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Asian Journal of Law and Society / Volume 2 / Issue 02 / November 2015, pp 357 - 377

DOI: 10.1017/als.2015.12, Published online: 07 September 2015

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### How to cite this article:

Amrita SHODHAN (2015). The East India Company's Conquest of Assam, India, and "Community" Justice: *Panchayats/Mels* in Translation. Asian Journal of Law and Society, 2, pp 357-377  
doi:10.1017/als.2015.12

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## Research Article

# *The East India Company's Conquest of Assam, India, and "Community" Justice: Panchayats/Mels in Translation*

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### Abstract

The East India Company troops fighting the Burmese aggression on the frontier of Bengal in Eastern India "freed" upper and lower Assam territories in 1825. David Scott of the Bengal Service was appointed to oversee the establishment of civil and revenue administration in these frontier territories. He established a hierarchical multiple structure of "native courts"—called *panchayats*—as the chief medium of civil and criminal justice. This was ostensibly continuing a traditional Assamese form of dispute resolution—the *mel*; however, the British criminal jury as well as the expert assessor model animated the system. After his death in 1831, the system was brought in line with the rest of the Bengal administration based on the British court system. His experiment, paralleled in many other newly conquered and ceded districts from the Madras territories to Central India, suggests the use of this mode in post-conquest situations by British administrators in South Asia.

**Keywords:** jury, alternative dispute resolution, history of empire

## 1. INTRODUCTION

A *panchayat* is classically defined in many Indian languages as a committee of five or approximately that number which deliberates and comes to an almost divine "pronouncement." Here I am drawing on the north Indian tradition of "*panch parmeshwar*"—that is, the five being divine. This image of *panchayat* justice has been an enduring cultural image.<sup>1</sup> However, in academic literature—in law, anthropology, sociology, and history—there is a converse consensus that the *panchayat* did not exist or, if it did, it was primarily an intra-caste organization.<sup>2</sup>

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1. For such immortal images of the *panchayat*, see Premchand's *Panch parmeshwar*, written in the early twentieth century, Premchand (1997); also see the Bollywood film *Panchayat*, Bhakri (1958). I thank Francesca Orsini for the latter reference.

2. See the extended discussion in Baxi & Galanter (1979), pp. 343–86; also Cohn (1987); Hayden (1984); Hayden (1999); Mandelsohn (2014).

Contrary to this academic understanding, the period from the 1790s to the 1840s of East India Company governance in India yields plenty of evidence for British run *panchayats*. Meschievitz has documented these in Madras 1820–43, Ballhatchet has described them for the Deccan 1818–21/22 but lingering until 1827, and also Gujarat 1790–1820. Malcolm and Gait mention them for Malwa and Assam, respectively, and Barpujari has a careful account in his study of Assam.<sup>3</sup> I focus on the Assam experience with *panchayats* in this paper.

The Assam experiment with *panchayats* is significant for understanding two aspects of imperial governance. First, it casts further light on a growing interest in the idea of a Scottish imperialism as distinct from the English variety.<sup>4</sup> The man behind the experiment, David Scott, came from Montrose, Scotland, in 1801 to India and worked through the ranks of the Bengal civil service. He was not demonstrably associated with any of the famous Scottish Governors—Munro, Elphinstone, or Malcolm. There is not enough information on Scott's background and intellectual habits to categorically assert that Scott's interest in the *panchayat* came from the same Scottish roots as Martha McLaren attributes to the other three.<sup>5</sup> However, the *panchayats* were an idiosyncratic response to the governance situation in Assam. It arose from his personal initiative given the circumstances in which he found himself, primary of which was his isolation and distance from the Bengal administration. This initiative may be associated with the different accent to Scottish imperialism, which showed a greater responsiveness to local traditions of authority.

The other significant aspect to the Assam *panchayat* experience is its location in the Bengal administration—a presidency that most staunchly advocated the hierarchical courts from the small districts to the provinces presided over by the Supreme Court. This was the judicial model implemented from beginning of company authority in Bengal from 1772 onwards. Yet, in the initial years in Assam, the Bengal administration sanctioned this quite different judicial form, based on including the community in the form of jury to adjudicate disputes and punish crime from provincial level courts to the highest court. I suggest that the post-conquest situation of Assam along with local traditions were together important in the use of this forum. Several constraints faced by the local officer in Assam were replicated in many different places where a similar forum to the *panchayat* in Assam employed members of the local community in judicial administration.<sup>6</sup>

Military conquest in Assam required a new “settlement”—a process not only of the organization of revenue, but also of governance in general. Thus there was an urgent need to demonstrate end of conflict. In this situation, the discussion centred on questions of legitimacy of the “foreign” government. There was concern regarding “upsetting local prejudices and showing continuity with local traditions.” The situation was also marked by a stress on resources and the inability to deploy further British officers on a scale required to organize the settlement. In this situation, the employment of local personnel in institutions that were familiar to them was emphasized. The opposition came from officers who worried about the moral standards of those delivering justice and failing to live up to “civilized” standards. The discussion thus also focused on the demonstration of a new and more civilized authority.

3. Meschievitz (1986); Ballhatchet (1957); Malcolm (1824); Gait (1906), pp. 322–45; Barpujari (1980), pp. 18–46.

4. For further reading on Scottish Imperialism, see Jaffe (2015); McKenzie (1993), pp. 718–39; and also for a well-considered view, Powell (2010), pp. 6–10.

5. McLaren (2001), pp. 214–19.

6. Particularly relevant is Wimpelmann's study of Afghanistan; see Wimpelmann (2013).

Thus, the introduction of the *panchayat* highlights and clarifies the dilemmas faced on conquest and the competing sovereignty of local authorities and the new conquerors.

This study is also important for untying Assam's colonial experience. Recent studies suggest that the British, in their attempt to administer the region, undertook various (mis) translations and (mis) understandings to establish their control.<sup>7</sup> This essay looks particularly at the way the first colonial administrators for Assam from 1826 to about 1834 employed *panchayats* to administer justice/resolve disputes and punish crime. This is a little-known experiment in governance. Making sense of it requires an examination of several axes of power, sovereignty, and translation.

## 2. DESCRIPTION OF LOCAL *MELS* (TRANSLATED AS *PANCHAYATS* IN BRITISH REPORTS)

Let me begin first with David Scott's assertion that he was continuing a local practice in Assam when he instituted the *panchayats*. While Scott asserted this local origin, he also presented the *panchayats* as an efficient method of providing urgent judicial administration. He did not see them as a necessity required by local prejudices. They were convenient and easy to organize. The central government, on the other hand, in their statement approving the *panchayats*, stated that this was "reviving" local forms of government which should be encouraged.

