CSW)(L), the 3<sup>rd</sup> January 2002.<sup>21</sup> It is obvious to see that it is purposeless for the MJS Officer as it only contains IPC, Indian Constitution etc which is the field of expertise of MJS Officers. It needs a separate syllabus for Departmental Examination Regulations to impart sound and efficient MJS Officers.

In the Code of Conduct mentioned in the Rules, it is found necessary to include that Judges/ Magistrates should have acumen and should be beyond the misguidance of Advocates. For instance, if Judges / Magistrates merely depend on submissions of both parties, some engaged Advocates inflicted foul play in some cases which erode justice. The role as a Judge / Magistrate is to adjudicate the case and deliver judgement order or decree not only by co-opting of submissions of both parties but also utilising his consciences. Simply, the Judge should be a truth lover and law centric.

### **The Mizoram (Appointment, duties fees etc. of Government Advocates) Rules, 1995 (As amended in 2007) :-**

The Judge alone couldn't run the Court without prosecution branch or the Bar, proceedings in a court room rather lies in the ability of prosecution. Hence, the Government of Mizoram promulgated the Mizoram (Appointment, duties, fees etc of Government Advocates) Rules, 1995.<sup>22</sup> Under these Rules, Government Advocate means the Advocate engaged or

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21. *The Mizoram Gazette* Vol. XXXI, 15.1.2002, SE 1923, Issue No. 6.

22.. Notified under No. A. 45011/1/91 – LJE, the 10<sup>th</sup> Nov. 1995 and published in the *Mizoram Gazette*, Extra Ordinary Vol. XXIV, 15.11.1995. SE 1917, Issue No. 511. And amended under Notification No. A. 45012/20/2000 – LJE the 1<sup>st</sup> Feb. 2007 published in the *Mizoram Gazette*, Extra Ordinary Vol. XXXVI, 2.2.2007. SE 1928, Issue No. 13.

appointed or empanelled as such by the Government to enter appearance in any Court of law on its behalf and it shall include the Additional Advocate General, Government Advocate-cum-Public Prosecutor in the High Court, Asst. Government Advocate cum Public Prosecutor in the High Court, Government Advocate in the District Court and Public Prosecutor including Special Public Prosecutor in the District Court.

In connection with these Rules, there are allegations based on reasonable belief of an unholy nexus between the Public Prosecutor and the defence counsels, which defeats the whole purpose of administration of justice. In the meantime, under rule 10 of the said Rules of 1995, in the event, the performance of any Government Advocate appointed under these Rules is found to be unsatisfactory, the Legal remembrancer/Secretary, Law or his representative or the Advocate General shall have the right to take over the brief from such Government Advocate without assigning any reason whatsoever. Furthermore, under Rule 11 of the said Rules of 1995, the Advocate on panel to be appointed to conduct cases on behalf of the Government in the High Court and various Subordinate Courts under these Rules of 1995, the State Government may remove an Advocate from such panel at any time without assigning any reason. However, the Code of Conduct for the same became ambiguous and firm belief that some Advocates in panel practiced misconduct, it is ascertained minimizing justice in a law court, attention is therefore necessary to expand the said Rules for inclusion of unambiguous and un-vague Code of ethics.

Rate of fees in respect of Advocate General for the Government of Mizoram was notified under No. A. 45012/9/98 – LJE/329, the 6<sup>th</sup> Sept. 2000.<sup>23</sup> The Legal fees for Advocate General is fixed per diem and Settlement of Affidavit etc as per case. However, Public Prosecutor/Government Advocate, Assistant Public Prosecutor/ Assistant Government Advocate in the High Court and its Subordinate Courts rates of fees has been notified

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23. *The Mizoram Gazette*, Extra Ordinary Vol. XXIX, 12.9.2000. SE 1922, Issue No. 258.



under No. A. 45011/1/91- LJE/333, the 6<sup>th</sup> Sept. 2000.<sup>24</sup> Wherein, It has been fixed a fee per day by classifying effective hearing and non effective hearing, the rate of fees for Additional Public Prosecutors in the District Courts/Special Courts was notified under No. A. 45011/1/91 – LJE /Pt/6 – the 3<sup>rd</sup> November, 2005<sup>25</sup> and fixed the rate of fees per day. Appearance fee for the Additional Public Prosecutor in the High Court and the Consumer Disputes Redressal Commission has again been fixed as per day separately for effective and non-effective hearing and notified the same under No. A. 45011/1/91 – LJE/Pt/ Dt. 28<sup>th</sup> March, 2006.<sup>26</sup>

In the matter of appearance fees as discussed above, it is found suitable and more applicable to fix the appearance fee per case with a lesser amount as compared to per day. Otherwise, the prosecution couldn't be able to prosecute so many cases in a day successfully as same amount should be received in a day whether effectively or non-effectively prosecuting one case or a number of cases in a day. As experienced, it may lead to violation of Government notification by misusing the rules, if not, delay and pending of cases particularly in the lower Courts. To epitomise, more detailed rules and regulations for the Government Advocates, Public Prosecutors is quite felt which may be applicable in day to day prosecution.

The state Government is also advised to closely look the Code of Criminal Procedure (Amendment) Act of 2005 in respect of Directorate of Prosecution with viewing the criminology of the society.

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24. *The Mizoram Gazette*, Extra Ordinary Vol. XXIX, 12.9.2000. SE 1922, Issue No. 255.

25. *The Mizoram Gazette*, Extra Ordinary Vol. XXXIV, 14.11.2005. SE 1927, Issue No. 311.

26. *The Mizoram Gazette*, Extra Ordinary Vol. XXXV, 5.4.2006. SE 1928, Issue No. 69.

In other words, ties between the Bench and the Bar should not to be neglected . It may be apt to quote the dictum of Justice P.K. Goswami, Ex-Chief Justice of Gauhati High Court & Judge (Retd.) of Supreme Court of India, he said that “Good lawyers make good Judges, Good Judges make good judgments. The Court are decorated by good Judges and good lawyers, but not the other alone. There is no beauty of lotus without water and there is no dignity of water without lotus. With the water and lotus together, the entire lake gets decorated. Lawyers and Judges together decorate Courts, thus, the Bar and the Bench are complementary to each other”.

# **CHAPTER - 8**

## **Conclusion**

### **Conclusion :**

- (i) Concluding observations**
- (ii) Suggestions**

### **I**

The political efficacy and administrative sanctity appears degraded in the present era and the deprived sections in a society seek redressal in the arena of judiciary as a manoeuvre. As triggered in the case of S.P. Gupta Vs Union of India as reported in AIR 1982 SC 149, any member of the public or social action group or interest group or a concerned citizen acting bonafide can file an application in the Supreme Court or High Courts seeking remedy where a legal wrong or a legal injury has been caused to a person or class of persons, who by reason of their poverty, disability or socially and economically disadvantaged position cannot approach the Courts for relief. The Supreme Court has observed that Public Interest Litigation was intended to mean nothing more than what the words themselves said 'litigation in the interest of the public' in the case of Balco Employ-

ees Union (Regd.) Vs. Union of India reported in (2002) 2 SCC 333, 376. The Supreme Court therefore issued Notification on 1.12.1988 for Guidelines to be followed for entertaining letters/petitions received in the Court as public interest litigation. The marginal sections in Mizo society also expected the shadow of PIL in the Subordinate Courts those who do not have any other remedy except to approach the Court. It is therefore an arduous task to renovate the administration of justice in Mizoram.

In the preceding chapters, it is found that the state of Mizoram and its people lately awakened for proper administration of justice in conformity with law of the land. Till abolition of chiefship in 1954, the chief in their respective villages used to administer justice according to Mizo Customary Laws at a grass root level. The said institution was replaced by Village Courts in line with District Council Court at the apex. The territory after elevated into Union Territory and full fledged state hood, continuity of District Council Courts and its subordinates established under Sixth Schedule to the Constitutions of India became misnomer and inappropriate.

The enactment of the Administration of Justice Rules, 1937 remains in force till state hood status is also partial, arbitrary and bias. The Magistrates exercising both executive and judicial powers is against rule of law but rather leads to obtrusion, unfairness and in efficiency.

The existing three Autonomous District Council Courts also felt a radical change with more competent Judicial Officers to deal justice delivery system, as the matter falls under the authority of Autonomous District Council under Sixth Schedule to the Constitution of India, impartial and efficient courts can be established by themselves with the enactment of new Acts and Rules.

From the prevailing system, Special Courts under ND & PS Act, Prevention of Corruption Act, Juvenile Justice Board, Essential Commodities Act, MACT etc. needs decentralisation by setting up separate Courts and Tribunals in other administrative districts where the people including the villagers can get simpler, lesser expensive and speedier justice.

In the context of fast changing socio-economic environment, some judicial Acts, regulations, usages, etc. are required to tackle the dynamic problems. A preventive as well as reformative approach needs to be adopted to face the social problems and other related hazards. A Law Commission can be constituted in Mizoram in order to overcome the drawbacks of judiciary in the state and to deliver effective and sound judgement. The establishment of Law Commission to minimise chaos in the judicial system and to update the prevailing laws in the state would no doubt bring about positive change on the sphere of administration of justice.

## II

Judiciary doesn't only mean law, but it is also meant for the needy. Sadly today the weaker sections of society have been deprived of justice for long due to poverty, ignorance and illiteracy. The rights and benefits conferred by the Constitution have no meaning for them due to their socially and economically disadvantaged position which is also witnessed by the Supreme Court in the case of Bihar Legal Support Society Vs. Chief Justice of India reported in (1986) 4 SCC 767. The Judiciary has to evolve mechanisms to ensure that 'equal justice' can be ensured. The Courts in Mizoram also felt proper administration pertaining to instructions, guidance and vigilance to meet the above stated bleak situation, but it cannot be rebuilt at overnight.

Although Mizoram is the second highest literate state in India, most of the people particularly in the rural areas remain illiterate in law. It is also opined that due to ignorance of law, some community based organizations like JAC, YMA, etc. committed overstepping to inflict punishment of the defaulters into their own hands or custody which is barbaric, uncivilised and hoary past ethos. They do not understand the court procedures and even powers of a court which leads to imposed unusual and deterrent action according to their understandings. National Legal Literacy Mission should be effective and should have wide coverage. Quality approach Law Institution like Law

College and introduction of Post Graduate course in the Mizoram University is further necessary to nourish the society to produce more law abiding citizens.

Another ailment is cumbersome judicial procedures which is difficult to comprehend for the public. These hazardous procedures defer people from approaching Courts. The litigation also often involves huge expenses in lawyer's fees and other incidental expenses such as physically reaching the Courts etc. Simpler mode of adjudication, less expenses mode of proceedings and easy access to justice is an uphill task but need of the hour to realise the goal set forth by the Constitution of India

The relationship between the Bar and the Bench is very important towards justice. The advocates enrolled under the registry of Mizoram Bar Association as on 31<sup>st</sup> March, 2007 is 91 (ninety one). It is found that some advocates who practised in the Subordinate Courts sometimes inflicted anti-ethical practices. Thus, The Mizoram Bar Association should also be prompted to draw necessary proceedings under the Advocates Act, 1961.

The subordinate judiciary is the most significant limb of justice delivery system as it is the judiciary at the bottom level. Members of the subordinate judiciary come in close contact with the people and the society. Being the trial courts, they are closer to the litigants. Thus, the State Government shall also pay persistent effort for the infrastructure development of Subordinate Courts. Probably, judiciary is sacrosanct, the recommendation of the Committee on India Vision 2020 chaired by S.P.Gupta, Member of Planning Commission, which is as many as more than 1000 pages excludes judiciary.<sup>1</sup> Even in the State of Mizoram, it is required that Law and Judicial, who administered justice is the second lowest department allocation of Plan Fund during 2004-2005 and 2005-2006 viz., -Rs 80.00 lakhs (0.12% to total) and Rs 62.00 lakhs (0.09% to total)

respectively.<sup>2</sup> When the State Government gear up towards separate Judicial Service with other new infrastructures like Court Buildings, manpower recruitment etc. In India, where the burning issue is human rights protection, the deprived sections depend on the efficacy of judiciary. Obvious to see that the State Government should be aware of the importance of justice delivery system which covers every persons including the haves or have nots.

In respect of the number of judges Viz., at least 50(fifty) Judges for ten lakhs people should be the guiding factor for the decision makers which is also spelt out by the Hon'ble Apex Court in the case of All India Judges Association & Ors. Vs. Union of India & Ors. as reported in (2002) 4SCC 247. As on 31<sup>st</sup> March, 2007, the number of Judicial Services in Mizoram falls only 22 numbers to meet the projected population of Mizoram for 2007 is 10,38,912.<sup>3</sup> On 9<sup>th</sup> May, 2007, the Hon'ble Supreme Court in the case of All India Judges Association & Ors. Vs Union of India & Ors. in Writ Petition No.1022 of 1989 urged the High Court to take urgent steps to fill up the remaining vacancies of the Judicial Officers at the earliest at least within one year in accordance with Mizoram Judicial Service Rules, 2006.

The quality of justice depends upon the quality of personnel participating in the administration of justice. Hence, the Judicial Officers should equip themselves with well and sound training system from time to time not only in North Eastern Judicial Officers' Training Institute (NEJOTI), Guwahati, but also in National Judicial Academy at Bhopal which started functioning w.e.f. October, 2003.<sup>4</sup> There is also the increased role of expert witnesses, and hence is the need of judges to be scientifically and technologically aware.

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1. Delivered by Hon'ble Mr. Justice R.C. Lahoti on Law Day, Nov 26<sup>th</sup>, 2004 reported in pp. 1-20 (2005) 2SCC
  2. *Statistical Handbook (2006)*, Mizoram, Aizawl: Directorate of Economics & Statistics, Govt of Mizoram, p. 85
  3. *Ibid.*p.3
  4. *op.cit*, 2004

In the ciber era of 21st century, during 2004, the Registry of the Supreme Court and National Informatics Centre (NIC) have in close co-ordination developed the programmes of (i) Digitisation of old records (ii) Supreme Courts digital display boards on internet (iii) Interactive Voice Response System (IVRS) (iv) Automatic deletion or shifting of excess matters and proposing next listing date (v) Cause list/daily orders on web etc.<sup>5</sup> It is also a sine quo non to utilise the modern Information Technology in subordinate courts. Under e-court project, laptop was also supplied to all Judicial Officers in Mizoram on 17<sup>th</sup> September, 2007. It is further suggested to follow the system adopted by the Supreme Court even in Mizoram.

Model Calendar for Processing Direct Recruitment to fill up vacancies of the judicial post framed by the Hon'ble Supreme Court in CA No. 1867 of 2006<sup>6</sup> and under Order Dt. 3.4.2006, which is also put in Office Memorandum by the Govt of Mizoram under No. C. 18018/3/2006- P&AR (CSW), Aizawl, the 18<sup>th</sup> Sept, 2006 shall also be adopted in the recruitment process for impartial and quick recruitment. It should be completed from 1st February to 15<sup>th</sup> August as per the said calendar.

