

# Examining the Judicial Independence and Separation from Executive in Arunachal Pradesh: A Legal Analysis

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## Abstract

This paper explores the historical journey of the judicial system in Arunachal Pradesh, India, tracing its origins from ancient times. Initially, various regions in India functioned under monarchical rule, with their unique systems of dispute resolution known as Darbars, primarily guided by the principles of Dharma. With the Mughal invasion, a new judicial system was established across different states. Subsequently, the British introduced the court system as the primary institution for dispute resolution in India. Even during this transitional period, Arunachal Pradesh had its own decentralized judicial administration at the village level, employing diverse methods such as the Chicken Liver Test, ordeals, oaths using tiger teeth, swords, stones, and more. The arrival of the British gradually impacted the culture and traditions of the region. Eventually, the area was designated as the North-East Frontier Agency (NEFA) for administration purposes. In 1945, the Assam Frontier (Administration of Justice) Act was enacted, outlining the establishment and appointment of Village Authorities responsible for administering justice. This legislation defined the powers, functions, dispute settlement procedures, and provisions for appeals within the village authority framework. In 1987, Arunachal Pradesh was declared a separate state, leading to a gradual separation of the judiciary from the executive and the establishment of courts. Presently, both systems—village councils (known by various names) and the court system—coexist for dispute resolution in Arunachal Pradesh. The region exhibits a need for specific customary laws, and several tribes have published their own Customary Laws that differ from the nationally established legal framework. Notably, the Government of Arunachal Pradesh recently passed the Arunachal Pradesh Civil Code Bill, introducing a novel dimension to the dispute resolution mechanism in the state.<sup>1</sup>

This study aims to comprehensively discuss the step-by-step development of the judiciary in Arunachal Pradesh, shedding light on its historical evolution and the recent legal reforms that have shaped its contemporary landscape.

**Keywords:** Judicial, Village Councils, Separation of Powers, Executive, Legal Analysis etc.

## Introduction

The principle of judicial independence and the separation of powers between the judiciary and the executive branch are crucial elements for the effective functioning of a democratic legal system. Article

50 of the Constitution of India specifically emphasizes the need for every state to take steps to separate the judiciary from the executive in the public services. This research article undertakes a legal analysis to examine the judicial independence and separation from the executive in the state of Arunachal Pradesh, India.

The Constitution of India establishes an independent and integrated judicial system, with the Supreme Court serving as the guardian of the Constitution, followed by the High Courts at the state level, and the District and lower courts. Arunachal Pradesh, as a state of India, has relatively recently established its own independent judiciary, making it one of the youngest modern judicial systems in the country. Prior to the establishment of the modern judicial system, Arunachal Pradesh relied on various traditional practices and customs for dispute resolution, which varied among different tribes and regions. However, in recent years, the state has made significant strides in separating the judiciary from the executive, aligning itself with the constitutional mandate and bringing a more structured approach to the administration of justice.

This research article aims to explore the evolution of the judicial system in Arunachal Pradesh, from the traditional dispute resolution methods practiced by different tribes to the establishment of a modern judiciary. It will critically analyze the extent to which the separation of powers has been implemented and examine the current state of judicial independence in the state.

### Objectives

1. To analyze the historical development of the judicial system in Arunachal Pradesh, focusing on the establishment of a separate judiciary and its journey towards independence from the executive branch.
2. To examine the legal framework and constitutional provisions relevant to judicial independence and the separation of powers in Arunachal Pradesh, evaluating their effectiveness and implementation in practice.
3. To identify and analyze the challenges and conflicts that arise due to the coexistence of traditional dispute resolution mechanisms and the modern court system in Arunachal Pradesh, exploring the implications for the administration of justice.
4. To assess the extent of judicial independence in Arunachal Pradesh, investigating the role of the executive branch in the appointment, functioning, and oversight of the judiciary, and evaluating the impact on the impartiality and autonomy of the judicial system.
5. To provide recommendations and insights for strengthening judicial independence and the separation of powers in Arunachal Pradesh, taking into account the unique cultural, social, and legal context of the region, and proposing measures to promote a fair, efficient, and independent justice system.

### Research Methodology

The research methodology employed in this study involves a comprehensive analysis of legal literature, constitutional provisions, and relevant case law. It also includes an examination of primary and secondary sources, such as statutes, regulations, and scholarly articles, to gather relevant data and information.

