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'We Will Teach India Democracy': Indigenous Voices in Constitution Making

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ABSTRACT

The framing of the Indian Constitution (1946-50) was a pivotal moment in the history of indigenous communities (colloquially adivasis, officially scheduled tribes) and their relationship with the state. This essay makes three interventions. First, I contest the prevailing emphasis in Indian history and sociology on seeing indigenous politics as primarily in opposition to state institutions and laws. Instead, drawing on representations from indigenous organisations to the Constituent Assembly (CA), I highlight an earlier trajectory of engagement with law-making and state institutions. Second, I show how tribes saw the making of the constitution as an opportunity to be recognised as both equal citizens and distinct communities and offered real alternatives in constitutional design and ideas of democracy. What is particularly interesting is how, despite the different constitutional histories of countries with indigenous populations, there is common core to the demand for 'constitutional recognition' involving cultural, political and resource autonomy. Third, through a close reading of CA and committee deliberations, I show how personalities, processes and contingencies and not abstract rational deliberations alone shaped constitutional design. Here, I add to the literature locating the 'force of law' in the procedural movement of files.

KEYWORDS

Constitution; India; indigenous peoples; adivasis; democracy; Jaipal Singh; AV Thakkar; 5th Schedule

In 2017, the adivasis or indigenous peoples of Jharkhand inscribed provisions of the Constitution on stone monoliths outside their villages, interpreting these to mean they had the right to self-governance.¹ An anxious administration purchased several copies of the Constitution, a senior administrator confessing that he had not read much of the Constitution till then, and invited a 'Constitutional Expert' to lecture to the village heads. When villagers called out the Expert's interpretation of the Constitution as uninformed and proceeded with what is known as the Pathalgadi (stone installation) movement, the administration opened fire on their meetings and charged some 10,000

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people with sedition. Despite a more sympathetic government since 2019, the villagers continue to be embroiled in legal issues.²

Elsewhere in India, adivasis protesting against mining, large dams or paramilitary camps on their lands have invoked the Constitution, with the police now claiming that the Constitution is the new weapon of choice for the Naxalites, banned for armed struggle against the state.³ Why would adivasis – among the most neglected of India's citizens, for whom the law has been as much a tool of expropriation as protection – spearhead a movement that engages deeply with constitutional interpretation? Is this something new, given the ruling RSS-BJP regime's antipathy to the existing constitution,⁴ perhaps what Walter Benjamin described as 'that image of the past which unexpectedly appears to man signaled out by history at a moment of danger.'⁵ Certainly, the increased interest in Dr. Ambedkar, the Chair of the Drafting Committee of the Constitution, the widespread Preamble-reading assemblies that sprang up all over the country in 2019 to protest against a discriminatory Citizenship Amendment Act, or the year-long farmers' protests against land laws asserting the freedom of assembly, are all embodied manifestations of a renewed and widespread engagement with constitutionalism outside the courts.⁶ But in order to make sense of the centrality of the Constitution to the hopes and dreams, as well as dashed desires of large sections of Indians today, we need to go back to the making of the document itself.

When it comes to indigenous relations with the state, the overwhelming focus has been on antagonism and distance. The Subaltern School historians entrenched the idea that indigenous consciousness in its 'pure form' could only exist outside of or in stark opposition to the state, as against a nationalist focus on appropriating existing state power.⁷ Unlike Dalit politics which traces its history through Ambedkar and the Constitution, Adivasi politics has largely been studied through the prism of armed rebellions (both colonial and post-colonial) around resources, resistance to displacement, participation in environmental movements, or ethnicity and autonomy movements in north-east India.⁸ Despite the fact that contemporary adivasi organisations have succeeded in bringing in two major constitutional innovations – the Panchayats Extension to Scheduled Tribes Act (PESA) 1996 and the Forest Rights Act (FRA) 2006,⁹ their genealogical connection to the moment of constitution-making has been lost.

This essay aims to uncover some of this earlier history, looking at the making of the 5th Schedule of the Indian Constitution. The 5th and 6th Schedules deal with areas of indigenous concentration in central and northeastern India respectively, marking them as legally distinct. In common perception, the 5th and 6th Schedules are merely replicas of the partially excluded and excluded tracts recognised by the GOI Act of 1935.¹⁰ On one reading, this is true.¹¹ Yet, the similarities were not preordained and the so-called straight line between the 1935 Act and the 1950 Constitution actually went through multiple

bends. The story this essay narrates is precisely how something that was meant to be different ended up looking similar. From rejecting scheduling, how did the Congress end up adopting a similar framework? A recent article by Sagar Tewari argues that it was the communist movements in tribal areas as well as the demands for statehood in Jharkhand that led to the Congress adopting 'scheduling' as a compromise.¹² As this essay shows, neither of these contexts explains why the 5th Schedule took the form it did. Instead, one needs granular analysis at multiple levels: prior legal frameworks, the formation and working of the sub-committees and the drafting committee and the negotiations in the constituent assembly, as well as the personalities and processes involved.

Before going on to look at the specific schedules, I address three common views in the literature on constitution-making within India: the claimed lack of public involvement, the dominant tone of deliberative rationality, and the top-down pedagogic nature of constitutional morality.

A Constitution Made by Elites to Teach Indians Democracy?

In 1947, in the foreword to his Socialist Party's Draft Constitution, Jayaprakash Narayan wrote that the work of the Constituent Assembly (CA):

has so far failed to enthuse the country or create adequate interest. Its deliberations have been dominated by cool and sedate lawyers who give no evidence that they comprehend the significance of the turmoiled birth of a nation. There have been no passionate controversies raised in the Assembly, nor have we witnessed there the din and dust of any stubborn fight of interests and ideologies; nor even the flash and spark of a collision of personalities. Thus, the Assembly has carried on its hum drum work for a year, inspired not by the revolutionary mood and aspirations of the people but by the natural conservatism and timidity of worthy diwans and legal luminaries.¹³

This passage encapsulates at least two of the popular misconceptions of the Constitution-making process – that it was made by elites, mostly lawyers, insulated from politics and the public. The elite charge is accurate in terms of the limited franchise, but not so the idea that there was little public interest. As recent work by Shani and Chetan shows,¹⁴ different communities and individuals mobilised to have their views heard by the Constitution makers.

Tribal organisations, like others, fully recognised the significance of the constitution making moment, both from the point of representation and in terms of its substantive content. In numerous letters to the CA, they questioned the credentials of existing CA members to speak for them and demanded adequate representation on the committees for their own communities. This goes directly against the accepted view of Granville Austin, the preeminent biographer of the Constitution, that the CA was seen as representative despite the limited franchise because the Congress was representative in itself and had taken pains to bring in different shades of opinion from Dr Ambedkar to members of the Hindu Mahasabha.¹⁵ In fact, the tribal constituency had numerous political

bidders, not all of whom were represented in the CA – from community based organisations like the Naga National Council in the Northeast to the Adibasi Mahasabha in Bihar, Congress-led organisations such as the Harijan Sewak Sangh which claimed representative rights through their ‘constructive work’ among the adivasis to the Communist Party of India which led armed struggles in Telengana, Bengal and Maharashtra. There were also anthropologically-minded administrators who thought it was really they who knew best what the tribes needed. The question of representation will be explored at greater depth later in this essay.

The second view of the Constitution as a space of magically insulated deliberative rationality,¹⁶ has recently been contested by scholars who point to the need to locate constitution making in the history (Partition, famine, strikes) and politics of the time.¹⁷ Rather than being a space of consensus, the Assembly reflected fundamental differences of opinion and conflict, often expressed in combative and even disagreeable terms.¹⁸ Yet most of this work has been based on readings of the Constituent Assembly Debates (CAD), where the only voices that come to us are those of the members. By looking at committee deliberations, the correspondence of the CA secretariat, and certain regional contexts, I show how personal histories and prior relations between the actors involved bled into the written text. The granular view provided by a historical ethnography of constitution-making reveals how the Constitution was shaped not just by abstract norms or forces outside but also contingencies and personalities within, as well as the movement of files, the ordinariness of bureaucratic procedures, and the immanence of law in its self-referential procedures.¹⁹

In the case of the 5th Schedule, the clash of personalities is best brought out by the contesting visions of two CA members, AV Thakkar and Jaipal Singh. They were two very different men with differing styles and claims to ‘represent’ adivasis. Thakkar was chair of the committee drafting what became the 5th Schedule.²⁰ Singh, the leader of the Jharkhand based Adibasi Mahasabha, and an adivasi himself, was his nemesis on the committee.²¹ One was an eighty year old Gandhian social worker, who had abandoned a career as a civil engineer to join the Servants of India Society and was intent on ‘serving’ the most downtrodden Indians. The other was a man almost half his age, India’s first Olympic hockey captain, who took up the leadership of his people and declined to act downtrodden. One refused to travel in anything other than third class railway compartments, the other flew on private aircrafts if he could and stayed at the expensive Hotel Imperial in Delhi. One tried to save people through temperance, the other loved his whiskey and gladly stood people drinks. One wanted administrative solutions for the problems of the aboriginals, the other wanted political self-determination.