To meet the newly impleaded right to speedy trial<sup>7</sup> and the right against custodial violence<sup>8</sup> under Art. 21 of the Constitution of India, it is strongly recommended to implement

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5. *Ibid*, 2004

6. Malik Mazhar Sultan & Ors Vs UP. Public Service Commission & Ors. CA No. 1867 of 2006

7. Kadra Pahadioja Vs. State of Bihar, AIR, 198 SC 1167 (para 2)

8. Sheela Barse Vs. State of Maharastra (1983) 2 SCC 96.



the recommendations of the 'Core Group' for 'Forensic Science Laboratory' set up on 9<sup>th</sup> June, 1998 which is also accepted by the National Human Rights Commission and the Govt of India and forwarded to the States and Union Territories by the Ministry of Home Affairs (PM Division) under No. 2501/46/2001/GPAII/PM,II. Dated 8<sup>th</sup> Dec, 2003. The gist of the recommendations of the said core group was (i) establishment of State Forensic Science Directorate under Department of Home (ii) establishment of State Forensic Science Development Board (iii) District Mobile Forensic Science Unit at every Police Range Headquarters etc.

In pursuance to the order passed by the Hon'ble Supreme Court of India in the case of Dilip K Basu Vs State of West Bengal as reported in AIR 1997 SC 3017 for setting up of at least Human Rights Committee where no State Human Rights Commission had established in the state as per the Protection of Human Rights Act, 1993. The Gauhati High Court set up Human Rights Committee under the Chairmanship of the Registrar, Gauhati High Court, Aizawl Permanent Bench,<sup>9</sup> for the single purpose of custodial violence and crimes. The states like in Mizoram where the people as well as the decision makers are ignorant about the law of the land, it is suggested to set up State Human Rights Commission under the provision of the Protection of Human Rights Act, 1993 (No 10 of 1994). Otherwise it would lead to failure to ensure the guidelines issued by National Human Rights Commission which were human rights friendly, such as-

- (i) Guidelines on encounter deaths 29<sup>th</sup> March, 1997 and Revised Guidelines December 2, 2003.
- (ii) Guidelines on Polygraph (Lie detector) tests, January 11, 2000
- (iii) Guidelines on Police-Public Relations December 22, 1999
- (iv) Guidelines on Arrest Nov 22, 1999 etc.

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9. Under Memo No. HC.VII, 126/2001/, Dated 7<sup>th</sup> Feb, 2002.

The Constitutional directives under Article 39 'A' and mandate as a Fundamental Rights under Art 21 of the Constitution<sup>10</sup> - legal aid or the right to legal aid which operated under the Legal Services Authorities Act, 1987 doesn't realise for the seekers who were entitled under chapter IV of the Legal Services Authorities Act, 1987 in the implementation process. Special allocations to judiciary should be put in the annual state budget. Without which judiciary would fail in the implementation of the fundamental rights as enshrined in Part -III of the Constitution of India.

Separation of Powers is one of the paramount elements of Good Governance. It is also known that Indian judiciary is burdensome. Thus, it is proposed to establish the State Administrative Tribunal as envisaged under Art 323 'A' of the Constitution of India. It is also not clear whether the State of Mizoram is under the jurisdiction of the Assam Administrative Tribunals Act, 1977 and Regulation of 1977. The Administrative Tribunal is expected more expertise in the field of administration, and to adjudicate service matters even for prompt and speedy adjudication.

In respect of corruption and embezzlement in judiciary and whereas the judiciary of Mizoram moving towards under the authority of the Gauhati High Court, the Vigilance Cells in a High Court have to be more activated: Action against deviant and erring judges shouldn't be delayed. The Chief Justice of Gauhati High Court shall also personally monitor the working of Vigilance Cells or Registrar (Vigilance). In this sphere, the Right to Information Act, 2005 shall also be fruitfully implemented in the Court system. Transparency in the judiciary is also highly solicited to mitigate and eradicate malpractices for upholding the sanctity of judiciary.

In the light of sub-clause (iii) of clause 12 of the Memorandum of Settlement reached between the Mizo National Front (MNF) and the Govt of India signed on 30<sup>th</sup> June, 1986. It is expected of Mizoram state to set up a separate High Court. Therefore, it is

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10. Madhav Hayawadanrao Hoskot Vs. State of Maharashtra, (1978) 3 SCC 544

further suggested to set up a separate High Court for the smooth and healthy functions of Subordinate Courts in the way of administration and efficiency in judicial proceedings. Nagaland, where the Gauhati High Court (Establishment of a Permanent Bench at Kohima) Order was also promulgated in 1990<sup>11</sup> set an example on 7<sup>th</sup> April, 2007. Hon'ble Justice K.G. Balakrishnan laid a foundation stone of the separate High Court for the State of Nagaland having a five Judges Bench.<sup>12</sup>

The Judicial Officer/Judges sitting in a Courtroom, who is not bound to visit all the place of occurrences in a civil and criminal cases is not only responsible reforming justice delivery system. The police personnel who are an integral part of successful prosecution is also expected to uphold the dignity of judiciary. In this regard, fruitful implementation of the new Mizoram Police Manual 2005 and the Mizoram Police Special Branch Manual 2005<sup>13</sup> and the various directions issued by the Hon'ble Supreme Court in respect of policing is one of the remedies upon the loophole of judiciary. Besides that, failure to comply Section 167 of the Code of Criminal Procedure, 1973 in the matter of completion of crime investigation in time leads to pendency of cases in judiciary which is now usually practised in the present investigation process. In short, the police personnel are urged to adhere to and use as a guide, "Code of Conduct for the Police in India" issued by the Ministry of Home Affairs and communicated to Chief Secretaries of all States/Union Territories and Heads of Central Police Organisations on July 4, 1985.

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11. Notification No. G.S.R. 73(E) dated New Delhi, the 7<sup>th</sup> Feb, 1990 (Vide the *Gazette of India*, Part II, Extra Ordinary, Section 3(1) dated 7<sup>th</sup> Feb., 1990 at pages 2 & 3)
  12. *The Telegraph*, 23<sup>rd</sup>. Feb., 2007
  13. Notification No.A.60011/2/88-HMP, the 1<sup>st</sup> May,2006 published in the *Mizoram Gazette* Extra Ordinary, Vol. XXXV, 1.5.2006, SE. 1928, Issue No. 109.

The opinion of experts is also highly appreciated in the justice delivery system and also having evidentiary value under the Indian Evidence Act, 1872. The contributions of recognised medical practitioners is especially compulsory in some cases. For instances, the Mizoram Liquor Total Prohibition Act, 1995 which is the hall mark social legislation in the State of Mizoram specifically need the opinion of medical experts to proof consumption of liquor. Moreover, even in heinous offences particularly in rape, grievous hurt, murder, etc., the judiciary is more depends on the findings of medical practitioners. It is therefore indispensable to abide by the medical jurisprudence like Code of Medical Ethics; Medical Council of India, the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.<sup>14</sup>

It is the prime duty of the state judiciary to protect human rights. It may not be a wrong notion to say that, the Constitution of India is aiming to protect human rights. It also ensures the essence of human rights in its Preamble, the Preamble of the Indian Constitution guarantees justice, liberty, equality and fraternity to all citizens assuring the dignity of the individuals and the unity and integrity of the Nation. Articles on Fundamental Rights and the Directive Principles of State Policy also apprised the value of human rights. It may not be exaggerated to express that the constitutional framers endue human rights as the basic of the Constitution of India. The basic structure of the Constitution should not be changed.<sup>15</sup> Therefore, the interpretation of laws and proceeding in the judiciary shall be guided by the logic of Indian Constitution to protect human rights and shall also utilise the state judiciary for the vulnerable sections.

Actually, delay in cases is often judge made, some Magistrates or judges are found not conscientious. Even the people also never claim their rights in the sense of justice

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14. Notification No. MCI 211(2) 2001 - Regn., dated 11<sup>th</sup>. March, 2002, published in the *Gazette of India*, Part III, Sec. 4, dated 6<sup>th</sup> April, 2002

15. Keshvanand Bharti Vs. State of Kerela AIR 1973 SC 1461.

delivery system. Lack of punctuality, laxity, non-deliverance of quick and timely judgments after conclusion of arguments, grant of adjournment on frivolous ground have ravaged judiciary. The motive of all these is lack of separation of judiciary in Mizoram. The Civil Service personnel posted in a district administration have also invested the power of Judicial Magistrate and Session Judge. Due to less expertise in judicial matters and more concentration in other executive dealings like disaster management and rehabilitation, election duty and process, receiving VIP's, land revenue administration, celebration and preparation of important days, public faith in the judiciary has decreased. The leaders of some NGO's like YMA attend sometimes three or more times in a court in one case to give evidence whereas the Magistrate/Judges adjourned the court without reasonable excuse. It is also one of the causes of traditional mob-rule in a society which cannot be eradicated till date since the public especially the leaders of NGO's usually disapproved speedy proceedings. The Judicial Officers themselves also challenged the strategy on speedy trials. It has been estimated that in the year 2005, the pendency of civil and criminal cases in the High Courts in India was about 3,521,283 and that in the Subordinates Courts was over 25 million.<sup>16</sup> This invariably leads to inordinate delays in obtaining justice. This deters people from approaching the Courts for the enforcement of their rights. In view of these impediments, effective strategy is needs to be welcome.

Reiterated that since administration of criminal justice system is mostly based in policing and when policing in India including Mizoram has increasingly become dissonant with the aspirations, needs and reality of modern democratic India and its citizens, it is strongly recommended to implement in full the seven directions of the Hon'ble Supreme Court in its historic judgement delivered on 22<sup>nd</sup> Sept, 2006 in Prakash Singh & Ors. WP(C) No. 310 of 1996. It's directions are as follows:-

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16. S.K.Kaul, Judge of Delhi High Court (2006), *Access to Justice*, the Official Journal of NALSA Vol. VII, Issue 4. October, 2006, pp. 86-87

1. To constitute a State Security Commission (i) to ensure that the State Government doesn't exercise unwarranted influence or pressure on the police (ii) to lay down broad policy guidelines and (iii) to evaluate the performance of the state police.
2. To ensure that the Director General of Police (DGP) is appointed through a merit based and transparent process and enjoys a minimum tenure of two years.
3. To ensure that other police officers on operational duties (including Superintendent of Police (SP), in-charge of a District and Station House, Officers in-charge of a Police Station) also have a minimum tenure of two years.
4. To set up a Police Establishment Board, which will decide all transfers, postings, promotions and other services related matters of Police Officers of and below the rank of Deputy Superintendent of Police (DSP) and make recommendations on postings and transfer of Officers above the rank of DSP.
5. To set up a National Security Commission at the Union level to prepare a panel for selection and placement of Chief's of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years.
6. To set up independent Police Complaints Authorities at the State and District levels to look into Public Complaints against Police Officers in case of serious misconduct, including custodial death, grievous hurt or rape in Police custody ;  
and
7. To separate investigation and law and order functions of the police.

Pertaining to the above, the 'Police Act Drafting Committee' (PADC) headed by Soli Sorabjee drafted a new model Police Act, 2006 to obsolete the archaic Police Act of 1861. The said Model Police Act, 2006 also complements the Supreme Court judgement in that it provides the detailed nuts and bolts through which the directions of the Supreme

Court can be most effectively enforced. As a result, the Government of Mizoram set up the State Security Commission on 9<sup>th</sup> Nov, 2006 under Notification No. C. 18018/12/90-HMP (SC) and increased five other members under Notification No. C 18018/12/90-HMP (SC), the 16th August 2007.<sup>17</sup> Also complied the above directions pointed in number two and three as above on 9<sup>th</sup> Nov, 2006 under Notification No. C. 18018/12/90-HMP(SC).<sup>18</sup> Furthermore, Mizoram Police Establishment Board also constituted on 9<sup>th</sup> November, 2006 under Notification No.C 18018/12/90-HMP(SC).<sup>19</sup> What is further required is to set up Police Complaints Authorities and to separate Investigation and law and order Police for speedier Justice and more efficiency in criminal justice system in the State of Mizoram. However, it is proposed to codify the new Mizoram Police Manual-2005 for the inclusion of the afore discussed landmark Supreme Court directives.

The present justice delivery system in Mizoram is ambiguous and awkward, full-fledged separation of judiciary from executive under the spirit of the Constitution of India is a must, therefore the Subordinate Courts shall be on line with the Gauhati High Court with a clear cut demarcation of territorial as well as pecuniary jurisdictions, which shall be more suited to the litigants. In the existing system, for instance, a Civil Court is also in two lines, one is Deputy Commissioner and his Assistants in the case in between tribal to non-tribal cases, whereas, Courts under Administration of Justice Rules, 1953 is also a Civil Court in the case arising between tribal to tribal cases with an endless pecuniary jurisdiction even applicable to the lowest Village Courts also. Big cases which fall under the jurisdiction of the Village Courts lead problems in the grass root judiciary viz., Village Courts. It needs to introduce in practical the Mizoram Civil Courts Act, 2005 under the said Act, of 2005. Various Civil Courts have a pecuniary as well as territorial jurisdiction which is more reasonable in view of the capacity of Courts at various levels.

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17. *The Mizoram Gazette, Extra Ordinary*, Vol-XXXV 10.11.2006, SE. 1928, Issue No. 288 & Vol. XXXVI. 3.9.2007, SE 1929, Issue No. 228 respectively.

18. *Ibid*, Vol. XXXV, 10.11.2006, SE 1928, Issue No. 290

19. *Ibid*, Vol- XXXV, 10.11.2006, SE 1928, Issue No. 289

Due to the lethargy of action taken for separation of Judiciary and for the implementation of the Mizoram Civil Courts Act, 2005, the Hon'ble Gauhati High Court in the case of Smt.Lalziki Vs. State of Mizoram & Ors. on 19<sup>th</sup> July, 2007 adjudicated that by virtue of section 10 of the Mizoram Civil Courts Act, 2005, as a transitional period, there exist appropriate forums for trial of Civil disputes, like Courts of District Judge {Addl. District Magistrate ( J )}, Court of Senior Civil Judge ( District Council Court ) and Court of Junior Civil Judge ( Sub- District Council Court and Addl. Sub- District Council Court ) at Aizawl, Kolasib, Champhai and Lunglei with their existing local and pecuniary limits, till the High Court otherwise decides. Accordingly, the Senior Addl. District Magistrate (J) shall act as the District Judge and Junior as Addl. District Judge. The Senior of the other two Judicial Officers, who are members of the District Council Court, shall act as Senior Civil Judge and Addl. Senior Civil Judge. Similarly, the Judicial Officers of the Sub- District Council Court and Addl. Sub-District Council Court shall act as Junior Civil Judge and Addl. Junior Civil Judge. The Government of Mizoram on 11<sup>th</sup> Sept. 2007 under order No.C.18016/26/07-LJC also evinced the above direction and in connection with Gauhati High Court order dt.10.8.2007 in Review Petition No.04 of 2007 for the transitional arrangement. The said order further interpreted that Courts established under the Lushai Hills Autonomous District ( Administration of Justice ) Rules, 1953 is not repealed by the Mizoram Civil Courts Act, 2005 and shall remain functional as existence.