Yet, in none of the reports is there a clear description of the Ahom (the dynastic rule that the British replaced) system that they were continuing. To access this local practice, we have to turn to the *Buranji* literary tradition—a historical and political literature of Assam. In this literature, the judicial form is called a "*mel*," a getting-together of important members of the administration—the *Barbarua*, the *Barphukan*, or even the Queen—to decide on the cases in dispute. Barman's accounts of the *mels* is the only modern English-language study of these. This account suggests that the *mels* were "an assembly of persons coming together to decide some questions." The term is used today to call for any meeting, ranging from gossip to political discussion, but also to refer to a system of "local judiciary."<sup>8</sup> In their judicial form, *mels* were held in villages when there was a "breach of peace or privilege." The complainant convened the *mel* which was attended by the *melkis*. The residence of any important person or a temple or mosque was used to convene the *mel*. The accused were summoned to the *mel* by sending a representative of the *melkis*. Both parties deposited "surety money" and took an oath to accept the decision of the *mel* and the punishment.

The complaint was heard orally; witnesses might be heard to bring in evidence. In case the complaints were proved true, the accused were subject to punishment. A payment of fine, a community feast, etc. might be the punishments. The complainant may get their surety money returned, but they would submit it to the *melkis*; the accused would also lose the money and these would be the income of the *mel*. Some of it may be distributed to the religious institutions of the area.<sup>9</sup>

7. Chatterjee (2013a and 2013b), pp. 57–98; Misra (2005), pp. 215–46; Sharma (2002, 2011).

8. Barman (2005), pp. 7–8.

9. The whole account of Assamese *mel* is based on Santo Barman's description. His summary is followed by detailed chapters on accounts of different *mels* from different periods of history. Primarily, these are famous political cases of sedition and betrayal, but also cases of property divisions. See Barman, *supra* note 8.

Scott seems to have learned about the *mels* from Haliram Dhekiyal Phukan (who was later appointed to head this system of *panchayats*) and his brother Jajnaram Barbarua. These brothers were important in the revenue office of the last Ahom kings when David Scott was appointed the Agent to the North-East in 1823.

### 3. BACKGROUND TO THE BRITISH RELATIONSHIP WITH ASSAM

In 1823, Assam was a complex of territories, ruled by a coalition of the Ahom king with his religious priest and disciples, serviced by revenue and labour of their population.<sup>10</sup> The British of the East India Company were in contact with the Ahom kings from 1770s onwards, providing military training and guns for the army. This connection continued through informal and formal trade, leading to a sense of association. The Assamese primarily bought salt, which they paid for in silver. This region had had continuous incursions from the Burmese monarchs with whom the Ahom nobility was inter-married and had long and close trade and military contacts. In the 1820s, the Ahom kings and their subordinates sought closer military connection with the Company to fight Burmese aggression. The association with Assam and the various smaller principalities, primarily of Garos, Khasis, and others, was overseen on the Company's behalf by David Scott of the Bengal judicial services, also appointed as the Agent of the Governor General in the North-East Frontier of Bengal.<sup>11</sup>

Soon after Scott was appointed in 1823, the Ahom kings and many officials from Guwahati and elsewhere took refuge in his district headquarters—Rangpur (see map), Eastern Bengal, fleeing the Burmese aggression. This was the place where David Scott was stationed as magistrate and Commissioner. The two brothers, customs officials (*Duaria Barua*) from the customs of Guwahati-Haliram Dhekiyal Phukan and his brother Jajnaram, were amongst these refugees in Rangpur. Their father and grandfather had been in charge of the customs at Guwahati, controlling the Bengal-Assam trade.<sup>12</sup> The contract for business between Assam and the East India Company was made yearly through them—as the official in charge of customs. The *Duaria Barua* had made considerable profit out of the trade. According to Maniram Dewan's report in 1814, 60,000 *Narayani* Rupees (Rs.) were collected from the customs house that year. During the reign of Gaurinath Singha (1780–95), 90,000 Rs. were realized annually, but only 26,000 Rs. were received by the Ahom rulers.<sup>13</sup>

This customs officer was serviced by numerous labourers (*Paiks*) and armed monks (*Bairagis*). In fact, in the fighting with the Burmese, Haliram also joined in and, in the wake of defeat, escaped by boat to Jogighopa (Goalpara) with kin including women. He was injured by his own bayonet and hid the injury in the folds of his turban.<sup>14</sup>

10. Chatterjee (2013b).

11. Watson (1832), pp. 15–20.

12. Goswami (1986), pp. 204–5.

13. *Ibid.*, p. 206.

14. Neog (1977), pp. 6, 7. He then fled to British territory near Rangpur where Chandrakanta Simha and Purandar Simha were also staying and from which location they were making sporadic attempts to fight the Burmese. While in Goalpara–Rangpur, Haliram married Prasuti, daughter of Gosain of Majuli, a refugee, and therefore regrettably could not afford the pomp of having female singers from Bengal. He also travelled to Benares and sought the help of several important merchant princes there—like Jagat Sheth. Later, his brother Jajnaram was amongst the few who joined the Brahma prayer services with Raja Rammohan Roy at Calcutta.

Both brothers accompanied Scott when he led the 23rd Native Infantry to the aid of the Ahom marching from Chittagong in the south-east to Nowgong, upper Assam (see map) in the north. The Burmese were repelled from 1825 onwards. Scott along with Captain Neufville of the military was employed in settling upper and lower Assam, which the British acquired by right of conquest during the Burma War with the treaty of 24 February 1826 at Yandabao. This acquisition was a tract of country about 400 miles in length stretching from Goalparah to Sadiya.<sup>15</sup> They selected Guwahati to set up the headquarters of their establishment. Guwahati was a large and prosperous town on the Brahmaputra, as we saw earlier, already familiar to the British as controlling much of the trade of the region with Bengal. David Scott urged a closer connection with the country as he saw opportunity in Assam—in terms of both greater trade possibilities but also greater possibility of revenue extraction. In addition, he saw the hill ranges around Cherrapunji as highly suitable for European settlement.<sup>16</sup>

As Agent, he went beyond his circuit and was involved in many military skirmishes from which he never held back. He formed a Goalpara *Sebundy* Corps (Police) in 1826 under his superintendence. He had to deal with the deposed Ahom kings and the local Jaintia, Khasi, and Garo groups.<sup>17</sup>

#### 4. DAVID SCOTT AND THE SETTLEMENT OF ASSAM

The primary activity of any occupying power is stability and ensuring popular acceptance of the new administration. As in other conquered districts and territories, the Commissioner's principal job was to settle revenue collection and the judicial system. For this, he suggested that, in upper Assam, the region around Rangpur in the north and the seat of the Ahom kings should eventually be restored to the Ahom kings and in the meantime to maintain a more Assamese structure of governance in that location. On the other hand, lower Assam, the region around Guwahati, should be incorporated into Company territory and its governance should be the same as that of Bengal, as this part of Assam had a long history of foreign rule under the Mughals. Scott wrote:

I have no hesitation in expressing my belief that it would be much more acceptable by far the largest and most influential portion of the inhabitants who having been accustomed to be ruled by strangers have not that aversion to the introduction of a foreign authority that I apprehend would be felt in the Upper part of the country.