Explaining why social rights were downgraded to directive principles in the Constitution, Chandoke attributes this to ‘elite containment’ or Congress

attitudes to struggles led by others, especially the communists and socialists.²² References to contemporary mobilisations by the communists such as the Warli movement or the Telengana armed struggle are conspicuous by their absence other than one understated line in a sub-committee report: ‘The recent rising of the Warlis has drawn attention, in a rather forcible way perhaps, to their problems.’²³ If, however, there was a spectre haunting the making of the 5th Schedule, it was the separate Jharkhand province demanded by Jaipal Singh and the Adibasi Mahasabha with Jaipal Singh doing his best to bring it on the agenda, and Thakkar doing his equal best to ensure it did not figure.

Yet, Thakkar’s battles with Ambedkar in favour of adivasi suffrage,²⁴ or his tireless efforts to persuade Congress governments to attend to the rights of both ‘Harijans’ and ‘aboriginals’ make the constitutional contest of visions more multi-dimensional than one might assume. As late as 1945, even Ambedkar was dismissive of the political capabilities of the tribes, wanting to deny them any representation in the Central Assembly:

The Aboriginal Tribes have not as yet developed any political sense to make the best use of their political opportunities and they may easily become mere instruments in the hands either of a majority or a minority and thereby disturb the balance without doing any good to themselves.²⁵

Thakkar put up a strong public rebuttal to this position, accusing Ambedkar of ‘excessive favouritism for the Harijans and contemptuous denial of justice to the Aborigines.’²⁶ Unfortunately, some of this contempt persisted even through the CA, with Ambedkar making common cause with KM Munshi of the Hindu Mahasabha to whittle down the rights of the Tribes Advisory Council suggested by the Thakkar sub-committee (see section on CAD debates).²⁷ On the other hand, Ambedkar was committed to adult suffrage, and believed that the depressed classes and aboriginal tribes could make common cause, especially over land issues.²⁸

A third common view on the Constitution was that expressed by Ambedkar, when he famously claimed that the people had ‘yet to learn’ constitutional morality and that democracy was ‘top-dressing on an Indian soil, which is essentially undemocratic.’²⁹ Writing of the wise men of the Constitution, Austin says ‘They knew that the Constitution must help to bring about the reform, the renaissance of Indian society, that it must embody the national goals and subserve their achievement.’³⁰ In the years since, this view of the Constitution as a ‘pedagogic exercise’ in creating a democratic citizenry has become further entrenched.³¹

As this essay shows, the various indigenous communities of India had their own ideas of what democracy should look like and as egalitarian communities with still extant traditions of self-governance, hoped to teach this lesson to the rest of India. Many representations emphasised the natural affinities between tribes and democracy. The Naga National Council made the case for self determination in a memorandum dated 19 February 1947 saying ‘Democracy in its

purest form exists among the Nagas.³² The Adivasi Student Fellowship, one among the many organisations petitioning the CA for a separate Jharkhand province, wrote:

India is marching towards democracy. We will be the future free citizens of India. India will be teaching democracy to her children. We are the most democratic people on earth. We have maintained the principles and ideals of democracy from the very beginning. What we require at present is protection from disrupting us into tribes and sub-tribes by the present Government. This tendency is solely meant to disrupt the democratic Adivasis. In order to keep our identity, our self-entirety and for self determination, we demand a separate province, constituting Chhota Nagpur plateau and Santhal Parganas with areas adjacent to it with Adivasi population. By this we will be able to protect our culture, history, civilization and our very own existence for the service of India. We will be in the vanguard in the battle field of India's freedom. Jai Jharkhand Province.³³

Within the CA itself, Jaipal Singh repeatedly emphasised that adivasis were the first inhabitants of India and were offering to begin relations with other communities anew, on an equal footing and in a spirit of reconciliation despite a long history of exploitation.³⁴ In all these, we see an attempt at asking for what Gussen identifies as indigenous claims to 'constitutional recognition' rather than handouts or lessons from the state.³⁵

In their representations to the CA, some organisations made proposals for proportional representation or separate electorates, while others demanded greater autonomy for their respective areas. The common thread was collective political rights as a means to ensure rights to land and indigenous culture.³⁶ In a parallel context, Pommersheimer describes this as a demand for 'indigenous federalism,' a mixture of claims to 'autonomy and participation ... that recognises (despite the forces of colonisation) significant legitimate (national) political authority in the states but also recognises significant reserved powers of local autonomy in indigenous communities.'³⁷ This call for legal arrangements that would preserve autonomy while ensuring full civic participation would eventually become a key principle (see especially Article 5) of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) showing a common imperative to indigenous people's aspirations globally.³⁸

At the same time, indigenous demands for political autonomy were influenced by other contemporary currents in India demanding federation or legal pluralism – such as by princely states,³⁹ religious minorities⁴⁰ or by the communists⁴¹ – drawing on different epistemologies and understandings of sovereignty as part of a larger imagination of independence.

The Jharkhand Back Story

Before proceeding to the site of Constitution making, it is useful to take a step back.

Like many celebrated periods in history— in this case, the struggle for independence and the making of the Constitution – the reality was rather more tawdry than the representation. As acknowledged even by Congressmen,⁴² many of the Congress run provincial governments elected in 1937 and 1946 were riven by factionalism and careerism apart from caste or religious prejudice.⁴³ As the largest area of tribal concentration in central British India, Bihar politics were critical in laying the ground for what transpired in the CA and its various committees.

The correspondence from 1938 till 1950, between Rajendra Prasad, veteran Congressman and President of the Constituent Assembly, AV Thakkar, and Jaipal Singh is a study in political rivalry. Prasad, who for all his work on the national stage remained at heart a Bihar Congressman and a Kayasth Hindu,⁴⁴ other Bihar Congressmen⁴⁵ including the Congress socialists,⁴⁶ and Thakkar, all saw Jaipal Singh as a political outsider, a missionary-supported Christian and a troublesome figure in their Hindu upper-caste Congress world where the depressed classes and aboriginals would be spoken for but not allowed to speak themselves, except through pliable Congressmen.

All through 1938 and the beginning of 1939, when he first returned to Jharkhand after working as Finance Minister in Bikaner State, Jaipal Singh wrote to Rajendra Prasad offering his services and asking Prasad to intervene with the Bihar Ministers to employ him suitably: ‘I must be given an opportunity to serve my people. The adibasis, I am one of them, must be helped. They have been forgotten long enough. Forgive me for mentioning the hapless condition of the Chhota Nagpuris. Coming back to my home after twenty years I am cut to the quick at their stationary condition.’⁴⁷ He repeatedly asserted his desire to work in tandem with the Congress, pointing out that he was married to the grand-daughter of the Congress founder, WC Bonnerjee: ‘I have always felt that nothing should be done to weaken the nationalistic forces of India and I am most concerned that the adibasi movement should be within the major national struggle for an all-India freedom.’⁴⁸

Finally, Jaipal Singh seems to have given up in frustration, writing to Prasad: ‘The Congress and the Bihar Ministry are not the same thing. It would be truer to say that the Ministry is Bihari rather than Bihar ... have the poor and backward adibasis anything to hope from a Bihari Ministry which has been determined as its acts show to ignore everybody else at the expense of Congress principles and to help only the Biharis?’⁴⁹

Rajendra Prasad responded indignantly, saying that the Ministry must be given time, asking him to compare Bihar with other provinces, and finally concluding, ‘I cannot help feeling that your opinions expressed so strongly are based on imperfect knowledge of facts and want of acquaintance with the province and its people.’⁵⁰ However, a letter from GD Birla as President of the Harijan Sevak Sangh asserting that Bihar fared worst among all provinces in its treatment of aboriginals was met with a markedly different tone, conciliatory rather than patronising.⁵¹

Having given up on the Bihar Ministry, Jaipal Singh plunged himself into adivasi politics after being invited by the Adibasi Mahasabha to be its President in 1939. He toured extensively in Chhota Nagpur and its neighbouring princely states, drawing hundreds of thousands of adivasis to his meetings – or meetings held in his name – where the issues taken up included beggar or forced labour, high rents, forest restrictions, and merger with Chhotanagpur.⁵² The British authorities kept a close eye on Jaipal Singh's 'scurrilous' and 'mischievous' speeches but did not prohibit the meetings, since many of them also doubled as war recruitment efforts. For instance, at one meeting held in Kharsawan, 'the lecturers spoke on the war effort but their main theme is reported to have been sanghatan [organization] of the Adibashis. Tributes were paid to the leader Jaipal Singh and so, it is said, the Dikus were criticised on the grounds that they were oppressing the Adibashis who were the real owners of the soil.'⁵³

By the end of 1939, Jaipal Singh was becoming a threat to the Congress Ministry in Bihar. They were keen to see differences develop between Christian and non-Christian adibasis,⁵⁴ and propped up their own alternative to Jaipal Singh in the form of Devendra Nath Samanta, even though Thakkar Bapa accepted that 'Devendranath Samant has not much in him, except that he is an educated aboriginal.'⁵⁵

A letter from a Bengal Congressman Jimut Behen Sen is candid in its appraisal of Samanta as well as the Congress' role in supporting him: 'Devendra Samanta was pampered, he was made to believe that he would be made a minister or a Parliamentary Secretary. His joining the Congress (from the Unnati Samaj) was another fuel to the fire. He is not regarded as an aborigine by the aborigines – in fact, he is not – and the aborigines thought that this is a move of the Congress party to stifle them by means of a bribe.'⁵⁶

There were a variety of competitive interests involved. One important subtext of Thakkar's constructive work was countering Christian missionaries, for which he also sent his trusted aide PG Vannikar to Mandla, and Ramakant Keshav Deshpande of the RSS to Jashpur.⁵⁷ As Jharkhand separatism grew, Thakkar also proposed a committee to oversee adivasi welfare as well as an adivasi workers conference in 1946. When Prasad suggested that it might be seen as competing with Jaipal Singh, he responded saying the 'The Adivasi Sabha is a talking body or an agitating body. The Committee that I propose is a silent constructive body of actual workers.'⁵⁸

Jamshedpur union politics was another site of contestation between the Adivasi Mahasabha and the Congress (as well as factions within the Congress). Jaipal Singh played the role of strike breaker, asserting the dignity of the adivasi workers, especially women, at the receiving end of outsider foremen.⁵⁹ While the Congress opposed the war effort, Jaipal Singh saw in it an employment opportunity for his people and recruited extensively. Election time – both district board elections and assembly elections (1946) were violent affairs, with

both the Adibasi Mahasabha and Congress complaining of violence and booth capturing by the other, and the Congress claiming that the Muslim League and Adibasi Mahasabha worked together in the disturbances.⁶⁰ The Congress also disrupted Communist campaign meetings in 1946 and injured candidates.⁶¹ Jaipal Singh himself lost from Ranchi in the 1946 election but the Adibasi Mahasabha won enough seats to send him to the CA.