Nationwide, the Supreme Court in India has become basically the social legislator of the country. If they are busy running the government, they can not also be resolving cases unlike in the United States. In the United States, the Supreme Court sits only as an appellate body, they have discretion over the kinds of cases they take, and they are not running the government. Therefore, Judicial Activism prevailed in India needs re-looking. In respect of pendency of cases, the United State's Congress passed a statute namely the Civil Justice Reform Act of 1990, which ordered the Courts, in a sense, to take a more active role, and required reporting from the Courts about how long cases were taking to get



through and giving the courts a mandate for the trial Judges to get involved and to set the Schedules and to get more active.<sup>20</sup> Justice Reforms Act as stated earlier is also a remedy to marginalise pendency of cases in judiciary to meet the rate of pendency of cases in Supreme Court as on 31.03.2006 falls 35, 201.<sup>21</sup>

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20. An interview with Judge Fern M.Smith, Director of the Federal Judicial Centre in Washington DC, *SPAN*, Jan/Feb. 2001, Vol.-XLII, No.1 p.17

21. *Court News*, Jan. - March, 2006. Vol.1 Issue No. 1

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## **GLOSSARY**

Chhuping	- A narrow passage of women's vagina and incapable to use sexual intercourse with a man.
Fathang	- A paddy tax payable to the chief in kind.
Hnamchawm	- The common people.
Hnatlang	- It means a kind of contributory service of a compulsory nature to a particular work or works for the common welfare of the villagers which the residents of the village are bound to render and refusal to which may ordinarily lead to punishment or fine.
Kawngka sula mak	- Divorce by a husband and simultaneous marriage to another women.
Khawchhiar	- A village Registrar.
Kutkemnei	- A person who habituated with theft.
Lawithlem	- Co-habitation by personation of husband.
Lal sutpui dawm	- Physical and mental submission of murderer to the custody/aegis of chief's in order to avoid revenge.
Ma or Mak	- Divorce by husband without the consent of a wife by payment of marriage price in full.
Nupui fanau tlanbosan	- Abandonment of family committed by a husband.
Puithiam	- A priest.
Peksachang	- Divorce by a husband and also agreed by a wife not to demand the marriage price remaining due and not ought to return the amount already paid.
Ramhual	- An expert for jhum land distribution with having pre-emptive rights.
Sachhiah	- A meat tax payable to the chief in kind.
Salam	- A fine equivalent to Rs 5/-, payable for remuneration in respect of trial of suits and cases.

Sepui	- A full grown mythun equivalent to Rs. 40/-
Sumchhuah	- Divorce by wife by returning marriage price.
Sumlaitan	- Divorce by mutual agreement with equally sharing of marriage price.
Tlangau	- A public announcer who is bound to disseminate information to the villagers.
Thirdeng	- A blacksmith.
Tlaisial	- A mythun equivalent to Rs. 20/-
Thlim	- Rape of a sleeping women during the absence of her husband.
Thival	- A round bead (Cornelian)
Thifen	- A Kind of bead.
Upa	- A village elder/Council of elder(s).
Uire	- Adultery.
Zawlbuk	- A dormitory of youngmen, constructed at the central place in a Village.
Zen	- An attempt to sexual intercourse with a girl.
Zangzaw	- Impotency

## APPENDICES

### Appendix - 1

#### The Mizoram Judicial Service Rules, 2006

#### NOTIFICATION

**No. A.12018/1/2003-DP&AR (CSW), the 12<sup>th</sup> December, 2006.** In exercise of the power conferred by the proviso to Article 234 of the Constitution of India and the supersession of all previous notifications on the subject-matter, the Governor of Mizoram after consultation with the Mizoram Public Service Commission and with the Gauhati High Court is pleased to make the following rules, namely :-

**1. Short title and commencement :**

1. These rules may be called ‘The Mizoram Judicial Service Rules, 2006.
2. They shall come into force with effect from the date of publication in the Mizoram Gazette.

**2. Application :** These rules shall apply to all members of the Mizoram Judicial Service.

**3. Definition :** In these rules, unless there is anything repugnant to the subject or context :

- a) “Cadre” means the Cadre of the Service;
- b) “Chief Justice” means the Chief Justice of the Gauhati High Court;
- c) “Commission” means the Mizoram Public Service Commission;
- d) “Constitution” means the Constitution of India;
- e) “Governor” means the Governor of Mizoram;
- f) “Government” means the Government of Mizoram;
- g) “High Court” means the Gauhati High Court;



- h) “Member of the Service” means the officers appointed or deemed to have been appointed under the provisions of these rules;
- i) “Service” means the Mizoram Judicial Service;
- j) “Year” means the Calendar Year.

**4. Constitution of the Service :** There shall be constituted a State Service to be known as the ‘Mizoram Judicial Service’ and any member of the service shall be under the exclusive control of the Gauhati High Court except during the period, such a member of the Service is holding any post other than the Cadre post on deputation.

**5. Cadre :**

- 1. The strength of the Service and cadre shall be determined by the Governor from time to time in consultation with the High Court.
- 2. On the commencement of these rules, the strength of the service shall be as given in Schedule – A appended to these rules.
- 3. The Governor may, by Notification, leave unfilled or hold in abeyance any post of the Cadre or any increase the strength of the Cadre by creation of additional post as may be required and recommended by the High Court from time to time.

**6. Initial Recruitment :**

- 1. The persons who at the time of commencement of these rules are the existing members of the service or are holding any post as may be specified / notified by the State Government in consultation with the High Court shall continue as such under the administrative control of the High Court.
- 2. The persons whose services are placed under the administrative control of the High Court shall be considered for initial recruitment by way of absorption in the post mentioned in Schedule – A. Those who are found suitable by the High Court shall be appointed by the Governor as initial recruits by way of absorption. Such persons who are not found suitable for initial recruitment/absorption will stand reverted to the State Government.

3. The High Court may place the services of members of the service at the disposal of State Government on deputation, as may be requisitioned by the State Government from time to time.
  4. After initial recruitment by way of absorption, vacancies in the posts mentioned in Schedule – A shall be filled up in accordance with these rules.
- 7. Gradation :** The gradation of the service in the Cadres for the purpose of their career advancement shall be as follows :-
- a) District Judge : The Cadre of the District Judge shall consist of the following grades :-
    - i) District Judge
    - ii) Selection Grade
    - iii) Supertime Grade
  - b) Civil Judge (Senior Division).
  - c) Civil Judge.
- 8. Pay and Allowances :**
- 1) The time scale of pay of the Mizoram Judicial Service shall be as under :-
    - i) District Judge Cadre :
      - a) District Judge, Supertime Grade : Rs. 22850-500-24850/-  
(Non-functional)
      - b) District Judge, Selection Grade : Rs. 18750-400-19150-450-21850-500-22850/-  
(Non-functional)
      - c) District Judge : Rs. 16750-400-19150-450-20500/-
    - ii) Civil Judge (Senior Division) Cadre.
      - a) Civil Judge (Sr. Division) : Rs. 16750-400-19150-450-20500/- (Non-functional)

- b) Civil Judge (Sr. Division) : Rs. 14200-350-15950-  
(First Stage ACP) 400-18350/- (Non-functional)
- c) Civil Judge (Sr. Division) : Rs. 12850-300-1350-350-  
15950-400-17550/-
- iii) Civil Judge Cadre :
- a) Civil Judge : Rs. 12850-300-350-  
(Second Stage ACP) 15950-400-17550/- (Non-functional)
- b) Civil Judge : Rs. 10750-300-  
(First Stage ACP) 13150-350-14900/- (Non-functional)
- c) Civil Judge : Rs. 9000-250-10750-300-  
13150-350-14550/-

2) Allowances and other service benefit shall be as per entitlement notified by the Government in the Official Gazette from time to time.

**9. Method of Recruitment, Qualification and Age limit :** In respect of each category of the Cadre specified in column (2) of the Table below, the method of recruitment and minimum qualification, age limit etc. are as shown in the corresponding entries in columns (3) and (4) thereof.

Provided that the High Court shall have the power to relax the qualifying service of Judicial Officer for the purpose of promotion in case the same is considered necessary in the interest of service.

Sl. No.	Cadre	Method of Recruitment	Qualification, age limit etc.
1.	District Judge	<p>(i) Not exceeding 25% of the post in the cadre may be filled by direct recruitment on the basis of the aggregate marks/grade secured in a competitive examination conducted by the High Court as specified in Schedule-B of these rules.</p> <p>(ii) 50% of the post in the cadre shall be filled by promotion from the cadre of Civil Judge (Senior Division) of the service on the basis of merit-cum-seniority in consultation with the High Court following the criteria in Schedule-E.</p> <p>(iii) Remaining 25% of the post in the Cadre shall be filled up by promotion strictly on the basis of merit through limited departmental competitive examination as conducted by the High Court as specified in Schedule – B of these rules.</p>	<p>By direct recruitment</p> <ol style="list-style-type: none"> <li>1. Must be holder of degree in Law of a recognized University.</li> <li>2. Must be practicing as an Advocate in court of Civil and Criminal Jurisdiction on the last date fixed for receipt of applications and must have so practiced for a period not less than seven years as on such date.</li> <li>3. Must have attained the age of 35 (thirty five) years and must not have attained the age of 48 (forty eight) years in the case of candidates belonging to Schedule Tribe and forty five years in the case of others, as on the last date fixed for receipt of applications.</li> <li>4. Must possess knowledge of Mizo Language at least Middle School standard.</li> </ol> <ol style="list-style-type: none"> <li>1. Must have been in the cadre of Civil Judge (Senior Division) for a period of not less than 5 years regular service in the Cadre.</li> </ol> <ol style="list-style-type: none"> <li>1. Must have been in the cadre of Civil Judge (Senior Division) for a period of not less than 5 years regular service in the Cadre.</li> </ol>

2.	Civil Judge (Sr. Division)	By promotion from the cadre of Civil Judge of the service on the basis of merit-cum-seniority by the High Court following the criteria in Schedule – E.	By Promotion : 1. Must have been in the cadre of Civil Judge for a period not less than 7 years regular service.
3.	Civil Judge	By direct recruitment on the basis of aggregate marks obtained in a competitive examination conducted by the Commission as indicated in Schedule – B of these rules.	By direct recruitment : 1. Must be holder of degree in Law of a recognized University.  2. Must not have attained the age of 35 (thirty five) years.  3. Must not have completed 40 years of age in the case of candidates belonging of Schedules Castes or Scheduled Tribes and 35 years of age in the case of others as on the last date fixed for receipt of application.  4. Must possess knowledge of Mizo language of at least Middle Standard.

**10. Disqualification for appointment :** No person shall be eligible for appointment to the service :

- a) Unless he is a citizen of India.
- b) If he is dismissed from service by any High Court, Government or statutory or local authority.
- c) If he has been convicted of an offence involving moral turpitude or who is or has been or has been permanently debarred or disqualified by the High Court or the Union Public Service Commission or any State Public Service Commission from appearing for examination or selections conducted by it.

- d) If he directly or indirectly influence the recruiting authority by any means for his candidature.
- e) If he is a man, has more than one wife living and if a woman, has married a man having another wife living.

**11. Recruitment :**

- 1) To fill a vacancy required to be filled by promotion, the recruiting authority shall take all necessary steps well in advance so as finalise the list of persons considered eligible for promotion at least 10 – 15 days before the occurrence of the vacancy.
- 2) (i) Whenever two or more vacancies required to be filled by direct recruitment occurs in a cadre in the service or once in two years, whichever is earlier, the recruiting authority shall, invite by advertisement and in at least two Local/National news papers in two consecutive issue, applications in such form as it may determine from intending candidates, who possess the prescribed qualifications. The advertisement shall indicate the number of vacancies and shall contain all necessary information relating to the recruitment. It shall also indicate that an additional list of selected candidates would be prepared as per clause (iv).
  - ii) The decision of the recruiting authority as to the eligibility or otherwise of a candidate for admission to the written and *viva voce* examination shall be final. No candidate to whom Certificate of admission has not been issued by the recruiting authority shall be admitted for the examination.
  - iii) The recruiting authority shall, on the basis of cumulative grade value secured by a candidate, prepare in the order of merit, assessed as provided in Schedule-B, a list of candidates to be included in the list which shall be equal to the number of vacancies notified.
  - iv) The recruiting authority shall, in accordance with the provisions of clause (iii), also prepare an additional list of names of candidates not included in the list of candidates prepared under clause (iii) above for

which the number of candidates to be included, shall, as far as possible, be ten percent of the number of vacancies notified for recruitment or one, whichever is higher.

- v) The list so prepared under clauses (iii) and (iv) above shall be published for general information and they shall cease to be operative on the expiry of one year from the date of such publication.
- vi) Candidates whose names are included in the list prepared under clause (iii) above shall be considered for appointment in the order in which their names appear in the list and subject to rule 10, they may be appointed by the appointing authority in the vacancies notified under clause (i) above. Candidates whose names are included in the additional list prepared under clause (iv) may be similarly appointed after the candidates whose names are included in the list published under clause (iii) above have been appointed.
- vii) Inclusion of the names of a candidate in any list prepared under clause (iii) or (iv) above shall not confer any right of appointment to such candidate.

**12. Fees :** Every candidate for direct recruitment may be required to pay such fees as may be specified in the notification inviting applications.

Provided that in the case of a candidate belonging to Schedule Caste or Schedule Tribes, the fees payable be one half of the fees specified in the notification for other candidates.

**13. Conditions relating to suitability, Fitness and character :**

- 1) No person selected for appointment by direct recruitment shall be appointed : -
  - i) unless the appointing authority is satisfied that he is of good character and is in all respects suitable for appointment to the service,
  - ii) unless he is certified by the Medical Board of the Government for the purpose that he is medically fit to discharge the duty of the post to which he is selected for appointment.

- 2) Every candidate selected for appointment by direct recruitment shall furnish certificates, given not more than six months prior to the date of the application, from two respectable persons unconnected with his college or university and not related to him testifying to his character, in addition to the certificate which may be required to be furnished from the educational institution last attended by him.

**14. Joining time for appointment :**

- i) A candidate by direct recruitment shall report for duty before the authority on the date specified in the order of appointment.
- ii) Notwithstanding anything contained in sub-rule (i) the appointing authority may on the application of the candidate, if satisfied that there are good and sufficient reasons for doing so, by order in writing, grant such further time as it may deem necessary.
- iii) The name of the candidate who fails to assume charge of the post within the time specified in sub-rule (i) or within the further time granted under sub-rule (ii) shall stand deleted from the list of selected candidates and he shall cease to be eligible for appointment.

**15. Oath :** Every person appointed to the service shall, before joining, make and subscribe before such person as may be specified by the Chief Justice of the High Court, oath or affirmation in the Form as mentioned in Schedule-C.

**16. Appointment :**

- 1) All appointments to the service in the Cadre of District Judge; Civil Judge (Senior Division) and Civil Judge shall be made in the appropriate cadre/ Grade but not against any specific post.
- 2) Appointments to the service in the Cadre of the District Judge by promotion/direct recruitment shall be made by the Governor on the recommendation of the High Court, and appointment to service in the Cadre of the Civil Judge by direct recruitment shall be made by the Governor on the recommendation of the Mizoram Public Service Commission.



- 3) All appointment to the service in the Cadre of Civil Judge (Senior Division) by promotion from Civil Judge Cadre and promotion to the Selection Grade and Super time Grade in the Cadre of the District Judge and the grant of the first and second stage ACP Scale to the Civil Judge (Senior Division) and Civil Judge Cadre shall be made by the High Court.
- 4) Promotion of the member of the service to higher Cadre as well as higher grades in the Cadre of the service shall be made strictly following the criteria laid down in Schedule-E.

