# STATE OF NAGALAND

*v.*

# RATAN SINGH, ETC.

*March* 9, 1966

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.]

A

B

*Scheduled Districts Act,* 1874—*Rules thereunder—If valid and in force—If Act bad for excessive delegation—If Rules violate Arts.* 14 *and* 21 *of Constitution—Applicability of Criminal Procedure Code to backward tracts—Constitution of India,* 1950.

C

The respondents were sought to be tried for offences under the Indian Penal Code, before the Additional Deputy Commissioner, Kohima, when objection was taken that the trial should be before the Court of Sessions after commitment, as the offences were triable exclusively by the Court of Session under the Code of Criminal Procedure. The Additional Deputy Commissioner overruled the objection on the ground that there were no Courts of Session in the Naga Hills District and the Criminal Procedure Code was also not in force. He ruled that committal proceedings and the trial before a session court was therefore not possible and the procedure laid down in the Rules for the Administration of Justice and Police in the Naga Hills District, 1937, would be followed. Thereupon the respondents filed writ petitions to quash the proceedings commenced under the Rules of 1937. The High Court issued a writ directing the State not to proceed with the trial under the Rules of 1937.

D

E

The area, where the trial was taking place was one of the backward tracts and it was for a century and more specially administered. The successive Criminal Procedure Codes, which ordinarily would have governed the trial of offences, were always withdrawn from this area and special rules for administration of criminal justice were pomulgated instead. By the Government of India Act, 1870, the Governor-General and other authorities were conferred the power to make or propose laws, and the Governor-General was allowed to legislate separately for the backward tracts. As difficulties arose in determining what laws were in force and in which area of backward tracts, the Scheduled Districts Act, 1874 was passed. The position at the inauguation of the Government of India, 1935 was that the Governor-General in Council legislated for these backward areas and the Governor-General could direct that any Act of the Indian Legislatures should not apply at all or should apply with such exceptions and modifications as he might think fit. The 1935 Act provided for the ascertainment of the backward tracts and for making of laws in those areas and in 1936 an Order in Council was made specifying the backward tracts. The Scheduled District Act was repealed by the Adaptation of Laws Order, 1937. The Constitution of India, 1950, by Art. 244 made a special provision for the scheduled and tribal areas. The State of Nagaland was formed by the State of Nagaland Act, 1962 comprising of Naga Hills-Tuensang Area and consisting of three districts. The administration of the State of Nagaland was to be in accordance with the provisions of the State of Nagaland Act, which among other things provided for the continuance of existing laws and their adaptation. The Government and administration of these areas was often not carried on directly under laws made by the Governor-General either by himself

F

G

H

A or in his Council but through rules which were framed from time to time by other agencies. In 1937, the Governor of Assam prescribed revised Rules under the powers vested in him by s. 6 of the Scheduled Districts Act. These Rules of 1937 began by stating that they cancelled "all previous orders on the subject" but were on the pattern of earlier rules which laid down that in criminal trials the spirit of the Criminal Procedure Code was to be followed because the Code itself was not in force. In appeal B to this Court, the main question that arose were whether the Rules of 1937 were validly enacted and they continued to be in force, whether the Scheduled Districts Act was bad because of excessive delegation, and whether the Rules of 1937 were rendered void by reason of Arts. 14 and 21 of the Constitution.

HELD: The Rules of 1937 were validly enacted and continued to be in force and governed the trial of the respondents. The Code of Criminal C Procedure admittedly did not apply to that area and the Additional Deputy Commissioner was therefore right in holding the trial under the Rules of 1937. [854 E-F]

The Rules of 1937 did survive the repeal of the Scheduled Districts Act, 1874 by virtue of the saving clause in the Adaptation of Laws Order which repealed the Act. The saving clause preserved all notifications and the Rules of 1937 were enacted by a notification. After the passing D of the Government of India Act, 1935, the Rules of 1937 were successively preserved by ss. 292 and 293 of the Government of India Act, 1935, s. 18 of the Indian Independence Act, 1947 and Art. 372 of the Constitution. [847 G-848 A]

There was no excessive delegation under the Scheduled Districts Act. The Legislature clearly indicated the policy and the manner of effectuating that policy. The Act conferred on the local Governments power to appoint E officers for administration of civil and criminal justice within the Scheduled Districts and empowered the local Government to regulate the procedure of the officers so appointed and to confer on them authority and jurisdiction powers and duties incidental to the administration of civil and criminal justice. These provisions afforded sufficient guide to the local Government that the administration of Civil and Criminal justice was to be done under their control by the officers appointed by them and the procedure which they were to follow had to be laid down. Besides, there F was sufficient guidance in the three sub-sections of s. 6 read as a whole with the preamble, and the Chief Commissioner's Rules made in 1872 and republished in 1874 by Governor-General in Council were also available as a further guide as the last were continued in force by s. 7. [849 G-850 D]

By the Scheduled Districts Act the Governor-General in Council conferred on the local Government an equal or concurrent power and this G was clearly indicated by the word "as the case may be" in s. 7 of the Act. Those words did not, show that the local Government could only amend its own Rules. They showed that whoever made the rules the authority of the Act made them binding. [851 A-B]

Article 21 of the Constitution did not render the Rules of 1937 ineffective. In the backward tracts it was considered necessary that H discretion should have greater play than technical rules and the provision that the spirit of the Code should apply was a law conceived in the best interests of the people. The discretion of the Presiding Officer was not subjected to rigid control because of the unsatisfactory state of defences which would be offered and which might fail if they did not comply with

some technical rule. The removal of technicalities, led to the advancement of the cause of justice in these backward tracts. On the other hand the imposition of the Code of Criminal Procedure would have retarded justice as indeed the Governors-General, the Governors and the heads of local Government had always thought. [852 B-D]

It was not discriminatory to administer different laws in different areas. These backward tracts were not found suitable for the application of the Criminal Procedure Code in all its vigour and technicality and to say that they were to be governed, not by the technical rules of the Code, but by the substance of such rules was not to discriminate this area against the rest of India. [852 E-G]

The law had not attempted to control discretion by Rules in this area but had rightly left discretion free so that the rule might not hamper the administration of justice. There was no vested right in procedure; therefore, the respondents could not claim to be tried under the Criminal Procedure Code in this area where the Code was excluded. [853 G]

No discrimination can be spelled out from the differences in the rules applicable to different areas in the backward tracts. The object was to bring these territories under the Code of Criminal Procedure applicable in the rest of India, by stages. Article 371 of the Constitution itself contemplates a different treatment of these tracts and the differences are justified by the vast differences between the needs of social conditions in Nagaland and the various stages of development of different parts of this area. [854 D]

[Uniform set of Rules for the whole area suggested.]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 198 of 1965 and 29-32 of 1966.

Appeals from the judgment and order dated August 26, 1965 of the Assam and Nagaland High Court in Civil Rules Nos. 200, 235, 234, 233 and 232 of 1965.