### Administration of Justice in Arunachal Pradesh before British Period

Arunachal Pradesh, the land of rising sun is the abode of different tribes with different ethnic culture and tradition. There are different customary laws amongst different tribes. Amongst the differences in Arunachal Pradesh one thing is common that each tribal group have their own traditional system of dispute resolution for dispensing justice. Every member of a particular tribe is pledged by birth to the system of

dispute resolution practiced by such tribe. Belief upon the existence of divine power and the faith upon the village council or the group of elderly persons of village including the village chief and priest uphold proper administration of justice at village level. The Customary practice of dispute resolution existing in different tribal groups are differently named, such as Nyel in Nyishis, Kabang in Adis, Keba in Galos, Buliang in Apatanis, Ngothun in Noctes etc.

As per the oral testimony of village elders almost all of the tribes of Arunachal Pradesh used to live a nomadic lifestyle, they used to settle at a place for few years and used to migrate from one place to another, sometime in search of better cultivable land and hunting ground and sometime inter tribe feud, pandemic etc. Since the days immemorial the process of dispute resolution has been carried on by the tribes amongst themselves, sometime by using power, sometime by the authority of the village elders and sometime by the priest through the faith of divine body.

### Administration of Justice during British Period

After 1838 the British colonial government assumed the administration of Ahom kingdom.<sup>2</sup> They have gradually spread their administration to the tribal areas of North-East. There have been three regular expeditions against the Adis in 1858, 1859 and 1862. By the grant of Posa and agreements, the formal British Sovereignty was extended over the hills up to the international border during the period of 1826 to 1847.<sup>3</sup>

The territory, now called Arunachal Pradesh entered into the area of administration in 1857 with the Britishers having designed administrative machinery for the area with the purpose to preserve their overlordship in it.<sup>4</sup> The area was included within the region and known by a term of wider spectrum as the North-East Frontier of Bengal. In 1914 some of the hill areas of North East frontier of Bengal were made separate tract with the name of North-East Frontier Tract by Government of India for better administration.<sup>5</sup> The area is again bifurcated as the Balipara Frontier Tract, the Lakhimpur Frontier Tract, the Sadiya Frontier Tract and Tirap Frontier Tracts of Assam.

There are several instances where the Political Officer employed by the British Government has visited in different places for dispute resolution amongst villages and amongst different tribes. Similarly, two British officers namely W. R. Godfrey, Political Officer of Sadiya Frontier Tract visited Aalo by foot for resolution of dispute between Darka and Bagra village of West Siang District. Later on the first Political Officer of Siang region namely P.L.S. Gems also visited the place to decide village boundary after measurement of the altitude of the mountain ranges and by placing demarcation stone.

The Government of India Act 1935, proposed for establishment of Indian Federation and for the first time it is provided that there should be a Federal Court of India as a court of record to be headed by the Chief Justice of India.<sup>6</sup>

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<sup>2</sup> B. Dutta Ray, As Aspect of North-East Frontire Policy of the Raj: An Overview, Himalayan Publisher, 6<sup>th</sup> Session, Agartala, 1985.

<sup>3</sup> B. Dutta Ray, As Aspect of North-East Frontire Policy of the Raj: An Overview, Studies in the History, Economy and Culture of Arunachal Pradesh, Himalayan Publisher, 6<sup>th</sup> Session, Agartala, 1985

<sup>4</sup> Bijan Mohanta, Administrative development of aunachal Pradesh 1873-1975, Uppal Publishing House, 1984, New Delhi-110002

<sup>5</sup> Notification No.977-EB, 978-EB and (79-EB dated the 25<sup>th</sup> September 1914, Foreign and Political Department, Government of India.