**17. Training :**

- 1) There shall be a training course for the Officers appointed in the Cadre of Civil Judge entry grade of the service and direct recruit in the entry grade of the District Judge Cadre of the service, as the High Court may deem fit and proper as per the Schedule-D.
- 2) The High Court may arrange Refresher course for officers of all cadres from time to time. The Judicial Officer may also be deputed for Training/ Refresher Course outside the State or outside the country in consultation with the State Government.

**18. Probation :**

- 1) All appointments to the service by direct recruitment shall be on probation for a period of two years.
- 2) All appointees by promotion shall be on probation for a period of one year.
- 3) The period of probation, for reasons to be recorded in writing, may be extended by the appointing authority but the total period of probation shall not exceed three years.
- 4) Notwithstanding anything contained in sub-rule (1) and (2) where validity of the appointment of any persons –
  - a) as probationer is questioned in legal proceeding before a court of law, the period of probation of such person shall continue until the final disposal of such proceedings.

- b) as a promotee on probation is questioned in legal proceeding before a Court of law, the period of probation shall continue until the final disposal of such proceedings.
- 5) At the end of the period of probation or the extended period of probation, as the case may be, the appointing authority shall consider the suitability of the person so appointed or promoted to hold the post to which he was appointed, and –
- i) If it decides that he is suitable to hold the post to which he was appointed and has passed the special examinations or tests; if any, required to be passed during the period of probation, it shall, as soon as possible, issue an order declaring him to have satisfactorily completed the period of probation and such an order shall have effect from the date of expiry of the period of probation, including extended period, if any, as the case may be.
  - ii) If the appointing authority considers that the person is not suitable for confirmation to the Cadre/Grade to which he was appointed or promoted, as the case may be, shall by order –
    - a) If he is a promotee, revert him to the Cadre/Grade which he held prior to his promotion.
    - b) If he is a direct recruit, discharge him from service;
- 6) A person shall not be considered to have satisfactorily completed the period of probation unless a specific order to that effect is issued. Any delay in issuing such an order shall not entitle the person to be deemed to have satisfactorily completed the period of probation.
- 7) A probationer shall be deemed to be on probation until confirmed, reverted or terminated as the case may be.
- 8) Discharge of a probationer during the period of probation –
- i) Notwithstanding anything contained herein above, the appointing authority may, at any time during the period of probation, discharge from service, a probationer of direct recruit on account of his unsuitability for the service.

ii) An order under sub-rule (1) shall indicate the grounds for the discharge but no disciplinary inquiry shall be necessary.

- 19. Appeal :** No appeal shall lie against an order discharging a probationer or an order reverting a promotee to the post held by him prior to his promotion.
- 20. Confirmation :** A probationer who has been declared to have satisfactorily completed the period of probation shall be confirmed in service of the Cadre/ Grade to which he was appointed or promoted, as the case may be, at the earliest.
- 21. Increment during the period of Probation :**
- a) A probationer may draw the increments that fall due during the period of probation. He shall not however, draw any increment after the expiry of the period of probation unless and until he is declared to have satisfactorily completed his probation.
  - b) When a probationer is declared to have satisfactorily completed his probation he shall draw, as from the date such order takes effect, the pay he would have drawn had been allowed the increments for the whole of his service from the date of his appointment on probation.
- 22. Posting and Transfer :** Posting and transfer of Judicial Officers to the Judicial Posts shall be made by the High Court.
- 23. Deputation :** Any member of the service may be transferred and posted to perform the duties of any post in the Central Government or State Government or the Union Territory Government or to serve in any organization, which is wholly or partly owned or controlled by the Central or the State Government on deputation for a period as the High Court and the borrowing department may agree. But the total period of deputation to a particular post in one spell shall in no case exceed 5 years.
- 24. Seniority :**
- 1) An Officer appointed or promoted in accordance with the rules, on regular basis shall be senior to persons appointed ad-hoc or temporarily.

- 2) The seniority inter-se of the members of the service, appointed on the basis of result of competitive Examination/Limited Department Examination shall be determined according to the Merit List prepared by the concerned Authority.
- 3) Where officers are recruited to a Cadre by promotion or by direct recruitment on the same date, the officers recruited by promotion shall take precedence over the direct recruit officer(s).
- 4) Where two officers are placed at the same position of the Merit List, the person senior in age be senior to the other.
- 5) The inter-se seniority of persons appointed in any Cadre/Grade by way of promotion/direct recruitment/departmental examination shall be determined according to the dates in which they report for duty, subject to merit list.
- 6) Where more than one Officer is promoted to a Cadre by the same order, the inter-se Seniority of persons so promoted shall be determined by their inter-se Seniority in the lower Cadre unless directed otherwise.
- 7) A 40 (forty) point roster is to be maintained for appointment/promotion to the Cadre of the District Judge of the Service. The post at Serial Nos. 1 and 2 will go to the promotees under 50% quota. The post at Serial No. 3 shall go to the promotee under the limited Departmental competitive examination and the post at Serial No. 4 shall be available to Direct recruit. This process shall be repeated till all the posts in the cadre are filled up in the roster in the manner stated.

Provided that the above roster will not affect the existing members of the Service and this be implemented prospectively.

- 8) The High Court shall prepare and publish a Seniority list of Officers in all Cadres from time to time and the list so published shall be used for the purpose of consideration for promotion to the next higher cadre.
- 9) The seniority inter-se of the members of the services appointed to various Cadre/Grade by way of absorption for the initial constitution of the ser-

vice under these rules will be determined on the basis of their inter-se Seniority under the State Government prior to their absorption.

**25. Retirement :** Except as otherwise provided in this Rule, every Judicial Officer shall retire from service on the afternoon of the last date of the month in which he attains the age of 60 years, provided that the Judicial Officer whose date of birth is the 1<sup>st</sup> day of the month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 60 years.

**26. Retirement in Public Interest :**

- 1) There shall be a committee consisting of three Senior Judges, headed by Chief Justice of the High Court to review the career progress and other attributes of all Judicial Officers.
- 2) This review will be undertaken when the concerned officer(s) attained the age of 50 or has completed 25 years service whichever is earlier. If the committee considers that in public interest the officer should be retired from service, he shall be retired as per the provision of FR 56 (J) of Fundamental Rules.

Provided that nothing in sub-rule (2) shall be considered as preventing consideration for compulsory retirement of a member of the service at anytime other than those mentioned therein.

**27. Re-employment after retirement :**

- 1) Judicial Officer retiring at the age of 60 years may be re-employed till the age of 62 years, if the High Court so desires provided there are vacancies in the Cadre appropriate for such re-employment and they satisfy the following conditions.
  - i) There is no adverse comment in the ACR so far as disposal/integrity and character are concerned.
  - ii) The Officer was not dismissed or removed or compulsorily retired or made to seek retirement.

- iii) The Officer has not sought voluntary retirement after initiation of departmental proceedings/inquiry.
  - 2) Judicial Officer will have to be found fit and eligible to continue in service only after assessing and evaluating the record for his continued utility and recommended by the High Court.
  - 3) The order of re-employment shall be made by the Governor, only on the recommendation of the High Court.
- 28. Addition of certain past service for the purpose of pension :** Notwithstanding anything contained in the Civil Service (Pension) Rules, 1972, as adapted by the Government of Mizoram or in any other rules.
- 1) The members of the Service initially recruited to Civil Judges Cadre of the Service having not less than 10 years of actual qualifying service shall be entitled to add to their service qualifying for superannuation pension, the actual period, of practice put in by him at the Bar not exceeding three years.
  - 2) The members of the Service directly recruited from the bar to the District Judges Cadre of the Service, having not less than 10 years of actual qualifying service, shall be entitled to add to their service qualifying for superannuation pension, the actual period of practice put in by him at the Bar not exceeding seven years.
- 29. Residuary Provision :** The Conditions of service of the members of the service for which no express provision is made in these rules shall be determined by the rules and orders for the time being applicable to corresponding State Civil Services.
- 30. Conduct :** A Judicial Officer appointed under these rules shall be required to maintain the absolute integrity and conduct himself in conformity with the dignity of the office he holds. He should follow the Code of Conduct as provided in Appendix-A to these rules.
- (A) Disqualification :**
- 1) A Judge shall disqualify himself or herself in a proceeding in which the

Judge's impartiality might reasonably be questioned, including, but not limited to instances whereas;

- a) The Judge has personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;
  - b) The Judge served as a lawyer in the matter in controversy, or lawyer with whom the judge previously practiced law, served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;
  - c) The Judge knows that he or she, individually or a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding;
  - d) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person;
    - i) is a party to the proceeding, or an officers, director or trustee of a party;
    - ii) is acting as a lawyer in the proceeding;
    - iii) is known by the judge to have interest that could be substantially affected by the proceeding;
    - iv) is to the judge's knowledge likely to be a material witness in the proceeding.
- 2) The rules governing and regulating the conduct of State Civil Service Officers shall, in so far as they are not inconsistent with the rules in this chapter, shall apply to the members of the service.

**B) Disciplinary Authority :**

- 1) The members of the service shall be under the disciplinary control of the High Court and the disciplinary proceeding if and when necessary arise

may be drawn up against the member of the Service in accordance with the provisions of the rules followed by the Gauhati High Court. Notwithstanding anything contained in this rules, penalty of dismissal or removal from Service or reduction in rank in respect of any member of the Service shall be imposed by the Governor only on the recommendation of the High Court.

2) No disciplinary proceeding shall be initiated against any member of the service except by the High Court.

**31. Leave, Pension etc :** Except as provided in these rules, Retirement benefits, leave and other conditions of service of the members of the Service shall be regulated by the relevant rules in force in the State which are applicable to members of corresponding State Civil Services.

**32. Power to relax :**

1) Where the High Court is satisfied that the operation of any of the rules relating to posting, transfer, probation, confirmation, promotion, deputation and leave causes undue hardship in any particular case or to any category of service, it may, for reasons to be recorded in writing, dispense with or relax the particular rule to such extent and subject to such exceptions and conditions as may be deemed necessary.

Provided that if any such relaxation is granted by the High Court, the State Government shall be informed of the same.

2) Save as otherwise provide in sub-rule (1), where the State Government is satisfied on the recommendation of the High Court that the operation of any of the rules relating to appointment, imposition of major penalties of dismissal, removal and reduction in rank and compulsory retirement, causes undue hardship in any particular case or to any category of service, it may, for reasons to be recorded in writing, dispense with or relax the particular



rule to such extent and subject to such exception and conditions as may be deemed necessary.

- 33. Saving :** Any appointment made, order issued, action taken or anything whatsoever done under the earlier Mizoram Judicial Service Rules prior to the coming into force of these rules, shall be deemed to have been validly made, issued, taken or done under the corresponding provisions of these rules.

**C. ROPIANGA**

Secretary to the Government of Mizoram  
Deptt. of Personnel & Administrative Reforms.

## SCHEDULE – A

The composition of the Service and the duty posts shall be as shown here under :-

1. District Judge.
2. Civil Judge (Senior Division).
3. Civil Judge.

Sl No.	Name of Posts	No. of Posts	Remarks
1	2	3	4
	<b>I. District Judge Cadre</b>		
1.	District & Session Judge	2	Deemed to be created vide Cabinet decision issued under Memo No. J.11012/2/97-POL/Part dt.29.7.1997
2.	Addl. District & Session Judge	4	
3.	Special Judge, (P.C. Act, 1988)	1	
4.	Presiding Officer, (MACT Act)	1	
5.	Judge, Special Court under NDPS Act.	1	
6.	Judge, Special Court under E.C. Act	1	
7.	Member Secy. MSLSA	1	
	<b>Total</b>	<b>11</b>	
	<b>II. Civil Judge (Senior Division) Cadre</b>		
1.	Chief Judicial Magistrate	4	ADM (J) re-designated vide Mizoram Judicial Service Rules, 1989.
2.	Principal Civil Judge	1	President DCC (A) may be re-designated.
3.	Senior Civil Judge	4	Equivalent to J.O-I i.e. Re-designated as such
	<b>Total</b>	<b>9</b>	
	<b>III. Civil Judge Cadre</b>		
1.	Sub-Divisional Judicial Magistrate	6	
2.	Judicial Magistrate	4	4 Post of JO-II redesignated.
3.	Senior Munsiff	2	10 Post of Munsiff/Judicial Magistrate
4.	Upper Munsiff	2	First Class deemed to have been created
5.	Munsiff	2	May be redesignated as Judicial Magistrate, Senior Munsiff, Upper Munsiff, Munsiff and Special Judicial Magistrate.
6.	Special Judicial Magistrate	4	
	<b>Total</b>	<b>20</b>	
	<b>Grand Total</b>	<b>40</b>	

## **SCHEDULE 'B'**

(See rule 9 & 11)

### Competitive Examination.

1. The competitive examination for recruitment to District Judges Cadre of the service for Direct Recruitment & Promotion under Limited Departmental Examination shall be held at such intervals as the High Court may from time to time determine. The examination shall be conducted by the High Court with the syllabus as below :-

- i) **Paper – I** : One paper of 100 marks (duration not less than 2 hours) to test the general knowledge, aptitude, intelligence, test of comprehension and expression of law and General English including Essay Writing on legal topic and information technology.
- ii) **Paper – II** : One paper of 100 marks (duration not less than 2 hours) duration regarding objective questions and problems of law as regards the Transfer of Property Act, Civil Procedure Code, Code of Criminal Procedure, Indian Evidence Act, Indian Penal Code, Limitation Act.
- iii) **Paper – III** : One paper of 100 marks (duration not less than 2 hours) consisting of judgement writing (paper Book to be supplied), Legal theories on jurisprudence, provision of Constitution of India.

Note : **(The candidates is expected to refer to the relevant decisions of the Apex Court and the High Court while writing answers in Paper II and III)**

iv) Interview : *Viva-voce* – 50 marks.

1. The Competitive Examination for recruitment to Civil Judge Cadre of the Service shall be held at such intervals as the Governor may, in consultation with the High Court, from time to time determine. The examination shall be conducted by the Commission in accordance with the following syllabus :

- i) *Paper on English – 100 marks*
  - a) Essay Writing
  - b) Precis Writing
  - c) Grammer, etc.
- ii) *General Knowledge – 100 marks*
  - a) Objective Type
  - b) Aptitude Test.
- iii) *Law paper – I – 100 marks*
  - a) Constitution of India
  - b) Code of Civil Procedure
  - c) Transfer of Property Act
  - d) Indian Contract Act
- iv) *Law paper – II – 100 marks*
  - a) Indian Penal Code
  - b) Criminal Procedure Code
  - c) Indian Evidence Act
  - d) Law of Torts
- v) Interview, *Viva voce* – 70 marks

**3. General Instructions :**

- 1) In the process of conducting examination for direct recruitment to the Mizoram Judicial Service, the MPSC shall associate the High Court with a particular reference to the *viva-voce* examination and the advice of the representative of the high court shall prevail unless there are strong and cogent reasons for not accepting it, for which, reasons should be recorded in writing.
- 2) All candidates who obtain sixty percent or more marks or corresponding grade in the written examination shall be eligible for *viva-voce* examination. The object of the *viva-voce* examination under clause 1 and 3 is to assess the suitability of the candidate for the cadre by judging the mental alertness, knowledge of law, clear and logical exposition, balance of judgement, skills, attitude, ethics, power of assimilation, power of communication, character and intellectual depth and the like of the candidate.