*C. K. Daphtary, Attorney-General, D. M. Sen, Advocate-General for the State of Nagaland, P. K. Goswami, Anil Barthukar, B. Dutta* and *Naunit Lal*, for the appellant (in all the appeals.)

*A. K. Sen, S. S. Ray, H. K. Puri* and *H. L. Arora*, for the respondents (in all the appeals).

*Niren De, Additional Solicitor-General* and *Naunit Lal*, for the intervener.

The Judgment of the Court was delivered by

**Hidayatullah, J.** These are appeals by the State of Nagaland against the judgment and order of the High Court of Assam and Nagaland, August 26, 1965, by which the High Court, allowing certain writ petitions filed by the respondents, issued a writ of *mandamus* directing the Additional Deputy Commissioner, Kohima and the State of Nagaland, not to proceed with the trial of the

A respondents. The High Court has certified the case as fit for appeal to this court. The facts are these :

The respondents are members of the 7th Battalion of the Central Reserve Police (shortly called in this judgment the C.R.P.) who, under the command of the 8th Mountain Division Infantry Brigade, were engaged in operations in the State of Nagaland. B On receipt of information that on or about August 3, 1964, seven hostile Nagas, who were captured and kept prisoners with the C.R.P. at Pfutser Camp, were murdered and their dead bodies secretly disposed of, the police, after investigating the report, arrested 44 persons and charged them with offences under ss. 302/109/34 and 201, Indian Penal Code. Some other members C of the C.R.P. were charged at the same time under s. 436, Indian Penal Code for setting fire to some houses in certain villages. The trial was about to take place before the Additional Deputy Commissioner, Kohima, when an objection was taken that the trial should be before the Court of Session after commitment, as the offences were triable by the Court of Session exclusively, under D the Code of Criminal Procedure. The Additional Deputy Commissioner overruled the objection pointing out that there were no Courts of Session in the Naga Hills District and the Criminal Procedure Code was also not in force. He ruled that committal proceedings and trial before a Sessions Court were, therefore, not possible and the procedure laid down in the Rules for the Administration of Justice and Police in the Naga Hills District, E 1937, would be followed. For brevity we shall refer to these Rules as the Rules of 1937.

The respondents filed five petitions under Art. 226 of the Constitution for writs or orders to quash the proceedings under the Rules of 1937 and other reliefs. By the order impugned here a Divisional Bench consisting of C. Sanjeeva Rao Nayudu and F S. K. Dutta JJ., quashed the proceedings and issued a writ of *mandamus* directing the Additional Deputy Commissioner and the State of Nagaland not to proceed under the Rules of 1937 with the trial of the accused before him. The learned Judges gave separate, but concurring judgments. Mr. Justice Dutta in a brief judgment reached the conclusion that the Rules of 1937 made by G the Governor of Assam and the earlier rules made by the Lt. Governor on November 29, 1906 were not validly made. In his opinion there already existed certain other Rules made by the Governor-General in Council in 1874 and the local Government was not competent to make rules while those Rules existed. In regard to the Rules of 1874 the learned Judge held that they "had H become infructuous" for want of suitable adaptations after the political changes since 1874. He did not consider any other ground of alleged invalidity of these Rules and expressly refrained from giving any opinion. Mr. Justice C. Sanjeeva Rao Nayudu

dealt with the problem exhaustively and viewed it from many angles. He gave several reasons for holding that the trial could not take place under the Rules of 1937. We have not found it easy to summarize his reasons effectively but, briefly stated, they were : that the Rules of 1937 were void *ab initio* because the Scheduled Districts Act, 1874 under which the Governor purported to make them did not give him any authority to make them; that if the Act gave such authority, it was itself *ultra vires* the statutes of British Parliament and involved excessive delegation; that on the repeal of Scheduled Districts Act in 1937, all ruled made under it lapsed; that the Rules of 1937 were vague, uncertain and elusive and were not law as contemplated by Art. 21 ; that they were discriminatory for various reasons ; that they could not apply to Indian citizens in Nagaland and that, in any event, the Additional District Magistrate was not acting in accordance with those Rules such as they were. We need not at this stage attempt to enlarge upon the various themes because the arguments on behalf of the respondents have presented a selection of the reasons which were given by Mr. Justice Nayudu and they will appear in appropriate places in our Judgment.

We are concerned with a new State formed as late as 1962 but the territory of this State has had a very long and chequered history. The area, where the trial is taking place is one of the backward tracts and it has, for a century and more, been specially administered. In that area the ordinary laws (particularly the two main Codes) in force in the rest of India, have not been applied. The successive Criminal Procedure Codes, which ordinarily would have governed the trial of offences, were always withdrawn from this area and special rules for administration of criminal justice were promulgated instead. Whether such rules (particularly the Rules of 1937) were validly enacted, whether they continue to be in force and whether they are rendered void by reason of Arts. 14 and 21 of the Constitution are the main problems requiring consideration. Before we consider these questions the history of law-making in these areas may first be told generally and then in relation to the Rules for the Administration of Justice promulgated in 1937 and at other times.

Even prior to the taking over of the Government of the territories formerly administered by the East India Company the making of laws was entrusted to the Governor-General in Council under 3 & 4 William IV, Ch. 85 and 16 & 17 Vict. Ch. 95. They allowed laws to be made directly for the areas which were under the Government of East India Company. After the Indian Councils Act of 1861 (24 & 25 Vict. Ch. 67) was passed the legality of the laws which had been made by the Governor-General either in Council or on his own was in question. Section 22 of the Indian Councils Act made new provision by which the Governor-General in Council

A was authorised to make laws and regulations for India and to repeal, amend or alter any law or regulation whatever in force in India. The Act also made provision validating all earlier laws by enacting that no rule, law or regulation made before the passing of that Act by the Governor-General or certain named executive authorities would be deemed invalid by reason of not having been B made in conformity with the provisions of the Charter Acts. The power to make laws was taken away from the executive authorities. The power, which was taken away from the Governor and other authorities to make or propose laws was again conferred on the Governor-General and other authorities by the Government of India Act, 1870 (33 & 34 Vict. Ch. 3) and the Governor-General C was allowed to legislate separately for the backward tracts. For this purpose the Governor in Council, the Lt. Governor or the Chief Commissioner, as the case may be, could submit to the Governor-General draft regulations for his consideration and after their approval by the Governor-General in his Council such regulations became law for these backward areas.