At the same time, a modicum of commitment to democracy and desire for conciliation ensured that lines of communication remained open. Even as they dismissed Jaipal Singh and the demand for a separate Jharkhand province, Thakkar and Prasad recognised the basic truth in his argument that adibasis were not being given a fair share in Bihar. Both of them repeatedly wrote to the Bihar Premier, Sri Krishna Sinha, urging a separate portfolio to look after aboriginal and Harijan affairs, appointing parliamentary secretaries or a cabinet minister from amongst adibasis in Chhotanagpur. They recognised that what was at stake was both substantive and ascriptive representation. The real sticking point was what Jaipal Singh correctly identified as the overwhelming parochialism of the Bihar Congressmen who could not bear to give adibasis the recognition they deserved.

Both Prasad and Thakkar thought that co-opting Jaipal Singh into the Bihar Cabinet might work to stem the demand for a separate Jharkhand. Prasad wrote to Sri Krishna Sinha: 'The experiment which we have made here in appointing Dr. Ambedkar [to the Union Cabinet] has so far proved quite successful and it is certainly worthwhile considering whether it should be repeated there also.'⁶² By 1948, despite his earlier skepticism of Jaipal Singh,⁶³ Thakkar was even more forthright:

Bihar Government's welfare work for Adibasis has already been described by Congressmen themselves as 'a defence mechanism against the separation movement' which is, I regret to mention, a reality. It is time the Bihar Govt. include at least one Adibasi immediately in the Cabinet. I am told that an offer had been made to Shree Jaipal Singh, but he appears not to be in a mood to accept the offer. It may be he does not want to work with so selfish and corrupt colleagues.⁶⁴

The Adibasi Mahasabha and its various offshoots in different districts of Chhotanagpur (CN) and Santhal Parganas (SP) were arguing for a separate province on the grounds that CN and SP together constituted a dominantly aboriginal area essentially different from Bihar proper, 'ethnologically, geographically, historically, geologically, linguistically, culturally and economically.' This was backed up by detailed histories, comparison to smaller provinces like Sind and Orissa, census figures etc. For instance, the Adibasi Mahasabha argued that if CN, SP, Saraikela and Kharsawan and the states of Gangpur, Jashpur, Bonai, Bamra and Chhattisgarh States Agency were taken together, adibasis would exceed 50% even after the migration to tea gardens in Assam and Bengal. Contesting the Bihar government's claim that Jharkhand would be a

‘deficit’ area, they argued for a more equitable distribution of resources, with investment in education (including degree colleges and mechanical and industrial training institutes), roads, irrigation, restitution of adivasi lands, and employment for locals.⁶⁵

The attitude of the Bihar Ministry towards Jharkhand is evident from a speech given by Premier Shri Krishna Sinha, in which he described the attitude of the Adivasi Mahsabha as ‘impertinent’ and said that ‘Jaipal Singh would be entirely mistaken if he thought that in a Legislature for, say, CN, the aboriginals would have their way’ since adivasis were no more than 25% of CN and SP taken together, and culturally, linguistically and religiously divided.⁶⁶ A common refrain was to accuse the movement and Jaipal Singh, in particular, of being funded and supported by European capitalists, Christian Missionaries and the Muslim League, and of representing only Christian adivasis, a claim that the Mahasabha denied. But leave alone Jharkhand, they were not willing to concede even the other limited demands. In exasperation, Thakkar warned the Bihar Ministers, during the course of the CA sub-committee’s tours that ‘Until the political aspirations of the Adivasis were satisfied he would not be able to serve Bihar in the way he wanted and that the separation movement should not be belittled.’⁶⁷

As subsequent sections show, much of this rivalry spilled over into the work of the sub-committee drafting the 5th Schedule. Before that, however, I lay out the legal and administrative history of the provisions.

The Prehistory of Scheduling

Marking off certain regions and their inhabitants under a special legal framework, the basic concept of scheduling, has an old history. In the genealogy provided by JP Mills, then on special duty in the Reforms Office of the Government of India (GOI),⁶⁸ the colonial government responded to ‘problems’ (read rebellions) emerging from the expansion of Presidencies by removing regulations for specific areas. These came to be known as ‘deregulationising acts.’ The first list of backward tracts was created under the 1870 Statute 33 Vic. Cap 3 passed by the British Parliament.⁶⁹ The Scheduled District Act (SDA) of 1874 and Laws Local Extent Act of 1874 followed. SDA created a schedule of districts and declared the written law for each district, leaving customary law untouched. This was followed by the GOI Acts of 1919 and 1935, which drew up lists of backward tracts, and superimposed dyarchy on this map of exclusion, leaving the tribal areas under the control of the central government while transferring certain powers (and non-tribal areas) to the elected governments.⁷⁰

Scheduling was marked by an oscillation between the fear of armed uprising, ideas of paternalist protection, as well as a form of racism that underpinned both the fear and the paternalism. At one level, this attitude was not confined to tribal areas but characterised the broader framework of colonial

rule post-1857.⁷¹ In analysing the 1935 GOI Act, Muldoon writes that the British were willing to concede only limited governance because India as a whole was perceived as an ‘authentically primitive’ place, whose apolitical rural inhabitants were not interested in elections.⁷² The British saw themselves as ‘trustee or guardian, charged less with nurturing Indian political development than with protecting Indians from themselves.’⁷³

However, globally, ‘trusteeship’ came to be a defining feature of state relations with indigenous peoples, whether settler states like the USA which signed treaties with sovereign nations, or colonial states like India. As control intensified, and the conflict of interest between the ‘trustee’ state and the peoples whose land it coveted grew, the humanist rhetoric of trusteeship came to the fore.⁷⁴

Nationalist opposition to ‘scheduling’ was couched in the language of ‘extending democratic and self-governing institutions to all parts of India’ but was also motivated by the resources available in indigenous areas. The resolutions of the Faizpur (1936) and Haripura (1938) sessions of the Congress declared: ‘This Congress is further of opinion that the separation of these Excluded and Partially Excluded Areas is intended to leave a larger control of disposition and exploitation of the mineral and forest wealth in those areas and keep the inhabitants of those areas apart from the rest of India for their easier exploitation and suppression.’⁷⁵

Further differences marked the colonial and nationalist position on scheduling. Colonial – anthropological and administrative – interest in keeping tribal areas distinct drew on a conception of tribes as honest and democratic, compared to the conniving caste Hindu.⁷⁶ A Memorandum for the Statutory Commission on the Backward Tracts of Bihar and Orissa (1935) defends not extending ‘reforms’ or ‘elections’ to these areas on the grounds that they already enjoyed a measure of self-governance through indirect rule:

‘It may be argued, however, that the Santal and to a considerable extent the non-Santal of this district, has an effective system of self-government which the Bihari and Oriya have not. It rests on the support of the local officers, whose duty it is to maintain the authority of the headman against the individual and to prevent abuse of that authority, when it is exercised against the interests and wishes of the village community.’⁷⁷

Jharkhand activists and ideologues – in the 1940s and now – put a similar positive spin on legal exceptionalism, seeing the scheduling laws and special tenurial laws like the Chotanagpur Tenancy Act (CNTA) and the Santhal Parganas Tenancy Act (SPTA) as colonial concessions to adivasi rebellions.⁷⁸

There were differences, however, within the colonial administration, and not just between the nationalists and the British. The listing of backward tracts in the GOI Act of 1935 involved negotiations between British MPs keen on preserving excluded areas from the provincial governments, and officials (as also

residents of these tracts) arguing that their inhabitants were no longer backward. One irate civil servant, Sir Eyre Gordon, described the proposals for exclusion of specific areas in the Central Provinces as 'com(ing) from someone who left the province last century.'⁷⁹ The Bombay government reported of the West Khandesh district and Panchmahals that 'plenty of Bhils with experience of local Board Administration and sufficient intelligence to be members of Provincial Legislatures can be found in these areas.'⁸⁰

Sections 91 and 92 of the GOI Act of 1935 providing for Excluded and Partially Excluded Areas eventually compromised by giving the Governor powers to apply or not apply laws to these areas as he saw fit, and to make regulations for the 'peace and good governance of these areas' (with the assent of the Governor-General). Governors were under an 'Instrument of Instructions' to ensure they carried out their responsibilities. While the Provincial Legislative Assembly decided funds for the partially excluded areas, the Governor could overturn their decision if he felt that more was needed. At the same time the 1935 Act severely restricted the areas which were totally excluded, making not just a preponderance of tribal population but administrative convenience as well as economic value a criterion for demarcating partially excluded areas.⁸¹