Provided that Scheduled Caste/Schedule Tribes candidates who obtain fifty percent or more marks or corresponding grade in the written examination shall be eligible for the viva-voce examination.

- 3) Selection of candidates shall be made on the basis of cumulative grade value obtained in the written and viva-voce examination.
- 4) All necessary steps not provided for in these rules for recruitment under these rules shall be decided by the recruiting authority.
- 5) The mode of evaluating the performance of Grading the written and *viva-voce* examination shall be as specified below :

**Evaluating performance in Competitive Examination for appointment to the Judicial Service.**

The system operates as follows :

- 1) The question in the question paper may carry numerical marks for each question.
- 2) The examiner may assign numerical mark for each sub-question which may be totaled up and show against each full question in numbers.
- 3) The tabulator will then convert the numerical mark into grades in a seven point scale with corresponding grade values as follows :-

<b>Percentage of marks</b>	<b>Grade</b>	<b>Grade Value</b>
70% and above	O	7
65% to 69%	A+	6
60% to 64%	A	5
55% to 59%	B+	4
50% to 54%	B	3
45% to 49%	C+	2
40% to 44%	C	1
Below 40%	F	0

- 4) After converting the numerical marks of each question into the appropriate grade according to the formulae given in first column above, the tabulator will reconvert to Grade obtained for each question to the Grade value according to the value given in the third column above.
- what is now obtained is the relative Grade value of each answer in the question paper obtained by the candidate in a seven point scale (i.e. 'O' to '7')
  - The tabulator's next task is to add up those Grade values and divide the sum total by the numbers of questions in the answer book including the questions unanswered by the candidate. What is thus obtained is the Cumulative Grade Value Average (CGVA) obtained by the candidate at the examinations. Suppose the CGVA comes to 4, the grade obtained by the candidate at examination is 'B'+. If the CGVA is '6', the Grade of the Candidate is "A+".
- 5) Thus organized, the result of the written examination will be indicating only the cumulative evaluation grade of the candidates which moderates the inevitable element of subjectivity in individual evaluation and brings in relative objectivity and fairness to much higher degree. Of course, the tabulation record sheet can carry the numerical marks as well for reference and re-checking whenever needed. A proper computer programmed can do all these operations within minutes.
- 6) What happens if there are several successful obtaining the same grade and the available positions are fewer in number? How do you rank them to determine who is to be given the job? Of course, the situation can develop with numerical marking also where persons with one mark or half a mark difference are given advantage. This is unfair given the fact that in actual practice this may happen because of the play of subjective elements on the part of the individual examiners. What is therefore recommended is a similar vigorous and objective grade value exercise for the viva-voce examination as well.

- 7) At the end of each day's interview the tabulator will convert the numerical marks assigned to each category into grades and then to grade value. This will then totaled up and the Cumulative Grade Value Average of each candidate interviewed will be obtained.
- 8) Thus a separate list of candidates interviewed and the Grades obtained in the viva-voce will be readied which will naturally be far more fair and transparent with little scope for corrupt practice to creep in. Again, for ready reference, the result sheet may carry the numerical mark side by side with grades.
- 9) The final selection list will be readied by combining the Cumulative Grade Value obtained in the written examination and the viva-voce examination.
- 10) Since in practice many candidates who have obtained less than a prescribed grade (say B+) in the written examination will not be called for viva-voce examination, then combined tabulation has to be done only with reference to fewer candidates, possibly one-tenth or even less of the total number of applicants for the job.
- 11) If the viva-voce is rigorous and higher marks are given only to those who are outstanding in all categories of evaluation given in the proforma, the chances are very few will obtain higher grades (like 'O' or 'A') and their numbers may be just within the available vacancies. There may be some borderline cases where it is difficult to determine who is to be included and who is to be excluded. This dilemma may be resolved by a second interview between those candidates by the same board or alternately looking at the difference in numerical scores between them similarly placed in grades.

**SCHEDULE – C**

(see rule 15)

**Form of Oath**

I Shri/Smt. .... S/o, D/o ..... having been appointed as a member of the Mizoram Judicial Service, do swear in the name of God/solemnly affirm, that I will bear true faith and allegiance to the Constitution of India as by law established. That I will uphold the sovereignty and integrity of India. That I will duly and faithfully and to the best of my ability, knowledge and judgement, perform the duties of my office without fear and favour, affection or ill-will and that I will uphold the Constitution and the laws.

**Signed before me**

**Signature**

**Signature.**

**SCHEDULE – D**

(see rule 17)

- A. Training Course for officers appointed in District Judges Cadre. (Direct Recruits) :** After the appointment of a candidate in District Judge Cadre of the Service as provided in rule 9 read with rule 11, the officer would require to submit his Joining Report before the Registrar General, Gauhati High Court and there after he shall be given four weeks training at the Training Institute in the following manner :



- i) Writing of judicial orders both in civil and criminal cases;
- ii) Framing of charge and settlement of issues ;
- iii) Judgement writing ;
- iv) Administrative order and other matters relating to administration of the office including accounts ;
- v) Any other subject which the High Court/Training Institute may deem fit and proper.

Before the completion of the training necessary order of posting shall be issued so that the officers may join at their respective place of posting.

**B. There shall be a training course for officers appointed in Civil Judge Cadre of the service which will be spread over as below :**

- i) Classroom lecturers at TRAINING INSTITUTE as per the curriculum fixed in consultation with the High Court.
- ii) Two months working knowledge of Criminal Court, Civil Court and Revenue Courts to be arranged by TRAINING INSTITUTE.
- iii) On completion of the period of 6 (six) months training the officers who had completed 3 years practice at the Bar shall be given posting.
- iv) The officers who have not completed 3 years practice at the Bar shall be given further training for a period of 1 (one) year as under :
  - a) The High Court shall depute the officers to various district/sub-divisional courts for further field training. The officers will attend the civil, criminal courts and watch the proceedings and maintain a diary. They will be under the supervision of the concerned District Judge. This training shall be for a period of six weeks. On completion of the training they will submit a report to the Director, TRAINING INSTITUTE.
  - b) After the field training, there will be a gap of two weeks and there after the officer shall report back to the Director, TRAINING INSTITUTE for further training of six weeks. In this period the trainees will give the feedback and the Training Institute will take steps

to remove all doubts in the mind of the trainees as regard the working of the Courts or any law points raised by them. On completion of the above period the trainees will be posted out.

## **SCHEDULE – E**

(see rule 16)

### **Consolidated procedure on promotion :**

#### **1. Frequency at which the High Court Committee should meet :**

- 1) The High Court Committee should convene at regular annual intervals to draw panels which could be utilized on making promotions against the vacancies occurring during the course of a year. For this purpose it is essential for the concerned appointing authority to initiate action to fill up the existing as well as anticipate vacancies well in advance of the expiry of the previous panel by collecting relevant documents like ACRs, Integrity Certificate, Seniority List etc for placing before the High Court. High Court Committee should be convened every year preferably during the month of May.

Provided that the requirement of convening annual meeting of the High Court should be dispensed with only in case a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or there are no officer eligible for promotion during such vacancy year.

- 2) Where a High Court Committee has already been held in a year and further vacancies arise during the same vacancy year due to death, resignation, voluntary retirement, etc or because the vacancies were not intimated to the High Court due to error or omission on the part of the Department concerned, the following procedure should be followed :-

- i) In case of vacancies belonging to the category which could not be foreseen at the time of placing facts and materials before the High Court, another meeting of the High Court should be held for drawing up a panel for these vacancies as these vacancies could not be anticipated at the time of the earlier High Court. If, for any reasons, the High Court could

not meet for the second time, the procedure for drawing up of year –wise panels may be followed when it meets next for preparing panels in respect of vacancies that arise in the subsequent year(s).

- ii) In case of non-reporting of vacancies due to error or omission (i.e. though the vacancies were there at the time of holding the High Court meeting they were not reported to it) which results in injustice to the officers concerned by artificially restricting the zone of consideration, the wrong done can not be rectified by holding a second High Court or preparing year – wise panel. In all such cases, a review High Court Committee should be held keeping in mind the total vacancies of the year.

**2. Determination of regular vacancies :** It is essential that the number of vacancies in respect of which a panel is to be prepared by a High Court should be estimated as accurately as possible. For this purpose, the vacancies to be taken into account should be the clear vacancies in a post/cadre of the service due to death, retirement, resignation, regular long term promotion and deputation or creation of additional post on a long term for the cadre post. As regards vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for.

**3. Calculation of Vacancies :** For preparation of select panel, vacancies to be reported to the High Court should be calculated calendar year-wise, that means vacancies which can be foreseen to occur during first January to thirty first December of the relevant year shall be taken as vacancies for such vacancy year.

**4. Crucial date for determining eligibility :** The eligibility dates for determining the eligibility of officers regarding the qualifying service rendered for promotion would be the first day of the vacancy year i.e. January, 1 of the crucial vacancy years, provided that if any of the officer is not yet eligible on the first day of January of the vacancy year and the vacancy/vacancies cannot be filled within such vacancy year, his eligibility shall be determined as on the first day of January of the succeeding vacancy year(s) as the case may be.

**5. Zone of consideration :** Where promotions are to be made by selection method as prescribed in the Recruitment Rules, the High Court shall, for its purpose of determining the number of officers who will be considered from out of those eligible officers in the feeder grade(s), restrict the field of choice as under with reference to the number of clear regular vacancies including anticipated ones within the vacancy year.

No. of Vacancies	No. of Officers to be including within the zone of consideration
1	5
2	8
3 and above	Twice the number of vacancies +4

**6. Preparation of select list :** The High Court should consider ACRs for equal number of 5 years in respect of all officers within the zone of consideration for promotion and after due examination and consideration of the performance of such officers, prepare a 'select list' equal to the number of vacancies identified for filling up during the vacancy year in order to merit-cum-seniority.

Provided that where for reasons beyond control, the High Court meeting could not be held in a year(s) even though the vacancies arose during the year or years, the first High Court that meets there after should follow the following procedure :-

- i) Determine the actual number of regular vacancies proposed to be filled for each of the vacancy year separately.
- ii) Consider in respect of those officers who would be within the fill of choice with reference to the vacancy year starting with the earliest vacancy year and so on.
- iii) Prepare a 'Select List' by placing the select list of the earlier year above the one for the next year and so on.

**7. General Criteria for promotion by merit-cum-seniority :**

1) Promotion from lower cadre to higher cadre shall be made subject to availability of vacancies in the cadre but for promotion to the higher grade within the same cadre, there shall be no question of vacancies and the following criteria should be observed by the DPC for preparation of select list.

a) Considering the number of vacancies to be filled up, the High Court shall assess the Judgements / ACRs of the officers who are within the zone of consideration, the ratio being 1:3.

b) The suitability and over all performance of the officers including disposal of cases and the remarks of the concerned Portfolio Judge shall be considered.

c) In case any Department Proceeding/Enquiry is pending against the officers, his/her promotion may be considered and the decision be kept in a sealed cover, to be opened on conclusion of the Department Proceeding/Enquiry.

d) The officers against whom there are adverse entry regarding their integrity, will be eligible for promotion provided the required benchmark has been obtained subsequent to the adverse entry.

2. The essential condition and basis for promotion in various grades will be as follows :

a) From entry Grade of Civil Judge Cadre to the next and subsequent higher Grades/Cadre.

i) Seniority cum merit subject to over all suitability.

ii) Officer having minimum three 'Good' Grading out of the last five years ACRs including the last will be considered provided that his integrity and character is beyond doubt.

iii) Must have completed 5 years regular service in the grade for grant of each ACP Scale.

iv) For promotion to the cadre of Civil Judge (Senior Division) the officer must have completed 7 years service in Civil Judge Cadre.

b) Civil Judges (Senior Division) to the next and subsequent higher Grade/Cadre.

i) Merit cum seniority subject to suitability.

ii) Officers having minimum three 'Good' grading out of the last five years ACRs including the last will be considered provided their integrity and character is beyond doubt.

iii) Must have completed 5 years regular service in the grade for grant of each ACP Scheme.

- iv) For promotion to the District Judge Cadre the officer must have completed 7 years service in the Civil Judge (Senior Division) Cadre.
- c) From entry grade of the District Judge Cadre to Selection Grade District Judge.
  - i) Merit and suitability.
  - ii) Minimum four ‘Good’ out of last five years ACRs; or
  - iii) The officer must have at least two ‘Good’ and one ‘Very good’ out of the last five years.
  - iv) Must have completed 5 years regular service in the feeder grade.
- d) From Selection Grade District Judge to Super Time Scale District Judge:
  - i) Merit cum suitability
  - ii) The officer must have at least three ‘good’ and one ‘very good’ ACRs during the last five years ; or
  - iii) The officer must have at least two ‘Good’ and one ‘Outstanding’ grading during the last five years.
  - iv) Must have completed 5 years regular service in the feeder grade.

## **APPENDIX – A**

**(see rule 30)**

### **1. Should uphold the Integrity and Independence of Judiciary –**

An independent and honourable judiciary is indispensable to administer justice in our society. A judge should participate in establishing maintaining and enforcing and should personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. A Judge shall always be aware that the judicial system is for the benefit of the litigant and the public, and not the judiciary. The provisions of this chapter should be constructed and applied to further these objectives.

### **2. Should avoid Impropriety –**

i) Public confidence in the judiciary is eroded by irresponsible or improper conduct by Judges. A Judge must avoid all impropriety and appearance of impropriety. A

Judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

ii) A judge shall respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect.

iii) A Judge shall not allowed family, social or other relationships to influence his judicial conduct or judgement. A judge shall not lend the prestige of judicial office to advance his private interests or those of others. A judge shall not convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not appear as a character witness in a Court proceeding unless subpoenaed.

iv) A judge shall not allow activity as a member of an organization to cast doubt on the judge's ability to perform the function of the office in a manner consistent with the code of judicial conduct and the laws of the State. A judge shall not hold membership of a organization protected personal characteristics. Nothing in this paragraph should be interpreted to diminish a judge's right to free exercise of religion.

