

Mora Ho Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jan-05-2000

Judge : R.A. Sharma, S.J. Mukhopadhyaya and M.Y. Eqbal, JJ.

Acts : Code of Civil Procedure (CPC) (Amendment) Act, 1951; Scheduled District Act, 1874 - Sections 7; Scheduled District Regulation, 1833 - Sections 5; Code of Civil Procedure (CPC) - Sections 1(3)

Appeal No. : Civil Writ Jurn. Case No. 198 of 1979(R)

Appellant : Mora Ho

Respondent : State of Bihar and ors.

Advocate for Def. : P.K. Banerjee, M.M. Pal, S.K. Dutta, S.K. Chatterjee, Advs., R.N. Sahay, S.C.I, M.K. Roy and Rajesh Lala, J.C.S. to S.C.I

Advocate for Pet/Ap. : P.K. Sinha, Sr. Adv., Rajeev Ranjan, A.R. Choudhary and Pandey Neeraj Rai, Advs.

Judgement :

R.A. Sharma, J.

1. I have gone through the two Judgments prepared by my two learned brothers (S.J. Mukhopadhyaya and M,Y. Eqbal, JJ.) who along with me were the members of the Full Bench, which was constituted to answer the questions referred, which

have been reproduced on the 2nd page of the judgment of Hon'ble S.J. Mukhopadhaya, J.

2. Hon'ble S.J. Mukhopadhaya, J. has held that Wilkinson's Rules have not been framed by the Governor General in the Council, who was the only competent authority at the relevant time to frame such Rules and, therefore, they lack statutory force and the law laid down by the Division Bench earlier in the case of Dulichand Khirwal, AIR 1958 Pat 366 and Mahendra Singh's case, AIR 1958 Patna 603, does not represent the correct legal position. Hon'ble M.Y. Eqbal, J. on the other hand has taken a contrary view holding the said Rules to be statutory in nature. The decisions of the Division Bench of this Court in Dulichand Khirwal. AIR 1958 Patna 366 and Mahendra Singh's case. AIR 1958 Patna 603 (supra) have, accordingly, been approved by him.

3. For the reasons given by Hon'ble S.J. Mukhopadhaya, J. I agree with him that the Wilkinson's Rules have not been framed by a competent authority and, therefore, they lack statutory force.

4. Although these Rules have no statutory force but the admitted position is that they have been followed and acted upon in the Administration of Civil Justice in the Kolhan area of Singhbhum district for about 150 years. Even Hon'ble S.J. Mukhopadhaya, J. in paragraph 16 of his judgment has held that 'the Wilkinson's Rules thus cannot be stated to be statutory, though it can be held to be a general law, being followed for more than 1 1/2 century. Final report on the survey and settlement operation in the district of Ranchi (1910) and the final report on the resettlement of the Kolhan Government Estate (1913-1918) have also recorded that the Rules framed by Captain Wilkinson though not sanctioned by the Government but have been followed in the Administration of Civil Justice. If these Rules are made inapplicable, now, in the absence of any suitable substitute, it may cause hardship and confusion. Therefore, it is expedient that till the new Rules/Regulations are framed by the Government in place of these Rules, these Rules should continue to hold the field.

5. It may further be mentioned that the Wilkinson's Rules are applicable to a small area of land known as 'Kolhan Estate' in the district of Singhbhum. These Rules

are not applicable to other Tribal areas, including the remaining part of the district of Singhbhum. Hon'ble M.Y. Eqbal. J. in Paragraph '45' to '50' of his Judgment has high-lighted the deficiency in the Wilkinson's Rules to cope with the present system of life and litigation in Kolhan. The learned Judge has pointed out that these Rules were framed about 150 years ago in order to govern and regulate the litigations of the illiterate and Ignorant tribals but by pas-sage of time literacy and wisdom have progressively dawned on them on account of which these Rules have become inadequate to meet their requirements. In this connection the learned Judge has also observed that the large number of industries have been established in Kolhan area but these Rules do not lay down any procedure for resolving the dispute relating to dismissal, wrongful transfer of the workmen as well as the dispute between the landlord and the tenant. It is further pointed out that the decree passed by a Court under these Rules cannot be executed anywhere in the country excepting Kolhan Itself. Even the Kolhan Enquiry Committee in its report dated 31st July, 1948 has highlighted some such deficiency and in this connection has observed as under :--

'Cases are instituted by ordinary petitions. The Court-fees Act is nominally in force in the Kolhan and where a case is allowed to assume the form of a regular civil suit, it is valued according to the Court-fees Act. As regards procedure, the Civil Procedure Code is followed in a modified form, so that it is not inconsistent with 'Wilkinson's Rules; but great use is made of the ordinary village Panchayat as arbitrators. The majority of petitions, however, is treated as miscellaneous petitions and settled by the Kolhan Superintendent without being allowed to assume the form of a civil suit. Though this is the procedure still followed it appears that the results are not as happy as it was in the past. The Hos have advanced from their backward state; they have lost faith in their Mankis and Mundas and have also come under the influence of lawyers and touts. While recording the evidence of witnesses, it transpired that some Mundas act as touts for lawyers. So most of the miscellaneous petitions, do not end with the Kolhan Superintendent, Arbitration by Mankis is in many cases a failure these days. So ultimately by the Kolhan Superintendent has to allow most of these petitions to assume the form of civil suits. This is putting a strain on the existing staff and is perhaps not giving real satisfaction to the litigant Ho. In the past this system gave

cheap and speedy justice to Ho. But now it is neither cheap nor speedy.'

The said Committee has, accordingly, recommended for framing of the Rules for the Kolhan Estate also on the line of Santal Civil Rules. In this connection, Brother M.Y. Eqbal, J. has noted the fact that the draft regulation was framed in 1983 in order to replace the Wilkinson's Rules but they have not been made final so far. It appears that there is inaction on the part of the Government in this regard. It is high time that the Government should act and provide better substitute.

6. For the reasons given above, I agree with Hon'ble S. J. Mukhopadhaya, J. that the Wilkinson's Rules do not have statutory force and the questions referred to the Full Bench are answered in terms of his judgment. It is, however, not necessary for me to express any opinion on the question about the applicability of the Civil Procedure Code to the Kolhan area.

7. But for the reasons given hereinafter, the Wilkinson's Rules shall continue to be followed in the Administration of Civil Justice of Kolhan area till suitable Rules/Regulations in place of those Rules' have been framed by the Government. The State Government shall do the needful in this regard within a period of three months from the date of receipt of the copy of this Judgment.

8. Let a copy of this judgment be sent to the Chief Secretary, Government of Bihar, for compliance at the earliest.

S.J. Mukhopadhaya, J.

The case relates to right and title in respect of Plot No. 2075 under Khata No. 141 of village Konkoa, Thana No. 14, situated within Kolhan area (District -- Singhbhum).

9. Initially, a Kolhan Title Suit No. 27/66 was preferred by petitioner, which was withdrawn, having filed before a Court having no jurisdiction, followed subsequently as Kolhan Title Suit No. 1/71, preferred the Additional Deputy Commissioner, Chaibasa. In terms with Rule 20 of the Wilkinson's Rules, it was referred to Panches, who on hearing the parties submitted award in favour of

defendants. The suit was decreed, accordingly, in favour of defendants, against which the petitioner preferred Title Appeal No. 84/74 before the Commissioner . South Chotanagpur Division Ranchi. The appeal having rejected, the present petition was preferred, wherein while challenging the award/decreed, the petitioner raised the question of validity of Wilkinson's Rules.

10. The validity of Wilkinson's Rules was challenged, from time to time, but upheld by Division Bench of this Court in Dulichand Khirwal v. State of Bihar, AIR 1958 Pat 366, Chotanagpur Division, AIR 1958 Pat 603.

11. In the present case, taking into consideration the submission made on behalf of the petitioner and the Division Bench decisions in Dulichand Khirwal, AIR 1958 Patna 366 and Mahendra Singh, AIR 1958 Patna 603, the Court was of the view that the aforesaid cases need reconsideration by a larger Bench and referred the matter to determination the following questions :--

'(i) The authenticated copy of the Wilkinson's Rules is not available in the records nor is there any publication as to how Rules were purported to be framed or made under paragraph 5 of Regulation XIII of 1833. A typed copy of the Rules signed by Captain Thomas Wilkinson is available in the records. Captain Thomas Wilkinson was an Agent of the Governor General and the Rules framed or made under the signature of Captain Thomas Wilkinson cannot be said to be a Rule within the meaning of paragraph 5 of Regulation XIII of 1833.

(ii) With the enactment of the Government of India Act, 1915, substantive part of the legislation by British Parliament of Chapter Act, 1833, was wholly repealed and Regulation XIII of 1833 made under the said Act also stood repelled and the Wilkinson's Rules, which are said to have been framed under the said Regulation also stood repealed, inasmuch as petitioner Section 130 of the Government of India Act, 1915, nor the 4th Schedule of the said Act saved Regulation XIII of 1833 or Wilkinson's Rules.

(iii) By the Government of India (Adoption of Indian Laws) Order 1937, the Schedule District Act 1874 was not adopted. Consequently, the operation of the Scheduled District Act 1874, ceased to exist and the Wilkinson's Rules could no

longer be saved under Section 7 of the Scheduled District Act XIV of 1874.

(iv) After enactment of Schedule Areas (Part A State) Order, 1950, and amended Schedule Areas (State of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977, by the President of India in exercise of the power conferred under subparagraph 2 of the paragraph 6 of the Vth Schedule, the continuation of the Wilkinson's Rules is ultra vires.'

12. The main question raised on behalf of the petitioner is that the Wilkinson's Rules is not a Rule framed under Section v of Regulation XIII of 1833, nor can be said to be a statutory rule having binding force.