Thus, he said he was “not aware of any local reason for the exception of lower Assam from the jurisdiction of the *Nizamut Adawlat*.”<sup>18</sup> On the other hand, he suggested that, in upper Assam since Sookhpha's (1228–68) conquest, Ahoms have ruled the country and only members of this “tribe” are allowed to hold high office and therefore insisted that they should hold office.<sup>19</sup>

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15. Watson, *supra* note 11, p. 15.

16. *Ibid.*

17. *Ibid.*, also p. 34.

18. Scott to Swinton, 29 March 1828, H/671, p. 850.

19. Scott to Swinton, 2 February 1828, in Home Miscellaneous, consultation H/671, p. 806; Barpujari, *supra* note 3, p. 18.

#### 4.1 In Upper Assam

In that spirit, in May 1825, Scott appointed Lambodar Barphukan (brother-in-law of Chandrakanta—the defeated Ahom ruler to whose aid the Company army was chasing the Burmese in Assam) to decide civil cases in upper Assam with the Revenue Collector Janardan Barbarua (also an officer with the deceased Ahom ruler Gaurinath Singha) as co-adjutor. He also instituted a *surasuree* (meaning unclear in the original) *panchayat* of former pundits to deal with summary suits of minor importance. Criminal cases were to be tried by the Company's Junior Commissioner and referred to the Barphukan and heinous offences were to be decided by the Barphukan in trials with juries with the Barphukan presiding. The verdict would be subject to the Commissioner's decision. In the *mofussil* (districts/provinces), the revenue collectors—*choudhuries*—were given the right to try minor cases, both civil and criminal, with the aid of *mels* or *panchayats*.<sup>20</sup>

Neufville's letter to Scott of 7 March 1828 is a good statement demonstrating the guarantee given by Scott that English law should not be imposed. He asserted that "the inviolability of privileges which they (the local nobility) have obtained for themselves, and of which we found them possessed will be guaranteed to them, without releasing them from the homage and normal subserviency due to their suzerain."<sup>21</sup>

In the *sunuds* (deeds) granted by you (Scott) to the two principal authorities—the Busseena Puttree and the Suddeeya Khawa Gohain, they are allowed to decide upon cases of civil law and to administer justice to the inhabitants according to their respective jurisdictions.<sup>22</sup>

Thus, at Sadiya, the furthest eastern position in Assam, the Khims Khamti chiefs (the local ruling group) should sit as assessors in the Sadiya Khawa Gohain's court (*cutcherry*) and, under him, cases where individuals of their own immediate following were concerned should be continued:

... until the lower classes shall feel an interest in the soil and confidence in the existing government, which must gradually tend to weaken the ties at present subsisting between them and the chiefs to whom they have more immediately attached themselves ... during the troubles and the natural sentiment arising from a common sense of danger and a mutual collective security.

Neufville thus advocated native rule in the Singhpo region as well and judicial administration through "assessors." While Scott and Neufville do not use the term *panchayat* for this mode of administration, the idea of assessors and trials by juries is similar to the *panchayat* prescribed for Guwahati, described below, the primary difference being that, in upper Assam, the trials were held under the local chiefs and monks rather than the colonial Commissioner and his deputies. In fact, these chiefs were not paid for these duties, which were considered a privilege of their position.<sup>23</sup>

#### 4.2 In Lower Assam

Scott advised that lower Assam should be incorporated with the Company's regular provinces and he set up a system more in keeping with the Bengal Regulations where all

20. Barpujari, *supra* note 3, pp. 30–1.

21. H/671, p. 819.

22. H/671, p. 820.

23. Neufville to Scott, 23 December 1827, H/671, p. 823.



cases, civil and criminal, were to be decided by the Commissioner and his assistant (Captain Adam White, appointed as assistant in 1825), and criminal and "heinous" offences requiring capital punishment were to be tried by a court martial under Colonel Richards.

When they returned to Guwahati with the Company army, Chandrakant Simha, while at Guwahati, appointed Haliram and Jainaram as *dhekiyal* and *kharghariya* (gunpowder/ordnance) *Phukans* (superintendent of a *khel* or *mel*—units of professional or judicial groups).<sup>24</sup> In the first round of administrative appointments, Scott appointed Haliram as *Sheristadar* of upper Assam—collecting revenue, and also responsible for the revenue settlements of Kamrup district, going to office in sedans (*parhie dola*) flanked by huge sunshades (*barjapi*). He paid long visits to Calcutta and became known in high circles chiefly by virtue of his two publications "meant for Bengalis," particularly *Kamakhya jatra paddhati* (1829) in Sanskrit and *Asam Buranji* in Bengali (1831). Haliram was appointed assistant magistrate at Guwahati in 1832 but died before taking charge of office. He was well versed in Sanskrit and Tantras and in the local lore of the country. He had a busy daily ritual programme, as he was a pious tantric.<sup>25</sup> Digby and Jayatee Sharma indicate that Haliram was not fully integrated into Western/Bengali renaissance modernism. His use of Bengali was very much a reflection of the power of Bengal rather than the success of this hegemony, as it was rustic and interspersed with many Ahom words.<sup>26</sup>

Towards the close of 1826, namely within a year of the settlement, Scott found at the court of Guwahati 1,500 cases requiring immediate decision.<sup>27</sup> The court martial tribunal could not be assembled even once in that year. Thus, while prisoners were held at length without trial, the mortality rate in Guwahati jails was dreadful.<sup>28</sup>

Without waiting for the Supreme government's approval, Scott provisionally set up a structure of several district and central "*panchayats*"—that is, three "native courts" in Guwahati, the first with a *Rajkhowas* (traditionally an officer having jurisdiction over a prescribed area or unit of *paiks*, or 3,000 men) and three assessors to try civil cases, the second having a *Barphukan* (traditionally Ahom viceroy posted in Guwahati) and three assessors to decide civil cases up to 1,000 Rs, and the third to hear criminal cases of minor importance and appeals from provincial *choudhuries* (revenue officials) and other officials. He also created provincial *panchayats* in three districts—Nowgong, Kaliabar, and Charduar in central Assam. Appeals lay from the lower *panchayats* to the higher ones, and finally to the Commissioner himself. They were allowed to award sentences from six months' to two years' imprisonment.<sup>29</sup>

For heinous offences, he set up in March 1826 a *barpanchayat* with three native judges to be aided by two pundits and six assessors.<sup>30</sup> In despatches of 1826 and 1827, Scott said that violent crimes had increased considerably—theft, cattle-lifting, elopement of girls, cases of burglary, highway, and gang robberies were frequent.<sup>31</sup> Scott suggested that the *panchayat*

24. Neog (1977), p. 7.

25. *Ibid.*

26. Digby (1973), pp. 588–602; Sharma (2002).

27. Barpujari, *supra* note 3, p. 32, quoting BSPC, 16 February 1827.

28. *Ibid.*, pp. 32–3; also letters from the Asst. Surgeon in the consultation 56950, F/4/1443.