In Northeast India, the continuing need for 'pacification' meant somewhat greater autonomy. Stuligross argues that in the contours of the assimilation vs integration vs isolation debate prevalent at the time,⁸² the 5th Schedule made for 'assimilation' while the 6th Schedule attempted 'integration'.⁸³

The Numbers Game: Representation in the CA

Expediency led the Cabinet Mission under whose aegis the CA was formed and the Congress to abandon the long standing dream of a CA elected by adult franchise in favour of one indirectly elected by the Provincial Legislatures formed in 1946.⁸⁴

Given the property, tax and educational requirements, Austin estimated that merely 28.5% of the adult population was able to vote in the 1946 elections.⁸⁵ The exclusion was keenly felt. Godavari Parulekar writes: 'At the time of the Bombay Legislative Assembly elections in 1946, hundreds of them (Warlis) marched to the polling booths. In those days there was no adult franchise and the Warlis were indignant to see that while all their exploiters were voters, all of the Warlis were not.'⁸⁶

Under the 1935 Act, while seats had been reserved for tribes in the provincial legislatures, these were much below their proportion of the population. For instance, in Bombay presidency, tribes were 7.74% of the population but had 0.57% of the total seats, in Bihar, they were 13.9% of the population and had 4.6% of the seats, in CP and Berar they were 17.47% of the population with 0.89% of the seats, while in Assam 24.36% of the population had only 8.33% of the seats.⁸⁷ Tribes were about 6% of the total Indian population.⁸⁸

While the unfairness in representation was evident even from the existing census figures, adivasi groups in Jharkhand claimed that the census figures were themselves underestimates of the actual percentage of adivasis in Bihar.⁸⁹ For instance, the Palamau District Adibasi Sabha asked how the Chotanagpur and Santhal Parganas which in 1928 was some 88% tribal (based on the Governors submission to the Simon Commission) was according to the 1941 census only 45% tribal.⁹⁰

Another memorandum by the Dalbhum Adibasi Sabha⁹¹ pointed to the injustice of Muslims with 47 lakhs in Bihar getting 5 seats in the Constituent Assembly while the more numerically dominant adibasis at 50.5 lakhs were included in the 31 general seats. Of these, the Adivasis should have got 6–7 seats, but instead the Bihar Congress sent only two token adivasis, Boniface Lakra and Debendra Nath Samanta, to the CA. The Sabha Memorandum, however, concludes on an optimistic note:

‘But fortunately there is the Adibasi party in the Bihar Assembly and it managed to elect one real Adibasi representative Marang Gomke Jai Jaipal Singh, the President All India Adibasi Mahasabha to the CA. Thus the 3 Bihar Adibasi representatives to the CA represent only 30 lacs of adibasi in Bihar and the rest 31 lacs of Bihar adibasis are represented by Hindus (Dikus), but truly speaking the entire 61 lacs of Bihar Adibasis are represented by only one real Adivasi, the aforesaid Marang Gomke.’

As the CA debates reveal, this seemingly bombastic claim was perhaps an understatement. Jaipal Singh was not only the sole tribal representative of Bihar but the sole tribal representative for the whole of central India.

The Advisory Committee on Fundamental Rights, Minorities and Tribals

To offset the low representation of minorities, the Cabinet Mission plan of 1946 included provisions for the protection of tribes:

The Advisory Committee on the rights of citizens, minorities, and tribal and excluded areas should contain **full representation** of the interests affected, and their function will be to report to the Union Constituent Assembly upon the list of Fundamental Rights, the clauses for the protection of minorities, and **a scheme for the administration of the tribal and excluded areas**, and to advise whether these rights should be incorporated in the Provincial, Group, or Union constitution.⁹²

On January 24, 1947, the CA appointed an Advisory Committee of 50 members, with the President authorised to nominate 22 more. Govind Vallabh Pant’s speech moving the resolution mentioned that out of 50, 13 would be representatives of Tribal and Excluded Areas, and out of the 22 nominations by the President, five would be from tribal areas and 7 from Muslim minority provinces, the other ten being left to the discretion of the President. The Advisory Committee would appoint sub-committees to prepare schemes for the administration of the Northwestern tribal areas, the Northeastern tribal areas and the

excluded and partially excluded areas in areas 'other than Assam'.⁹³ 'Each of such sub-committees may co-opt not more than 2 members from the particular tribal territory under its consideration for the time being, to assist it in its work in relation to that territory.'⁹⁴

Pant assured the assembly that 'the voice of the minorities and the representatives of the Excluded and Tribal Areas will preponderate in this committee' and that 'unless the questions are examined very closely by qualified persons and local opinion is fully consulted, it will not be easy to reach conclusions that may suit the requirements of the particular areas.'⁹⁵

Going by the CA resolution, there should have been a minimum of 18 tribal representatives, in addition to those co-opted from specific areas visited. But at the first meeting of the Advisory Committee on 27 February 1947 when the members of the committees were named,⁹⁶ there were only 6 representatives of the tribes themselves (not counting the two Pashtun representatives from the NWFP).⁹⁷ Congressmen like Gopinath Bardoloi and AV Thakkar were put in charge of the committees dealing with Assam and 'areas other than Assam'. Thakkar had been nominated by Rajendra Prasad along with Raj Krushna Bose, a nondescript Congressman from Orissa, who also served on the 'other than Assam' committee.⁹⁸

Jaipal Singh repeatedly raised, both in the CA and in letters to the Assembly secretariat, the paucity of tribal members in the CA,⁹⁹ and argued that they were being denied the 'full representation' they were promised.¹⁰⁰ Having six tribal members, he said, was 'only a matter of political window-dressing' and asked if there was any provision to bring in more adibasis, especially adibasi women, into the CA, as well as representatives of numerically important tribes like Gonds (32 lakhs) and Bhils (23 lakhs).¹⁰¹ Singh also tried to argue for adibasi representation on the committee negotiating with the princely states since they included 17 million adibasis but was shot down on the grounds that the (Congress run) State Peoples Conference had the issue under control.¹⁰² Finally, noting that rather than Congressmen, some scientific experts like Verrier Elwin, BS Guha (Director of the Anthropological Survey) or the anthropologist D.N. Majumdar of Lucknow University should have been co-opted, he emphasised that 'Whichever way we look at the problem, we cannot, within the nine members, represent duly in the Committee all the 34 Excluded Areas.'¹⁰³

Similar opinions were being voiced across the length and breadth of tribal India.

Demands for Representation

'Representation' was key to the politics of the time, with the Congress claiming that it provided what Hanna Pitkins calls 'substantive representation', while other parties (Muslims, depressed classes, Sikhs, Adivasis) were only providing 'descriptive representation'.¹⁰⁴ Where the people to be represented were

thought to need ‘uplift’ like the aboriginals, the Congress (as well as Hindu Mahasabha) case to be ‘acting for’ them seemed even stronger in their own eyes. Put another way, the Congress claimed the universalist high ground of ‘national unity and ‘citizenship’, while everyone else was reduced to sectional interests.¹⁰⁵

Contrary to the general impression that demands by particular communities for representation were based on ascriptive choices, the petitions submitted show that adivasi communities had a more substantive idea of representation. There was resentment at people who were seen as Congress stooges – not everyone who was nominally a member of the depressed classes or aboriginals was seen as entitled to speak for them. For instance, a telegram dated 10th December 1946 from the President Khasi National Durbar (Shillong) and Hills Union to the Secretary, CA stated: ‘Hill Tribes of North east Frontiers are totally unrepresented there. Mr Nichols Roy simply Congress nominee not theirs. Framing their own constitution. Reserving Right of Secession from Hindusthan. Pray Publish.’¹⁰⁶

While the attack on Rev JJ Nichols Roy’s credentials to be in the CA may have been unjustified, that on Phul Bhan Shah, a Gond landlord, seems warranted by his utter lack of contribution to the sub-committee framing the 5th Schedule, leave alone the wider CA. His letterhead lists him as Phul Bhanu Shah, MLA, Landlord and Proprietor Dhala Estate, Vice Chairman, Dist Council Chhindwara & Officer in Charge Harrai Pagara Estate, District Chhindwara, Central Provinces.¹⁰⁷ A typed representation from the Aboriginal Mahasabha dated 20th February 1947, emerging out of a meeting held in Mandla, accuses Phul Bhan of buying his seat in the CA and of being interested only in perpetuating zamindari in the CP. Phul Bhan, it states, had little education and no experience, could barely write, and had done nothing for the tribes. His only qualification was that ‘he can hold up his hand well while voting.’ The petitioners said that meetings of aboriginals were being held all over CP to protest since his ‘selection is waste of national money and dark future for aboriginals.’¹⁰⁸

Many associations and communities expressed the feeling that the making of the Constitution was a pivotal point for them, ‘a matter of life and death,’ for which having the right representative was of extreme importance.¹⁰⁹ The Mizo Union, which unlike the Mizo Chiefs, wanted merger with India, argued that ‘exclusion from representation in framing the Constitution of India means exclusion from the general life of India, it is therefore decided that if they are excluded from duties of framing the Constitution of India, they will make their own constitution according to their own model ... The Working Committee of the Mizo Union wish to inform the present Constituent Assembly members and the Advisory Committee members that it would be a waste of time to frame the Constitution for Lushai people other than their own nominee.’¹¹⁰ In fact, the Mizos did frame their own Constitution,

modifying provisions of the 6th Schedule, which they submitted to the CA at the end of October 1948.¹¹¹