13. To determine the aforesaid questions, it is necessary to trace out the history of Wilkinson's Rules, as also the Acts, Enactments; Rules and Regulations, as Issued, from time to time, since 1833 in that regard.

14. The Kolhan, which was a Government estate is situated within the district of Singhbhum which, forms south eastern portion of Chotanagpur Division.

The Kolhan was divided into 26 Pirs. The whole estate is a non police tract, but for administrative convenience three of the north western Pirs, Kuldlha, Kainua; and Gulkera, have been put in the jurisdiction of Chakradharpur Police Station, and Saranda and Rela Pirs in the south west in Manoharpur. The remaining 21 Pires constitute the Kolhan Thana. The larger Pirs are further subdivided into Maniks' divisions or ilakas, each under a Manki or divisional headman. There are 75 such divisions. The number of village under one Manki varies from 3 to 33, and the area from 1,002 acres to 31,349 acres. In each village there is a Munda or village headman. On the 12th August, 1765, the Dewani of Bengal, Bihar and Orissa was conferred upon East India Company by Emperor Shah Alam. The tract of Chela Nagpur was included in Suba Bihar and had several fudal lords. Their mutual rivalry gave the British opportunities to occupy the territories.

The Military Collectorship of Ramgarh embraced the whole of the present district of Hazaribagh and Palamau and part of the districts of Gaya, Manbhum and Monghyr, as well as Chota Nagpur proper. This was formed in 1780 with

headquarters at Sherghati in the Gaya district and at Chatra in the Hazarbagh district. The Raja was allowed a free hand in the internal administration of the country, though it was nominally included in the Military Collectorship of Ramgarh. The internal condition of the district during this Collector ship was marked by incessant rivalries among Jagirdars, incursions of the Marathas and occasional infiltration of the Larka Kule of Singhabhum into Chota Nagpur, and above all the incompetence of the Raja to keep in subjugation the dependent Rajas and the turbulent elements. Therefore, in absence of peace and order, discontent among the masses increased, suggesting the failure of the Military Collectorship.

Owing to the repeated rising of the Mundas and Oraons, Chota Nagpur, as part of the Ramgarh district was brought under the administration of the East India Company and the Maharaja was no longer a Tributary Chief. In 1819, a Political Agent to the Government of South Bihar was appointed. This Synchronised with a great drought in the Tamar Pargana and the transfer of the police administration from the Raja to the British under the Superintendent of Police. The administration took an ultimately measure in imposing a tax on hanrla (rice-beer) when a Munda rising in the pargana of Tamar, Rahe, and Silli was gaining ground. This added to the discontent among the aboriginals.

The suppression of the revolt was followed by a number of administrative reforms. The Insurrection brought home the necessity for a closer administration and more effective control by British officers on the spot. Accordingly, the whole system of administration was changed, and the South-West Frontier Agency was established in 1834, with headquarters at Kishanpur (Ranchi). The Agency included, Ramgarh, Kundu, the Jungle Mahals (except Bishenpur, Sainpahari and Sherghar) Parganas Dhalbhum and the dependant tributary Mahals.

Captain Thomas Wilkkinson was appointed the first Agent, and one of his Principal Assistant, Lieutenant Oseley, was placed in charge of the Lohardaga Division, which correspondend roughly to the present district of Palarnau and Ranchi with headquarters at Lohardaga.'

(Quoted from the final report on the resettlement of the Kolhan Government Estate, published in 1920 (period 1913 -- 1918) by A.D. Tuckey, I.C.C.).

15. Regulation XIII of 1833 was promulgated on 2nd Dec. 1833 for abolition of the Courts of Dewani Adalat of Zilase of Ramghur and Jungal Mahals and for providing special Rules for the superintendence of certain tracts as was included in the Zilase of Ramghur, Jungal Mahals and Midnapur.

Section V there in stipulated, as follows :--

'It shall be competent to the Government General by an order in Council to prescribe such rules as he may deem proper for the guidance of the Agent, all the officers subordinate to his control and authority, to determine what shall be exercised by the Agent and his Assistants respectively, also to determine, to what extent the decision of the Agent to Civil Suits shall be final and in what suits an appeal shall lie to the Sadar Dewani Adalat, and to define the authority to be exercised by the Agent in Criminal trials and what case he shall submit for the decision of the Nizamat Adalat.'

Section IV of this Regulation, which is also important, reads as follows :--

'The administration of civil and criminal justice, the collection of revenue, the Superintendence of the police, of the land revenue, customs abkaree, stamps, and every branch of Government within the tracts of country separated as prescribed in the foregoing section, shall be vested in an officer appointed by the Governor General in Council, to be denominated agent to the Government-General.'

16. A Code of Rules was drawn by the Captain Wilkinson for the administration of Civil Justice (commonly known as Wilkinson's Rules). Admittedly, it is being acted upon since more than 150 years.

For the time, in the case of Dulichand, AIR 1958 Patna 366, doubt was raised in respect of Wilkinson's Rules, when it was pleaded that there was no proof that Wilkinson's Rules were prescribed by the Governor General in the Council for the guidance of officers appointed within any of the schedule District.

Similar plea taken in the case of Mahendra Singh AIR 1958 Patna 603, and in the present case, where specific plea taken that the Wilkinson's Rules were never published nor prescribed by the Governor General. There is no date of publication

shown nor any signature put thereon, nor it was adopted by any subsequently Act/Rule.

The Division Bench in Dulichand's case, AIR 1958 Patna 366, made the following observations :--

'It is true that the typed copy of Wilkinson's Rules produced by the parties before us has been signed by Mr. Wilkinson as 'Governor General's Agent.'
XXXXXXXXXXXXXX.

'But it is undisputed position that Wilkinson's Rules have been accepted as valid law and acted upon by the Government Officers and the people of Kolhan area for several decades. Decisions have been given, titles to property have passed and contracts have been made on the basis that Wilkinson's Rules continue to exist in Kolhan area. It is important to note that the Kolhan Inquiry Committee appointed by the State Government in 1948, has said in Chapter II of its report that civil justice is still administered under Wilkinson's Rules and that these rules are statutory rules framed under Regulation XIII of 1833, and are still in force by virtue of Section V of the Scheduled Districts Act. It was stated by learned counsel on behalf of the opposite party that the order in Council by which the Governor General prescribed the rules is not traceable.

But in a case of this description, I think that the maxim *omnia presumuntur rite et solemniter esse acta donec probetur in contrarium* is applicable.'

In the case of Mahendra Singh AIR 1958 Patna 603, while reiterating the aforesaid finding, the Division Bench further, held, as follows :

'In view of the principle laid down in the above mentioned cases we must presume in the present case that Wilkinson's Rules were prescribed by the Governor-General by an order in Council under Section V of Regulation XIII of 1833 and that these rules have been continued by Act XIV of 1874 and succeeding statutes. I, therefore, reject the contention of learned Counsel for the petitioners on this point.'

17. Though in both the cases, same conclusion drawn, contrary reasons given for coming to the conclusion.

For example, the plea of petitioner that the Rule framed under Section IV of Regulation XIII of 1833 was rejected in the case of Dulichand Khirwal, AIR 1958 Patna 366 on the ground that it was not possible to answer the question from the typed copy of the Rules. In the case of Mahendra Singh, AIR 1958 Patna 603. On the basis of same set of typed copy, on mere presumption, it was held to be a Rule framed under Section V of Regulation XIII of 1833.

18. On the other hand, while reiterating the aforesaid observations, the Court in the case of Mahendra Singh, AIR 1958 Patna 603, held the Wlikinson's Rules made under Section V of Regulation XIII of 1833 on mere presumption, giving reference of one or other case.

19. It has not been made clear in the case of Dulichand Khirwal, AIR 1958 Patna 366 and Mahendra Singh's case AIR 1958 Patna 603, in absence of specific evidence whether the Governor General prescribed Wilkinson's Rules by an order in Council and in absence the date of publication as to how the Court gave finding on presumption that the Rule was framed under Section V of Regulation XIII of 1833.

20. It will be evident that in both the cases, the Courts took into consideration Chapter II of report submitted by Kolhan Inquiry Committee appointed by the State Government in 1948, where it was reported that the Civil Justice is still done under Wlikinson's Rules and that those rules are statutory rules framed under Regulation XIII of 1833 and are still in force by virtue of Section 7 of the Schedule District Act 1874. However, no doubt raised relating to such Kolhan Inquiry Committee's report. Though, it was not brought on record whether the Governor General prescribed them by an order in Council nor the date of publication.

21. The letter No. 363 dated 17th Feb. 1834 issued from Judicial Department to Captain T. Wilkinson (the Agent who framed the Rules) shows that the said rule framed for Civil Justice was not prescribed by the Governor General by an order in Council, till said date, as it was suspended. The said letter reads, as follows :

'I am directed by the Hon'ble the Vice President in Council to acknowledge the receipt of a letter from you dated the 13th ultimo submitting arrangements made

by you for the future management of the tract country placed under your authority by Regulation XIII, 1833 and the rules which you propose to prescribe for the guidance of your Assistants in the administration of Civil and Criminal Justice within the tracts placed under their respective jurisdiction.

2. His Honour in Council approves your having divided the districts into three Divisions to be denominated the Manbhum, Lohurdugga and Hazareebaugh Divisions, the first being placed under Ensign Neielson, the second under Lieutt. Ouseley and the third under Mr. Davidson. The general instructions which you have issued for the guidance of those officers as well as the rules for the administration of Criminal Justice with the modification noted in the annexure paper are also approved.