29. Barpujari, *supra* note 3, p. 32.

30. *Ibid.*, p. 33; also H/671 letters from Swinton & Stirling to Scott in (1828), pp. 837–50.

31. Barpujari, *supra* note 3, p. 34.

be used, because the number of offences “loudly called for good and unobjectionable means if available but any means rather than not at all.” The number of heinous cases pending on the day was 34, with almost 100 under-trial prisoners in Guwahati Jail.<sup>32</sup> He suggested that there would be great difficulty in transferring these cases to the court in Calcutta (*Nizamat Adalat*) because of the number of cases and the paperwork that would need translation into Persian through a Bengali version of the Assamese. Thus, a local solution was required. Yet he goes on to say that these objections do not seem to justify so wide a deviation from the ordinary course of law as that contemplated—and that he would therefore recommend that such parts of the Regulation X of 1822 as relate to the administration of criminal justice should be extended to lower Assam.<sup>33</sup>

By 1828, Scott assured the government that it would be very hard to raise revenue in upper Assam, particularly as cash payments were not common and there was a great scarcity of the currency.<sup>34</sup> By then, it was quite clear that the revenue targets he had set up were causing distress and peasants were abandoning farms and villages. There was migration in all directions—to land holdings (*zamindaries*) in Bengal, as well as Bhutan and even Burma.<sup>35</sup> In the absence of the predicted revenue collection, Scott felt that he had to economize in the local administration and set up a system that would not strain the Company’s budgets. Thus, he did not ask for the appointment of European officers and instead set up a system of “local administration” under his overall supervision.

## 5. THE FUNCTIONING OF SCOTT’S *PANCHAYATS*

In the context of great scarcity of funds and people as well as increasing complaints about life and security, the *panchayats* were instituted in Guwahati and the surrounding districts. There were three in Guwahati, organized hierarchically—the first, second, and third *panchayats*—and under these were the three district *panchayats*. In these *panchayats*, the officiating members were elected by the people of the locality and were remunerated as under the former government with a number of “Pykes (labourers) and other immunities from revenue demands.”<sup>36</sup> Thus, the cost to the Company of the establishment of the three courts was a minimal 616 Rs. per mensem.<sup>37</sup> For capital offences, a new court was set up. This was manned by natives who have held high judicial offices—with three judges, two pundits, and six assessors, agreeable to the former practice of the country, at a total monthly expense of Rs. 700.<sup>38</sup>

White’s memoir describes these native jurors in 1831 as being primarily paid assessors from amongst the Indian functionaries of the civil courts, but “respectable natives

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32. The details of these 34 cases provided that 18 were wilful murder, which had 55 persons remaining for these trials, of which 38 are in jail and 17 on bail, 12 cases of Dacoity (Deakytee with murder) of which 55 are under-trials, 54 are in jail, and one on bail. Four other cases of homicide are four under-trials of which two in jail and two are on bail, H/671, p. 851.

33. Scott to Stirling, 29 March 1828, H/671, p. 850.

34. Barpujari, *supra* note 3, p. 38.

35. *Ibid.*, p. 45.

36. *Ibid.*, p. 32.

37. Swinton to Scott, 7 March 1828, H/671, p. 837.

38. Swinton to Scott, 7 March 1828, H/671, p. 837.

unconnected with the government were encouraged to apply for permission to sit on these trials as members of the *panchayat* court."<sup>39</sup>

The system was approved by the Supreme government. They held that it was ideal for the moment, in Assam, provided that:

... in making the above arrangement you must always have contemplated, that the sentence of the native court should be submitted to your revision and sanction, previous to their being carried into execution, with this important and essential proviso ... government favourably disposed to the proposed plan. Before extending the *Nizamut Adalat* to western Assam, Governor General would like a detailed account of how the tribunals functioned to give a full and fair trial to the novel and interesting experiment already partially introduced under your orders.

The letter goes on to note that, at that time, the state of the country in Assam was:

... inexpedient to extending the authority of the *Nizamut Adawlut* to lower Assam ... the object of establishing an efficient system for the ... criminal justice ... (was) best provided for *by availing ourselves to the full extent of these local tribunals and institutions which you have very judiciously revived and put in action*, subject to the control, revision and superintendence of the British Officer.

There is nothing, Scott was assured, at variance here from the course pursued in other portions of territory conquered of late years—Araçan, Tenasserim, or even in the older provinces like Delhi, Nerbudda Territory, where the jurisdiction of the *Nizamut adalat* does not extend. Thus, Scott's innovations were deemed not to be out of the ordinary.<sup>40</sup>

The government, while approving Scott's plan for lower Assam, did not agree with his suggestions for an Ahom prince in charge of upper Assam. According to them, the Ahom princes would not manage well, they had not really helped in the defeat of the Burmese, and Captain Neufville would do a better job. Yet they were not ready to annex upper Assam immediately and felt it should continue to be under joint military and civil occupation in a non-regulated system; however:

... the spirit of the Regulations (Bengal Regulations of 1793 modified by Regulations X of 1822) in such a way as to cause it to harmonize and blend itself with all that is good in the spirit of the native institutions.<sup>41</sup>

Thus, in place of the natives ruling upper Assam, the home office would rather "the spirit of their institutions be absorbed into the practice of the Company officers." These statements from the Supreme government suggest that what seemed to have made sense on the ground as the cheapest and most efficient means of finding acceptable forms of judicial administration were incorporated into the justification of governance "in keeping with local tradition."

This importance of local systems was seen in Scott's revenue administration of lower Assam as well. The residents here elected their own native representative (*Choudhury*) in each village who collected the revenue and paid it to the government.<sup>42</sup> This was in keeping with the Ahom system of collecting revenue through the *Khels* (organized collections of

39. Watson, *supra* note 11, p. 20.

40. A. Stirling to Scott, 2 May 1828, H/671, pp. 838, 852–3, emphasis added.

41. Barpujari, *supra* note 3, p. 22.

42. *Ibid.*, p. 22.

professions performing service for the state).<sup>43</sup> Thus, the different social and political structures in Assam were incorporated into the new bureaucratic structure of the Company.