D This state of affairs existed right down to the Government of India Act, 1915. As difficulties arose in determining what laws were in force and in which areas of the backward tracts, the Scheduled Districts Act, 1874 was passed. This Act will be considered closely later and for the present we content ourselves with a few points of importance to the present narrative. The preamble of E the Act clearly set out that the object, *inter alia*, was to ascertain the enactments in force in any territory and the boundaries of such territory. The Act, therefore, specified "scheduled tracts" and the local Governments were given the powers to extend by public notification, any enactment in force in British India. When the Government of India Act, 1915 (5 & 6 Geo V, Ch. 61) was F enacted, while repealing by the Fourth Schedule the Government of India Act, 1870, section 71 was included in the 1915 Act which, in effect, provided the same procedure for making and applying laws as had been provided by the Act of 1870. The local Governments could propose draft regulations for peace and good Government of any part within their jurisdiction and the Governor-General after taking the draft regulations and the reasons into consideration G could approve in his Council and assent to the Regulations. After his assent and on their publication in the official Gazette of India and in the local official Gazette, if any, they had the same force of law and were subject to the same disallowance as if they were the Act of the Governor-General in his Legislative Council. When the Government of India Act, 1919 (9 & 10 Geo. V, Ch. 101) was H passed s. 52-A. was inserted which read as follows :—

"52-A. Constitution of new provinces, etc., and provision as to backward tracts.

A

(1) . . . . . . .

(2) The Governor-General in Council may declare any territory in British India to be a "backward tract", and may, by notification, with such sanction as aforesaid, direct that this Act shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification.

B

Where the Governor-General in Council has, by notification, directed as aforesaid, he may, by the same or subsequent notification, direct that any Act of the Indian legislature shall not apply to the territory in question or any part thereof, or shall apply to the territory or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit, or may authorise the Governor in Council to give similar directions as respects any Act of the local legislaturee."

C

D

Thus at the inauguration of the Government of India Act, 1935 the position was that the Governor-General in Council or the Governor etc. with the approval of the Governor-General in Council legislated for these backward tracts and the Governor-General could direct that any Act of the Indian legislature should not apply at all or should apply with such exceptions and modifications as the Governor-General might think fit. When the Government of India Act, 1935 replaced the Government of India Act, an Order in Council was made in 1936 specifying the backward tracts and the 1935 Act included ss. 91 and 92 for the ascertainment of the backward tracts and for the making of laws in those areas. Section 92, which dealt with the administration of the excluded areas and partially excluded areas, provided :

E

F

"92. Administration of excluded areas and partially excluded areas :

(1) The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in Act, no Act of the Federal Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

G

H

(2) The Governor may make regulations for the peace and good Government of any area in a Pro-

A vince which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature or of the Provincial Legislature, or any existing Indian Law, which is for the time being applicable to the area in question.

B Regulations made under this sub-section shall be submitted forthwith to the Governor-General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any C such regulations assented to by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him.

(3) The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretion."

D After this the Scheduled Districts Act became obsolete and was repealed by the Adaptation of Laws Order, 1937.

Next came the inauguration of the Constitution. Article 244 made a special provision for the scheduled and tribal areas and the second clause of that article provided that the provisions of E the Sixth Schedule were to apply to the administration of the tribal areas in the State of Assam. Originally in the Sixth Schedule to the Constitution the Naga Hills District was included as an autonomous district and was shown in Part A of Paragraph 20 and the Naga Tribal Area was shown in Part B. It is not necessary to refer in detail to the Sixth Schedule which provided for separate modes of administration of the Part A and Part B territories. The F name Naga Tribal Area was changed to Tuensang Frontier Division by the North East Frontier Areas (Administration) Regulation, 1954 (No. I of 1954) which came into force on January 19, 1954. By the same Regulation the North East Frontier Tract was stated to include Balipara Frontier Tract, the Tirap Frontier Tract, the Abor Hills District, the Misimi Hills District and with the Naga G Tribal Area was named collectively as the North East Frontier Agency. Then by the Naga Hills-Tuensang Area (Administration) Act, 1957 (42 of 1957), the Naga Hills District was omitted from Part A and the whole of the Naga Hills-Tuensang area was shown in Part B with effect from December 1, 1957. The Tuensang area was the former Naga Tribal Area and the other two areas H were the autonomous districts of Kohima and Mokokchung. The State of Nagaland was formed by the State of Nagaland Act, 1962 (27 of 1962). That Act repealed and replaced the Nagaland (Transitional Provisions) Regulation, 1961 (Regulation 2 of 1961). The

territory of the new State comprises the Naga Hills-Tuensang Area and consists of three districts which are the Kohima District, the Mokokchung District and the Tuensang District. The State of Nagaland Act also deleted all references to the Naga Hills-Tuensang Area from the Sixth Schedule. The administration of the State of Nagaland was to be in accordance with the provisions of State of Nagaland Act. Among other things it provided for a common High Court for the State of Assam and the State of Nagaland. By section 26 it laid down :—

> "26. Continuance of existing laws and their adaptation.—
>
> (1) All laws in force, immediately before the appointed day, in the Naga Hills-Tuensang Area shall continue to be in force in the State of Nagaland until altered, repealed or amended by a competent Legislature or other competent authority.
>
> (2) For the purpose of facilitating the application in relation to the State of Nagaland of any law made before the appointed day, the appropriate Government may, within two years from that day, by order make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.
>
> *Explanation.*—In this section the expression "appropriate Government" means, as respects any law relating to a matter enunciated in the Union List in the Seventh Schedule to the Constitution. The Central Government; and as respects any other law, the Government of Nagaland."

Section 27 conferred power on courts, tribunals and authorities to construe, in the absence of adaptations, the laws in such manner, without affecting the substance, as may be necessary. By s. 28 all courts, tribunals and authorities discharging lawful functions were continued as before unless their continuance was inconsistent with the State of Nagaland Act. So much will suffice to describe the ground-work of law-making under the authority of British Parliament, the Governor-General in Council and the Parliament and Legislatures under the present Constitution. We shall now see the real crux of the problem because the Government and administration of these areas was often not carried on directly under laws made by the Governor-General either by himself or

A in his Council but through rules which were framed from time to time, by other agencies. We will now describe how these rules, some of which are in controversy in the present appeal, were made.

On September 24, 1869 the Governor-General enacted the B Garo Hills Act, 1869 (Act 22 of 1869). By this Act the Garo Hills were removed from the jurisdiction of the Civil, Criminal and Revenue courts and offices established under the General Regulations and Acts and the Act provided for the administration of justice and collection of revenue. The Act repealed an earlier Act of 1835 (No. 6 of 1835) and the Bengal Regulation 10 of 1822, but in this case we are not required to go behind 1869. We are C referring to this Act because it was extended also to the Naga Hills. Section 4 of the Act on extension provided that the territory known as the Naga Hills was removed from the jurisdiction of courts of Civil and Criminal Judicature as well as from the law prescribed for the said courts and no Act passed by the Council of the Governor-General for making laws and regulations was D deemed to extend to any part of the said territory unless the same was specially named in it. By s. 5 the administration of Civil and Criminal justice was vested in such officers as the Lt. Governor might, for the purpose of tribunals of first instance or of reference and appeal, from time to time, appoint. The officers so appointed were, in the matter of administration, subject to the direction E and control of the Lt. Governor and were to be guided by such instructions as the Lt. Governor might, from time to time, issue. The Lt. Governor could extend by notification any law or any portion of a law in force in the other territories subject to his Government or to be enacted by the Council of the Governor-General or of the Lt. Governor for making laws and regulations and while making such extensions could direct by whom the powers F and duties incident to the provisions so extended should be exercised or performed and might make any order which was deemed requisite for carrying such provisions into operation. The Act also gave power by s. 9 to the Lt. Governor to extend *mutatis mutandis* all or any of the provisions contained in the other sections of the Act to the Jaintia Hills, the Naga Hills and to such portions of G the Khasi Hills as for the time being formed parts of British India. The Act was also extended to Khasi and Jaintia Hills and the authority of the Governor-General to enact the Act and of the Lt. Governor to extend it was challenged. The decision of the Judicial Committee is reported in *Queen* v. *Burah* (L. R. 5 I.A. 178) which held that both the powers existed. On October 14, 1871 acting H under s. 9 of the Act of 1869 the Lt. Governor extended the whole of the Act to the Naga Hills District and vested the administration of Civil and Criminal jurisdiction in the Commissioner of Assam subject to his own direction and control. The Commissioner