3. It is considered proper to suspend the orders regarding the proposed Rules for Civil Justice till the regulation on that subject which is now prepared by Mr. Millet under the direction of Sudder Courts be passed. Many of the new rules will be applicable to your jurisdiction, and it will be easy to add any that may be specially applicable to that territory as well as to exclude from operation, there such as many be in applicable there.

4. The Assistants are authorised to provided themselves each with an office tent of the size of a Captain's Regulation Tent and to charge the expense in Contingent bills. The charge of carriage for the Kutchery tents when the Assistants may be marching will be included in the contingent charges of the office.'

Thereby, it is evident that the Wlikinson's Rules were not given seal under Section V of Regulation XIII of 1833, till 17th Feb. 1934. There is nothing on the record to suggest that it was prescribed by the Governor General, subsequent to the said date. On the other hand, the other reports show that it never received any sanction, as mentioned hereunder :

Final report on the survey and settlement-operations in the district of Ranchi (1902-1910):--

'A simple code of rules was also drawn up by Captain Wilkinson for the administration of Civil Justice, but it did not receive the sanction of Government, pending the promulgation of a Bill on the subject which was under preparation at the time but which was never passed. There was therefore, no specific rules to guide the Courts in the administration of Civil Justice for some years, until the introduction of the Civil Procedure Code (Act VIII of 1859). The Courts, however, appear to have been guided by the general spirit of the rules framed by Captain Wilkinson and by the Regulations. An appeal was allowed from the decision of the Munsiffs to the Assistant and from the decisions of the latter to the Agent.'

Final report on the resettlement of the Kolhan Government Estate, published in 1920 (period 1913-1918) by A.D. Tuckey, I.C.S. :--

'For the administration of Civil Justice, there were two Munsiffs, one at Lohardaga, and the other at Ranchi. The Principal Assistants tried some original civil suits and heard appeals from the decisions of the Munsiffs. For the guidance of the Courts, a simple Code of rules was drawn up by the Captain /Wilkinson which though not sanctioned by Government, appears to have been followed till the introduction of the Code of Civil Procedure (Act VII of 1859). Two salutary rules, drafted by Captain Wilkinson may be mentioned, one with the object of discouraging vexatious litigation, prohibited vakils from practising in any Courts and allowed suits to be conducted only through the agency of Mukhtears, or authorised agents the other declaring that no sale, mortgage or transfer of landed property was valid without the consent of the Agent was intended to prevent disputes over transferred property and to discourage the old landlords from running into debt. A rule prohibited the Munsifs from granting ex parte decree against Mundas, Manis, Kols, and other such ignorant people. The Principal Assistant, Dr. Davidson, first issued and enforced this rule in 1838, but this rule was later superseded by the Code of Civil Procedure resulting in numerous fraudulent ex parte decrees against the Mundas which were one of the causes of the subsequent agrarian discontent.'

22. Thus, in absence of an order prescribing them by Governor General in Council and in absence of date of promulgation, on mere presumption, it cannot be held to be a rule framed under Section V of Regulation XIII of 1833.

Under Regulation V, it was the Governor General who was competent to prescribe rule, by an order in Council. Agents were to be guided by such rules. No power was delegated to the Agent. Though the original of the Wilkinson's Rules is not available and in the typed copy, which was produced before this Court in 1958, it was shown to have signed by Captain Thomas Wilkinson. He having not delegated with power to frame rules, the same cannot be held to be a rule framed under Section V of Regulation XIII of 1833. At best, it can be stated to be a draft rule, drafted by Captain Wilkinson, as shown in the final report published in 1920.

There are five grounds on which a bye-law may be treated as ultra vires, as shown in 'Crane on Statutes' (page 324). One of the ground is that they are not made, mentioned and published in the manner prescribed by the Statute which authorises the making of them. In absence of the original Rules, authority of Captain Wilkinson; date of publication, and the date on which the Governor General prescribed the same, one can hold the Wilkinson Rules as ultra vires.

Doubt was raised in earlier cases as to whether the Wilkinson's Rules were in force after promulgation of Scheduled District Act, 1874 (Act 14 of 1874). In both the aforesaid cases of Dulichand Khirwal AIR 1958 Patna 366 and Mahendra Singh, AIR 1958 Patna 603, It was answered in affirmative in view of Section 7 of 1874 Act.

To determine this question, it is necessary to quote relevant section of 1874 Act which reads, as follows :--

'Section 7 : Continuance of existing rules and officers.

All the rules herebefore 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 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.

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.'

Admittedly, there is nothing on the record to suggest that the Wilkinson's Rules was prescribed by the Governor General. Admittedly, it was not framed by the Local Government for the guidance of the officers. Thereby, the Wilkinson's Rules cannot be stated to have been saved and continued by virtue of Section 7 of the Scheduled District Act.

This Court in the case of Dullchand Khirwala, AIR 1958 Patna 366 and Mahendra Singh, AIR 1958 Patna 603, placed reliance on maxim 'omina preesumuntur rite et solenniter esse acta donec probatur in contrarium', it means 'all things are presumed to have been done correctly, lawfully and with due formality until the contrary is proved.

23. Even if the aforesaid maxim is made applicable in respect of Wilkinson's Rules, though it can be presumed to have been done correctly, lawfully and with due formality, it cannot be presumed to have been done under Section IV of Regulation XIII of 1833.

The Wilkinson's Rules thus cannot be stated to be statutory, though it can be held to be a general law, being followed for more than 1 1/2 century.

In the aforesaid background, I do not subscribe to the findings given by the Division Bench in the cases of Dulichand Khirwal, AIR 1958 Pat 366 and Mahendra Singh, AIR 1958 Pat 603 to the extent above.

24. In view of aforesaid findings, while the first question is answered in positive i.e. in favour of petitioner and against the State, the same being not statutory rule or rule framed under Regulation XIII of 1833, the question of its repeal by one or other Act does not arise. Thereby, no further answer is required to be given in respect of Question Nos. 2, 3 and 4, as referred above.

25. It is not in dispute that the Wilkinson's Rules is a procedural law. One of the questions arises as to what will be the procedure to be followed in Kolhan area for administration of civil justice, if the said rule is not made applicable.

26. In the case of Dullchand Khirwal, AIR 1958 Pat 366, one of the ground taken by the petitioner was that the procedure prescribed under Wilkinson's Rules was no longer in force in view of judgment of this Court in K K. Sinha v. Basudeo Harjiwan Pathak, Misc. Judl. Case No. 392 of 1952, disposed of on 22nd Dec. 1952. The Court in that case, observed, as follows :

'The first ground taken by learned Counsel on behalf of the petitioner is that the Deputy Commissioner of Singhbhum adopted a procedure prescribed by Wilkinson's Rules which are no longer in force and so the Commissioner of Chota Nagpur had no Jurisdiction to hear the appeal. In support of this argument reference was made to a judgment of this Court in K.K. Sinha v. Basudeo Harjiwan Pathak, Misc. Judl. Case No. 392 of 1952, D/- 22-12-1952 (A) where it was held that Act II of 1951, amended the Civil Procedure Code so as to extend its operation to the whole of India, including the so called shceduled districts, with the exception of certain Tribal Areas in the State of Assam, in the State of Madras and in the State of Jammu and Kashmir and in the State of Manipur, Act II of 1951, received the assent of the President on 17-2-1951, and came into effect from that date, and so it was held by the High Court in that case that the Civil Procedure Code applied to the entire district of Singhbhum, including the scheduled area of Kolhan.

But on behalf of the State of Bihar it was pointed out by learned Counsel that the effect of this Judgment has been superseded by a subsequent notification of the State Government dated 26-8-1952, issued in exercise of the authority conferred on the State Government by sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India. The notification of the State Government is in the following terms.

'No. A/AB/303/53-3533J. :-- In exercise of the powers conferred by sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India, the Governor of Bihar is pleased to direct that the Code of Civil Procedure (Amendment) Act 1951 (II of 1951), shall not apply to the Sadr Subdivision of the district of Singhbhum except the areas comprised within the Chaibassa and Chakkradharpur Municipalities.

2. This notification shall be deemed to have come into force on the 1st April, 1951 the date on which the said Act was brought into force by the Central Government.

By order of the Governor of Bihar, R. Singh, Secy.

In view of this Government I do not think that the ratio of the decision In Misc. Judl, Case No. 392 of 1952. D/-22-2-1952 (Pat) (A) has any application to the present case and the argument of the learned Counsel on this point must fail.'

The aforesaid view was reiterated in the ease of Mahendra Singh, AIR 1958 Patna 603.

27. After the aforesaid decisions, now more than 30 years have passed, various amendments made in the meantime, in different laws, including amendment of CP.C. made in 1976, whereby Sub-section (3) was substituted by Code of Civil Procedure (Amendment) Act, 1976 (Act 104 of 1976), on 1st Feb. 1977 for old Sub-section (3), to reflect the present position as to the extent the Code which reads, as follows :

'Sub-section (3) of Section 1 of C.P.C., 1908 :--

(3) It extends to the whole of India except .-

(a) the State of Jammu and Kashmir;

(b) the State of Nagaland and the tribal areas.

Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such other tribal areas as the case may be with such, supplemental, incidental or consequential modifications, as may be specified in the notification.

Explanation, --

In this clause, 'tribal areas' means the territories which, immediately, before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred

to, in Paragraph 20 of the sixth Schedule of the Constitution.'

28. Thereby, even if the Bihar Government's Notification dated 26th August, 1953 is taken into consideration, whereby Code of Civil Procedure (Amendment) Act, 1951 was not made applicable to the district of Singhbhum, in view of 1976 amendment whereby Sub-section (3) to Section 1 of C.P.C. was substituted, I hold that the C.P.C. holds field for the whole district of Singhbhum. Including Kolhan area.