Thus, Scott “settled” the frontier zone of lower and upper Assam with the help of judicial institutions that translated the local “*mels*” as the British jury where financial and personnel difficulties along with insecurity regarding legitimate authority drove the decision-making. These *panchayats*, as reported by Scott, functioned as a civil and criminal expert jury at trials—taking evidence as well as pronouncing sentences.

The *panchayats* were the main source of judicial decisions from 1829 to 1832. A series of annual reports from 1829 document the effectiveness of the system. The reports after 1833 suggest the declining importance of the *panchayats*. In the first period from 1829 to 1832, the *panchayats* are getting through a much greater case load, and the cases coming before the Commissioner are also transferred to the *panchayats* for adjudication. However, even the *panchayats* were not coping and there were mounting arrears by the end of the period.

Scott’s annual reports from 1829 to 1831 on the functioning of the judicial system detail how many cases were tried by each *panchayat*—the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> *panchayats* in *Sadar* (head quarter) and the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> *mofussil* (district) *panchayats*.

- In 1829, 2,644 cases came before the Commissioner:
  - 16 were decided in trial
  - 2,607 were transferred to *panchayats*
  - 37 were remaining
- 4,090 cases came up for trial before all six *panchayats*:
  - 1,781 were decided in trial
  - 911 were dismissed
  - 496 were withdrawn
  - 1,202 remained pending (the totals do not add up, but this is what Scott reported) (29% pending)
- In 1830, 2,346 cases came before the Commissioner:
  - but only two were decided in trial
  - whereas 2,296 were transferred to the *panchayats* and only
  - 24 remained pending
- 4,568 cases came before the various *panchayats*:
  - 1,989 cases were decided in trial
  - 893 were dismissed
  - 357 were adjusted
  - 1,324 were pending (29% pending)

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43. Bhuyan (1933), pp. 80, 241.

- In 1831, 2,164 cases came before the Commissioner:
  - two were tried and disposed
  - 2,089 were transferred to *panchayats*
  - two were dismissed
  - 68 were pending
- 4,316 cases came before the various *panchayats*:
  - 1,863 were decided in trial
  - 764 were dismissed
  - 1,409 were still pending (32%, i.e. almost a third of the cases, were still pending).<sup>44</sup>

Each year, these *panchayats* were reporting large backlogs of cases. Through 1831, Scott's health was rapidly declining and he found it impossible to manage things singlehandedly. In 1831, Scott requested and was granted a new post of Native Assistant Magistrate at Guwahati, who would preside over the "juries" and award punishments based on the decisions of the *panchayats* from six months' up to two years' imprisonment and up to ten lashes for trials involving burglary, theft, and cattle stealing.<sup>45</sup> This person would be paid Rs. 230 per month including an establishment. The person to be appointed was also suggested by Scott—Haliram Dhekiyal Phukan. But Scott passed away before the appointment was confirmed,

Neufville and Scott passed away within a few months of each other from December 1830 to August 1831, respectively. W. Cracroft was appointed in Scott's place. Adam White (Scott's assistant) was appointed in Neufville's place in upper Assam and James Matthie became Magistrate and Collector of Guwahati.<sup>46</sup>

Cracroft enthusiastically took up the *panchayat* as a jury experiment. He confirmed the Native Assistant magistrate appointment in February 1832.<sup>47</sup> However, Haliram never took up office, as he died before he could.<sup>48</sup> This letter appointing the Native Assistant Haliram also describes the setting-up of a systematic administration for the *panchayat*. It details the making-up of a list of 310 people of Guwahati. At the start of the month, the assistant magistrate was to divide the list in a new arrangement—these names into 31 lists which he was to keep in a closed box and from which, whenever a jury may be wanted, a list was to be drawn the day before and notice given to the person on the list to attend court the following day. At 9 a.m., the person not attending was to be fined.

Five persons from the list would be chosen by lots to be called up as jurymen. No relatives of the plaintiff or defendant within three degrees could serve as the jury, and another name would be drawn, but no challenges were to be permitted. Those not chosen could retire. The jury would be sworn on oath, and each one would sign a *hulufnameh* (affidavit/self-declaration). The jury would elect a foreman who would deliver the verdict of the majority without specifying any individual opinion.

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44. Boards Consultations, IOR F/4/1443, compilation 56950.

45. *Ibid.*, letter dated 15 July 1831, F/4/1443.

46. Barpujari, *supra* note 3, p. 66.

47. Cracroft to government of Bengal, 21 February 1832, F/4/1443, collection 56950, pp. 183–5.

48. Neog, *supra* note 24, p. 7.

Each would be paid eight *annas* (unit of currency, 16 annas to the Rupee) if they delivered a verdict and fined much more severely two Rs. (four times) if they did not turn up. No appeal would lie from the *panchayat* decision in case of acquittal; however, a guilty verdict could be referred to the Commissioner. Each case must end its hearing and pass verdict on the same day.

Cracroft was working to regularize the *panchayat* courts to reflect the jury system more exactly. As he said in the letter, “A standing jury *as at present is the case in the civil courts in Assam*, would militate with principles on which juries are established, while expense would be too great.”<sup>49</sup> His proposed system throws Scott’s experiment into sharp relief—where the head of the *panchayats* were chosen and appointed by the government but the other members were called up on the basis of the case, deputed through traditional officialdom of *khel*, corresponding more closely to the oligarchic system of *mels*. Cracroft tried to regularize the appointments to the *panchayats* in accordance with the concepts of the jury of peers. It is unclear whether this system was ever put into practice, as the native administrator, Haliram Phukan, appointed by the same order passed away before taking office.

Within two months (in April 1832), Cracroft himself was replaced by T.C. Robertson, formerly agent and Civil Commissioner in Arakan. Robertson is described as an administrative genius, reorganizing the revenue collection in Assam, restoring the Ahom monarchy in upper Assam. He is also credited with laying the foundation of the civil and criminal judicial administration in Assam.<sup>50</sup>

## 6. DISMANTLING THE *PANCHAYATS*

Robertson was guided by the Bengal Regulations modified to suit local conditions. He made the Commissioner and his assistants the highest courts hearing cases of any significance directly rather than on appeal. He reorganized the provincial system as well, appointing *Munsiffs* to hear cases of greater value. The *panchayats* were relegated to petty cases. He reorganized Scott’s system of revenue collection as well, and appointed headmen of districts in Nowgong and Darrang. While the *Khels* continued to be drawn upon to make these appointments, the members of the *Khels* or localities were not directly choosing these men.