was to exercise the powers of the High Court in Civil and Criminal cases triable in the Courts of the said districts but no sentence of death was to be carried out without the sanction of the Lt. Governor and it was competent to the Lt. Governor to call for the record of any criminal or civil case and to pass such orders thereon as he saw fit. The notification also ordered that cases not then triable in the ordinary British Courts would not be triable therein and even in those cases which were triable in those courts, the officers were to guide themselves by the spirit of the laws prevailing in British India and in force in the districts. In continuation of this notification, the Lt. Governor made under s. 5 of the Act of 1869, in application to the Naga Hills (which he renamed the Naga Hills Agency) Rules for the Administration of Justice and Police in the Naga Hills Agency. These rules were first published on August 7, 1872 and may be called, for brevity, the Rules of 1872.

The Rules of 1872, 39 in number, dealt with various topics but we shall set down the purport of such rules only as concern us. Part I was general and consisted of two rules. By Rule 1, the administration of the Naga Hills Agency was vested in the Commissioner of Assam, the Political Agent and his assistants, the Mouzadars, Gaonburahs, Peumahs (Naga Chiefs) and Houshas (Kookie Chiefs) or headmen of Khels, or such other classes of officers as the Lt. Governor deemed fit. Part II provided for police and consisted of Rules 3 to 15. We are not concerned with it. Criminal justice was provided for in Part III (Rules 16 to 24) and Civil Justice in Part IV (Rules 25 to 30). We are only concerned with the former.

Criminal justice was to be ordinarily administered by the Political Agent, his assistants and by the Mouzadars etc. The Political Agent could pass a sentence of death or imprisonment for a term unlimited or of fine up to any amount but not so as to exceed the value of the offender's property. No sentence of death was to be carried into effect without the concurrence of the Commissioner and the sanction of the Lt. Governor. Similarly, no sentence above 7 years' imprisonment could be carried into effect without the approval of the Commissioner. The Commissioner could enhance any sentence passed by his subordinates. The Assistant to the Political Agent was to exercise the powers of a Magistrate, First Class as laid down in the Criminal Procedure Code of 1872. The Mouzadars etc. were to try petty offences and could impose a fine up to Rs. 50. There were elaborate rules for trial by them and appeals lay against their decisions to the Political Agent or his Assistant. Appeals lay to the Political Agent from the decisions of his Assistant. No appeal lay as of right from the sentence of the Political Agent involving less than three years' imprisonment but the Commissioner could call for the record of the case to satisfy himself. Sentences above that period were appealable to the Com-

A missioner. The Lt. Governor was empowered to review the proceedings of all subordinate officers. Rule 23 bore upon the manner of the trial. It provided that the procedure of the Political Agent and his Assistant was to be in the spirit of the Code of Criminal Procedure as far as it was applicable to the circumstances of the District and consistent with the Rules. The main exceptions B were:

(a) Verbal notices fixing a date to appear were sufficient when the police was employed to convey them or the person was not resident or in the district or where his place of abode was not known.

C (b) Political Agent and his Assistant were to keep only the substance of all proceedings in cases requiring sentences below three years. In other cases, full notes of the proceedings had to be kept in English.

(c) Proceedings before Mouzadars etc. were not required to be in writing but if a person could be found D to be able to write, a brief note of the proceeding was to be made.

(d) All fines levied by the Mouzadars etc. were to be paid to the Political Agent or his Assistant or some officer specially empowered by the Political Agent.

(e) It was discretionary to examine witnesses on oath E in any form or to warn them that they were liable to punishment for perjury if they stated what they knew to be false.

On February 6, 1874 there was formation of the Chief Commissionership in Assam. The Governor-General in Council issued a proclamation under s. 3 of 17 & 18 Vict., Ch. 77. By the pro- F clamation he took under his immediate authority and management the backward territories then under the Lt. Governor of Bengal including the Naga Hills. By another notification the Governor-General in Council in exercise of powers under s. 3 of the Act formed those territories into a Chief Commissionership called the Chief Commissionership of Assam. In April of the G same year an Act (Act 8 of 1874) was passed to provide for the exercise within the said territories, of the powers which were before exercised under or by virtue of any law or regulation by the Lt. Governor of Bengal and the Board of Revenue. By the first section these powers were transferred and vested in the Governor-General in Council and by s. 2 the Governor-General in Council H was empowered to delegate to the Chief Commissioner all or any of the powers or withdraw any power so delegated. On 16th of April, 1874 the Governor-General in Council by notification delegated to the Chief Commissioner of Assam powers which

were formerly vested in or were exercisable by the Lt. Governor of Bengal. On June 13, 1874 the Governor-General in Council made alterations in the Rules of 1872 but only to make them accord with the political changes and republished them for general information. The changes were that wherever the Commissioner was mentioned in the Rules, the Chief Commissioner was substituted and where the Lt. Governor was mentioned the Governor-General was to be read. The Rules, however, remained the same. We shall refer to these Rules as the Rules of 1874.

Doubts having arisen in some cases as to which Acts or Regulations were in force or the boundaries of the territories in which they were in force and with a view to providing a ready means for ascertaining the enactments in force in the respective areas and the boundaries of the areas and for administering the law therein, an Act was passed by the Governor-General of India in Council. This Act was intituled the Scheduled Districts Act, 1874 (14 of 1874). This Act remained on the statute book till the Government of India Act, 1935 came into force when it was repealed by the Adaptation of Laws Order, 1937. The scheme of the relevant provisions of this Act was this. The Act extended to the whole of India. It defined "Scheduled Districts" by reference to its First Schedule and these districts were to include such other territories in which the Secretary of State in Council declared the provisions of 33 Vict. Ch. 3 (section 1) to be applicable. The Act repealed other enactments by its Second Schedule. By sections 3 and 4 the local Government was enabled, with the previous sanction of the Governor-General in Council to notify what enactments were in force and what were not in force in any of the Scheduled Districts and to correct any mistake of fact in a notification already issued under that Act but not so as to change a declaration once made and on the issue of such notifications the intended effect was to follow. By s. 5 the local Government with the previous sanction of the Governor-General in Council was enabled to extend to the Scheduled Districts any Act in force in British India. Sections 6 and 7, which were the subject of great discussion in this appeal, may be quoted for future reference:

"6. Appointment of officers and regulation of their procedure.