The questions, thereby referred to Full Bench, are answered, accordingly, in favour of petitioner. However as this finding will come into effect from prospective date, any decision already rendered under Wilkinson's Rules cannot be automatically held to be illegal, till a decision otherwise given by any competent Court of law.

29. The present writ petition is remitted for decision on merit, to be placed before an appropriate Bench (of learned single Judge).

M.Y. Eqbal, J.

30. I regret my inability to agree with my learned Brother S.J. Mukhopadhaya, J. that the Wilkinson's Rules cannot be said to be statutory and that the decisions of the Division Bench in the case of Dull Chand v. Bihar State, AIR 1958 Patna 366 and Mahendra Singh v. Commissioner of Chotanagpur Division, AIR 1958 Pat 603 are not correct. I also regret to agree with the view expressed by my learned Brother that, the Code of Civil Procedure holds the field for the whole district of Singhbhum including Kolhan area.

31. Before discussing the main question with regard to the validity of Wilkinson's Rules, it would be useful to state in brief the background and the legislative history as to under what circumstances such rule was framed for the administration of civil and criminal Justice amongst the Ho community in the tribal areas.

32. The learned authority on the Ho is the Ethnology of Bengal, in which Colonel Dalton has described their physique and intellect, their customs and manners,

their morals and religion, their occupations and traits, individual and tribal, with great fulness and lucidity. The tradition of the Hos regarding their origin and that of the human race as given by Colonel Dalton, which is quoted hereinbelow :--

'Ote Boram and Singbonga were self-created; they made the earth with rocks and water, and they clothed it with grass and trees, and then created animals-first, those that man domesticates, and afterwards wild beasts. When all was thus prepared for the abode of man, a boy and girl were created, and Singbonga placed them in a cave at the bottom of a, great ravine, and finding them to be too innocent to give hope of progeny, he instructed them in the art of making illi (rice beer), which excites the passions, and thus the world became peopled. When the first parents had produced twelve boys and twelve girls, Singbonga prepared a feast of the flesh of buffaloes, bullocks, goats sheeps pigs, fowls and vegetables; and making the brothers and sisters pair off, told each pair to take what they most relished, and depart. Then the first and second pair took bullocks and buffaloes' flesh and they originated the kola (Hos) and the Bhujlj (Matkum); the next took of the vegetables only, and are the progenitors of the Brahmans and Kshattiyas; others took goats and fish and from them are the Sudras. One pair manki or divisional headman, while each village has its own Munda or headman. The latter are all subject to the authority of the Mankis. who are assisted by tahildars of village accountants (a post introduced in 1867) and by dakuas or constable appointed by the Mankis. Every Munda is responsible for the payment of the revenue, and for the detection and arrest of criminals in his village, to the Manki. who is in his turn responsible to Government. For acting as revenue collectors the manki receive a commission of 10 per cent and the mundas 16 per cent, of the revenue which passes through their hands. Besides these duties, the mankis and mundas, each in his degree, have certain informal powers to decide village disputes and questions of tribal usage.'

33. It would also be useful to mention here the history and origin of land revenue administration in the Kolhan area :--

'After the conquest of the Kolhan in 1821, the Hos acknowledged the suzerainty of the Singhbhum Chiefs and agreed to pay rent of 8 annas per hat (plough) i.e.

practically per pair of bullocks to be increased to Re. 1 if circumstances admitted of it. Their sub mission was, however, nominal. The Chiefs were unable to exercise any effective control over them, and from 1830 to 1836 the Hos successfully resisted every attempt to realise rent, and waged war on their neighbours. In 1836 a strong force was sent against them, and after some bloodshed they were reduced. On the conclusion of the campaign, the British Government resolved to bring their territory under its direct rule. Accordingly, 23 Pirs over which the Rajas of Porahat, Saraikela and Kharaswan claimed suzerainty, were, with four other Pirs, taken from Mayurbhand, brought under direct management under the name of the Kolhan.

The first settlement was carried out on 1837 when Major Wilkinson fixed the rental at 8 annas per 'plough' of land, this being the sum assessed but not paid in 1821. The total assessment was Rs. 5,108 for 622 villages, and was realised without difficulty. At the same time, the old village system of the Hos was maintained by the recognition of the Mankis or village headman and of the mankis or headman of groups of villages. The former collected the rent of their own villagers and paid it to Government through the mankis. In 1855, without altering the principles of assessment, but by simply doubling the rate per plough, a net revenue of Rs. 17,448 was obtained, and a settlement for 12 years was concluded.'

Quoted from the book 'Bangal District Gazetteers SINGHBHUM. SARAIKELA AND KHARSAWAN, Written by L.S.O.'s MALLEY.

34. From the aforesaid book it further appears that for the purpose of administration Kolkhan was divided into 73 local divisions, each comprising a group of 5 to 20 villages. Each division was under a Manki or Divisional headman, under whom again are the mundas or village headman the Tahsildars or village accounts, and the dakuas or village constables. The Mankis collect from the Mundas the village rents as fixed by the settlement and pays them into the District Treasury according to the kists. It was his duty to prevent foreigners that are not already recorded as resident ryots from cultivating or holding lands in any village within his Pir without the written permission of the Deputy Commissioner. He was entitled, in consultation with his Munda, to settle the land, waste land with resident

ryots and to assess such lands at rates not exceeding those established by settlement. He was also responsible for the protected forest contained in his Pir. The Manki was liable to fine and dismissal by the Deputy Commissioner for disobedience of the order or breach of the terms of his patta or of dismissal being subject to confirmation by the Commissioner of the Division. Similarly, the Munda was the village headman and his village was settled with him under the terms of patta. The rent was not liable to enhancement during the period of lease but the Government reserved the right to increase the rates for bera, bad and gora land at any future settlement. The Munda was responsible for payment of the village rent through the mankis of the Pir according to the kists. He was bound to collect rent according to village Jamabandi given to him. The author of the book further describes the Munda as the police officer of his village and, as such, is subordinate to the Manki who is the police officer of the Pir. He was bound to obey all legal orders he received from the Manki as well as superior authority.

35. Sir Herbert Risley, K.C.I.E. C.S.I. studied in detail about the culture of tribals in India. In his book 'People of India' published in 1915, he has stated that the Hos of Singhbhum and the Mundas of the Chutia Nagpur Plateau have also exogamous septs of the same type as the Oraons and Santhal, with similar rules as to the totem being taboo to the members of the group. The lists given in 'the Tribes and Castes of Bengal' contain the names of 323 Munda septs and 40 Ho septs. Six of the latter are found also among the Santhals. The other Ho septs appear to be mostly of the local or communal type, such as are in use among the Kandhs, but this is not quite certain, and the point needs looking into by some one well acquainted with the Ho dialect, who would probably find little difficulty in identifying the names, as the tribe is known to be in the habit of giving to places descriptive names having reference to their natural characteristics. Nearly all the Munda sept names are of the totem type, and the characteristic taboos appear to be recognised. The Tarwar or Talwar sept, for example, may not touch a sword, the Udbaru may not be the oil of a particular tree, the Sindur may not use vermilion, the begbela may not kill or eat a quail, and strangest of all, rice is taboo to the Dhan sept. the members of which, though rice is grown all round them, must supply its place with gondli or millet. It is difficult not to be sceptical as to the rigid observance of this last prohibition.

36. Similarly, Sir T.S. Macpherson, in his book 'Operation for the preparation of Records of Rights' in Pargana Porahat, district Singhbhum has gone in detail with the earlier history of the tribes. According to the author, Pargana Porahat comprises all villages within the old Singhbhum Raj, which are situated outside the Government Kolhan, and the political states of Seraikela and Kharsawan, and in which the Zamindar of Porahat is either rent receiver or has a reversionary interest whereby he may, according to Chotanagpur customs, resume tenures. The term 'Pargana' is occasionally applied to the subordinate estates and to the two sadant Pirs of Porahat (Chakradharpur and Porahat). Pir is probably the Mundari and Ho. 'Ko or Kolhan' Pirs contain over 90 per cent of aboriginals, the so called sadan Pir omitting Chakradharpur town, also contain a slight majority of aboriginals, practically all Hos. The author further says that in 1908 the Porahat became tributaries. The porahat family claims to be the Rathor (Kadambassi) Rajputs. In 1918 Raja Ghanshyam Singh, with the object of being recognised as paramount over Seraikela and Kharswan, regaining the family idol from Seraikela and receiving assistance to subjugate the aboriginals, became tributary to the British Government. In 1921, Major Roughsedge, commanding the Ramgarh Battalion, induced the Kols to agree to pay 8 annas per plough of oxen to the Chiefs of Porahat, Seraikela and Kharsawan, to be Increased to one rupee after years but the money was never paid either by the Hos of the present Kolhan or by the Mundaris of the Kolhan, Pirs of the Porhat and from 1830 to 1836 the whole body of aboriginals resisted all attempts to realise rent and waged war on the claimants. In 1832 the Mundaris of Bandgaon also joined in the insurrection of Dasai Manki of Kochang, because of the attempt of the tenure holder to destroy Khuntkatti rights amongst them through the imposition of the plough tax and introduction of diku headman. The whole pargana the Molhan and South Ranchi continued by Sonu Kandhapatar of Koraikela (and contrary to the wish of the Raja Porahat) by him delivered up to Majdor 'Wilkinson, the Agent to the Governor General.