Some individuals also canvassed for inclusion like P. Kodandaramiah, a Gandhian social worker in the Agency Areas of Madras, who had set up the All India Excluded and Partially Excluded Areas Association, Rajahmundry in 1935. This association attempted to work as an internal caucus, taking forward the old Congress stand against having any specially demarcated (partially excluded or scheduled) areas. He was endorsed by CA members Ananthasayanam Iyengar and Pattabhi Sitaramayya as the only representative from the South, and eventually coopted as a member of the sub-committee 'other than Assam'.¹¹²

Once the Draft Constitution had been circulated, the demand for representation on the sub-committee and CA gave way to more specific objections. For instance, the CA received representations from the Mar Mongolian Federation of Assam protesting against powers given to the District and Regional Councils and wanting central guardianship. The Naga National Council wanted an interim government for ten years after which they would be free to choose (in keeping with the Hyderi agreement). The Assam Tribal Sangha wanted constitutional safeguards to be extended for 25 years. The Garo National Council rejected regional councils, and wanted control over all types of forest.¹¹³ The Adivasi organisations of central India wanted separate statehood (Jharkhand), more funds for education and control over land.

The Communists were on the same page as the tribal parties like the Adibasi Mahasabha and the Naga National Council (NNC) in speaking not of 'backwardness' but of 'exploitation'.¹¹⁴ Their vision of tribal rights in the constitution also involved special areas or scheduling: 'Tribals and similar backward people living in compact areas to be given the right to form autonomous regions inside the provinces concerned. The Central as well as every Provincial Government must assure economic and cultural development of these tribal areas. Administration of agriculture, education, forest, shall be the jurisdiction of the Autonomous unit of the tribal and semi-tribal people.'¹¹⁵ The concept of autonomy here was developed in practice in the Telangana armed struggle through the 'sanghams' which redistributed land, managed conflicts etc.¹¹⁶ In the Northeast, the Communist Party of India (CPI) urged the Congress to stop governing through bureaucrats and transfer interim government, pending constitutional changes, to representative Hills People organisations like the NNC or Mizo Union.¹¹⁷

There were also several non-tribal letters protesting against any special form of governance for the tribals, or contesting areas that were to be scheduled, especially in Jharkhand. For instance, the Kurmi Kshatriya Zila Samiti, the Chotanagpur Citizens Protection Association and the Deoghar Bar Association objected to the inclusion of ChhotaNagpur and Santhal Parganas as scheduled areas, arguing that they would encourage separatist tendencies.¹¹⁸

Committee Deliberations

The Working of the Sub-committee for Areas other than Assam

Even before Jawaharlal Nehru suggested the formation of three sub-committees for the tribes – for the NW, NE and the rest of India, the secretariat of the Constituent Assembly consisting of civil servants had already been at work.¹¹⁹ They planned the tours of the Advisory Committee and wrote to the provincial governments gathering data on their tribal populations and the names of competent officers to depose before the Committee.¹²⁰ From July 1946 through 1947, the Secretariat sent repeated reminders to the provinces on the urgency of the issue.

Because of the contacts of the members themselves, especially Thakkar's contacts with members of the reformist Servants of India society, the influence of anthropologists associated with government like Elwin, Guha or Hutton, and the over-riding control by government which meant a preponderance of officials, the views available to the Assembly committees were decidedly constrained.¹²¹ The mark of a bureaucratic framework lay heavily on the framing of issues before the committee. A questionnaire sent to the provinces asked about tribal experience with elections, political parties, administrative arrangements, and the people who could speak for the tribes.¹²² In fact, because of the property qualification, few across India, not just tribes, had experience with elections. Those who did speak, like Jaipal Singh, were not taken seriously.

The sub-committee toured Madras, Bombay, Bengal, Central Provinces and Orissa, without much apparent conflict, between 14th March and 8th April 1947. In both Orissa and the Central Provinces, the governments claimed to be working on Thakkar's advice.¹²³ However, its tour to Bihar was postponed several times and severely curtailed, and they were not able to visit Lahaul and Spiti at all due to the 'communal disturbances' in East Punjab as Partition violence was described.

Relations between Thakkar and the CA staff were sometimes strained. Thakkar complained to Ramadhyani, the Deputy Secretary in the CA, that he was 'doing every important thing without consultation with your Chairman.' He accused him of fixing the tour programme in Chhotanagpur and keeping 12 days for Bihar when all the other provinces collectively had been covered in 25 days. Ramadhyani blamed the miscommunication on poor phone connectivity. Despite the best efforts of HVR Iyengar, the Secretary, to defend his junior and pacify the old man, Thakkar was not mollified saying that if Ramadhyani knew phones were faulty, he should have arranged for a personal meeting.¹²⁴

Phones were not the only mundane issue that affected Constitution-making. There was also the delicate question of whether cold drinks *and* cigarettes should be served at committee meetings (finally decided in favour of cold

drinks alone); what class of railway compartments should be booked,¹²⁵ the pecking order of accommodation and the timings of the depositions.

Where Jaipal Singh had provided an expansive list of the names of people whom the sub-committee should meet in Bihar, including representatives of the Adibasi Mahasabha, Muslim League and Hindu Mahasabha, Separation League, landholders, Church representatives, teachers, labour federation, lawyers, *parganais* (traditional headmen), Kolhan Consumer association and others, Thakkar dismissed almost all of them as having no real association with tribal welfare. His definition of welfare extended only to education, health and agricultural improvement. Thakkar also refused to coopt on the sub-committee a Santhal from Bengal recommended by Rajendra Prasad on the grounds that he would have to 'reckon with Shri Jaipal Singh, who will surely put up his own Santhal from Santhal Parganas for cooption.' Eventually the majority of people the committee met were Congress MLAs and Bihar government officials.¹²⁶ Thakkar seems to have been much influenced by a pamphlet prepared by the senior Bihar Congressman, Sachidanand Sinha, laying out the case against a separate Jharkhand province.¹²⁷

During the hearings itself, people complained of highhandedness by the Committee. For instance, the Singbhum District Adibasi Sabha, the parent body of several adibasi associations within Singbhum, alleged that their voice was being suppressed.¹²⁸ Instead of listening to the parent body, Thakkar allowed only one representative each from some of the constituent elements like the Labour Federation, the association of traditional headmen (Mankis) and the women's federation to meet them. In protest, the whole group left the room.¹²⁹ Thakkar also defended the administration on a complaint that two adivasi women had been shot by the police during the collection of the paddy levy, saying it was regrettable but necessary.¹³⁰

'A Scheme for Administration'

Thakkar was determined that the task of the committee was concerned only with drawing up a 'scheme for the administration' of the scheduled areas and demands for a separate province could not be counted as having anything to do with administration. He enlisted BN Rau, who as Constitutional Advisor dutifully provided 'legal advice' that in the current scheme, the integrity of existing provinces was to be maintained and excluded & partially excluded areas could not be separated out from existing provinces. 'The Sub-Committee in question is bound by that plan inasmuch as it was appointed by the Advisory Committee set up under the plan.'¹³¹

Had the NWFP not gone out of the reckoning due to partition, this definition would not have gone uncontested. Sir Olaf Caroe, Governor of the NWFP, reflected on precisely this point: 'It is unfortunate that Para 20 of the Cabinet Mission's Statement spoke of *a scheme for the administration of the*

tribal areas (underline in original). ... if the problem is approached from the angle of administration it will place the Committee on the wrong footing in their dealings with the tribes ... It must be recognised that the tribes are free to negotiate just as the States are ... it will be necessary for the framers of the new Constitution for India to negotiate agreements with them in the future also. Their strong spirit of independence must receive full weight.¹³² He also noted that 'the tribes might make any transfer of rights without consent difficult ... The Afridis have recently put it in a Pathan phrase when they said they were not willing to be married in Delhi without their consent.'¹³³ While some of this reasoning was also used in the case of the Assam tribes, the Congress members in the mainland provinces evidently thought they were authorised to speak on behalf of the adibasis and without their consent.

Further, the CA leaders were not such sticklers for the text of the Cabinet Mission plan when it suited them. Responding to Sachidanand Sinha's query on the terms of reference for the sub-committee, Prasad wrote that while it had been constituted under the Cabinet Mission Plan, the Indian independence bill 'gives full powers to us to frame our own constitution and to pass any laws we like including laws repealing parliamentary statutes and this very Bill by which the Indian independence is established.'¹³⁴

The final report of the Sub-committee for the Excluded and Partially Excluded Areas (other than Assam) has the stamp of a one-man show by Thakkar. It described the Adibasi Mahasabha as having 'a very large advanced or Christian element,' and attributed the demand for Jharkhand to 'mere local ambition' in addition to genuine grievances.¹³⁵ Both Jaipal Singh and D. N. Samanta entered dissent notes arguing that all of Santhal Parganas and Chhota Nagpur should be treated as scheduled areas.

The Sub-committee vs the Drafting Committee vs the CA: the Gradual Whittling Down of Powers

The sub-committee reports involved an extensive filtering of the views of adivasi communities on the ground. Their recommendations then underwent further changes at the hands of the drafting committee,¹³⁶ and even further changes in the CA.