The Local Government may from time to time:—

(a) appoint officers to administer civil and criminal justice and to superintend the settlement and collection of the public revenue, and all matters relating to rent, and otherwise to conduct the administration, within the Scheduled Districts,

(b) regulate the procedure of the officers so appointed; but not so as to restrict the operation of any enact-

A

ment for the time being in force in any of the said Districts,

(c) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such District shall be exercised or performed."

B

"7. Continuance of existing rules and officers.

All rules heretofore prescribed by the Governor-General in Council or the Local Government for the guidance of officers appointed within any of the Scheduled Districts for all or any of the purposes mentioned in section six and in force at the time of the passing of this Act, shall continue to be in force unless and until the Governor General in Council or the Local Government, as the case may be, otherwise directs.

C

All existing officers so appointed previous to the date on which this Act comes into force in such District, shall be deemed to have been appointed hereunder."

D

Section 8 enabled settlement of question as to boundaries of Scheduled Districts. Section 9 indicated the place of imprisonment or of transportation. Sections 10 and 11 do not matter to us.

E

The Assam Frontier Tracts Regulation 1880 (Regulation II of 1880) was next enacted to provide for the removal of certain Frontier Tracts in Assam from the operation of enactments in force there. Section 2 of the Regulation read:

"2. Power to direct that enactment shall cease to be in force.

F

When this regulation has been extended in manner hereinbefore prescribed to any tract, the Chief Commissioner may from time to time, with the previous sanction of the Governor General in Council, by notification in the local Gazette, direct that any enactment in force in such tract shall cease to be in force therein, but not so as to affect the criminal jurisdiction of any court over European British Subjects."

G

Under the provisions of this Regulation the Criminal Procedure Codes of 1882 and 1898 were withdrawn from the Naga Hills.

H

By proclamation No. 2832 dated the 1st September, 1905 the Governor-General, with the sanction of His Majesty, constituted the Province of Assam (to which were added certain districts

of East Bengal) and appointed a Lt. Governor. The new Province was known as Eastern Bengal and Assam. The Governor-General in Council also passed on the 29th September, 1905 an Act (No. 7 of 1905). It provided by s. 5 as follows:—

> "5. Power to Courts and Local Governments for facilitating application of enactments.
>
> For the purpose of facilitating the application to any of the territory mentioned in Schedule A, B or C of any enactment passed before the commencement of this Act, or of any notification, order, scheme rule, form or by-law made under any such enactment,—
>
> (a) . . . .
>
> (b) the Local Government may, by notification in the local official Gazette, direct by what officer any authority or power shall be exercisable, and any such notification shall have effect as if enacted in this Act."

Naga Hills were in Schedule A.

On November 29, 1906, the Lt. Governor prescribed Rules for the Administration of Justice and Police in the Naga Hills District under s. 6 of the Scheduled Districts Act, 1874. These Rules may be conveniently called the Rules of 1906. These Rules repeated the Rules which had been in force from 1872 with appropriate modifications consequent upon the political changes. The nomenclature of Political Agent and his Assistant was dropped and in their place the Deputy Commissioner and his Assistants were named in the Rules. The Deputy Commissioners became the equivalent of Political Agents in the exercise of powers. The Assistants to the Deputy Commissioner were invested with powers of First Class Magistrates. All sentences of death or transportation were required to be confirmed by the Lt. Governor but did not have to be considered by the Commissioner as in the Rules of 1872 and 1874. All sentences of imprisonment of 7 years and upward had to be confirmed by the Commissioner. The Lt. Governor and the Commissioner had the powers to call for the record of a criminal case and reduce or cancel any sentence or enhance it within the limits prescribed by the Indian Penal Code. Except for these differences the Rules in other respects remained the same.

Assam underwent yet another change. At the Imperial Coronation Darbar held in Delhi in December, 1911, the King announced a new distribution of territory. Bihar and Orissa were cut off from Bengal and were formed into an independent

A Lt. Governorship. Eastern Bengal was reunited with West Bengal and Assam once again became a separate Province with a Chief Commissioner. This new scheme took effect from April 1, 1912.

In 1914 by two notifications (Nos. 5467P and 5459P dated 13-10-1914), which were issued under Regulation 2 of 1818, all enactments in force in the Western, Central, North East and Eastern B Tracts were to cease to be in force and under s. 5 of the Scheduled Districts Act, 1874, the Indian Penal Code, the Indian Police Act, the Indian Arms Act, the Assam Land Revenue Regulation, the Assam Forest Regulation and the Whipping Act were extended by the Chief Commissioner with the previous sanction of the Governor-General in Council. The administration of Assam C thereafter continued under the above mentioned Acts and the procedural part was taken from the Rules of 1906 which laid down that in criminal trials the spirit of the Criminal Procedure Code was to be followed because the Code itself was not in force. In 1921 Assam became a Governor's Province.

We next come to March 25, 1937. On that day the Governor D of Assam prescribed revised Rules under the powers vested in him by s. 6 of the Scheduled Districts Act. These Rules did not materially differ from the Rules of 1872, 1874 and 1906. The Rules of 1937 began by stating that they cancelled "all previous orders on the subject." The changes that were introduced were of the pattern we have known before. The administration of the E Naga Hills was vested in the Governor of Assam, the Deputy Commissioner, the Additional Deputy Commissioners and Assistants to the Deputy Commissioner, the Mouzadars, etc. The Deputy Commissioner, the Additional Deputy Commissioner and Assistants to the Deputy Commissioner were to be appointed by the Governor. As a result of these changes, the provisions of F Part III dealing with criminal justice were suitably amended. The first change was to assign duties to the Additional Deputy Commissioner. The term Deputy Commissioner was said to include an Additional Deputy Commissioner and the latter had the same powers as the former (Rule 15A). The terms District Magistrates, Additional District Magistrates and Magistrates of the District, Sub-Divisional Magistrates or Magistrate of a Sub-Division were G to refer to in any law in force in Naga Hills to the Deputy Commissioner, Additional Deputy Commissioner and Sub-Divisional Officers, Mokokchung (Rule 15B). In respect of all offences under the Indian Penal Code or under any other law to be investigated, inquired into, tried or otherwise dealt with according to the Rules of 1937 the words and expressions defined in s. 4 of the H Criminal Procedure Code, 1898 were to have the same meanings. The Deputy Commissioner could impose any sentence but the sentence of death was subject to confirmation by the High Court. The Assistants to the Deputy Commissioner were equated to

Magistrates of First Class, but the Governor could, if he thought fit, invest an Assistant to the Deputy Commissioner either generally or for trial of a particular case or cases with all powers of the Deputy Commissioner, except to pass a sentence of death. Another change was that instead of the Lt. Governor the High Court of Assam and the Deputy Commissioner could call for the record of any case and reduce, enhance or cancel any sentence or remand the case for retrial. Sentences of death passed by the Deputy Commissioner were subject to the confirmation by the High Court of Assam (Rule 16-A) and the Deputy Commissioner while convicting the accused and sentencing him to death was to inform the accused about the period in which the appeal should be filed (Rule 16-B). The other Rules defined the powers of the High Court in cases submitted for confirmation of sentence (Rule 16-C, D and E.). Appeals lay from the Deputy Commissioner to the High Court in any case.