37. Now I shall give the brief history of the tribals of Chotanagpur as narrated by Edward Tuite Dalton C.S.I. in his book 'De-scriptive Ethnology of Bengal', published in 1872. According to the author the Mundaris say that they had no Raja when they first took up the country now called Chutia Nagpur, They formed a congeries of small confederate states. Each village had its chief also called a

Munda, literally a head and, as a village often consisted of one family, the inhabitants were all of Munda dignity, and hence it became a name for the whole tribe. In the Mabhumi district the word Munda becomes 'Mura' which has also the same meaning. As these kols have taken up the word Munda, the Santals have appropriated the term 'Manjhi' and the Bhumij. The Mundari villages had each its staff of officers, and from the customs that still prevail in most old villages, the organisation that has descended from very primitive times, appears to have been very complete.

38. The author Sir Dalton, while describing the geographical distribution of the District of Singhbhum, has noted the following facts :--

The district of Singhbhum in which the Ho or Lakra Kola are located lies to the south east of Chutia Nagpur proper or between 22 and 23 of north latitude and 86°53' and 85°2' of east longitude. It measures 124 miles in extreme length from east to west and 64 mile, in its greater breadth from north to south. The total area is by survey 4503 square miles, of this 1905 square miles constitute the exclusive Ho territory known as the Kolhan. The most fertile and highly cultivated portion of this tract surrounds the station of Chhalbasa at a general level of seven hundred and fifty feet above the sea and here are massed about two thirds of the Kolhan population. To the south of this extending to the Baitarn river the general level rises to upwards of 1000 feet and the kols of this plateau are less civilised and more turbulent than those of the lower steppe. The whole district is undulating, traversed by dykes of trap which rise in rugged masses of broken up rock and the views are on all sides bounded by ranges of hill, rising to 2900 feet. To the south west bordering on Chutia Nagpur is a mountainous tract of vast extent sparsely inhabited by the wildest of the Kols, this, however, appears to be the region from which they first descended into the Singhbhum plains. Saranda bordering on Gangpur at the extreme south west of the District is called 'Saranda of the seven hundred hills'. It is a mass of mountains which rise to the height of 3500 feet and contains, but a few poor hamlets nestled in deep valleys belonging for the most part to a very unreclaimed tribe of kols. The inhabitants of the western hills bordering on Chutia Nagpur generally retain the name of Mundas and connect themselves rather with the people of Chutia Nagpur than with the Hos of

Singhbhum.'

39. Chutia Nagpur, as part of Bihar, was ceded to the British Government in A.D. 1765; but the earliest arrangement with the Raja occurred in 1772, when it is stated that the chief appeared before Captain Camac commanding a force in Palamau, and after exchange of turbans with the Company's representatives, duly acknowledged himself a vassal of that great power, gave as Rs. 3,000 and agreed to do service against the Maharattas. The oldest settlement deed is dated 1179 Fasli, by which Raja Dripnath Sahi of Khukhra, alias Nagpur, agreed to pay 12,000 rupees, viz. mal or rent 6,000 rupees, nazranah or tribute, 6,000. For some years after this, the Raja was allowed to administer the territory as the chief of a tributary mahal, but in 1816 or 1817, it was found necessary to deprive him of magisterial powers, the estate was placed under the Magistrate of Ramgarh, who held Court alternatively at Sherghati and Chatra. Natives of Bihar who were considered foreigners in Chutia Nagpur were sent into the country as Police officers, and occasionally the Nazir of the Ramgarh Magistrate's Court was deputed with extraordinary powers to inspect and report on the administration. Up to A.D. 1831, when the most serious revolt of the Kols of Chutia Nagpur occurred, there can be no doubt that the changes of government which had taken place were not beneficial to them. They were neglected by their new masters, oppressed by aliens and deprived of the means they had formerly possessed of obtaining redress through their own chief. The Raja, by no means satisfied at this own loss of dignity and authority, gave but surely answers to complaints who came before him. The Darogahs (Native Police Officers), the highest resident officials under the British Government, declared it was not competent to them to decide on the grievances that then most harassed the Kols; these were complaints, that they had been dispossessed by foreigners, Muhammadans, Sikhs, and others, who had obtained from the sub-proprietors farms of the Kol villages over the heads of the Kol headman; but it often happened that the unfortunate Kol who with difficulty made his way to the far off station found the tables turned on him when he got there. A host of witnesses in the pay of the opposite party were already there prepared to prove 'that he had not only no rights in the land, but was a turbulent rebel besides.'

40. The author further described as under :--

The judicious office who was now Agent to the Governor General for the newly formed non-regulation province the south western Frontier the late Sir Thomas Willnson at once recognised on the necessity of a thorough subjugation of the Kols and the impolicy and futility of forcing them to submit to the chiefs. He, therefore, proposed an occupation of Singhbhum by an adequate force and when the people were thoroughly subjugated to place them under the direct management of a British Officer to be stationed at Chaibasa in the heart of their country. These views were accepted by Government and in furtherance of them two regiments of Native Infantry a brigade of guns and the Ramgarh battalion the whole force commanded by Colones Richards entered Singhbhum in Nov. 1836. Operations were immediately commenced against the refractory pirs, and by the end of February, following all the Mankis and Mundas had submitted. There appears to have been very little actual fighting during this campaign. All the most important parts of the Kolhan were visited by the Agent and his troops the men whom it appeared desirable to make examples of in consequence of their having been leaders in the previous lawless proceedings were given up for captured, and the others readily acquiesced in the arrangements proposed.'

41. In the Imperial Gazetteer of India, Vol XV of 1908, the geographical description of Kolhan area has been described as under :--

'Kolhan. -- Government estate in Singhbhum District, Bengal, lying between 21 58 and 22 43' N. and 85 21' and 86 3 ' E., with an area of 1.955 square miles. The Kolhan is a low plateau, varying in elevation from 750 feet above sea level in the neighbourhood of Chaibasa to upward of 1,000 feet in the south. On the north, east, and south, the country is for the greater part open and gently undulating, it is covered with prosperous villages and is well cultivated, the depressions between the ridges being invariably sown with rice and some portion of the uplands with cereals, pulses, or oilseeds. In the southeast the surface is very rocky and covered with jungle; and in the west and south west are mountainous tracts thickly covered with jungle and very sparsely inhabited. The villages here are mere hamlets scattered on the bill slopes and an area of 529 square miles has been formed into

forest Reserves.'

42. Further, according to the Imperial Gazetteer, it appears that the British made use of the traditional village administrative structure for administration of the predominantly tribal area. Each village has its own Munda or headman, all of whom are subject to the authority of the Manki or Divisional headman. However, Munda is responsible for the payment of the revenue and for the detention and arrest of criminal in his village to the Manki who in his turn responsible to Government. It further appears that persons other than Hos were not allowed to settle in the estate without the permission of the Deputy Commissioner.

43. In the historical background of Kol insurrection in Chotanagpur during the period 1831 to 1833 Captain Thomas Wilkinson framed the aforesaid rule. The original copy of the said rule is not traceable and a typed copy of the said rule is available which is still followed in the Kolhan area. The said rule was framed under the Regulation XIII of 1833 and within the meaning of Section 51 of the Government of India Act, 1833.

44. The validity of the Wilkinson's Rules was earlier challenged in this Court in the case of Dull Chand v. Bihar State, AIR 1958 Patna 366, Mahendra Singh v. Commissioner of Chotanagpur Division, AIR 1958 Patna 603 and in the case of V. Ahya v. Deputy Commissioner, (1970 BLJR 855).

45. In Dull Chand's case the validity of Wilkinson's Rules was challenged on the ground, inter alia, that Regulation XIII of 1833, in pursuance of which the agent to the Governor General made Wilkinson's Rules having been repealed by Act XII of 1876, Wilkinson's Rules did not exist any longer and they had automatically been repealed with the repeal of Regulation XIII of 1833. This argument was negated with reference to Section 7 Act XIV of 1875 i.e. Schedule District Act, 1874. This Court further rejected the contention of the petitioner that rules were not framed by the Governor General under Section V of Regulation XIII of 1833. The relevant portion of the judgment in Dull Chand case has been quoted in the Judgment of Brother Mukhopadhyaya, J. and I need not repeat the same. However, I must indicate here that in Duli Chand 's case this Court held that though the order in council by which Governor General prescribed the rules is not traceable the maxim

'omina praesumuntur rite et solennieter esse acta donea probetur in contrarium' is applicable. In other words, their Lordships held that the principle of maxim 'communis error facit jus' should be applied.

46. Similarly, in Mahendra Singh's case (AIR 1958 Patna 603) this Court came to the same conclusion and held that Wilkinson's Rules framed under Regulation XIII of 1833 continued by virtue of Section 7 of Act XIV of 1874 and the succeeding statute. Their Lordships further held that Wilkinson's Rules have been accepted as valid law and acted upon by the Government Officers and the people of Kolhan area for the several decades, even after passing of Act 1 of 1905. The principle of maxim 'communis error facit jus' should be applied in this case.

47. In V. Ahya case (1970 BLJR 855) this Court followed the earlier two decisions referred to hereinabove and arrived at the same conclusion. Their Lordships held that it must be presumed that the rules were made by the authority of the Governor General.