In response to a query from Jaipal Singh as to where the concept of 'scheduled' came from (replacing the word aboriginal and tribal) since the sub-committee had never discussed scheduling, Ambedkar argued that the term 'adivasi' was too generic and had no 'definite legal connotation'; the concept of scheduled tribes would therefore enable a precise answer to the question of who was entitled to the relevant privileges.¹³⁷ The exact lists were finally left to the President to notify, since the CA ran out of time.¹³⁸

As for 'scheduled areas', Ambedkar noted that they were nothing other than the partially excluded areas of the 1935 Act.¹³⁹ In the 1935 Act, however, laws

had to be specifically applied by the Governor to both excluded and partially excluded areas.¹⁴⁰ The drafting committee changed this to the presumption that in the 5th Schedule all laws would automatically apply, unless specifically waived, while only in the 6th Schedule would they have to be specifically applied.¹⁴¹

In the CA, Jaipal Singh pointed out several features that had been whittled down by the drafting committee.¹⁴² The most important change was the diminishment in the powers of the Tribes Advisory Council (TAC). The fundamental difference between the new Constitution and the 1935 Act was that a TAC consisting of elected members was to exercise democratic oversight over the Governor. In the CA, however, from it being their 'duty' to advise the Governor on all matters relating to the Scheduled Tribes of the state, they could now only advise on matters that were referred to them by the Governor. Yudhisthir Mishra representing the Orissa states supported Jaipal Singh, pointing out that the Governor might well not refer important matters to the TAC.

KM Munshi's counter argument, which carried the day with Ambedkar, was that if it became a duty of the TAC to advise on 'administration', they would become 'miniature senates' and advise on the appointment of Collectors, or the administration of forests and even law and order, whereas their role should be confined to the 'welfare and advancement of tribes.' If Jaipal Singh's amendment went through 'the result will be that nothing could be done in a small scheduled area in a district without consulting the Advisory Committee.' He also questioned the ability of TACs to advise on acts of parliament, giving as an example, the intricacies involved in something like a money-lenders act.¹⁴³

The role of the Governor in the 5th Schedule itself figured more as an administrative relic from the colonial 1935 Act than one with substantial powers. As long as the Governor was appointed by the British, the institution was a way of controlling the Congress governments. But once the Governor became an appointee of the central government, their ability to act independently and protect the tribes was diminished. In the CA debate in May 1949 over whether the Governor should be elected (as originally planned) or nominated (as proposed by the Drafting Committee and eventually carried through), Dr Ambedkar had argued that 'since the powers of the Governor were so limited, so nominal, his position so ornamental' elections would be pointless.¹⁴⁴ Barely a few months later then, in September 1949, it was disingenuous to make the powers of the TAC dependent on the Governor's discretion.¹⁴⁵

The sub-Committee's recommendation that the Governor be required to report on the condition of scheduled tribes within the state as a whole not just within scheduled areas was also taken away. A loophole clause provided for this report to be submitted not annually as a statutory duty but 'whenever so required by the President'. This effectively left large numbers of adivasis outside of any protective fold, other than that of reservations.

The Thakkar sub-committee had recommended allowing different judicial systems and customary law to operate. As late as October 1948, the drafting committee envisioned that topics under which separate laws could be made (and which would be passed depending on the advice of the TAC) included (a) all social matters (including marriage, inheritance and property), (b) land and tenure and (c) village panchayats. Most importantly, scheduled areas could have enforced, to some extent, their own criminal law.¹⁴⁶ This was also dropped from the final form of the 5th Schedule, subjecting adivasis to the extortionate pressures of the Indian police and the penal code.

Another important provision that was dropped from the Sub-Committee's report, and which would have clearly shown the pattern of internal colonialism in these resource rich areas, was the recommendation that income from and expenditure on scheduled areas should be separately shown in the provincial budget.

These intrinsic flaws in the 5th Schedule have been more than borne out by the past 70 years. The dependence of the 5th and 6th schedules on the powers of the Governor, the rapid deterioration in the Governor's role and status as an independent actor, the balance of political power between upper castes and scheduled tribes in the wider electoral politics of both states and centre, and the consequent reluctance of the central government to intervene in the administration of scheduled areas over the heads of the state governments, meant that the operation of the 5th Schedule was a doomed cause from the beginning. In the end, the 5th Schedule went back to being an *administrative scheme* for the protection of adivasi interests in land, rather than an avenue for the differentiated democracy that the tribes wanted. Tribes have had to continue to protest to get the limited rights of consultation and recognition of customary law that the sub-committee envisaged, through later enactments like PESA 1996 and the FRA 2006.

Secret Negotiations, Racism and Repartee in the CA

Even allowing for what Austin describes as the oligarchy and the overlapping trimvurate of Congress, Assembly and Government,¹⁴⁷ the CA was not always democratic. Jaipal Singh complained of not being consulted, that 'secret talks and consultations have been going on among certain people' while drawing up a new Fifth Schedule. KM Munshi retorted saying he had not come to meetings when invited because he differed with the others on both fact and outlook. He accused Jaipal Singh of wanting to treat adivasis as a community, when in reality they were a heterogenous lot. This was rather rich coming from a leading light of the Hindu Mahasabha who wanted to treat Hindus, including scheduled castes, as a homogenous community.

There was an open competition for representation and expertise between Jaipal Singh and Thakkar. Thakkar condescendingly asked Singh to travel

outside Bihar and Jaipal Singh responded by saying that he had extensively travelled in all the tribal areas, including Assam. In turn, he asked Thakkar how many tribal languages he knew. The mood of the Congress dominated Assembly, however, was overwhelmingly with Thakkar in his mission of upliftment.

Jaipal Singh was not one to be silenced: ‘Sir, I was speaking of the zeal which several people of this House profess to have for promoting the interests of Adibasis If, however, your mission of amelioration of the lot of the Adibasis is of the kind that the British professed to have, coming to India over all this distance of six thousand miles, I would ask you mercifully to leave us alone, and quit the Adibasi regions. I would remind such people of the adage ‘Physician, heal thyself.’¹⁴⁸

There followed one of the more colourful exchanges of the CA:

Jaipal Singh: ‘The country belongs to my most ancient group and we are very glad to have Mr. Munshi. I am very sorry to disappoint him that, in supporting the Fifth Schedule, I did not dress in my bows and arrows, the loin cloth, feathers, earrings, my drum and my flute.’

Biswanath Das (Orissa: General): May I know whether the Honourable Member has ever put on clothes like that?

Jaipal Singh: ‘What makes Mr. Das think I never wear the clothes that my people wear? There has to be reciprocal co-operation. That distrust, that fear that existed before must be made to vanish from both sides. The non-Adibasi must go to the Adibasi as his friend, and, similarly, the Adibasi in his turn should take his proper place, the role of honour that is accorded hereafter in the national life of this country.’

Brajeshwar Prasad, lawyer from Darbhanga, who inveigled himself into the CA by witing to Rajendra Prasad, also rushed to the defence of Thakkar Bapa: ‘Comparisons are odious, but no option is left. I would not compare my Friend Mr. Jaipal Singh with Shri Thakkar Bapa. It would be ridiculous for me, and for the matter of that for anyone, to be taken anyone, howsoever great he may be, as the sole representative of the hill tribes. A person, from his residence in the second or third floor of the Hotel Imperial, ill compares himself with a person like Thakkar Bapa.’

In the end, constitution making was reduced to a morality tale.

A Promise Broken Even as it was Being Voiced

Even as the Constitution was being drawn up, the adivasis of India experienced their first firing in independent India. This has since been repeatedly enacted – in Indravelli (now Telangana), Bastar (now Chhattisgarh), Tapkara (Jharkhand), Maikanch (Odisha) – quite apart from the corralling of Telangana koyas into camps during the Telengana armed struggle (1946-51), the bombings of Nagas and Mizos in the 1950s and 1960s, and the Salwa Judum in Chhattisgarh (2005-7).

On 1st January 1948 a peaceful meeting of adivasis in Kharsawan demanding merger with Jharkhand was fired upon on market day. The Adivasi Mahasabha estimate was that 1000 had been killed and the same number wounded. After the firing was over, the Orissa Government authorities cordoned off the area and destroyed all evidence of the carnage, shooting those who survived, dumping the corpses in truckloads into rivers and jungle ravines. This firing also established a pattern in future impunity. While there was outrage even by Congress committees in Seraikela and elsewhere, no one was held accountable. The only concession was that by mutual agreement between the premiers of Orissa and Bihar the states of Seraikela and Kharsawan came to Bihar.

As Jaipal Singh put it, 'It has fallen to the lot of Jharkhandis, to be martyrs of the first Jallianwallabagh of Free India, and to Oriyas to be their butchers.'¹⁴⁹

Conclusion

The framing of the Indian Constitution was a significant moment for indigenous communities who saw it as a potentially transformative opportunity in their relationship with the state. The demands made by indigenous organisations, amongst others, not only challenge the idea of people as passive recipients of a constitution that was given to them, but also indicate alternative sources of democratic thinking. It was not the Constitution makers who were delivering democracy to India's newly enfranchised citizens but citizens who were trying, with more or less success, to get varied concepts and forms of democracy or 'indigenous federalism' inscribed in the Constitution, such as the district and regional councils of the 6th Schedule or the Tribes Advisory Council of the 5th Schedule. As with indigenous peoples globally, collective self-government and resource autonomy have been seen by the scheduled tribes as the path to full citizenship.