These Rules, it is contended on behalf of the State of Nagaland, continue till today. They were amended in 1952, 1954, 1956 and 1957. In 1937 by the Adaptation of Laws Order the Scheduled Districts Act was repealed but there was a special saving which read as follows:—

> "This Act shall cease to have effect, without prejudice to the continuing validity of any notification, appointment, regulation, direction or determination made thereunder and in force immediately before the commencement of Part III of the Government of India Act, 1935 :
>
> Provided that, where immediately before the first day of April, 1937, any enactment is, by virtue of any notification made under this Act, in force in any area in British India, either with or without restrictions or modifications, the Central Government, in relation to matters enumerated in List I of the Seventh Schedule to the Government of India Act, 1935, and the Provincial Government, in relation to other matters, may, within six months from the said date, by notification in the Official Gazette, declare that the enactment in question shall have effect in that area subject to such modifications and adaptations specified in the notification as the Government in question may deem necessary or expedient to bring it into accord with the Government of India Act, 1935."

In 1945 the Assam Frontier (Administration of Justice) Regulation, 1945 (Regulation 1 of 1945) was enacted. It was originally made applicable to Balipara, Lakhimpur, Sadiya and Tirap Frontier Tracts. It was applied to Tuensang in 1955. In the main these Regulations were the same as the Rules of 1937 applicable in the Kohima and Mokokchung Divisions but slight differ-

A ence existed in the powers of the High Court in the matter of transfers and appeals against acquittals. As these were the subject of an argument we shall refer to these differences later.

Before the formation of the State of Nagaland the laws in the Tuensang Frontier Division and those in force in the rest of the North-East Frontier Agency were assimilated by the Tuensang B Frontier Division (Assimilation of Laws) Regulation, 1955 (No. 4 of 1955). These were made by the Governor in exercise of the powers conferred by clause (2) of Art. 243 of the Constitution read with Sub-paragraph (2) of paragraph 18 of the Sixth Schedule to the Constitution by the President of India. By Paragraph 3 of that Regulation all laws except the Tuensang Frontier Division C (Undesirable Persons) Regulation, 1951, which were extended to or were in force in Tuensang Frontier Division but were not extended to and not in force in the rest of the North East Frontier Agency ceased to be in force in Tuensang Frontier Division. Similarly, all laws which immediately before the appointed day did not extend to or were not in force in the Tuensang Frontier D Division but extended to or were in force in the rest of the North East Frontier Agency, were extended to or came into force in the Tuensang Frontier Division. In other words, the laws in the North East Frontier Agency became completely uniform except in one respect, namely, the continued enforcement of the Undesirable Persons Regulation referred to above in Tuensang Division. As the Criminal Procedure Code was never in force in any part E of the North East Frontier Agency it did not come into force in the Tuensang Area. On the other hand, the Rules of 1937 if they were valid and in force got extended to the Tuensang area also. In 1921, in accordance with the provisions of the Government of India Act, Assam became a Governor's Province and later one of the States in the Indian Republic. The Regulations of 1952, F 1954, 1956 and 1957 were made by the Governor in exercise of his powers under the Sixth Schedule of the Constitution. We shall now consider the arguments in these appeals which have covered a wide field, and they were also apparently addressed in the High Court and found favour there.

We may here dispose of one argument which is somewhat G independent of the others. It is contended that the Rules of 1937 did not survive the repeal of the Scheduled Districts Act, 1874 by the Adaptation of Laws Order, 1937, notwithstanding the saving clause in the Adaptation of Laws Order. This argument is based on the submission that the savings clause (reproduced earlier by us) did not mention rules as such. We do not agree. H The saving clause preserved all notifications. The Rules of 1937 were enacted by notification and if notifications were saved the Rules in the notification were also saved. After the passing of the Government of India Act, 1935, the Rules of 1937 would be successi-

vely preserved by ss. 292 and 293 of the Government of India Act, 1935, s. 18 of the Indian Independence Act, 1947 and Art. 372 of the Constitution. The real questions are whether they were invalid for any reason to start with or became void after the Constitution.

The powers of the Governor-General in Council and now of the President derived from the various constitutional documents are not and indeed cannot be in doubt. Hence the attempt of the respondents is to challenge the powers of the Lt. Governor, Chief Commissioners and the Governor who have in turns made Rules for the administration of these areas. The attack is on the Rules of 1906 and 1937 as being incompetently made under the Scheduled Districts Act and on ss. 6 and 7 of the Scheduled Districts Act, if it be held that the Rules were competently made. We shall deal first with these arguments.

The contention that the Rules of 1937 were void *ab initio* is supported by many arguments. The submission is that ss. 6 and 7 of the Scheduled Districts Act did not confer any powers of legislation to regulate judicial procedure. It is pointed out in this connection that s. 6(a) gave powers to appoint officers to administer civil and criminal justice and s. 6(b) allowed the procedure of the officers *so appointed* to be regulated which meant administrative procedure and no general law-making authority can be implied and s. 6(c) enabled the choosing of authority by which any jurisdiction, power or duty incident to the operation of any enactment for the time being in force should be exercised or performed in any scheduled district. Reference is made in this connection to s. 5 of the Act of 1869 where it was laid down that the officers so appointed would, in the matter of administration and superintendence, be subject to the direction and control of the Governor and would be guided by such *instructions* as he might, from time to time, issue. It is contended that by regulating the procedure is meant *instructions* on the administrative side.