48. Mr. P.K. Sinha, learned Sr. counsel appearing for the petitioners, has advanced a very exhaustive and elaborate argument after taking much pain by bringing before us the relevant materials with regard to the Historical background of Kol insurrection in Chotanagpur during the period 1831 to 1833. The first attack on the validity of the Wilkinson's Rules by Mr. Sinha is that although under Regulation XIII of 1833 read with Section 51 of the Government of India Act, 1833, Governor General in Council was empowered to make rule for the purpose of superintendence and control of the whole civil and military Government but there is no evidence or material to show that Wilkinson's Rules framed under the aforesaid Regulation was ever approved by the Governor General in Council and was duly published in any official gazette. Learned counsel submitted that admittedly Thomas Wilkinson, who was the agent of the Governor General, framed rules, called Wilkinson's Rules for the purpose of administration of civil and criminal Justice in Kolhan areas. According to the learned counsel any such rule framed by Thomas Wilkinson being the agent of the Governor General, cannot be said to be rule framed by the Governor General in Council under Regulation XIII of 1833 read with Section 31 of the Government of India Act, 1833. Learned counsel

made alternative argument and submitted that the Government of India Act, 1833 vested its power to the Governor General in Council to make Regulation, who is a delegated authority and such delegated authority cannot redelegate legislative power to an authority to make rule/regulation. Learned counsel , therefore, submitted that on this ground also and also on the principle 'delegates non protest delegate' Wilkinson's Rule is ultra vires. Mr. Sinha then submitted that on the commencement of Indian Council Act, 1861 attempt was made to constitute councils in India to Govern people representation. Learned counsel submitted that Schedule District Act, 1874 was enacted and Governor General assent was given on 8-12-1874. Under the said Act the Kolhan in the district of Singhbhum was declared as Schedule area. According to the learned counsel Wilkinson's Rules was never saved by virtue of Section 7 of the Schedule District Act, 1874. Learned counsel also advanced his argument on the constitutional validity of the Wilkinson's Rules.

49. It has not been disputed that Thomas Wilkinson, the agent of Governor General in Council, framed a rule known as Wilkinson's Rules for the purpose of administration of civil and criminal justice. The original rule so drafted is not traceable. There is also no evidence to show that the draft rule in relation to administration of civil Justice was approved by the Governor General in Council. This fact is evident from the letter issued from the Judicial Department dated 17th Feb. 1834 to Captain Thomas Wilkinson. That letter referred to the approval granted by the Governor General was rules for the administration of criminal Justice. By the said letter it was directed to suspend to rule for civil justice till Regulation on that subject, which was under conflict, be passed, Except that, it is said that there is nothing to show that either the Wilkinson's Rules for administration of civil justice was approved by the Governor General in Council or it was prescribed in the official gazette.

50. As noticed above, in all the earlier three judgments this Court proceeded on the basis that Wilkinson's Rules framed under Regulation XIII of 1833 was saved and continued by virtue of Section 7 of Act XIV of 1874 and by the succeeding statute. It is, therefore, worth to examine the relevant provisions of Act, XIV of 1874.

51. The main thrust of Mr. P.K. Sinha is that the Wilkinson's Rules was never saved by Section 7 of the Act 1874 rather by virtue of Section 3 of the said Act various other enactments were made applicable in Kolhan area. In this connection learned counsel drawn my attention to a Notification No. 1401 dated 21-10-1881 which is available in Appendix X in the Reid's report of the year 1902 to 1910. Learned counsel submitted that various other enactments shown in the notification were made applicable in the Kolhan area. According to the learned counsel, therefore, no historical thread is found from the Reid's report that Wilkinson's Rules was in force.

52. I do not, find much force in the submission made by the learned counsel. In my view, learned counsel has misconstrued the notification issued under the Schedule District Act, 1874, which I shall deal with hereinafter.

53. Section 1 of the said Act defines the term 'Schedule Districts' mean territories mentioned in the first schedule hereto annex and from the date fixed in the resolution hereinafter mentioned shall also include any other territory to which the Secretary of the State of India by Resolution may declare the provisions of the 33rd of Victoria Chapter III. Section 3 of the said Act provides that the local government with the previous sanction of the Governor General in Council may from time to time by Notification in the Gazette of India and also in the local Gazette (if any) can declare (a) what enactments are actually enforced in any of the Schedule District or in any part of any such Districts (b) declare any enactment though it is not actually enforced in any of the said Districts or in any part of any such districts.

54. Pursuant to the aforementioned Act, it was argued that various enactments were enforced in the District of Chotanagpur Division by virtue of a Notification No. 1401 dated 21st Oct. 1881. This Notification is available in Appendix X in the Reid's report of the year 1902 to 1910. It appears that various enactments have been shown in the Notification which were made applicable in the Kolhan area. At this stage it is worth to quote the relevant paragraph from the final report on the Survey and Settlement Operation namely, Reid's Report, which reads as under :--

'Paragraph 56:-- Civil justice --A simple Code of rules was also drawn up by Captain Wilkinson for the administration of civil justice, but they did not receive the sanction of Government, pending the promulgation of a will on the subject, which was under preparation at the time, but which was never passed. There were, therefore, no specific rules to guide the courts in the administration of civil justice for some years. The introduction of the Civil Procedure Code (Act VIII of 1859). The Courts, however, appeared to have been guided by the general spirit of the rules framed by Captain Wilkinson and by the Regulation. An appeal was allowed from the decision of the Munsif to the assistant and from the decisions of the latter to the agent.'

55. Thus, from the Reid's report it is evident that the Regulation and the Wilkinson's Rules became applicable and the same was being followed by the Courts and the authorities. The Notification No. 1401 dated 21st Oct. 1881, upon which learned counsel put heavy reliance, reads as under :--

'APPENDIX X

ENACTMENTS IN FORCE IN THE DISTRICTS OF THE CHOTA NAGPUR DIVISION.

No. 1401, dated Simla, the 21st October, 1881

From --A MACKENZIE, Esq. Qf. Secretary to the Govt. of India Home Depts.

To -- The Secy. To the Govt. of Bengal, Judicial, Political, and Appointment Depts.

I am directed to acknowledge the receipt of your letter No. 3600 J., dated the 5th ultimo, submitting for formal sanction, and for publication in the Gazette of India, amended notification declaring the enactments in force in, and to be extended to, the districts in the Chota Nagpur Division.

2. In reply, I am to say that with the following modifications the notifications are approved and will be published in the Gazette of India of the 22nd instant.

3. Act XII of 1879 (amending the civil Procedure Code, the Registration Act, 1877, and the Limitation Act, 1877) which is inserted in the schedules to notifications C,

D, E and F has been omitted, because as pointed out in paragraph 2 of the letter from this office, No. 727, dated the 28th May last, that Act, in so far as it amends the Civil Procedure Code , was extended to all the districts of the Chota Nagpur Division by Home, Revenue, and Agriculture Department notification. No. 1259, dated the 1st Dec. 1880, while in so far as it amends the Registration and Limitation Act, it is entered in the schedule to notification B. The attention of the local officers will doubtless be drawn by the Government of Bengal to any separate notification now in force extending Acts not included in these schedules.

4. With regard to notification A, I am to observe that in view of the provisions of Section 1 paragraph 2, and Section 3 of the Scheduled District Act, the correct procedure appears to be, first to declare the Act itself in force in a scheduled district, and then to declare any other enactments in force in such district, by a separate notification. Accordingly, the reference to Act XIV of 1859 in notification A has been omitted, and Section 15 of that Act has been declared in force in the Kolhan by a separate notification. Further, the second clause to this notification seems scarcely necessary, and has also been omitted. Such a clause is only inserted in a notification declaring a larger number of enactments in force in a district in order to remove any doubt which may possibly arise as to whether the list of enactments is intended to be an exhaustive list of all enactments in force in the place to which such notification relates.

5. As Bengal Act IX of 1879 (Court of Wards) and VII of 1878) (Excise Revenue), which are entered in the Schedule to notification B have been amended by Bengal Act III of 1881 (Court of Wards) and IV of 1881 (the Bengal Excise Amendment Act, 1881), these two latter Acts have also been entered in the schedule.

6. Lastly, I am of say that it is not understood why Acts V of 1881 (probate and Administration) and VI of 1881 (District Delegates Act), which were inserted in the schedule to the original notification submitted with your letter No. 1151 J. dated the 14th March last, have been omitted from the schedule to notification B. The omission is probably accidental, and the Act have accordingly been included in the schedule to the notification as issued.

7. A copy of the notifications, amended in accordance with the above remarks, is enclosed.'

56. From perusal of the aforesaid notification No. 1401 It is manifest that the said notification was not finally given effect to rather another notification Nos. 1393 and 1394 dated 21st Oct. 1881 were issued in exercise of power conferred by Section 3 of the Act XIV of 1874, which are quoted hereinbelow :--

'No . 1393, dated Simla, the 21st Oct. 1881 Notification -- By the Government of India, Home Dept. In exercise of the powers conferred by Section 3 of Act XIV of 1874 (the Scheduled District Act). His Honour the Lieutenant Governor of Bengal is pleased with the previous sanction of the Governor General in Council, to declare that the said Act is in force in the Kolhan, in the district of Singhbhoom, in the Chota Nagpur Division.

No. 1394

In exercise of the powers conferred by Section 3 of the Act XIV of 1874 (the Scheduled Districts Act). His Honour the Lieutenant Governor of Bengal is pleased with the previous sanction of the Governor-General in council, to declare that the enactments mentioned in the schedule hereto annexed are in force in the districts of Hazaribagh, Lohardugga, and Manbhoom and in pergunnah Dhulbhoom and the Kolhan, in the district of Singhbhum, to the extent to which they are at present in force in any part of Bengal not included in any scheduled district.

2. Nothing herein contained shall be deemed to affect the operation of any enactment in force in the said portions of the Chota Nagpur Division, and not included in the said schedule.'

57. From paragraph 2 of the aforesaid notification, it is manifestly clear that the Wilkinson's Rules which was admittedly in force in the Kolhan area was sufficiently saved and it was made clear that the notification will not affect and it was made clear that the notification will not affect the operation of any enactments in force in the said portions of Chota Nagpur Division and not included in the schedule.