### **3. Performance of duties impartially and diligently –**

i) A judge shall be faithful to the law and maintain professional competence in it. A Judge should be unswayed by partisan interest, public clamour, or fear of criticism.

ii) A judge may require lawyers, court personnel, and litigants to be appropriately attired for Court and should maintain reasonable rules of conduct, order and decorum in the Courtroom.

iii) A judge shall be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom the judge deals in official capacity, and should require similar conduct of lawyers, and of staff, Court officials, and others subject to the judge's direction and control.

iv) A judge shall not initiate, permit or consider ex-parte communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.

v) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

vi) A judge shall perform judicial duties without bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, Court officials and others subject to the judge's direction and control to do so.

vii) A judge shall dispose of all Judicial Matters speedily, effectively and fairly.

viii) A judge shall not, while a proceeding is pending or impending in any Court, make any public comment that might reasonably be expected to effects its outcome or impair its fairness or make any non-public comment that might substantially interfere with a fair trial or hearing. The Judge shall require similar abstention on the part of Court personnel subject to the judge's direction and control. This clause does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the Court. This clause does not apply to proceedings in which the judge is a litigant in a personal capacity.

xi) A judge should prohibit broadcasting, televising, recording or taking photographs in or out of the courtroom during session of court or recess between sessions except as authorized by the High Court.

x) a) A judge may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but the judge should bear in mind that undue interference, impatience, or participation in the examination of witness, or to serve attitude in the judge's part toward witness, especially those who are excited or terrified by the unusual circumstances of a trial may tend to prevent the proper presentation of the cause, or the ascertainment of truth in respect thereto.

b) Conversation between the judge and counsel in Court is often necessary, but the judge should be studious to avoid controversies that apt to obscure the merits to the dispute between litigants and lead to unjust disposition. In addressing counsel, litigants or witness, the judge should avoid a controversial manner or tone.



c) A judge shall avoid interruptions of counsel in their arguments except to clarify their positions, and should not be tempted to the unnecessary display of learning or premature judgement.

xi) A judge shall adopt the usual and accepted methods of doing justice avoid the imposition of humiliating acts or discipline, not authorized by law in sentencing and endeavour to conform to a reasonable standard of punishment and not seek popularity or publicity either by exceptional severity or undue leniency.

xii) A judge shall be punctual in attending court and do judicial work during Court hours. He shall ensure punctuality of the staff and Court officials.

xiii) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and Court officials.

xiv) A judge should take or initiate appropriate measures as admissible under law against a judge or lawyer for unprofessional conduct of which the judge may become aware.

xv) A judge should not cause unnecessary expense by making appointments. All appointments shall be based upon merit.

xvi) A judge should not approve compensation beyond the fair value of services rendered.

#### **4. Extra Judicial and quasi-judicial activities –**

I. i) As a Judicial officer and person specially learned in the law, a judge is in unique position to contribute to the improvement of the law, the legal system and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice to the extent time permits, and without affecting his judicial work, a judge is encouraged to do so, either Independently or through a Bar Association, judicial conference, or other organization dedicated to the improvement of the law.

ii) A judge, subject to the proper performance of judicial duties and to the extent time, may engage in the following quasi-judicial activities.

a) A judge may speak, write, lecture, teach and participate in other activities concerning only the law, the legal, and the administration of justice; and

b) A judge may appear at a public hearing on matter concerning only the law, the legal system, and the administration of justice.

II. A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality or judicial office, interfere with the proper performance of judicial duties, exploit the judicial position, demean the judicial office or involve the judge in transactions with lawyers or persons likely to come before the court on which the judge serves.

III. A judge should serve as an executor, administrator, testamentary trustee or guardian.

IV. A judge should as an arbitrator or mediator except in the performance of judicial duties.

V. A judge should not practice law remuneration.

VI. A judge should not accept appointment to a government committee, commission or other position without the permission of the High Court in writing.

VII. (i) A judge or a candidate from judicial office should not be a member of, or hold any office in a political party.

(ii) A judge shall not make speeches on behalf of a political party or endorse a candidate for a political office.

VIII. A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interest of the judge's spouse and children residing in the judge's household.

IX. A judge shall conduct all of the judge's extra-judicial activities in such a way that they do not :

- i) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- ii) de-mean the judicial office; or
- iii) interfere with the proper performance of judicial duties.

X. A judge shall not serve as an officer, Director, Trustee, or Legal Advisor if it is likely that the organization,

- i) will be engaged in proceedings that would ordinarily come before the judges;

or

ii) will be engaged frequently in adversary proceeding in the court of which the judge is a member or in any Court subject to the appellate jurisdiction of the Court of which the judge is a member.

XI. A judge and members of the judge's family residing in the judge's household shall not accept a gift, request, favour or loan from anyone except for :

a) A gift incident to a public testimonial, books, tapes, and other resource materials supplied by the publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar related function or an activity devoted to the improvement of the law, the legal system or the administration of justice.

b) A gift, a ward or benefit incident to the business, profession or other separate activity of a spouse or other family member of judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family members and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

c) Ordinarily social hospitality;

d) A gift from a relative or friend, for a special occasion, such as wedding, anniversary of birthday, if the gift is fairly commensurate with the occasion and the relationship.

e) A gift, bequest, favour or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under rule 30 (A)

f) A loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

g) A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

h) Any other gift, bequest, favour or load, only if the donor is not a party or other person, who has come or is likely to come or whose interest has become or are likely to come before the judge.

**C. ROPIANGA**

Secretary to the Government of Mizoram  
Deptt. of Personnel & Administrative Reforms.

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## **Appendix-II**

### **The Mizoram (Appointment, duties, fees etc of Government Advocates) Rules, 1995**

#### **NOTIFICATION**

No. A. 45011/1/91-LJE, the 10<sup>th</sup> November, 1995. Whereas it is expedient to make a consolidated rules relating to the conditions of appointment, duties and fees payable to Additional Advocate General<sup>1</sup> the Government Advocate-cum-Public Prosecutor in the High Court, Assistant Government Advocate-cum-Public Prosecutor in the High Court, Government Advocate in the District Court, Assistant Government Advocate in the District Courts, Public Prosecutor in the District Courts and Advocates on panel, the Governor of Mizoram is pleased to make the following rules :

1. (1) These rules may be called the Mizoram (Appointment, duties, fees etc. of the Government Advocates) Rules, 1995.
  - (2) They shall come into force at once.
2. In these rules, unless the context otherwise requires, -
  - (a) “Advocate” means an Advocate as defined in the Advocates Act, 1961 (Central Act, No. 25 of 1961) ;
  - (b) “day” means a period of twenty four hours beginning at midnight;
  - (c) “Government” means the State Government of Mizoram;

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1. Inserted under No. A. 45012/20/2000-LJE, the 1<sup>st</sup> Feb, 2007 viz The Mizoram ( Appointment, Duties, fees etc. of Government Advocates ) ( Amendment ) Rules, 2007 w.e.f. 12<sup>th</sup> Sept. 2000, vide The Mizoram Gazette, 2.2.2007, Issue No. 13.

(d) “Government Advocate” means the Advocate engaged or appointed or empanelled as such by the Government to enter appearance in any court of law on its behalf and it shall include Additional Advocate General<sup>2</sup> the Government Advocate-cum-Public Prosecutor in the High Court, Assistant Government Advocate-Cum-Public Prosecutor in the High Court, Government Advocate in the District Court and Public Prosecutor including Special Public Prosecutor in the District Court.

3. (1) No person shall be eligible for appointment as –

- (a) Government Advocate-cum-Public Prosecutor in the High Court;
- (b) Government Advocate in the District Court;
- (c) Public Prosecutor in the District Court –

Unless he hold a degree in laws from a recognized University and has been in continuous practice for a period of not less than ten years and has also worked as Assistant Government Advocate or Assistant Public Prosecutor for a period of not less than three years or as Assistant Government Advocate or Assistant Public Prosecutor anywhere for any time;

Provided that the qualifications relating to length of practice may be relaxed and the length of engagement as an Assistant Government Advocate or Assistant Public Prosecutor if they are local candidates;

(2) No person shall be eligible for appointment as –

(a) an Assistant Government Advocate-cum-Public Prosecutor in the High Court;

(b) Assistant Government Advocate in the District Court unless he holds a degree in law from recognized University and has been in continuous practice for a period of not less than seven years or has also worked as an Assistant Government Advocate anywhere for any time;

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2. Inserted under No. A. 45012/20/2000-LJE, the 1<sup>st</sup> Feb, 2007 viz The Mizoram ( Appointment, Duties, fees etc. of Government Advocates ) ( Amendment ) Rules, 2007 w.e.f. 12<sup>th</sup> Sept. 2000, vide The Mizoram Gazette, 2.2.2007, Issue No. 13.

3) No person shall be eligible for appointment as an Additional Advocate General in the High Court unless he has been in continuous practice for a period of not less than fifteen years or has worked as a Government Advocate in the High Court for a period of not less than five years.<sup>3</sup>

Provided that the requirement relating to the length of service as the Government Advocate may be relaxed at the discretion of the Government.<sup>3</sup>

4. Duties of the Government Advocates under these rule shall be as specified in Annexure – I

5. No Government Advocate appointed under these rules shall take up private cases except the previous approval of the Legal Remembrancer/Secretary, Law & Judicial Department, Government of Mizoram, in writing. This condition is however, not applicable in cases of Central Government or statutory corporation where the such case or cases are not adverse in any manner to the interest of the State Government. Provided that a Government Advocate may with the previous approval in writing of the Legal Remembrancer/Secretary, Law appear for any individual in any case in which the interest of such individual and the State Government is the same.

Provided further that a Government Advocate may with the previous approval in writing of the Legal Remembrancer/Secretary, Law appear for any government employees or employees in cases where the Secretary, Law considers it necessary in the interest of the State.

6. Travelling Allowances, leave and other facilities admissible to a Government Advocate shall be such as may be prescribed by the Government from time to time.

7. The Government Advocate under these Rules shall be entitled to such rates of fees as the Government may prescribe from time to time.

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3. Added under No. A. 45012/20/2000-LJE, the 1<sup>st</sup> Feb. 2007 viz – The Mizoram (Appointment, duties, fees etc. of Government Advocates) (Amendment) Rules, 2007 w.e.f. 12<sup>th</sup> Sept. 2000. Vide The Mizoram Gazette – Vol. XXXVI. 2.2.2007, Issue No 13.

8. No Government Advocate under these Rules shall be entitled to any fees for consultation with the officers of the Government in Government cases.

9. In the matter of appointment of Advocates of all categories under these rules, preference shall be given to local candidates in the State of Mizoram.

10. In the event of performance of any Government Advocate appointed under these Rules is found to be unsatisfactory, the Legal Remembrancer/Secretary, Law or his representative or the Advocate General shall have the right to take over the brief from such Government Advocate without assigning any reason whatsoever.

11. The State Government may have a panel of Advocates to be appointed to conduct cases on behalf of the Government in the High Court and in the courts of District and Sessions Judges/Deputy Commissioners, Additional District Magistrates/Additional District & Session Judges, Civil Judges (Senior Division), Civil Judges (Junior Division) Magistrates of the first class and the second Class, Assistants to Deputy Commissioner and all other Courts & Tribunals and may remove an Advocate from such panel at any time without assigning any reason.

12. The Advocates on panel shall have the following duties :-

(a) to conduct only such criminal cases in such courts as may be determined by the Legal Remembrancer/Secretary, Law.

(b) to conduct civil cases in courts on behalf of the State Government as may be determined by the Legal Remembrancer/Secretary, Law.

(c) to act as Junior to Advocate General, or Additional Advocate General or Government Advocate-cum-Public Prosecutor in the High Court and Government Advocate in the District Courts as the case may be determined by the Legal Remembrancer/Secretary, Law.

(d) to discharge any other duties as may be assigned by the Legal Remembrancer/Secretary, Law.

13. The Government Advocate under these Rules shall be under obligation to serve three months notice of resignation.

14. The Legal Remembrancer/Secretary and Law Secretary may terminate the services of any Government Advocates under these Rules in the event such Advocate fails



to perform all or any of the duties mentioned in the Annexure – I without giving any notice or without assigning any reason whatsoever and such Advocate shall not be eligible to claim any amount as compensation for such termination.

15. Every Government Advocate or Advocate on Panel shall be debarred from :-
- (a) advising or holding brief against the State;
  - (b) Advising private parties in cases in which they are likely to be called to advise the Government;
  - (c) using their office accommodation provided by the Government for their private brief/consultation/advice/counseling;
  - (d) accepting any appointment as Legal adviser or consultant or in similar capacity in any firm or organization without prior sanction from the Government, which may adversely affected the interest of the Government;

16. The Legal Remembrancer/Secretary, Law may be general or special order distribute appeals and cases between the Government Advocates in the District Courts and amongst the Additional Advocate Generals, the Assistant Advocate Generals<sup>4</sup> and the Government Advocates in the High Court.

17. In appropriate cases, if so satisfied, the Government may relax any of the provisions made in these rules.

18. Where any doubt arises as to the interpretation of these Rules, the Law Department may with the approval of the Minister in charge of the Department, interpret any of the provisions of these rules and such a decision shall be final.

19. (1) On and from the commencement of these Rules, all rules and notifications relating to the appointment and terms of or conditions of engagement and fees for engagement of such Government advocates, published or notified by this Department shall stand repealed.

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4. Substituted under No. A. 45012/20/2000-LJE, the 1<sup>st</sup> Feb. 2007. viz – The Mizoram (Appointment, duties, fees etc. of Government Advocates) (Amendment) Rules, 2007, w.e.f. 12<sup>th</sup> Sept. 2000. Vide – The Mizoram Gazette Vol. XXXVI. 2.2.2007, Issue No. 13.

(2) Notwithstanding such repeal any action taken or anything done under the rules so repealed shall be deemed to have been taken or done under the provisions of these Rules.

P. Chakraborty,  
Secretary to the Government of Mizoram,  
Law & Judicial Department.

### **ANNEXURE – I**

**(See rule 4)**

1. To advise the State Government, without any fee, upon such Legal matters as may be referred to him by the State Government through the Legal Remembrancer/Secretary, Law.
2. To represent the State at all stages in cases before the respective District Courts and Tribunals as may be assigned.
3. To appear as a junior to the Advocate General or any other designated Senior Advocate as may be determined by the Legal Remembrancer/Secretary, Law.
4. To appear with the previous approval of the Government or the Legal Remembrancer/Secretary, Law, for government employees in cases including those falling within the purview of section 199 of the Code of Criminal Procedure, 1973, if it is necessary to do so in the interest of the State.
5. To appear in the Aizawl Bench of the Gauhati High Court and before the State Commission constituted under the Consumers Protection Act, 1986 (entrusted specifically to the Government Advocate-cum-Public Prosecutor in the High Court while for others as and when so entrusted by the Legal Remembrancer/Secretary, Law).
6. To prepare brief paper books (duly paginated and allied with the Court records), synopsis of arguments, and obtain copies of order-sheets in all cases in which he has been briefed to appear.

7. To transmit three sets of paper-books to the Law Department.
8. To inform the Department concerned of the date fixed in all cases in which he has been briefed, with intimation to the Law Department.
9. To prepare plaint, written statement, counter affidavit, rejoinder and draftings of all kinds. If deemed necessary to get such drafts settled by the senior counsel as the case may be (in case of Assistant Government Advocates only)
10. To regularly attended the chamber of the senior counsel for preparation of the cases which have been assigned to him (for the Assistant Government Advocate only).
11. To hold conference with the Officers of the Department involved in litigation well in advance of the date or dates of hearing fixed and to get the briefing.
12. To stay in station during holidays except with leave from the Legal Remembrancer/Secretary, Law.
13. To perform such other duties or responsibilities as may be assigned to him by the Legal Remembrancer/Secretary, Law.