In our opinion this is a wrong reading of the section. We must not forget that the Scheduled Districts Act was passed because the backward tracts were never brought within the operation of all the general Acts and Regulations (particularly the Criminal Procedure Code) and were removed from the operation and jurisdiction of the ordinary courts of Judicature. In these areas the Indian Penal Code was always applicable but not the Code of Criminal Procedure. The local Governments were empowered by the Scheduled Districts Act to appoint officers to administer civil and criminal justice and to regulate the procedure of the officers so appointed. Officers appointed to administer civil and criminal justice must follow some procedure in performing this task. Regulating procedure, therefore, meant more than framing

A administrative rules. It meant the control of the procedure for the effective administration of justice. It is significant that the Governor-General in Council, who enacted the Scheduled Districts Act, framed the Rules of 1874 containing comprehensive rules of procedure for dealing with criminal cases. This was a clear exposition of ss. 6 and 7 of the Scheduled Districts Act by the Gover-
B nor-General in Council himself. The Act was understood as conferring full powers to regulate not the administrative procedure only but also the procedure for administration of criminal justice. As the Rules of 1872, 1874, 1906 and 1937 were almost the same (except for a few changes rendered necessary by the altered political conditions) it is clear that a succession of officers saw the necessity
C of Rules controlling not only the administrative side but the judicial side of administration of justice. In our judgment the construction of ss. 6 and 7 attempted by the respondents cannot be accepted.

It is next contended that the Act itself was bad because the Legislature did not legislate on the subject of judicial procedure
D but left essential legislation to a delegate, without laying down any or at least enough guidance in the Scheduled Districts Act for those who were to make Rules under it. In this connection learned counsel has drawn our attention to several rulings in which the question of excessive delegation has been considered by this Court and in particular we have been referred to *Re the Delhi Laws Act*, 1912,(1)
E *Hamdard Dwakhana (Wakf) Lal Kuan* v. *Union of India*,(2) *Vasantlal Maganbhai Sanjanwala* v. *State of Bombay*(3) and *D. S. Grewal* v. *State of Punjab*.(4) It is submitted that ss. 6 and 7 of the Scheduled Districts Act laid down no policy, and did not afford a guide in the making of Rules except to say that officers should be appointed to administer civil and criminal justice and that the local Government might regulate the procedure of such officers, thereby leaving the
F essential law-making to the delegate.

In this Court we have on several occasions pointed out that guidance may be sufficient if the nature of thing to be done and the purpose for which it is to be done is clearly indicated. Instances of such legislation were cited before us and the case of *Harishankar Bagla* v. *Madhya Pradesh*(5) was one of them. The policy and pur-
G pose may be pointed out in the section conferring the powers and may even be indicated in the preamble or elsewhere in the Act. The preamble of the Scheduled Districts Act shows that these backward tracts were never brought within, but from time to time were removed from, the operation of general Acts and Regulations and the jurisdiction of the ordinary courts of judicature was also
H excluded. It was therefore necessary to ascertain the enactments

(1) [1951] S.C.R. 747. (2) [1960] 2 S.C.R. 671.
(3) [1961] 1 S.C.R. 341. (4) [1959] Supp. 1 S.C.R. 792.
(5) [1955] 1 S.C.R. 288.

in force and to set up a machinery for making simple rules. The Act conferred on the local Governments power to appoint officers for administration of civil and criminal justice within the Scheduled Districts and empowered the local Government to regulate the procedure of the officers so appointed and to confer on them authority and jurisdiction, powers and duties incident to the administration of civil and criminal justice. These provisions afforded sufficient guide to the local Government that the administration of civil and criminal justice was to be done under their control by the officers appointed by them and the procedure which they were to follow must be laid down. This was not an instance, therefore, of excessive delegation at all. The Legislature clearly indicated the policy and the manner of effectuating that policy. There was sufficient guidance in the three sub-sections of s. 6 read as a whole with the preamble and the Chief Commissioner's Rules made in 1872 and republished in 1874 by the Governor-General in Council were also available as a further guide as the last were continued in force by s. 7. Indeed, the subsequent Rules of 1906 and 1937 repeated the Rules of 1872 & 1874 with amendments necessary owing to political changes and only slightly liberalised them in some ways. We do not consider that there was excessive delegation of legislative authority by the Legislature.

It is next contended that s. 7 of the Scheduled Districts Act did not confer any power upon the local Government to alter in any way the Rules made by the Governor-General in Council. That section says that Rules which had hitherto been prescribed by the Governor-General or the local Government for the guidance of the officers appointed within any of the scheduled districts were to continue to be in force unless and until the Governor-General or the local Government, as the case may be, otherwise directed. It is admitted that the Governor-General in Council, possessing an overriding power, might even have amended the Rules made by the local Government. But it is submitted that the Governor-General in Council could amend his own Rules and the local Government could amend its own Rules but the Local Government, being a delegate, could not amend or cancel the Rules of the Governor-General in Council. It is urged that the Rules of 1906 made by the Lt. Governor and the Rules of 1937 made by the Governor were ineffective. With regard to the Rules of 1906 it is sufficient to say that the Bengal Assam Laws Act 1905 authorised local Government by notification to say by what officer *any authority* or *power* was to be exercisable and *any such notification* was to have effect as if enacted in the Act itself. When the Rules of 1906 were made by the local Government they had effect as if they were enacted in Act 7 of 1905. But the power could be exercised by the Governor under the Scheduled Districts Act ss. 6 and 7 to make fresh Rules. By that Act the Governor-General in Council conferred on the

A local Government an equal or concurrent power and this is clearly indicated by the word "as the case may be" in s. 7 of the Act. Those words do not, as it contended, show that the local Government could only amend its own Rules. These words rather show that whoever made the rules the authority of the Act would make them binding. In our judgment the Rules of 1937 were validly B enacted.

In order to avoid this implication, the Rules are attacked as *ultra vires* Arts. 21 and 14. Article 21 is used because it is contended that these Rules do not amount to law as we understand it, particularly where the Rules say that not the Criminal Procedure Code but its spirit is to govern the administration of justice. It is urged C that this is not a law because it leaves each officer free to act arbitrarily. This is not a fair reading of the Rule. How the spirit of the Code is to be applied and not its letter was considered by this Court in *Gurumayum Sakhigopal Sarma* v. *K. Ongbi Anisija Devi* (Civil Appeal No. 659 of 1957 decided on 9th of February, 1961) in connection with the Code of Civil Procedure. With reference to a D similar rule that the courts should be guided by the spirit and should not be bound by the letter of the Code of Civil Procedure this Court explained that the reason appeared to be that the technicalities of the Code, should not trammel litigation embarked upon by a people unused to them. In that case although a suit was ordered to be dismissed for default of appearance, an order was passed on merits. The question arose whether it was dismissed E under O·9 r. 8 or O·17 r. 3 of the Code of Civil Procedure. It was held by this Court that it did not matter under which Order it was dismissed but that no second suit could be brought on the same cause of action without getting rid of the order dismissing the suit. In this way this Court applied the spirit of the Code and put aside the technicalities by attempting to find out whether F the dismissal was referable to O. 9, r. 8 or O. 17, r. 3 of the Code. That case illustrates how the spirit of the Code is used rather than the technical rule. In the same way, under the criminal administration of justice the technical rules are not to prevail. over the substance of the matter. The Deputy Commissioner in trying criminal cases would hold the trial according to the exigency of G the case. In a petty case he would follow the summons procedure but in a heinous one he would follow the procedure in a warrant case. The question of a Sessions trial cannot arise because there is no provision for committal proceeding and there are no Sessions Judges in these areas. Therefore, the Deputy Commissioner who was trying the case observed that he was going to observe the warrant procedure and in the circumstances he was observing the spirit of H the Code.