58. The next submission of Mr. Sinha, learned counsel appearing for the petitioner, that the Wilkinson's Rules did not exist any more after Regulation XIII of 1833 was repealed by Government of India Act, 1915, also has no leg to stand. It is true that various acts including Government of India Act, 1833 specified in 4th Schedule were repealed by the Government of India Act, 1915 but even after repeal of the Act the validity, rule, resolution etc. were saved. For better apprehension, Section 130 of the Government of India Act, 1915 is quoted hereinbelow :--

'130. Repeal. --The Acts specified in the Fourth Schedule to this Act are hereby repealed, to the extent mentioned in the third column of that Schedule :

Provided that this repeal shall not affect--(a) the validity of any law, charter, letters patent, Order in Council, warrant, proclamation, notification, rule, resolution, order, regulation, direction or contract made, or form prescribed, or table settled, under any enactment hereby repealed and in force at the commencement of this Act, or

(b) the validity of any appointment, or any grant or appropriation of money or property made under any enactment hereby repealed, or

(c) the tenure of office, conditions of service, terms of remuneration or right to pension of any officer appointed before the commencement of this Act.

Any reference in any enactment, whether an Act of Parliament or made by any authority in British India, or in any rules, regulations or orders made under any such enactment, or in any letters patent or other document, to any enactment repealed by this Act, shall for all purposes be constructed as references to this Act, or to the corresponding provision thereof.

Any reference in any enactment in force in India, whether an Act or Parliament or made by any authority in British India, or in any rules, regulations or orders made under any such enactment or in any letters patent or other document, to any Indian legislative authority, shall for all purposes be construed as references to the corresponding authority constituted by this Act.'

59. From bare reading of Clause (a) of the proviso to Section 130, it is clear that even after repeal of Government of India Act, 1833 the regulation and the rule namely, Wilkinson's Rules , which was admittedly in force, has not been affected. This is the reason why even after the repeal of Government of India Act, 1833 the Wilkinson's Rules continuously remained in force in the Kolhan area till date. It is, therefore, incorrect to say that by the passage of time the Government of India Act, 1833 lost its force and the regulations and the rules framed thereunder have been repealed and have become non-existent.

60. At this stage, I must take notice of the fact that even after the commencement of Government of India Act, 1935 the Wilkinson's Rules, which was in force in the Kolhan area, has not been repealed by any specific enactment rather it was saved. For better appreciation Sections 292 and 293 of the Government of India Act, 1935 are worth to be quoted hereinbelow :--

'292. Existing law of India to continue in force -

Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the law in force in British India immediately, before the Commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority.

293. Adaption of existing India laws, etc. -

His Majesty may by Order in Council to

be made at any time after the passing of this

Act provide that, as from such date as may

be specified in the Order, any law in force in

British India or in any part of British India

shall, until repealed or amended by a com

petent Legislature or other competent authority have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Act and, in particular, into accord with the provisions thereof which reconstitute under different names governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces:

Provided that no such law as aforesaid shall be made applicable to any Federated State by an Order in Council made under this section.

In this section the expression 'law' does not include an Act of Parliament, but includes any ordinance, order, bye law, rule or regulation having in British India the force of law.'

61. Even under the provisions of the Government of India (Adaptation of Indian Laws) Order, 1937, the Schedule District Act, 1874 ceased to have effect but the continuing validity of any notification, appointment, regulation, direction or determination made thereunder, which was in force has been saved. I am, therefore, of the view that Wilkinson's Rules which was admittedly in force, has been saved by subsequent legislation.

62. So far application of Code of Civil Procedure is concerned, it has not been disputed that by virtue of Code of Civil Procedure (Amendment) Act, 1951 the operation of the Code was extended to the whole of India including the Schedule Districts, with the exception of certain tribal areas in the State of Assam, in the State of Madras and in the State of Jammu and Kashmir and in the State of Manipur. The State of Bihar then came with a Notification dated 26-8-1953, Issued in exercise of power conferred on the State Government by sub-paragraph (1) of paragraph 5 of the Vth Schedule of the Constitution of India. By the said notification the sadar sub-division of the District except the area comprised within the Chaibasa and Chakradharpur Municipality have been excluded from the operation of Code of Civil Procedure. This was obviously done because of the fact that in the Sadar Sub-division of the District of Singhbhum i.e. in the Kolhan area the procedure provided under the Wilkinson's Rules was applicable and was in force.

63. It appears that under the Wilkinson's Rules the suits were to be heard by the Munsiff or Assistant to the Governor General's Agent, but really they were heard by Kolhan Superintendent or Deputy Commissioner of Singhbhum or an officer authorised by the Deputy Commissioner. Realising that the hearing of the suits by the Kolhan Superintendent or Deputy Commissioner or an officer authorised by him was irregular, the State Legislature came with a validiating Act namely, Kolhan Civil Justice (Regulating and Validating) Act, 1966. By the said Act all actions of the officers exercised power under the Wilkinson's Rules have been validated. This Act was published in the Bihar Gazette Extraordinary dated 20th March, 1967. This Act has only two sections, of which Section 2 reads as under :--

'2. Regulation and validation of certain past actions in the Kolhan with the exception of Chaibassa Municipality in the Sadar Sub-Division of the district of Singhbhum.--Notwithstanding anything contained in any other law for the time being in force, or any Judgment, decree or order of any Court, the officers mentioned in Column I of the Schedule shall, in regard to the trial of civil suit and proceeding arising within the local limits of the Kolhan with the exception of the areas comprised within the municipality of Chaibassa in the Sadar Sub Division of the district of Singhbhum and hearing of appeal, review or revision arising

therefrom, exercise the powers which the officers mentioned in the corresponding entries in column 2 thereof exercised under the Wilkinson's Rules made under Regulation XIII of 1833, and shall be deemed always to have validly exercised such powers and no order, judgment or decree passed by them shall be deemed to be invalid or shall be called in question in any Court or proceeding whatsoever merely on the ground that they were not so empowered.'

64. The State Legislature again in 1978 came with a similar Validating Act, namely, Kolhan Civil Justice (Regulating and Validating) Act, 1978 after repealing the earlier Validating Act, of 1966. It is, therefore, clear that the Legislature always recognised the vality of Wilkinson's Rules which is in force in the Kolhan area for more than 150 years for the purpose of administration of civil justice and all actions taken and power exercised by the officers under the said Rule, has been validated. In this way the procedure provided under the Code of Civil Procedure was not made applicable in the Kolhan area in the district of Singhbhum where the Wilkinson's Rules has been in force for the administration of civil justice.

65. In 1887, in order to consolidate the law relating to civil courts in Bengal, the North West Provinces and Assam, the British Parliament enacted a law namely, the Bengal, Agra and Assam Civil Courts Act, 1887. The operation of this Act was extended to the territories then administered by the Lieutenant Governor of Bengal, the Lieutenant Governor of North West Provinces and the Chief Commissioner of Assam. Learned counsel appearing for the petitioner has not disptued that the operation of this Act has not been extended in the Kolhan area in the district of Singhbhum.

66. In 1976 a drastic amendment has been made in the Code of Civil Procedure, 1908 on the basis of recommendation of Law Commission with the sole object to expedite the disposal of civil suits and proceedings, so that justice may not be delayed. The other object was also to make the procedure not so complicated rather to make it simple to ensure fair deal to the poorer section of the community who do not have the means to engage a pleader to defend their case.

67. The question now falls for consideration is whether after the amendment introduced in the Code of Civil Procedure 1908 by virtue of Code of Civil

Procedure (Amendment) Act, 1976, it has been made applicable in the Kolhan area in the district of Singhbhum. In this regard submission was made by the learned counsel that even if Wilkson's Rule was in force in Kolhan area after the amendment made in the Code of Civil Procedure in 1976 and particularly in view of Sub-section (3) of Section 1, the Code of Civil Procedure has been made applicable to the whole district of Singhbhum including the Kolhan area. In my opinion the submission made by the learned counsel has no force at all. As noticed above, by Notification dated 26-8-1953 issued by the State of Bihar the Sadar Sub-division of district of Singhbhum except the area comprised within Chaibasa and Chakradharpur Municipality have been excluded from the operation of the Code of Civil Procedure. In my opinion, therefore, even after the amendment made in Section 1 of the Code of Civil Procedure by virtue of Amendment Act of 1976, the Kolhan area remained excluded from the operation of Code of Civil Procedure by virtue of Notification dated 26-8-1953. For better appreciation Section 157 of the Code of Civil Procedure is quoted hereinbelow :--

'157. Continuance of orders under repealed enactments.-- Notifications published declarations and rules made places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act 8 of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.'

68. From perusal of the aforementioned provision, I have no doubt in my mind in holding that by virtue of Notification dated 26-8-1953 issued by the State of Bihar, the Sadar Sub-division of district of Singhbhum excluding Chaibasa and Chakradharpur Municipality shall remain excluded from the operation of Code of Civil Procedure and the said Notification shall have the same force.

69. Having regard to the entire facts and circumstances of the case and the relevant provisions of law discussed hereinabove. I am of the view that the Wilkinson's Rule was made under Regulation XIII of 1833 read with Government

of India Act, 1833 and it became the substantive part of legislation. I further hold that Wilkinson's Rule, so made and still in force in the Kolhan area, was saved by virtue of Section 130 of the Government of India Act, 1833 and Regulation XIII of 1833 and further the said rule was saved by subsequent legislation and recognised as valid piece of statute.