Within India, the constitutional history of tribes has often been written in terms of colonial policies of indirect rule through the idea that the excluded and partially excluded areas of the 1935 GOI Act, and the indirect rule practiced in the princely states percolated into the 1950 Republican Constitution. However, even as the template was set by the Cabinet Mission, the initial vision underlying the two constitutional moments differed: the 1935 Act promoted exclusion as a way of retaining Crown control and ensuring the welfare of tribes against the predations of nationalist governments. The 1950 exclusions were also motivated by a stated commitment to the welfare of tribes, but now defined as citizens. But this was welfare as defined by the anthropologist-administrator-Congressman nexus in the secretariat and assembly, and not the self-determination that the tribes wanted. Further, once the schedules were finalised in their attenuated form – as against giving tribes real self determination over resources and customs – scheduling made sense as a 'scheme of administration.' Congress no longer needed to oppose the

idea of scheduling because control of the resources within these areas would rest not with the British or with the tribes themselves but with governments dominated by the nationalists.

Over time, even as the Constitution enhanced the *individual* citizenship rights of tribals – through adult suffrage and reservation in the legislature, jobs and education – it weakened their *collective* political rights as potentially self-governing communities. For scheduled castes, full citizenship has meant individual equality (casting aside the caste-ridden village community); for the scheduled tribes, however, it is the self-governing territorially rooted community which is a source of meaningful citizenship. There are strong parallels here with the different constitutional struggles of Blacks and Native Peoples in the USA.¹⁵⁰

Although the Constituent Assembly set out to be consultative, aiming to draw its legitimacy from the people involved,¹⁵¹ the final provisions were determined by an assimilationist mentality (in central India) as well as a securitised approach to demands for autonomy (in the Northeast). Subsequent faultlines in the legitimacy of the Indian state – as shown by the ethnicity and independence movements in Northeast or the Maoist movement in central India – have emerged precisely out of the lack of substantive content to provisions for autonomy. It has taken decades more of struggle for the longed-for province of Jharkhand to materialise, albeit truncated, or for a law like PESA 1996 which requires governments to consult villages before acquiring their land to be enacted. But as the multiple contemporary struggles mentioned at the beginning of this essay show, India's indigenous citizens have not given up on the idea of the Constitution they first set out to frame between 1946 and 1950.

Notes

1. I use the terms adivasi, adibasi, scheduled tribes, indigenous people and aboriginals interchangeably, depending on the context. 'Tribes' and 'aboriginals' are used since that was current usage then. I use adibasi when citing the documents of that period, otherwise adivasi.
2. Jharkhand Janadhikar Mahasabha, Burugulikera.
3. Pal, PESA New Weapon.
4. For the Rashtriya Swayamsevak Sangh (RSS) vision, see <https://www.rss.org//Encyc/2012/10/22/rss-vision-and-mission.html>.
5. Benjamin, *Theses*, p. 255.
6. See De, *People's Constitution* on citizens invoking the constitution inside the courts.
7. Ranajit Guha, *Elementary Aspects*. For a contemporary version, see Shah, *Shadows*. See also attempts to locate contemporary Maoist insurgency in princely states and indirect rule, e.g., Beverly, *Old Borderlands*.
8. For an overview, see Xaxa, *State, Society and Tribes*.
9. On legal mobilisation around FRA, see Sundar, *The Rule of Law*.
10. Michael Brecher argues that the Constitution was 'essentially the last 1935 British Constitution. (India Act 1935). 250 out of 395 articles were taken verbatim or with

- minor changes from the 1935 Act and the basic principles remained unchanged.” Michael Brecher, *Nehru: A Political Biography*, 1959, p 421, cited in Yengde and Teltumbde, *The Radical in Ambedkar*, p. xv; also Chandra, *Liberalism*.
11. See Ambedkar’s response to Jaipal Singh on the origins of ‘scheduling’, CAD, 2nd December 1948.
 12. Tewari, *Framing*.
 13. Narayan, *Foreword*.
 14. See Shani, *The People*; Chetan, *Founding Mothers*.
 15. Austin, *Cornerstone*, p. 10.
 16. Khilnani, *Idea*, p. 33; Khosla, 2020; Sen, *Popular Sovereignty*.
 17. Sarkar, Introduction, *Towards Freedom, 1946*; Sammadar, *Ideas and Framework*; essays in Bhatia ed. *The Indian Constituent Assembly*, especially chapters 1 and 2; Elangovan, *Making: Non-nationalist Approach*.
 18. Nigam, *Text without Author*; Naresh, *Pride and Prejudice*.
 19. On law as immanent in procedure, see Latour, *Making*.
 20. Thakkar’s first experience with adivasi issues came during a famine in 1920–21 in Gujarat, where he was entrusted by the Servants of India Society with organising relief. He set up the Bhil Seva Mandal in Dahod, and subsequently toured widely in the country, including Chotanagpur and Assam, setting up similar ‘constructive’ organisations providing training in khadi spinning, girls education, temperance and so on. In 1932 at Gandhi’s behest he became Secretary of the Harijan Sewak Sangh, in which capacity he worked for both ‘Harijans’ and ‘Adimjatis’. The image that comes to us from the numerous tributes to Thakkar Bapa (father) on his 80th birthday is of an immensely hard working, meticulous and single minded social worker. See Jagadisan and Shyamlal ed. *Thakkar Bapa*.
 21. Jaipal Singh was an unusual man who crossed several worlds. Catapulted by his school principal from a small adivasi village in Chotanagpur to England, Singh matriculated from St Johns, Oxford in 1922. He resigned from the ICS over differences on leave for captaining the Indian hockey team in the 1928 Olympics; joined the Royal Dutch Shell Group in Calcutta; taught at Achimota College, Gold Coast; was Principal at Rajkumar College, Raipur, a school for princes; and finance minister in the princely state of Bikaner. In 1938, Singh decided to return to Chhotanagpur and work for his own people. On Jaipal Singh, see his autobiography, *Lo Bir Sendra*.
 22. Chandoke, “Antecedents”, pp. 100, 97.
 23. Report of the Sub-Committee on Excluded and Partially Excluded Areas other than Assam. Reproduced in B. Shiva Rao, *The Framing*, p. 746.
 24. Tiwari, *Debating Tribe*.
 25. Ambedkar, *Communal Deadlock*, pg 375.
 26. Thakkar cited in Tiwari, *Debating Tribe*, p. 23.
 27. on Munshi, see Bhagavan, *The Hindutva Underground*.
 28. Evidence of Dr JH Hutton taken by Dr Ambedkar, Joint Committee on Indian Constitutional Reform, 1933, BAWs, Vol 2, 2014, pp. 736-742. See also Kolge, *Ambedkar’s Prejudice?*
 29. Ambedkar, Constitutional Assembly Debates (CAD), 4th November 1948.
 30. Austin, *Cornerstone*, p. 21.
 31. See, for example, Khosla, *India’s Founding Moment*.
 32. CA/44/COM/47, NAI.
 33. SK Bage and others, Adivasi Students Fellowship, CN & SP, to the Secretary, Sub-Committee, 3rd May 1947, CA/61/Com/47, NAI.
 34. Jaipal Singh, CAD, 19 December 1946; see also Parmar, *Undoing Historical Wrongs*.

35. Gussen, *Constitutional Recognition*.
36. See also Gussen, *Constitutional Recognition*, pg. 4
37. Pommersheimer, *Broken Landscape*, p. 280.
38. UNDRIP 2007, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>
39. Purushotam, *Sovereignty*.
40. Rodrigues, *Azad*.
41. Joshi, Free Happy India.
42. Prasad, *Autobiography*, pp. 474-478.
43. On the Congress Ministry in Bihar, see Damodaran, *Broken Promises*, especially chapter 6.
44. Prasad, *Autobiography*. The Bihar Congress was overwhelmingly upper caste Hindu.
45. See correspondence between Prasad, Thakkar and Shri Krishna Sinha, Anugraha Narayan Sinha and Krishna Ballabh Sahay, all senior Bihar Congressmen. Prasad's mentor and senior Bihar politician, Sachidanand Sinha (the oldest member of the CA), functioned as a kind of eminence grise. Rajendra Prasad (RP) papers, NAI.
46. Socialist Party, *Draft Constitution*, p. 93.
47. Jaipal Singh (JS) to Rajendra Prasad (RP), 22 December 1938, 1-B-39 Col 1, Bihar Ministry, Rajendra Prasad papers, NAI.
48. JS to RP, January 16, 1939, 1-B-39 Col 1, NAI.
49. JS to RP, February 1st, 1939, 1-B-39 Col 1, NAI.
50. RP to JS, 14 February 1939, 1-B-39 Col 1.
51. RP to GD Birla, 14 Feb 1939; Birla to RP, 18 Feb 1939, 1-B-39 Col 1.
52. Swami Sahajanand described the Jaipal Singh led movement as "a middle class affair" and argued that "had it been running on the basis of the real class interests of the kisans, its powers would have been immense." See Hauser ed., *Swami Sahajanand*, p.3.
53. Acc 352 CRR, NAI, Eastern States Agency, Confidential D.O. No C 2(4)-C/41-11263 from Hancock to the Sec to Crown Representative, 29 December 1941.
54. Jimut Behen Sen to RP, 9 May 1939, 1-B-39 Col 4, RP Papers, NAI.
55. Thakkar to RP, 27 March 1939, I-B-39 Col 2 & 3 Bihar Ministry, RP Papers, NAI.
56. Jimut Behen Sen to RP, 9 May 1939, 1-B-39 Col 4, RP Papers.
57. Sundar, *Verrier Elwin*.
58. AVT to RP, 27 March 1939, I-B-39 Col 2 & 3 Bihar Ministry, RP Papers, NAI.
59. Simeon, *Strike-breaking?*
60. 33-C/45-46 Col 1, RP papers; see also RP 1957, pp. 575-576; Singh, 2004, p. 104.
61. see Damodaran, 1992, p. 316-17.
62. Prasad to Shri Krishna Sinha, 20 September 1947, 24-C-46-47 Col 1; see also Thakkar to Prasad, 4 June 1948, 4-H/48 Col. No. 1, RP Papers, NAI.
63. Thakkar writing to Rajendra Prasad, 27th March 1939, on Jaipal Singh: "I learn from your letter that he is out for a fat job from the Bihar Government and is probably censoring Bihar Govt. for that very purpose it seems. If the Bihar Government will encourage such a man, I think it would have wasted its money and encouraged a selfish man." I-B-39 Col 2 & 3 Bihar Ministry, RP papers, NAI.
64. Thakkar to Rajendra Prasad, 17 March 48, 4-H/48 Col. No. 1, RP papers, NAI.
65. CA/61/Com/47; Memorandum for Consideration by the Excluded and Partially Excluded Areas Sub-Committee of the Constituent Assembly's Advisory Committee, for the Establishment of a Separate Governor's Province of Jharkhand, out of Chotanagpur Division, the District of the Santal Parganas, and the suitable portions of the