P. Chakraborty,  
Secretary to the Government of Mizoram,  
Law & Judicial Department.

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**Source:** *the Mizoram Gazette, Extra Ordinary Vol. XXIV, 15.11.1995, Issue No. 511.*

# **Appendix -III**

## **The Mizoram Civil Courts Act,2005 (As amended upto 2007 )**

### **(Act No. 11 of 2005)**

An Act to consolidate and amend the law relating to Civil Courts in the State of Mizoram. Whereas it is expedient to consolidate and amend the law relating to Civil Courts in the State of Mizoram. Be it enacted by the Mizoram State Legislature in the 56<sup>th</sup> year of the Republic of India as follows:-

#### **CHAPTER-1**

#### **PRELIMINARY**

**01. Short title, extent and commencement:-**

- 1) This Act may be called the MIZORAM CIVIL COURTS ACT,2005
- 2) It extends to the whole of the State of Mizoram,excluding Autonomous District Councils.
- 3) It shall come into force on such date as the Governor may, by notification in the Official Gazette appoint.

**02. Definitions:-** In this Act unless the context otherwise requires.

- a) “appointed date” means the date appointed under sub-section(3) of section 1;
- b) “Civil Courts” means a court of a District Judge, a court of the Senior Civil Judge, a court of a Civil Judge or a court of a small causes;
- c) “Code” means the Code of Civil Procedure, 1908(5 of 1908);
- d) “district” means a revenue district or such local area as the Government may, from time to time notify to be a district for the purposes of this Act;
- e) “Governor” means the Governor of Mizoram.
- f) “Government” means the Government of Mizoram.
- g) ‘High Court’ means the Gauhati High Court

## CHAPTER-II

### ESTABLISHMENT AND CONSTITUTION OF SUBORDINATE COURTS

#### **03. Classes of Civil Courts**

In addition to the Courts established under any other law for the time being in force, there shall be following classes of Civil Courts in the State:-

- a) Courts of a District Judge;
- b) Courts of a Senior civil Judge
- c) Courts of a Civil Judge
- d) Courts of small causes.

#### **04. Establishment of Courts of District Judges:-**

1) There shall be established by the Government, by notification in each district a court of the District Judge and such number of Courts of the District Judge as may be fixed, in consultation with the High Court.

2) Each court of a District Judge shall be presided over by the senior most Judge to be called Principal District Judge.

3) i) When the business pending before a court of a District Judge so requires, the High Court may in consultation with the Government appoint to that court one or more judges to be called Additional District Judges, for such period as is deemed necessary.

ii) An Additional District Judge so appointed shall, subject to the general or special orders of a High Court, discharge all or any of the functions of a District Judge under this Act or any law for the time being in force which the Principal district Judge may assign to him and discharge of those functions and he shall exercise all the powers of the court of district judge.

#### **05. Establishment of Courts of Senior Civil Judges.**

1) There shall be established by the Government by notification, a Court of Senior Civil Judge for each district and such number of the Courts of Senior Civil Judge as may be

fixed, in consultation with the High Court.

Provided that the Government may, in consultation with the High Court, established a Courts of Senior Civil Judge for part of a district and specify the local limits of its jurisdiction.

2) Each Court of a senior Civil Judge shall be presided over by a Judge to be called as Senior Civil Judge.

3) (i) When the business pending before a court of a senior Civil Judge so acquires, the High Court may in consultation with the Government, by notification, fix the number of judges to be appointed to that court to be called as Additional Senior Civil judges, for such period as is deemed necessary.

(ii) An Additional Senior Civil Judge so appointed shall, subject to the general or special orders of the Principal District Judge, discharge all the functions of a Senior Civil Judge under this Act when the Senior Civil Judge may assign to him and in the discharge of those functions shall exercise all the powers conferred on a court of Senior Civil Judge by this Act or any other law for the time being in force.

#### **06. Establishment of Courts of Civil Judge.**

1) There shall be established by the Government, by Notification in each district such number of Courts of the Civil Judge as may be fixed in consultation with the High Court and with such local limits of jurisdiction of each such Court as may be specified.

2) Each Court of a Civil Judge shall be presided over by a judge to be called as Civil Judge.

3) When the business pending before a Court of a Civil Judge so requires, Government, may in consultation with the High Court, fix by Notification the number of Judges to be appointed to that Court to be called as Additional Civil Judge for such period as is deemed necessary.

4) An Additional Civil Judge so appointed shall, subject to the general or special orders of the District Judge, discharge all the functions of a Civil Judge under this Act which

the Civil Judge may assign to him and in the discharge of those functions, he shall exercise all the powers conferred on a Court of a Civil Judge by this Act or any other law for the time being in force.

**07. Establishment of Courts of small causes**

1) The High Court may establish by notification, a court of small causes at any place in the state in consultation with the Government and specify the local limits of its jurisdiction and such number of the court of small causes.

2) Court of small causes shall be presided over by a Judge to be called as Principal Judge of Court of Small causes.

3) (i) When the business pending before a court of small causes so requires, the High Court may in consultation with the Government by notification fix the number of additional judges of Small Causes for such period as is deemed necessary.

(ii) An Additional Judge of Court of Small Causes so appointed shall subject to the general or special orders of the Principal District Judge of the district, discharge all functions of a Judge of the court of small causes under this Act which the Principal Judge of Court of Small Causes may assign to him and in the discharge of those functions he shall exercise all the powers conferred of a court of small causes by this Act or any other law for the time being in force.

**08. Location of Civil Courts.**

1) The place or places at which every Civil Court under this Act shall be held, shall be fixed and may, from time to time, be altered by the State Government, in consultation with the High Court.

2) The place or places so fixed for a civil court under sub-section(1) may be within or outside local limits of the jurisdiction of that court.

**09. Seal of a Civil Court -** Every civil court under this Act shall use a seal which shall bear there on the emblem and shall be, in such form, of such dimensions and with the name of the court in such language or languages, as the High court may, in consultation with the government, by order, determine.

**10. Existing courts, their location and seal to be deemed to be established, fixed and determined under this Act.**

Subject to the provisions contained in Section 3 of the Act.

- 1) The Courts of Additional District Magistrate (Judicial) existing immediately prior to the date shall, with effect from the appointed date, be converted to be Courts of District Judges established under this Act until they are reconstituted in accordance with this Act.
- 2) The District Council Court existing immediately prior to the appointed date shall, with effect from the appointed date be deemed also to be Court of Senior Civil Judges under this Act until they are constituted in accordance with this Act.
- 3) Sub-District Council Courts and Additional Sub-District Council Courts at Aizawl, Kolasib, Champhai and Lunglei existing immediately prior to the appointed date shall with effect from the appointed date be deemed also to be court of Junior Civil Judge under this Act until they are constituted in accordance with this Act.
- 4) The seal in use, in a civil court deemed to be established under sub-sections(1) to (4), immediately prior to the appointed date may continue to be used until an order is made by High court under Section 9.

**11. Posting of District Judges, Senior Civil Judges, Civil Judges and Judges of the Court of Small Causes-**

- 1) No person other than a person belonging to the cadre of District Judges in the judicial service of the State shall be eligible to be posted as a Principal District Judge or as an Additional District Judge.
- 2) No person other than a person belonging to the cadre of senior Civil Judges in the Judicial service of the State shall be eligible to be posted as a Senior Civil judge or as an Additional Senior Civil Judge.
- 3) No person other than a person belonging to the cadre of civil judges in the judicial service of the State shall be eligible to be posted as a Civil Judge or as an Additional civil Judge.
- 4) No person other than a person belonging to the cadre of Civil Judges in the judicial service of the state shall be eligible to be posted as a Principal Judge of a Court of Small Causes or as an Additional Judge of Court of Small Causes.



**CHAPTER-III**  
**JURISDICTION OF CIVIL COURTS**

**12. Local limits of jurisdiction -**

- 1) The High Court may, by notification, fix and from time to time vary, the local limits of jurisdiction of any Civil Court, under this Act.
- 2) The local limits of jurisdiction of a civil court existing immediately prior to the appointed date shall, until it is fixed under this Act be deemed to be the local limits of that court.

**13. Jurisdiction of a Court of District Judge -**

- 1) A Court of District Judge shall be deemed to be the principal civil court of original jurisdiction within the local limits of its jurisdiction.
- 2) Subject to the provisions of the Code the jurisdiction of a Court of District Judge shall extend to all original suits and proceedings of a civil nature.
- 3) A Court of District Judge shall, subject to the general control of the High Court, have control over all other civil courts within the local limits of its jurisdiction.

**14. Jurisdiction of a Court of Senior Civil Judge -** The jurisdiction of the court of a Senior Civil Judge shall extend to all original suits and proceedings of a civil nature, the value of the subject matter of which exceed two lakh rupees or such other sum as the High Court may, from time to time specify.

**15. Jurisdiction of a Court of Civil Judge -** The jurisdiction of a court of Civil Judge shall extend to all original suits and proceedings of a civil nature, not otherwise excluded from the jurisdiction of a Court of Civil Judge by any law, the value of the subject matter of which does not exceed two lakh rupees or such other sum as the High Court may, from time to time specify.

## **16. Jurisdiction of a Court of Small Causes -**

- 1) A court of small causes shall not take cognizance of the suits specified in the schedule as suits excepted from the cognizance of a court of small causes.
- 2) Save as expressly provided by this Act or by any other enactment for the time being in force a suit cognizable by a court of small causes shall not be tried by any other court having jurisdiction, within the local limits of the jurisdiction of the court of small causes by which the suit is triable.
- 3) Subject to the exceptions specified in the schedule and to the provisions of this Act or any other law for the time being in force in the state all suits of civil nature the value of the subject matter of which does not exceed fifty thousand rupees shall be cognizable by a court of small causes.

Provided that the High Court may, by notification direct that all suits of civil nature the value of the subject matter of which does not exceed one lakh rupees shall be cognizable by a court of small causes mentioned in the notification.

## **17. Appeals etc:-**

- 1) Appeals from the decrees and orders passed by a Court of District Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie to the High Court.
- 2) Appeals from the decrees and orders passed by a court of Senior Civil Judge in original suits and proceedings of civil nature, shall when such appeals are allowed by law, lie-
  - a) to the Court of the District Judge of that district when the amount or value of the subject matter of the original suit or proceedings is less than five lakhs of rupees or such other sum as the High Court may, from time to time, specify.
  - b) to the High Court, in other cases.
- 3) Appeals from the decrees and orders passed by a Court of Civil Judge in original suits or proceedings of a civil nature, shall, when such appeals are allowed by law, lie to the Court of District Judge of the district.

Provided that the High Court may, in consultation with the Government, by notification, direct that such appeals against decrees and orders may lie to the Court of Senior Civil Judge when the amount or value of the subject matter of the suit or proceeding is less than one lakh of rupees and thereupon appeals shall be preferred accordingly.

When an order under section 35A or under section 95 or specified in clause (ff) or clause (g) or clause (h) of sub-section (1) of section 104 of the code is made by a court of small causes an appeal therefrom shall lie to the Court of the District Judge on any ground on which an appeal from such order would lie under that section.

(i) The High Court may, for the purpose of satisfying itself that a decree or order made in any cases decided by a court of small causes was according to law, call for the case and pass such order with respect thereto as it may think fit.

(ii) Save as provided by this Act a decree or order made by a Court of Small Causes shall be final.

**18. Power to require witness or party to make oath or affirmation-** Every civil court under this Act shall require a witness or party to any suit or other proceedings pending in such court to make such oath or affirmation as is prescribed by the law for the time being in force.

**19. Investment of Small Causes powers to courts of Senior Civil Judges or Civil Judges-**

1) The High Court may, by notification, invest with such restrictions as it shall from time to time determine, any Court of Senior Civil Judge or a Court of Civil Judge, with jurisdiction of the trial of suits cognizable by a Court of Small Causes upto such amount as it may deem proper, not exceeding in the case of a Court of Senior Civil Judge one lakh rupees and in the case of a Court of Civil Judge fifty thousand rupees.

2) The High Court may, by notification withdraw or alter whenever it thinks fit such jurisdiction of any Court of Senior Civil Judge or Civil Judge, so invested.

**20. Judges not to try suits in which they are interested etc.-**

- 1) No Judicial Officer shall try any suit to, or in which he is a party or personally interested or shall adjudicate upon any proceedings connected with or arising out of such suit.
- 2) No Judicial Officer shall try any appeal against any degree or order passed by himself in any other capacity.
- 3) When any such suit, proceedings or appeal comes before any such Judicial Officer he shall report the circumstances to the court to which he is immediately subordinate. the said superior Court shall thereupon dispose of the case in the manner prescribed by Section 24 of the Code.

**21. Application of the Code-**

- 1) Subject to the provisions contained in sub-section (3) of section 1 of the Code of Civil Procedure, 1908, the procedures prescribed in the Code shall, save in so far as is otherwise provided by this Act be followed in spirit in all the Civil Courts.
- 2) Notwithstanding anything contained in sub-section(1)
  - (a) in all suits cognizable by a court of small causes and in all proceedings arising out of such suits an applicant.
    - (i) for an order to set aside a degree passed exparte on a ground other than that summons in the suits was not duly served; or
    - (ii) for a review of judgement on grounds other than an error apparent on the face of the record, shall at the time of presenting his application either deposit in the court the amount due from him under the decree or in pursuance of the judgement or give such security for the performance of the decree or compliance with the judgement as the court may direct on a previous application made by him in this behalf. The security may be released in the manner provided by section 145 of the code.
  - (b) when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depends upon the proof or disproof of title to immovable property or other title which such a court cannot finally determine, the court may at any stage of the proceedings

return the plaint to be presented to a court having jurisdiction to determine the title. When a Court so returns the plaint it shall comply with the provisions of rule 10 of order VII and make such order with respect to costs as it deems just and the court shall for the purpose of Limitation Act, 1963 be deemed to have been unable to entertain the suit by reason of a cause of a nature like that of defect of jurisdiction.

**CHAPTER - IV**  
**MISCELLANEOUS**

**22. Temporary vacancy of office of Principal District Judge -** In the event of the death of the Principal District Judge or of his being prevented from performing his duties by illness or otherwise or of his absence on leave from the station in which his court is held, the Additional District Judges of the District and if there are more than one Additional District Judges the seniormost among them and there are no Additional District Judges in the district the senior most Senior Civil Judge in the district, shall without interruption to his ordinary duties assume charge of the office of the Court of Principal District Judge and while so in charge perform the duties of the Principal District Judge with respect to the filing of the suits and appeals, receiving pleadings, execution of processes, return of writs and the like, and shall continue in charge of the said court until the same is resumed by a Judge duly posted thereto.

**23. Temporary vacancy of office of Senior Civil Judge or Civil Judge or Judge of a Court of Small Causes-** In the event of death, suspension or temporary absence of any Senior Civil Judge or Judge of Court of Small Causes or Civil Judge the Principal District Judge may empower any Senior Civil Judge or Civil Judge in the District to perform such duties of such Senior Civil Judge or Judge of Court of Small Causes or Civil Judge, as the case may be, as are specified in section 22 either at the place of such court or of his own court, but in every such case the registers and records of the two courts shall be kept distinct.