In accordance with the Bengal Regulations, under Robertson, the Principal Assistants to the Commissioner were designated as the highest court for civil cases, hearing appeals and cases of between Rs. 500 and 1,000 Rs. Cases dealing with a higher amount were heard directly by the Commissioner. In the *mofussil*, he appointed *Munsiffs*. These *Munsiffs* heard original cases for amounts higher than 1,500 Rs. and appeals from *Munsiffs panchayats* and *mofussil Munsiffs panchayats*. The *Munsiffs panchayat* which sat as a jury consisting of no fewer than three members was vested with investigating original suits up to 100 Rs. None of the *Munsiffs* was a native of the province and could not execute their own decrees, but were to refer to the Principal Assistant for orders and enforcement.<sup>51</sup>

Despite rumours of venality, Robertson considered it expedient to retain civil *panchayats* at a petty level in Guwahati, when he found that “the cases to all appearance were well tried

49. Cracroft to government of Bengal, 21 February 1832, F/4/1443, collection 56950, p. 185, emphasis added.

50. Barpujari, *supra* note 3, p. 76.

51. *Ibid.*, p. 77.

and their decisions sound and impartial."<sup>52</sup> However, he abolished *mofussil panchayats* in central Assam. He set up a system of *Adalats* and separated the police functions from the Collector's functions.

Criminal cases were to be tried by the magistrate without a *panchayat*. In cases of murder, he tried them with the aid of a *panchayat*, who pronounced the verdict as to guilt, while the magistrate gave the opinion regarding capital punishment. The Commissioner exercised the *Nizamats Adalats* function in giving the final verdict.<sup>53</sup> This deepened the control that Scott and the Governor's office had wanted on the *panchayat*. The power of review in Scott's scheme was replaced by the power of passing judgment itself.

Robertson's annual report of judicial business in 1832 reported on 5 August 1833:

- In 1832, 2,102 came before the Commissioner:
  - none was decided in trial
  - 2,017 were transferred to *panchayats*
  - 85 were pending
- 3,936 came before the various *panchayats*:
  - 1,651 were decided in trial
  - 999 were dismissed
  - 234 were adjusted
  - 438 were transferred
  - thus, a total of 3,322 were disposed off
  - 614, i.e. one-sixth of the cases, were pending.<sup>54</sup>

The three *panchayats* in Guwahati had members receiving a fixed salary in money. The three *mofussil panchayats* of the nine southern *Doars* had members who were kings (*rajahs*) of the several *Doars*, three of whom must attend to form a court. They receive no salary, or other remuneration, for their activity was considered to be a duty to be performed as part of the tenure of their *Raj* (rule). As such, they were each allowed a certain number of local inhabitants (*Likchoos* or *ryots*) bound to serve them.<sup>55</sup>

The Proceedings of these *panchayats* are described by the authorities of the time as vague and confused in the extreme. This *panchayat* did not confine itself to the investigation of civil suits alone, but took cognizance of every case that accident and the absence of control enabled it to bring under its jurisdiction.

The City Summary Court dealt with 483 cases. The president received a salary, but the remaining individuals from the district revenue officers (*purgannah chowdhries*) received a deputation allowance of eight *annas* per diem. It had unlimited jurisdiction in its area and no appeals lay against these decisions. The parties aggrieved would have to file a civil suit.<sup>56</sup>

52. Robertson to Macfarlane, 5 August 1833, F/4/1733, pp. 11–12.

53. Barpujari, *supra* note 3, pp. 77–8.

54. Robertson, F/4/1733, pp. 14, 19.

55. Robertson, F/4/1733, p. 13.

56. Robertson, Boards Collections, F/4/1733, p. 14.

The second *mofussil* summary court heard 176 cases. The members were supernumary members of the *sudder panchayat* of Guwahati; each received a salary of 30 Rs. They had jurisdiction to clear arrears. Now that the country was divided into districts, the court's functions were taken over by the several assistants acting as collectors.<sup>57</sup> Thus, under Robertson, the *panchayats* were being replaced slowly by other officials, but seemed to have functioned in an ad hoc way because of their local effectiveness.

## 7. ABOLISHING THE PANCHAYAT

In April 1834, Jenkins relieved T.C. Robertson.<sup>58</sup> Under him, the *Sadar Dewani Adalat* and *Nizam Adalat* were extended to Assam. In civil cases, *panchayats* were abolished. Only in criminal cases of heinous crimes would the Principal Assistant try the cases with the aid of a jury and, in the event of a disagreement, the presiding officer was to forward with his own remarks to the Deputy Commissioner who had the powers of the district and sessions judge. Death sentences were to be confirmed by the *Sadar* Court.

For the year 1833, in the annual report by Captain Jenkins, submitted on 21 June 1834, for the first time, we have case numbers for those tried by *Munsiffs* and *Amins* as well by the assistant Commissioner. The only *panchayat* mentioned is the *mofussil panchayat*.

- In 1833, 396 cases were admitted before the *mofussil panchayat*:
  - 42 cases were decided in trial
  - 54 were dismissed
  - 37 were adjusted
  - 133 cases were disposed of
  - 262, i.e. two-thirds of the cases, were pending.<sup>59</sup>
- In 1834, there were 510 suits admitted before the *panchayat*:
  - 364 were disposed of—either in trial or otherwise
  - 530 were pending before this court.

The total number of civil suits declined by half, reflecting an improvement in the law-and-order situation. While the *panchayat* courts have a larger number pending, this was a reflection of the breaking-up of the courts. The larger number of pending suits in 1834 has not been explained in the reports.

Under Jenkins, Robertson's rules of procedure were codified and evolved. These were enforced with effect from 1837. These rules are known as the Assam Code. However, Barpujari describes how the administration was not run according to these rules. The Principal Assistant really did not have time to hear all the evidence, and it was recorded by the officers in a language foreign to the witnesses. Courts were not easily accessible. The *mofussil Munsiffs panchayats*, despite the condemnation, continued to exist, and tried civil suits in several districts.<sup>60</sup>

57. *Ibid.*

58. Barpujari, *supra* note 3, p. 209.

59. Jenkins report, 21 June 1834, F/4/1733, pp. 30–1.

60. Barpujari, *supra* note 3, p. 213; Neufville to Scott, 23 December 1827, *supra* note 23, p. 214.



In 1835, Matthie reported that, because the civil courts remained so inaccessible, the middle and poorer classes substituted a far more convenient and economic system of submitting their disputes to the headman of the village or a jury of their selection from amongst the villagers,<sup>61</sup> thus suggesting that *panchayats* were continuing by the choice of the local population outside the supervision of the colonial bureaucracy—in the absence of colonial courts.