70. Besides the above, I am in full agreement with the view expressed by this Court in Dull Chand's case (AIR 1958 Patna 366) (supra) and Mahendra's case (AIR 1958 Patna 603) (supra) and hold that Wilkinson's Rules have been accepted as valid law and acted upon by the Government officers and the people of Kolhan area for more than 150 years and still the Civil justice is administered under Wilkinson's Rule. This Court in aforementioned two judgments rightly held that Wilkinson's Rule cannot be declared ultra vires merely because of some error or irregularity in the matter of its publication rather the maxim '*Omnia Praesumuntur rite et solenniter esse acta doneo probetur in contrarium*' is applicable. Further the maxim '*communis error facit jus*' should be applied in this case.

71. I further agree with the ratio decided by another Division Bench of this Court in the case of C. V. Ahya v. Deputy Commissioner of Singhbhum, 1970 BLJR 855. In that case their Lordships after considering the entire background of different legislation have held that it must be presumed that the rules were made by the authority of the Governor General although they purport to have been issued by the Agent to the Governor General. It was further held that the administration of justice in Sadar Sub-division of Singhbhum could not be governed by the Code of Civil Procedure but by Wilkinson's Rules which still hold the ground.

72. Now I shall deal with the other aspect on the question of the validity of the Wilkinson's Rule. It is undisputed position that the Wilkinson's Rules have been accepted as valid law and acted upon by the Government officers and the people of Kolhan area for several decades. The Kolhan Inquiry Committee appointed by the State Government in 1948 has accepted that civil justice is still administered under Wilkinson's Rules and these Rules are statutory rules framed under Regulation XIII of 1833 and still in force by virtue of Section 7 of the Schedule District Act 1874. However, the Committee made the following

recommendations/suggestions to the Government :--

(i) The administration of Kolhan has to be developed progressively to approximate to the administration of the rest of the Chotanagpur which maintaining the essential features of the existing system prevailing in the Kolhan.

(ii) In Kolhan suits the Deputy Commissioner and Kolhan Superintendent may allow appearance of lawyers in cases which they considered involve complicated question of law.

(iii) The Wilkinson's Rules are out of date and Santhal Civil Rules with suitable modification to suit the Kolhan may be adopted.

(iv) In Kolhan suits there should be a provision that the Deputy Commissioner and the Kolhan Superintendent should transfer cases to the civil Court if both contested parties make a joint prayer that their cases should be tried in a Civil Court. In cases so transferred, the Code of Civil Procedure should be made applicable.

73. At this stage, it is worth to mention here some special features of the Wilkinson's Rules under which civil justice is being administered in the Kolhans. The original Court for cases for the value less than Rs. 300/- is that of the Kolhan Superintendent with an appeal to the Deputy Commissioner and the original Court for cases of higher value is the Deputy Commissioner with an appeal to the Commissioner.

74. Cases are instituted by ordinary petitions. Where the case is allowed to assume the form of a regular civil suit it is valued according to Court-fees Act. As regard procedure, normally the procedure provided under the Wilkinson's Rules and the procedure provided in the Code of Civil Procedure, not inconsistent with the Wilkinson's Rules, are valued. But all endeavours are made for adjudication of dispute by village Panchayat as arbitrators. The majority of petitions are however treated as miscellaneous petitions and settled by the Kolhan Superintendent without being allowed to assume the form of a civil suit. The method of administration of civil justice in this area are that the disputes be arbitrated in the

village assembly and not heard by Secretary from such individual witnesses as may be produced in Court. The parties are entitled to apply to the Deputy Commissioner to have their cases decided in regular form of civil suit on payment of Court-fees but this is allowed only after all efforts are made first to settle the dispute in village assembly and the result of such proceeding is always placed on record before a formal suit is admitted. The Panches can be appointed at any time even after a formal suit has commenced, if the party agreed to abide by their decisions. The outstanding advantage of this system is that it is a cheap, speedy and efficient system of justice but in ordinary matters.

75. There is a wrong notion about the Wilkinson's Rules among the general public specially the aboriginals of Kolhan who misconstrued it and thought it to be a law protecting their general interest. They nourished an idea that Wilkinson's Rules would protect their right and give relief to all troubles after little knowing of it. They hardly know that it is almost a customary law for administering civil justice in Kolhan. The rules were framed in 1833 when the people of Kolhan were illiterate, ignorant, uncivilised and were living mostly in jungle. There are large deficiency in the said rule to cope with the present system of life in Kolhan.

76. Wilkinson's Rules give justice to the people with lesser expenditure but there has been a drastic change in the civilisation of the tribals and now a days the Kolhan aboriginals became literate and therefore, how the said rule which was originally meant to administer justice to illiterate and ignorant people shall continue when literacy and wisdom have progressively dawn in them. Moreover, the Wilkinson's Rule followed in a very pocketed portion of the Singhbhum District but in the rest portion of the district, such as Bandgaon etc. the rule is not followed though aboriginals reside there in majority.

77. There are other deficiency in the said rule also. For example, in Kolhan area there are at present factories, mines and offices of big companies like TISCO etc. have cropped up. If any dispute or grievance arises in Kolhan due to dismissal, wrongful transfer etc. then where the aggrieved party would seek his legal remedy. There is no Court for them and there is no remedy under the said rule inasmuch as the Kolhan Superintendent has no jurisdiction to try such suit. Similarly the

Courts established under the Wilkinson's Rule lacks statutory jurisdiction to decide the dispute in between landlord and tenant. There are other anomalies also in the cases where the remedy lies under the Company law, Workmen Compensation's Act, Industrial law, service matter etc. There are thousands of tribals who are employed in factories, mines and other big organisation in Kolhan and if any dispute arises regarding their dismissal and suspension from service or their transfer they have no Court to get justice, when other tribal of Chaibasa town or of Jamshedpur may get such remedy from their civil Court under the Code of Civil Procedure. There is no provision under the Wilkinson's Rule for grant of immediate and expeditious remedy in the matter of dismissal, suspension or transfer of the tribals by the employers. Likewise, if a dispute arises with regard to the quantum of compensation payable under the Land Acquisition Act, the matter has to be referred in accordance with the provisions of Land Acquisition Act. But for the land situated in Kolhan and if such disputes arisen after acquisition the aggrieved tribals cannot seek remedy under the Wilkinson's Rules for final settlement of the compensation. Similarly the Courts constituted under the Wilkinson's Rules have no jurisdiction to decide the question with regard to the grant of probate, letter of administration and succession certificate in the manner provided under the Indian Succession Act. A very interesting anomaly appears to be that a decree passed by a Court under the Wilkinson's Rules can be executed only in Kolhan and nowhere else. A decree passed by Kolhan Court cannot be executed in any other Courts in India. Unlike, a decree passed by a Civil Court can be executed in any Civil Court situated within the territory of India.

78. The Kolhan Enquiry Committee in his report dated 31st July, 1948 has recorded the following finding on the issue of administration of civil justice :--

'Cases are instituted by ordinary petitions. The Court-fees Act is nominally in force in the Kolhan and where a case is allowed to assume the form of a regular civil suit, it is valued according to the Court-fees Act. As regards procedure, the Civil Procedure Code is followed in a modified form, so that it is not inconsistent with 'Wilkinson's Rules; but great use is made of the ordinary village Panchayat as arbitrators. The majority of petitions however, are treated as miscellaneous petitions and settled by the Kolhan Superintendent without being allowed to

assume the form of a civil suit. Though this is the procedure still followed, it appears that the results are not as happy as it was in the past. The Hos have advanced from their backward State; they have lost faith in their Mankis and Mundas and have also come under the influence of lawyers and touts. While recording the evidence of witnesses, it transpired that some Mundas Act as touts for lawyers. So most of the miscellaneous petitions, do not end with the Kolhan Superintendent, Arbitration by Mankis is in many cases a failure these days. So ultimately the Kolhan Superintendent has to allow most of these petitions to assume the form of civil suits. This is putting a strain on the existing staff and is perhaps not giving real satisfaction to the litigant Ho. In the past this system gave cheap and speedy Justice to Ho. But now it is neither cheap nor speedy.'

79. The Committee in his report has come to the following conclusion :--

'The 'Wilkinson's Rules' are out of date. It is suggested that the Santal Civil Rules might be adopted for the Kolhan. This will be a move in the right direction and in course of time the Civil Procedure Code can be brought in.

If the new rules are brought into force a provision may be added providing for the transfer of such cases as is considered fit by the Deputy Commissioner to the regular Munsiff or Sub-Judges Court for disposal according to law. If both the contesting parties want to have their case tried in a Civil Court, then the Deputy Commissioner (including the Kolhan Superintendent) should have no discretion, but must transfer the case to the Court, When a case is thus transferred, the Civil Procedure Code should be made applicable. Wilkinson's Rules will no longer be applicable to them.'

80. All these deficiencies in the Wilkinson's Rules were also considered and discussed in a symposium on Wilkinson's Rules held in the district of Chaibasa. This symposium was organised by Mr. Barun Sen Gupta, the Protect Director of Free Legal Aid Committee and was presided by Mr. Bagun Sumbrai, M.P. in which many dignatories also participated. It appears that on the suggestion made by the enquiry committee for framing of a new set of rule on the line of Santhal Pargana Civil Rules, an initiative was taken by the Government. It further appears that in 1983 a draft regulation namely, the Bihar Schedule Area (Wilkinson's Rule)

Regulation, 1983 was prepared in order to amend and re-arrange the Wilkinson's Rule for its application to the entire Kolhan area. But, there is nothing to show that this draft regulation or any other rule or regulation has been enacted by the State Government in order to remove the deficiencies in the Wilkinson's Rule or to enforce any other rules or procedure in the Kolhan area. In my opinion, therefore, it is high time when immediate attention of the State Government is needed. A direction is, therefore, issued to the State of Bihar to comprehensively examine the question on the premise of our constitutional ethos and the need voiced to amend the rule. The State Government must comply the direction within a period of three months from today.

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