**24. Vacations and holiday -**

- 1) The civil courts in the state shall be closed on such days as may be notified by the High Court as public holidays for the whole State or for such area in the State.
- 2) The civil courts in the State shall have such number of vacations in each year as the High court may declare but the total number of days of such vacations shall not exceed fifteen days.
- 3) Notwithstanding anything contained in this Act or in the Code, the High Court, may, by the general or special order appoint the Principal District Judge or an Additional District Judge or a Senior Civil Judge as vacation judge for the district and for the duration of the adjournment of the court of Principal District Judge in any vacation or any part thereof and regulate the work to be discharged by the vacation judge.
- 4) The local limits of jurisdiction of the vacation judge shall be the same as those of the Court of Principal District Judge concerned and his jurisdiction shall extend to all suits appeals and other proceedings pending in or cognizable any civil court in the district concerned.
- 5) The vacation Judge shall hold his court at the place at which Court of Principal District Judge is normally held and he shall have administrative control over all the staff of all civil courts in the district.
- 6) Notwithstanding the appointment of a vacation judge every civil court in the district shall during the period it is adjourned for any vacation be deemed to be closed for the purpose of section 4 of the Limitation Act, 1963 (Act 36 of 1963).
- 7) Appeal from the decree or order of a vacation judge shall, when such appeal is allowed by law, lie to the High Court.

**25. Subordination of civil courts-**

- 1) Subject to the other provisions of the Act and the rules and any other law for the time being in force all civil courts in a district including the staff thereof shall subject to the control of the High Court be subordinate to the Court of District Judge.
- 2) The Civil Courts shall maintain such forms, books of accounts, records, registers

and the like as may be specified by the High Court in consultation with the Government.

3) The Government may discharging their functions and responsibilities require through the High Court, the civil courts to furnish to the Government such particulars and information relating to the working of the courts and other matters as they may call for from time to time.

## **26. Constitution of committees-**

1) The High Court shall constitute a consultative committee for each district consisting of the following:-

1. Principal district judge of the district - Chairman
2. Deputy Commissioner of the district - Member
3. Superintendent of Police of the district - Member
4. President of the Bar Association of the district - Member
5. Executive Engineer of the District in charge of Court Buildings - Member
6. One Senior Civil Judge of the district nominated by the High Court - Member

2) The functions of the Committee may, among other functions prescribed by the High Court, include -

(i) to make recommendations to the High Court and to the Government regarding infrastructure of the courts in the district and improvements thereto.

(ii) to make suggestions to the High Court regarding improvements in the court procedure and functioning of the court and office thereof.

(iii) to make suggestions regarding closer coordination between Bar, Bench and other authorities and effective functioning of the Courts.

(iv) such other functions as may be assigned to it by the High Court from time to time.

## **27. Power to invest Senior Civil Judges with Jurisdiction under certain Acts-**

1) The High Court may by general or special order invest any Senior Civil Judge, within

such local limits and subject to such pecuniary limitation as may be specified in such order with all or any of the powers of a District Judge or a Court of District Judge, as the case may be under the Indian Divorce Act, 1869 (4 of 1969) the Indian Succession Act, 1925 (39 of 1925), the Special Marriage Act, 1954 or the Guardians and Wards Act, 1980 (8 of 1980).

2) Every order made by a Senior Civil Judge by virtue of the powers conferred upon him under Sub-Section (i) shall be subject to appeal to the High Court or the Court of the District Judge according as the amount or value of the subject matter exceeds or does not exceed five lakhs rupees.

3) Every order of the Court of District Judge passed on appeal under Sub-Section (2) from the order of a Senior Civil Judge shall be subject to an appeal to the High Court under the rules contained in the Code applicable to appeals from appellate decrees.

**28. Fees for process-** The High Court shall from time to time, with the sanction of the Government, prescribe and regulate by rules the fees to be taken for any process issued by any civil court. Such rules may provide for payment of process fee in a lump sum in advance along with the plaint.

**29. Mode of conferring powers-** Except as otherwise provided any powers that may be conferred by the High Court on any person under this Act may be conferred on such person either by name or by virtue of office.

**30. Power of High Court to make rules-**

1) The high Court may, after previous publication, by notification make rules to carry out the purposes of this Act.

2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:-

(a) the manner in which the proceedings of each civil court shall be kept and recorded.



- (b) regulating the grant of certified copies of papers in civil courts.
- (c) regulating the duties and functions of the ministerial officers of the civil courts.
- (d) regulating the issue of licences by the Principal District Judge of the district to persons to act as petition writers in civil courts in that district and the conduct of business by them and the scale of fees to be charged by them.
- (e) providing a penalty of such amount not exceeding five hundred rupees for breach of the rules made under clause (d) and the authority who could investigate the breach of rules and impose the penalty;
- (f) forms, books, registers, records and account to be maintained by the civil courts.
- (g) payment of process fees in lump sum in advance along with the plaint or otherwise:
- (h) any other matter which in the opinion of the High Court has to be or may be prescribed for the effective enforcement of the Act and the administration of the Courts.

**31. Repeal and savings-** (1) the provisions of Rules for Regulation of Procedure of the Officers Appointed to administer Justice in Lushai Hills published under the Government of Assam, Notification no.2530(a) AP Dt. 25<sup>th</sup> March, 1937 as subsequently amended and adopted, in so far as they relate to the matters dealt with in this Act are hereby repealed with effect from the appointed date.

Provided that such repeal shall not affect the previous operation of the enactments so repealed and anything done or any action taken (including the districts formed, limits defined, courts, established or constituted, appointments, rules or order made, functions assigned, powers granted, seals or forms prescribed, jurisdiction defined, or vested and notifications or notices issued by or under the provisions thereof are deemed to have been done or taken under the provisions of this Act) shall, in so far as it is not inconsistent with the provisions of this Act and shall continue in force unless and until superseded by any-

thing done or any action taken under this Act.

(2) Notwithstanding anything in sub-section(1) or any other provisions of this Act or in any enactment repealed by sub-section (1) or in any other law or provisions having the force of law, all suits, appeals and proceedings connected therewith, pending before any court, which under this Act have to be instituted or commenced in other court shall, on appointed day stand transferred to such other court and shall be continued and disposed of by such other court in accordance with law as if such suit and proceedings had been instituted or commenced in such other court under this Act.

(3) If there be any doubt as to which court any suit, appeal or proceedings shall stand transferred or as to which court any appeal shall be preferred in accordance with the provisions of this Act the Court designed by the High Court shall be the Court to which such suit, appeal shall be transferred or such appeal or proceedings shall be preferred, and the decision of the High Court shall be final.

**32. Powers to remove difficulties-** If any difficulty arises in giving effect to the provisions of this Act in consequence of the transition to the said provisions from the provisions of any enactment or law in force immediately before the commencement of this Act, the Government in consultation with the High Court may by notification make such provisions as appear to it to be necessary or expedient for removing the difficulty.

## **THE SCHEDULE**

### **SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES**

( See Section - 16 )

(1) A suit concerning any act done or purporting to be done by or by order of the Central Government or the State Government.

(2) A suit concerning an act purporting to be done by any person in pursuance of a

judgement or order of a Court or of a judicial officer acting in the execution of his office.

(3) A suit concerning an act or order purporting to be done or made by any other Officer of the Government in his official capacity, or by a Court of Wards, or by An officer of a Court of Wards in the execution of his office;

(4) A suit for the possession of immovable property or for the recovery of an interest in such property;

(5) A suit for the partition of immovable property;

(6) A suit by a mortgagee of immovable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagee of immovable property for the redemption of the mortgage;

(7) A suit to enforce a charge whether created by contract or by statute or by decree of Court;

(8) A suit for the assessment, enhancement, abatement or apportionment of the rent of immovable property;

(9) A suit for the recovery of rent, other than house rent unless the Judge of the Court of Small causes has been expressly invested by the government with the authority to exercise jurisdiction with respect thereto;

(10) A suit concerning the liability of land to be assessed to land revenue;

(11) A suit to restrain waste;

- (12) A suit for the determination or enforcement of any other right to, or interest in immovable property;
- (13) A suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office;
- (14) A suit to enforce payment of any allowance or fees paid to families or individuals by the Government, or of cesses or other dues when the cesses of dues are payable to a person by reason of his interest in immovable property or in an hereditary office or in a shrine or other religious institutions;
- (15) A suit to recover from a person to whom compensation has been paid under the Land Acquisition Act for the time being in force the whole or any part of the compensation;
- (16) A suit for the specific performance or rescission of a contract;
- (17) A suit for the rectification or cancellation of an instrument;
- (18) A suit to obtain an injunction;
- (19) A suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust and a suit by a co-trustee enforce against the estate of a deceased trustee a claim for contribution;
- (20) A suit for a declaratory decree;
- (21) A suit instituted under Order XXI, Rule 63, or Order XXI, rule 103 of the First

Schedule to the Code;

(22) A suit to set aside an attachment by a Court or a revenue authority, or a sale, mortgage, lease or other transfer by a Court or a revenue authority, or by a guardian;

(23) A suit for property which the plaintiff has conveyed while insane;

(24) A suit to alter or to set aside a decision, decree or order of a court or of a person acting in a judicial capacity;

(25) A suit to contest an award;

(26) A suit upon a foreign judgement as defined in the Code or upon a judgement obtained in India;

(27) A suit to compel a refund of assets improperly distributed under S 73 of the Code;

(28) A suit under S.360 of the Indian Succession Act, 1925 (39 of 1925) to compel a refund by a person to whom an executor or administrator has paid legacy or distributed assets;

(29) A suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate;

(30) A suit-

(a) for a dissolution of partnership or for the winding up of the business of partnership after its dissolution;

(b) for an account of partnership transactions; or

(c) for a balance of partnership account, unless the balance has been struck by

the parties or their agents;

(31) A suit for an account of property and for its due administration under decree;

(32) Any other suit for an account, including a suit by a mortgage, after the mortgage has been satisfied, to recover surplus collections, received by the mortgage, and a suit for the profits on immovable property belonging to the plaintiff which have been wrongfully received by the defendant ;

(33) A suit for a general average loss or for salvage;

(34) A suit for compensation in respect of collision between ships;

(35) A suit on a policy of insurance or for the recovery of any premium paid under any such policy;

(36) A suit for compensation -

(a) for loss occasioned by the death of a person caused by actionable wrong

(b) for wrongful arrest, restraint or confinement;

(c) for malicious prosecution;

(d) for libel;

(e) for slander;

(f) for adultery or seduction;

(g) for breach of contract of betrothal or promise of marriage;

(h) for inducing a person to break a contract made with the plaintiff;

(i) for obstruction of an easement or diversion of water course;

(j) for an act which is, or, save for the provisions of Chapter IV of the Indian

Penal Code (45 of 1860), would be, an offence punishable under Chapter XVII of the said Code;

(k) for illegal, improper or excessive distress, attachment or search, or for trespass committed in, or damage caused by, the illegal or improper execution of any distress,

search or legal process;

(l) for improper arrest under the Code or in respect of the issue of an injunction wrongfully obtained under the said Code; or

(m) for injury to the person in any case not specified in the foregoing sub-clauses of this clause;

(37) A suit by a Muhammadan for exigible (mu' ajjal) or deferred (mu' wajjal) dower;

(38) A suit for the restitution of conjugal rights, for the custody of a minor, or for a divorce;

(39) A suit relating to maintenance;

(40) A suit for arrears of land revenue, village expenses or other sums payable to the representative of a village community or to his heir or other successor in title;

(41) A suits for profits payable by the representative of a village community or by his heir or other successor in title after payment of land revenue, village expenses and other sums;

(42) A suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer or by a manager of joint property, or a member of an undivided family in respect of a payment made by him on a ccount of the property or family;

(43) Suits by one of several joint mortgagors of immovable property for contribution in respect of money paid by him for the redemption of the mortgaged property.

(44) A suit against the Government to recover the money paid under protest in satisfac-

tion of a claim made by revenue authority on account of an arrear of land revenue or of a demand recoverable as an arrear of land revenue;

(45) A suit to recover property obtained by an act which is, or, save for the provisions of chapter IV of the Indian Penal Code (Act 45 of 1860) would be an offence punishable under Chapter XVII of the said Code;

(46) A suit the cognizance whereof in a court of small causes is barred by any enactment for the time being in force.

**Sd/-**  
**P.Chakraborty**  
**Secretary**  
**Govt. of Mizoram**  
**Law & Judicial Department**

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*Source : Notification No.H.12018/155/05-LJD/7, the 19<sup>th</sup> Oct. 2005 (Vide-the Mizoram Gazette, Vol.XXXIV, 24.10.2005, Issue No. 291) Received the assent of the Governor of Mizoram on 30<sup>th</sup> Sept.2005. With effect from the 26<sup>th</sup> April, 2006 under No.A.36016/5/2001- P&AR(CSW) Aizawl, the 26<sup>th</sup> April, 2006 and the Mizoram Civil Courts (Amendment) Act, 2007 passed by the Mizoram Legislative Assembly on 19<sup>th</sup> Sept.,2007 and notified under No. H. 12018/155/05-LJD/23, Dated Aizawl, the 30th October, 2007.*



## STATEMENTS OF OBJECTS & REASONS

It is expedient, in the public interest, to secure independent of the Judiciary from the Executive and to that extent to effect the Separation of powers. This Bill seeks, inter alia, to provide for the following:-

- (i) to set up various civil courts at District and Sub-Division levels without disturbing the continuance of the traditional courts i.e. Mizo District Council Court, its subordinate courts and village courts, to define the territorial pecuniary jurisdiction of these courts and other ancillary matters connected thereto, by taking away the similar powers from the Deputy Commissioner and their Assistants.
- (ii) to insulate the Judges from any outside influence or pressure in the disposal of Criminal and Civil Cases.
- (iii) to curb lethargic disposal of cases.
- (iv) to impart fair and uniform judgement/trial of litigants.

The Bill has been prepared in line of the model drafted by the First National Judicial Pay Commission.

The enactment of this Bill seeks to repeals :-

- (i) Rules for Regulation of Procedure of Officers Appointed to Administer Justice in the Lushai Hills, 1937, as adapted and amended from time to time.
- (ii) The Bill has been framed with the above objects in view.

Aizawl the 23<sup>rd</sup> September, 2005

Minister,  
DP & AR

## **FINANCIAL MEMORANDUM**

In pursuance of the First National Judicial Pay Commission's recommendation approved by the Apex Court of India, the Government of Mizoram has taken steps to separate judiciary from the executive control and the Cabinet in its meeting held on 21.2.2005 had already passed to implement Separation of Judiciary from the Executive in the State of Mizoram excluding the Autonomous District Council Areas and therefore, the Control over the Existing Courts in Mizoram including the posting and promotion of, and the grant of leave to persons belonging to the Judiciary Service of the State have been vested to the Gauhati High Court vide Notification No. 36016/5/2001 - P & AR (CSW) Dt. 16.6.2005.

Since the nomenclature of the existing Courts as well as the gradation of the Judicial Service Cadre are different from the FNJPC recommendation to be implemented in all the States and Union Territories of the Union of India, it is felt necessary to have Civil Court Act in line with the FNJPC recommendation which is prepared in the form of a Bill. As it appears in the Bill the existing Courts should be converted to the Court of District Judge, Court of Civil Judge (Senior division) and Court of Civil Judges and the Court should be established as per requirement. It is therefore to state that the Bill do not involve immediate financial implication relating to the administrative and infrastructure set up. Further increases and improvements requiring additional financial implication shall be provided for in the regular budget on needs base in phased manner.

This has the approval of Finance Department vide their ID.No.FIN(E) 315/2005  
Dt.21.7.2005

Minister,  
DP & AR