By 1850, civil *panchayats* were more or less obsolete. In Kamrup, there is evidence of five cases being tried by *panchayat*, in Nowgong four, and in Darrang only one. In the same year, on the recommendation of the Board of Revenue, the government of Bengal abolished all the *panchayats* except one at Saikhowa (eastern Assam), which was retained there on political considerations.<sup>62</sup> From 1851, the Bengalis, who had hitherto a monopoly of all higher posts, were gradually replaced by Assamese apprentices.<sup>63</sup>

## 8. CRITICISM OF THE *PANCHAYATS*

As in other places where *panchayats* were run, some of the same complaints come up here in the colonial record. The complaint was often made that the *panchayats* employ native knowledge but acknowledge status differentiation, thus creating unequal/unfair verdicts—that they do not provide good justice. *Panchayats* are also criticized for corruption—taking bribes and siding with one party over another for monetary or other considerations. They are also criticized for inordinate delays. The favourite term of opprobrium is “venality.”

Above all, while the *mofussil* courts were mere engines of extortion, those at the headquarters were reported to be venal to the extreme. ... In fact, the courts and the *panchayats* at Guwahati were held by the people in such distrust and detestation that they preferred to submit to anything rather than meet redress at these courts, for it was not uncommon that the presenting of a complaint was more injurious than putting up with the original case.<sup>64</sup>

It was often assumed that, under the immediate eye of a European officer, the verdicts of the *panchayat* were on the whole satisfactory. But the civil business left entirely to the local tribunals subject to the remote supervision of a superior authority resulted in hopeless failure.<sup>65</sup> It also became clear that few people were volunteering to serve on *panchayats*.

From 1834, the *adalats* and *panchayats* ran simultaneously here, as they did in parts of the Deccan, Malwa, and Gujarat. In these situations, the disputants often preferred the *adalats*. In the absence of well-organized courts, *panchayats* continued to exist but on a diminished scale and not as standing juries, but put together for particular cases, until they were banned in 1851. However, even subsequently, there were many *mels*. There were some famous assemblies to settle heinous crimes, especially sedition, as well as civil disputes like the division of family property.<sup>66</sup>

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61. *Ibid.*, p. 214.

62. *Ibid.*; also Bengal Revenue Despatches letter, 18 May (No. 11) (1850), para. 32 E/4/813, pp. 1135–6.

63. Barpujari, *supra* note 3, p. 215.

64. *Ibid.*, also quoting White's private letter to the Agent, 28 May 1832.

65. Barpujari, *supra* note 3, p. 46, quoting Rutherford, 16 June 1833.

66. Barman, *supra* note 8.

## 9. PANCHAYATS—THE TRANSLATION

The *panchayats* that Scott established as a hierarchical system of courts, with a standing and paid jury, did not succeed. It was a substantial experiment and, if one could find how these courts arrived at their decisions and the types of decisions they made, it would open up a world of a different judicial order. This research still needs to be carried out in the Assam courts. Their lack of success may be the result of several factors—the translation of the *mel* as jury and another looking at the *mel* as providing a solution on the basis of fixed law.

### 9.1 Translation of Mel as Jury

The British supported the *panchayats* as a demonstration of their support of local practices. But, as I have shown, there was not much attention paid to the local practice and it was really accepted primarily because it was convenient at that time and place in Assam. The local practice was understood quite clearly within the jury paradigm of British practices. Unlike the Bombay experiment that James Jaffe analyses, in Assam, there is no hint of looking at the *panchayat* as a system of arbitration.<sup>67</sup> Thus, the issue was not confusion within the British effort arising from an ambiguous or conflicted understanding of what they were trying to do—whether they were instituting a board of arbitration or a jury-based trial. Here, it was clearly a jury that they were establishing.

However, as in other places, there was the eternal issue of the mistrust of the local personnel in the judicial system. This mistrust meant that any judicial forum required explicit oversight by the British authorities—either the Collector or a judge appointed for this purpose. Indrani Chatterjee has a detailed examination of the mismatch of local practices and Scott's as well as other British administrators' understanding of them, especially in the context of political forms and inheritance as well as private ownership.<sup>68</sup> Sanghamitra Misra's work also describes the British confusion in Assam over notions of sovereignty, kingship, and religion.<sup>69</sup> Thus, while Scott's *panchayat* scheme was indigenous in personnel, its terms of design and execution were British.

Barman's account put together with other accounts of *panchayats* of different regions suggests that the *mel* was, like the *panchayats*, an Indic form of dispute resolution. The *panchayat* was organized by the ruling authorities, either kings or their ministers. But each *panchayat* so constituted was the final authority and the king was also subject to its authority, hence the popular saying "*panch parmashvar*"—the collective of five was the highest authority, highest god. There was a sense of a body constituted by the disputants, of sharing in the local systems and forms, and yet not a body of peers but of absolute authority. This sanctity and authority of the *panchayat* were consistently undermined in Scott's system by it being relegated in a hierarchy of judicial authorities. The traditional authority of the *mel* as executing decisions was quite different from the way the *panchayat* was dealt with as a jury or expert assessors to judge the testimony and evidence presented, always subject to the supervisory power of the colonial or European officer. In the last phase under Robertson, the authority of the *panchayat* was further undermined by the fact that the *panchayat* was to only

67. Jaffe (2014), p. 155.

68. Chatterjee (2013b).

69. Misra, *supra* note 7, pp. 215–46.

provide a verdict of guilt or innocence and the Commissioner would pass the sentence in accordance with the law. Once the *panch* (collection of five) were understood as "jury" who must conform to higher authorities, their authority was deeply undermined. They became ineffectual in the same year and further succeeded in undermining native traditions. The local disputants themselves then did not trust the official *panchayats*. However, unofficially organized *panchayats* did continue in the absence of adequate judicial provisions for a long time.

## 9.2 Translation of Mel as a Judicial Court

The other aspect of *panchayats* was it provided the solution to the dispute—that is, it assessed the level of injury and the way that could be recompensed, whether by punishment or penance. In many cases, as argued by many British administrators, the *panch* actually did not examine any evidence as to the crime—the crime was already well known; what they spent time discussing was its solution, in accordance with the circumstances of place and time. Cohn noted early on this difference that *panchayat* was a way of doing justice, determining the best way of sorting a dispute, and thus was a process rather than applying fixed principles of law, in a place or the institution of *panchayat*.<sup>70</sup> Thus, *panchayat* was a form of dispute resolution quite different from a British law court, where the trial is the process of ascertaining the truth and the judgment (which may be separate from the trial) was the pronouncing of a punishment according to the crime. The highest authority in the British process was the law—a fixed textual statement or a customary practice. In the *panchayat* or *mel*, the collective wisdom of the group was the highest authority, publicly performed to arrive at a solution to a dispute.