<sup>6</sup> The Government of India Act 1935

Government of India in recognition and regulation to the diverse system of dispute resolution and administration of the area with an objective to consolidate and amend the law governing the Administration of justice in the Frontier Tracts of Assam has enacted the “Assam Frontier (Administration of Justice) Regulation, 1945”. The administration of the Tracts is vested in the Governor and of each Tract in the Political Officer, the Assistant Political Officer, and the village authorities thereof. The Deputy Commissioner was empowered to appoint such person or persons as he considers desirable to be the members of a village authority for such village or villages as he may specify, and may modify or cancel any such order or appointment, and may dismiss any person so appointed. Accordingly, village authorities are appointed by the Deputy Commissions in each and every village for the administration of justice at village level. Since the enactment of the AFR 1945 the existing traditional dispute resolution system of different tribes are regulated and its power, function and jurisdiction are defined. Section 19 of the Act provides that the village authorities may try any case involving any of the under mentioned offences in which the person or persons accused is or are resident within their jurisdiction: - Theft, including theft in a building, Mischief, not being mischief by fire or any explosive substance, Simple hurt, Criminal trespass or house trespass, Assault or using criminal force." However due to the ignorance and lack of awareness many of the time it is seen the village authority seen exceeding its jurisdiction.

### **Introduction of Modern Judiciary**

***Establishment of Supreme Court of India:*** The journey towards the establishment of the Supreme Court of India began with the formation of the Federal Court of India in 1937. However, it wasn't until January 26, 1950, that the Federal Court was transformed into the Supreme Court of India, marking a significant milestone in the country's legal history. The inauguration of the Supreme Court took place on January 28, 1950. Initially, the Supreme Court of India operated from the Parliament House before eventually relocating to its current premises on Tilak Marg in New Delhi.

To regulate the practice and procedure of the Supreme Court, the Supreme Court Rules, 1966 were formulated under Article 145 of the Constitution. These rules provide a framework for the functioning and administration of the highest judicial institution in the country.

Justice Sir Harilal Kania, a distinguished legal luminary, was elevated as the first Chief Justice of India. His appointment marked the beginning of a long line of eminent jurists who have served as Chief Justices and contributed significantly to the development of Indian jurisprudence. Since its establishment, the Supreme Court of India has played a pivotal role in safeguarding the Constitution, protecting the rights and liberties of citizens, and interpreting the law of the land. Over the years, it has become a symbol of justice, impartiality, and the embodiment of the highest standards of legal excellence.

As the apex judicial body, the Supreme Court continues to evolve, adapting to the changing needs and demands of a dynamic society, while upholding the principles of justice, fairness, and judicial independence.

***Establishment of Gauhati High Court:*** The Gauhati High Court as of today emerged from the High Court of Assam. On 9th September, 1947, the Assam Legislative Assembly adopted a resolution that a High Court be established for the Province of Assam. In exercise of power conferred by sub-section (1) of section 229 of the Government of India Act, 1935, as adopted by the Indian Provincial Constitution (Amendment) Order, 1948, the Governor General of India was pleased to promulgate on 1st March, 1948 the Assam High Court Order, 1948, establishing the High Court of Assam with effect from 5th April, 1948, for the then Province of Assam. Sir R.F. Lodge sworn in as the first Chief Justice of Assam High

Court on 5th April, 1948. The Assam High Court initially had its sittings at Shillong but shifted to Gauhati from 14th August, 1948. Later on, the Assam High Court came to be known as the High Court of Assam and Nagaland on the constitution of State of Nagaland with effect from 1<sup>st</sup> December, 1963. On re-organization of the North-Eastern region by the North Eastern Area (Re-organization) Act, 1971, a common High Court was established for the five North-Eastern States (Assam, Nagaland, Manipur, Meghalaya and Tripura) and the two Union Territories (Union Territory of Mizoram and the Union Territory of Arunachal Pradesh) and called as the Gauhati High Court.

With the enactment of the State of Arunachal Pradesh Act, 1986 (Act 69 of 1986), the States of Arunachal Pradesh attained statehood on 20.2.1987. From the appointed day, common High Court for the States of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh came into being. The Principal Seat of the Gauhati High Court is at Guwahati, Assam. Apart from the Principal Seat, the High Court has Itanagar Bench for the State of Arunachal Pradesh (established on 12.8.2000) (besides other benches). The Gauhati High Court occupied a unique position of being a common High Court of seven States of North East India, till 23.03.2013, the date of functioning of separate High Courts in Meghalaya, Manipur and Tripura.

***Establishment of Itanagar Permanent Bench:*** The Gauhati High Court Itanagar Permanent Bench was inaugurated on 12th August, 2000 by the then Hon'ble Chief Justice of the Supreme Court of India, Justice (Dr.) A.S. Anand. It is located at Naharlagun (Itanagar), Arunachal Pradesh.