Laws of this kind are made with an eye to simplicity. People in backward tracts cannot be expected to make themselves aware

of the technicalities of a complex Code. What is important is that they should be able to present their defence effectively unhampered by the technicalities of complex laws. Throughout the past century the Criminal Procedure Code has been excluded from this area because it would be too difficult for the local people to understand it. Instead the spirit of the Criminal Procedure Code has been asked to be applied so that justice may not fail because of some technicality. The argument that this is no law is not correct. Written law is nothing more than a control of discretion. The more there is of law the less there is of discretion. In this area it is considered necessary that discretion should have greater play than technical rules and the provision that the spirit of the Code should apply is a law conceived in the best interests of the people. The discretion of the Presiding Officer is not subjected to rigid control because of the unsatisfactory state of defences which would be offered and which might fail if they did not comply with some technical rule. The removal of technicalities, in our opinion, leads to the advancement of the cause of justice in these backward tracts. On the other hand, the imposition of the Code of Criminal Procedure would retard justice, as indeed the Governors-General, the Governor and the other heads of local Government have always thought. We think, therefore, that Art. 21 does not render the Rules of 1937 ineffective.

A similar attempt is made by comparing these Rules with the Criminal Procedure Code applicable in the rest of India. It is contended that this leads to discrimination. We think that the exigency of the situation clearly demands that the Criminal Procedure Code should not apply in this area. It is not discrimination to administer different laws in different areas. The Presidency Towns have got special procedures which do not obtain in other areas. We have known of trial by jury in one part of India for an offence which was not so triable in another. Similarly, what is an offence in one part of India is not an offence in another. Regional differences do not necessarily connote discrimination and laws may be designed for effective justice in different ways in different parts of India if people are not similarly circumstanced. These backward tracts are not found suitable for the application of the Criminal Procedure Code in all its rigour and technicality, and to say that they shall be governed, not by the technical rules of the Code but by the substance of such rules is not to discriminate this area against the rest of India.

It is contended that there is discrimination between the Tuensang District and the other two districts of the State because in the other two districts the Code of Criminal Procedure applies. This seems to be stated in the judgment of Mr. Justice C. Sanjeeva Rao Nayudu who proceeded upon a concession of the Advocate-General

A of Nagaland. We have, however, no reason to think that the Advocate-General could have conceded this point. It was made clear to us that there was some mistake and the assumption made by Nayudu J. was based on a misapprehension. It is now admitted by Mr. A. K. Sen on behalf of the respondants that the Criminal Procedure Code does not apply to any of the three districts and B therefore there is no question of any discrimination between one district and another in Nagaland.

Lastly, it is contended that the Rules themselves allow for discrimination because one officer may take something to be the spirit of the Criminal Procedure Code and another may not. The C requirements of the case must determine what should be applied from the Criminal Procedure Code and what should not. The Rules have been purposely made elastic so that different kinds of cases and different situations may be handled not according to a set pattern but according to the requirements of the situation and the circumstances of the case. In a backward tract the accused is not in a position to defend himself meticulously according to a D complex Code. It is, therefore, necessary to leave the Judge free so that he may mould his proceedings to suit the situation and may be able to apply the essential rules on which our administration of justice is based untramelled by any technical rule unless that rule is essential to further the cause of justice. This would rather lead to less discrimination because each accused would be afforded E an opportunity which his case and cricumstances require. The Rules of 1937 were designed for an extremely simple and unsophisticated society and approximate to the rules of natural justice. It is impossible in such cricumstances to think, that because the Judge has more discretion than if he acted under the Criminal Procedure Code or is able to bring different considerations to the F aid of administration of justice that there must be discrimination. If a Judge does not apply the spirit of the Code but goes against it or acts in a manner which may be considered to be perverse the High Court will consider his action and set it right. As we said earlier the law has not attempted to control discretion by Rules in this area but has rather left discretion free so that the rule may not hamper the administration of justice. As there is G no vested right in procedure the respondents cannot claim that they be tried under the Criminal Procedure Code in this State where the Code is excluded. In such a situation it is difficult to find discrimination.

H It was lastly contended that there is discrimination between one set of rules and another; that in some of the other backward tracts of Assam the rules are different and a comparative study was made before us of the different rules, as for example, Rules of 1874,

1937 and the Assam Frontier Administration of Justice Regulation, 1945 which applied to Balipura, Lakhimpur, Sadiya and Tirap tracts and had been applied in Tuensang Division in 1955. The main differences are in the matter of appeals against acquittals and the power of transfer. In so far as the appeals against acquittals are concerned, it is, of course, obvious that where such a power is not conferred there cannot be an appeal against acquittals. In so far as transfer is concerned, we see no difficulty because the rules were different to start with in different districts and even if the provisions for transfer may not be in one part the spirit of the Code of Criminal Procedure would permit transfer in that part. Similarly, in some places confirmation of sentence above 7 years is required and in some others there is only a right of appeal. This depends on how advanced each area is. The attempt, of course, is to bring these territories under the Criminal Procedure Code applicable in the rest of India, by such stages as appear justified. As that stage is not yet reached little differences must exist but no discrimination can be spelled out from the differences. Art. 371A of the Constitution itself contemplates a different treatment of these tracts and the differences are justified by the vast differences between the needs of social conditions in Nagaland and the various stages of development of different parts. We do not, therefore, consider that a comparison of these rules leads to any conclusion that there is likelihood of discrimination which would offend the Constitution.

We accordingly hold that the Rules of 1937 continue to be in force and govern the trial of these respondents. The Code of Criminal Procedure admittedly does not apply there and the Additional Deputy Commissioner was therefore right in holding the trial under the Rules of 1937. It is obvious that in following the spirit of the Code and in applying the warrant procedure the Deputy Commissioner followed the right procedure and the High Court was in error in thinking that neither the Rules of 1937, nor any Rules applied to this area. We accordingly allow the appeals and set aside the order of the High Court. The trial of the respondents shall proceed under the Rules of 1937.

We may, however, say that it would be better if, as soon as it is found to be expedient, all Rules are cancelled and one uniform set of Rules is made for the whole of this area. This would obviate having to find out through the mazes of history and the congeries of rules, notifications and regulations what law is applicable. If any difficulty is felt in making new rules recourse may easily be taken to the provisions of s. 31 of the State of Nagaland Act which enables the President, by order, to remove any difficulty to give effect to the provisions of the State of Nagaland Act. The history of this area shows that there have been difficulties in the past in

A ascertaining laws which were applicable at any point of time in any particular area and led to the passing of many Acts of British Parliament and of the Governor-General in Council to remove such difficulties. We do not think that such a state of affairs should continue indefinitely when the State of Nagaland Act itself gives sufficient power to remove difficulties.

B

*Appeals allowed.*