This brings up another crucial difference between the *mel* and the Company's *panchayat*—the publicity of the proceedings. All the descriptions of the *mel* suggest that the meetings were held in public and were attended by the local group in a public trial. The Company's *panchayats* were quite explicitly restricted proceedings. The public participation in the *mel* enjoined a quite different sense of community than the jury representing the community in a closed courtroom. This aspect of the translation might also be responsible for the non-acceptance of the British *panchayat*. Why was an institution that was seen as the height of good justice suddenly seen as the den of corrupt practices?

The *panchayat* was consistently presented in secondary studies of it as a system asserting the collective practice of community and the submission of the individual to collective wisdom. The same assessment of the *panchayat* was also present in the cultural imagination.

Thus, the indigenous system that Scott established was actually indigenous in that it was manned by local people. It was not indigenous in its conception, its sovereignty, or in its goals. This was the only response available to him—given his need and resources, also given his facility with local language and his interactions and connections with the local elite. His experiences with them in Rangpur and his facility with the language made him comfortable in employing them. But those who followed him were not similarly comfortable.

In Scott's reports, those who assisted the king or his ministers at a trial are called "assessors"; his reports also refer to the *panchayat* juries as assessors. Jaffe has shown how in

70. Cohn, *supra* note 2.

historical British parlance—assessors were specialist jurors appointed as experts. These jurors might be paid members of the jury, and came under severe attack at the hands of Jeremy Bentham.<sup>71</sup>

The traditional “*mels*” or *panchayats* held under the auspices of important officials were themselves made up of important and authoritative persons—from Barman’s descriptions of pandits/Brahmins, etc. Thus, it was not quite a jury of “peers.” The collective decision-making process is translated as “*panchayat*.”

But, as we saw in the context of a resource crunch and mounting need to maintain order, Scott had to set up a system urgently. He had recourse to a system that was recognized by the locals and acceptable to the Company in its paradigm of juries. In the context of the Company’s distrust of the local population, there was greater faith in a group, assuming that the group would check individual malpractice.

From these early attempts at *panchayats* in Assam, it would seem that the state was attempting to co-opt some of the local population in the judicial system and to share the right to adjudicate. However, it was a limited and hierarchical right and attended with constant oversight. This was quite unlike the local practice of *mels* which they were ostensibly continuing. In this context, the native disputants were confused regarding the manner in which the *panchayat* functioned, and found that it was inefficient compared to the *adalat* court system and flocked to these courts instead.

The inclusion of community in state was aborted by the clash of paradigms and the multiple issues arising from conquests—but those issues still need to be understood and spelt out rather than abandoned as early colonial mistakes.

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71. Jaffe, *supra* note 67, pp. 134–5.

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## GLOSSARY

- Ahom*: ruling Assamese dynasty overthrown by the British with headquarters in north-eastern Assam.
- Anna*: smallest unit of currency, 16 annas being one Rupee.
- Bairagis*: armed monks.
- Barbarua*: overall charge of civil and revenue administration.
- Barjapi*: ceremonial umbrella.
- Barpanchayat*: chief court of appeal.
- Barphukan*: chief customs official.
- Buranji*: political and genealogical histories in Assamese.

*Choudhury*: revenue official of the village or district.

*Cutcherry*: office.

*Duaria Barua*: customs officer.

*Garo*: hill state in southern Bengal and eastern Assam.

*Jaintia*: hill state in southern Bengal.

*Kamrup*: central Assam district around Guwahati.

*Khasi*: hill state in southern Bengal and Assam.

*Khel*: a division or unit of Assamese subjects having to perform specific services to the state.

*Kutcherry*: see *cutcherry*.

*Mel*: court of several important community members.

*Melki*: member of a community court.

*Mofussil*: the provinces, country station, or district.

*Munsiff*: native civil judge of the lowest grade.

*Narayani Rupees*: unit of Ahom currency in Assam.

*Nizamut Adawlat (adalat)*: criminal court.

*Paiks* (also spelt *Pykes*): individuals serving in groups of four the government with their labour or as soldiers.

*Panch parmeshwar*: five coming together is like God.

*Parhie dola*: sedan.

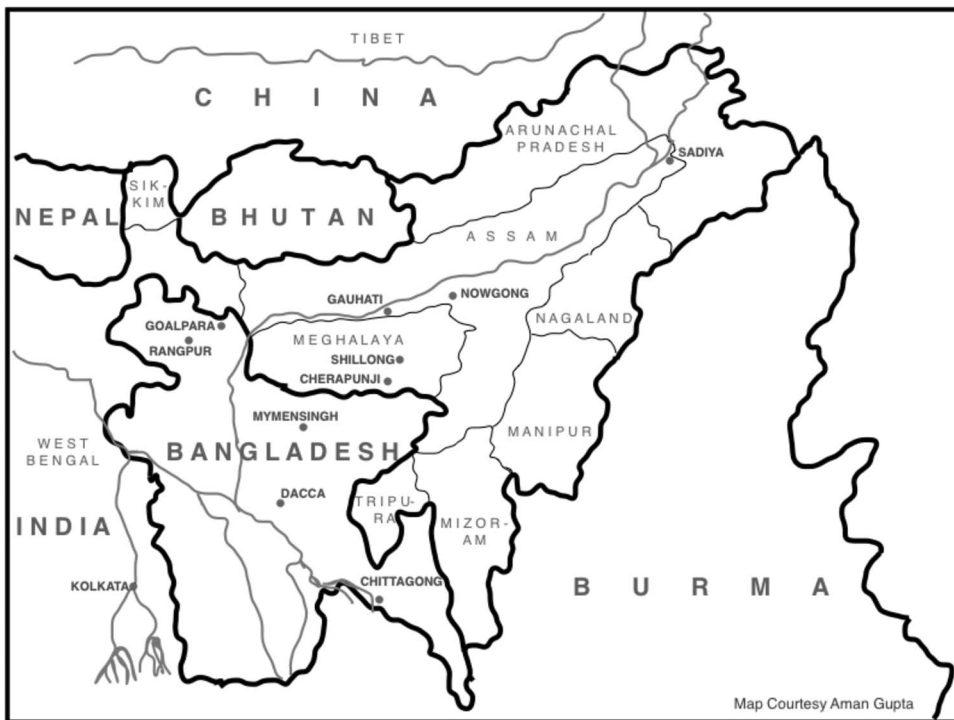
*Rajkhowas*: an officer having jurisdiction over a prescribed area or unit of 3,000 men.

*Sebundy*: irregular native soldiers/a sort of militia.

*Sheristadar*: head of a court to receive routine business, register-keeper.

*Sudder/Sadar*: Chief court of appeal.

*Sunud*: a deed of grant by the government of office, privilege, or right.



NE India Map