Though there was requirement of establishment and separation of Judiciary in Arunachal Pradesh as provided under Article 50 of the Constitution of India but due to lack of manpower and required infrastructure the Executive Magistrate were designated as JMFC and Sessions Court. The Deputy Commissioner was designated as the District and Sessions Judge and the Senior Executive Magistrate as the Chief Judicial Magistrate and the Judicial Magistrate First Class. Sometime a Circle Officer is designated as the Judicial Magistrate Second Class for trial and disposal of cases for judicial administration or administration of Justice.

***Establishment of three Adhoc Additional District and Sessions Court:*** An advertisement was issued on July 13, 2001 by the Government of Arunachal Pradesh inviting applications for filling up of three posts of Additional Deputy Commissioners with the powers of Additional Sessions Judge, on contract basis, for the period up to March 31, 2005. Pursuant thereto, on June 04, 2002, the High Court has selected three advocates for appointment accordingly the State Government has appointed them as the adhoc Additional Sessions Judges. They were posted at Bomdila, Yupia, Pasighat, Basar, Namsai and Tezu where they were to conduct circuit courts. The term of service was extended up to March 31, 2010. The purpose was to post the incumbents in Fast Track Court. During that time there was no separation of executive branch from the judicial wing in the State of Arunachal Pradesh.

***Establishment of Two District and Sessions Court:*** The Government of Arunachal Pradesh in consultation with the High Court has enacted the Arunachal Pradesh Judicial Service Rules, 2006, which were notified on December 06, 2006. Rule 7 of the 2006 Rules providing the process of recruitment of Judicial Officers.

Vide Notification dated 17<sup>th</sup> December, 2007 Government of Arunachal Pradesh established two Courts of the District and Sessions Judges. But only on July 31, 2008, the High Court issued advertisement for filling up of two posts of District and Sessions Judge, Grade-I, that were created vide Notification dated December 17, 2007. Vide Notification dated March 30, 2010, two candidates were selected and appointed to the notified posts. The State is divided into two Sessions Divisions and they are posted as District and



Session Judge West Sessions Division at Yupia and District and Sessions Judge, East Sessions Division at Tezu for the Judicial Administration.

***Creation of Additional District and Sessions Court:*** Initially State Government extended of term of the FTC judges in the State for a period of five years with effect from April 01, 2011 to March 31, 2015<sup>7</sup>. Few months thereafter, i.e. on November 03, 2011, the Government of the State of Arunachal Pradesh, in consultation with the High Court, converted the three FTCs into Regular Courts of Additional District and Sessions Judges, Grade-I.

On January 10, 2013, the High Court issued an advertisement inviting applications from eligible candidates for appointment to three vacant posts in the Grade-I cadre of the Arunachal Pradesh Judicial Service created on November 03, 2011.

Similarly, The Gauhati High Court issued an advertisement dated 20.02.2013, inviting applications from eligible Advocates for filling up 5 newly created posts in Grade-II of Arunachal Pradesh Judicial Service as the Chief Judicial Magistrate and Civil Judge Senior Division. Simultaneously the Government of Arunachal Pradesh has created 5 posts of Judicial Magistrate First Class cum Civil judge Junior Division and the Gauhati High Court have filled up all the posts for Additional District and Session Judge, CJM and JMFC and posted the judicial officers in different districts for dispersing justice. Thereafter again two posts in Grade II of eight posts in Grade III of Arunachal Pradesh Judicial Services are created and Judicial Officers are recruited. The government has redesignated two Additional District and Sessions Court as District and Sessions Court and created three more District and Sessions Court including four more Court of Chief Judicial Magistrates and several Court of Judicial Magistrate First Class. As on date there are in total 32 Judicial Officers in all three Grades who are dispensing justice almost all of the districts. Even in recent days the Cabinet of Arunachal Pradesh Government has approved for appointment of Legal Remembrance officer in the Government of Arunachal Pradesh.

### **Conflict between Modern Judicial System and Traditional Dispute Resolution Mechanism in Arunachal Pradesh**

In Arunachal Pradesh, a significant conflict arises between the modern judicial system and the traditional dispute resolution mechanisms that have long been practiced in the region. This conflict stems from the mismatch between existing laws and the customary practices observed in village councils, as well as the establishment of regular courts.

Arunachal Pradesh is home to diverse tribes and communities, each with its own unique customs and traditions. These distinct groups have developed distinguished traditional dispute resolution mechanisms, often known by different names. The underlying principle of these traditional village councils is to provide compensation to the victim and restore societal equilibrium while preserving the region's rich cultural heritage.

The decision-making process within the village councils is primarily guided by the prevailing customs of the specific tribe. However, the newly created regular courts operate based on the laws enacted by the Indian Parliament and the State Legislature. These courts rely on the legal framework established by the country, without a codified set of customs or personal laws. As a result, discrepancies in decision-making between the village councils and the courts become apparent.

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<sup>7</sup> vide orders dated May 19, 2011

The clash between traditional practices and modern legal principles poses a challenge for the administration of justice in Arunachal Pradesh. The absence of uniformity and standardization in decision-making across village councils, coupled with the application of national laws in the courts, leads to divergent outcomes.

Addressing this conflict requires a careful balance between respecting and preserving the cultural traditions and customs of Arunachal Pradesh while ensuring that justice is administered in accordance with the established legal framework. Efforts to reconcile the disparities and bridge the gap between the two systems are crucial to maintain harmony and fairness in the dispute resolution process.

Finding a middle ground that acknowledges and integrates the strengths of both the traditional dispute resolution mechanisms and the modern judicial system is essential for achieving an effective and inclusive system of justice in Arunachal Pradesh.

### **Findings**

1. The establishment of a separate judiciary in Arunachal Pradesh represents a significant milestone in the state's legal history, demonstrating a commitment to the principles of judicial independence and the separation of powers.
2. Despite the constitutional provisions and legal framework supporting judicial independence, there are challenges in practice, with instances of executive interference in the appointment and functioning of the judiciary, posing threats to the autonomy and impartiality of the judicial system.
3. The coexistence of traditional dispute resolution mechanisms and the modern court system creates a complex landscape, with a need to strike a balance between preserving cultural heritage and ensuring adherence to the rule of law.
4. The recognition of traditional village councils as Traditional Courts, along with the implementation of the Arunachal Pradesh Civil Code Act 2022, offers a potential avenue for integrating traditional dispute resolution mechanisms within the formal legal system, fostering greater inclusivity and cultural sensitivity.
5. There is a need for continuous efforts to strengthen judicial independence and the separation of powers in Arunachal Pradesh, including reforms in the appointment process, increased transparency, and greater awareness and respect for the importance of an independent judiciary in upholding the rule of law.

### **Conclusion**

The enactment of the Arunachal Pradesh Civil Code Act 2022 and the amendment of the Assam Frontier (Administration of Justice) Act 1945 have acknowledged the traditional village council as the Traditional Court, aiming to enhance the efficiency and effectiveness of dispute resolution and judicial administration in Arunachal Pradesh. This recognition signifies the potential for utilizing the Village Authority and traditional village councils as valuable and effective mechanisms for resolving disputes, albeit with certain modifications.

By exploring the interface between the modern judicial system and traditional dispute resolution mechanisms, this research sheds light on a new realm of possibilities in the justice delivery mechanism in India. It highlights the significance of incorporating and adapting traditional practices to complement the formal legal framework, particularly in states like Arunachal Pradesh where diverse customs and traditions prevail.

The findings of this study offer insights into the viability and benefits of utilizing traditional village councils as an alternative dispute resolution mechanism. While modifications may be necessary to align these practices with contemporary legal requirements, harnessing the potential of traditional dispute resolution mechanisms can contribute to more accessible, culturally sensitive, and efficient justice delivery.

As Arunachal Pradesh moves forward, it is essential to strike a balance between preserving cultural heritage and upholding the principles of justice. Integrating the strengths of both traditional and modern systems can pave the way for a more inclusive and effective justice system, meeting the needs and aspirations of the diverse population in the state.

This research opens up avenues for further exploration and invites policymakers, legal practitioners, and researchers to consider the potential of traditional dispute resolution mechanisms in shaping the future of justice delivery in India. Embracing innovation and drawing upon the rich cultural heritage of the nation can lead to transformative advancements in the pursuit of a fair and accessible justice system for all.

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