- outlying tracts, submitted by Hazaribagh Adibasi Sabha and othes branches to Sub-Committee.
66. Congress press release/pamphlet, "Demand for separation of CN – A sectional and interested cry." I-M-39- Col, RP papers, NAI.
 67. Memorandum of a meeting of the E&PE Areas (Other than Assam) Sub-Committee and the Ministers of Bihar, Ranchi, 10 September 1947, CA/51/COM/47 Collection No. 3, NAI.
 68. Note on the Backward Areas of British India and their position under the GOI Act 1935, by JP Mills, December 1935, ECO 9/36, National Archives of India (NAI).
 69. Statute 33 Vic. Cap.3 An Act to make better provision for making Laws and Regulations for certain parts of India, and for certain other purposes relating thereto, 25 March 1870, File No. 169, Legislative Dept, NAI.
 70. Legg, *Dyarchy*.
 71. Mehta, *Liberalism*.
 72. Muldoon, *Empire, Politics*, p. 19.
 73. Muldoon, *Empire, Politics*, p. 191.
 74. Pommersheimer, *Broken Landscape*, 2009, pp. 266-269; Gussen, *Comparative Analysis*.
 75. Indian Annual Register, 1936 Vol2, p. 202; IAR, 1938, Vol 1, p. 297.
 76. Skaria, *Hybrid Histories*; Sundar, *Subalterns*, pp. 156-190.
 77. Memorandum for the Indian Statutory Commission on the Backward Tracts of Bihar and Orissa. Reform Office, 4/1/35 G (B). & K.W. – Serial Nos. 1-33, NAI.
 78. Sundar, *Laws, Policies and Practices*, p. 5.
 79. CA/36/Genl/46 1946, NAI.
 80. Serial No. 8 – Express Letter from the Government of Bombay No. R-282 dated 15 April 1935. In Reform Office File No. 4/1/35 G (B). & K.W. – Serial Nos. 1-33.
 81. Mills, 1935 Note; Dhebar Commission Report, p. 38; Legg, p.54.
 82. Tewari, *Framing*, p. 1563, takes the idea of a 'debate' too literally, when critiquing previous scholars for speaking of an Elwin-Ghurye debate. As I have explicitly stated, the 'debate' was between "British administrators and anthropologists and Indian nationalists" standing for isolation vs assimilation respectively, with Elwin as a widely accepted exemplar of the first position (see Grigson's 1944, *The Aboriginal Problem*, p. 451). Tewari's choice of Thakkar for the second over Ghurye may be a good one, but that is not to say that Ghurye was not an influential exponent of the assimilationist position. My main point, however, was that both positions missed the way capitalism and colonialism had already transformed the situation of tribes (Sundar, *Subalterns*, p. 180.)
 83. Stuligross, *Autonomous Councils*, p. 506.
 84. Appendix 1, Austin, *Cornerstone*, pp. 331-332. The Cabinet Mission Plan allotted each province 1 seat per million population in the proportion of General, Muslims and Sikhs (in the Punjab). For the Communists and Socialists the lack of universal suffrage was an essential drawback. The Socialists did not join, while the Communists did. However, both advocated that the CA dissolve itself and a new CA be elected on the basis of universal adult franchise.
 85. Austin, *Cornerstone*, p. 10. But this left out the 23% of the population then in Indian states, which would bring the percentage down.
 86. Parulekar, *Revolt*, p. 23
 87. There were 24 seats reserved for tribals in all: Assam (9), Bihar (7), Orissa (5), Bombay, Madras and Central Provinces (1 each). See Table drawn up by Thakkar, reproduced in Tiwari, 2017, p. 27.

88. Yeatts, *Census of India, 1941*, p. 30.
89. Both in 1931 but especially in 1941 the census figures were politicised and contested. In the 1931 census, animism or 'tribal religion' had been used as a proxy for tribals. In 1941, this was corrected to 'community' regardless of religion. Yeatts, 1941 census, pg 29. Regardless, the Hindu Mahasabha campaigned to have adivasis return themselves as Hindus, while aboriginal organisations protested against non-adibasi enumerator bias. See Sundar, *The Indian Census*.
90. Memorandum by Palamau District Adibasi Sabha to the CA, October 1948. CA/50/1948/Cons.
91. CA/61/Com/47, NAI.
92. Cabinet Mission Plan, May 16, 1946. In Shiva Rao, Vol 1, p. 209, para 20.
93. This division into three committees was drawn up by Nehru. Note by Jawaharlal Nehru in response to letter from Sir Olaf Caroe, titled, Advisory Committee of Constituent Assembly (Tribal Areas). CA/16/GENL/46, NAI.
94. Resolution, CAD, 24 January 1947.
95. CAD, 24 January 1947.
96. North-East Frontier Tribal Areas and Assam Excluded and Partially Excluded Areas Sub-Committee : (1) The Hon'ble Srijut Gopinath Bardoloi, (2) The Hon'ble Rev. J. J. M. Nichols-Roy, (3) Mr. Rup Nath Brahma, (4) Mr. Mayang Nokcha, (5) Mr. A. V. Thakkar.
North-West Frontier Tribal Areas Sub-Committee: (1) Khan Abdul Ghaffar Khan, (2) Khan Abdul Samad Khan, (3) The Hon'ble Mr. Mehr Chand Khanna. (This committee became infructuous after Partition).
- Excluded and Partially Excluded Areas Sub-Committee (except those in Assam): (1) Mr. A. V. Thakkar, (2) Mr. Jaipal Singh, (3) Mr. Devendra Nath Samanta, (4) Mr. Phool Bhan Shah, (5) The Hon'ble Mr. Jagjivan Ram, (6) Dr. Profulla Chandra Ghosh, (7) Mr. Raj Krushna Bose.
97. Dambar Singh Gurung (Gurkhas), Nichols Roy (Khasis), Dharanidhar Basumatary (Kacharis), Boniface Lakra (Uraons), Devendranath Samanta (Mundas) and Jaipal Singh (Mundas).
98. Shiva Rao, Vol 2, pp. 64-67.
99. CAD, 19 December 1946; Dy No. 77/Com/47 dated 24.1.47, Note by Jaipal Singh, Advisory Committee and Tribal Representation. CA/9/Com/47, NAI.
100. There was some confusion in the CA (CAD 11 December 1946) over whether the Cabinet Mission Plan promised 'full' or only 'due' representation'. In fact, the tribes got neither.
101. Jaipal Singh, CAD, 19 December 1946. Dy No. 77/Com/47 dated 24.1.47, Note by Jaipal Singh, Advisory Committee and Tribal Representation. CA/9/Com/47, NAI.
102. Jaipal Singh and Nehru, CAD, 21 December 1946. 3 more Tribal members had been added.
103. Ibid.
104. Pitkin, *Representation*.
105. For a critique, see Tejani, *Between Inequality and Identity*, p. 177.
106. CA/52/GEN/46, NAI.
107. Letter dated 10 March 1947 from Phul Bhan Shah to Dy Secretary, CA, CA/27/COM/47, NAI. Here his name is spelt as Bhanu, elsewhere Bhan.
108. CA/27/COM/47, NAI.
109. Ibid.
110. Letter from Vanthuama, Gen Secretary Mizo Union addressed to Rajendra Prasad, President of CA, Nehru as PM, Bardoloi as Assam Premier and several others, 13 February 1947, CA/50/1948/Cons, NAI.

111. Draft Constitution for the Mizoram district as recommended by the People's Representatives in the District Advisory Council of Lushai Hills District with Amplification. This constitution brought all forests (including reserved forests) under the District Council. CA/50/1948/Cons, NAI.
112. CA/27/COM/47, NAI.
113. CA/50/1948/Cons; CA 19 (2) Cons 1949, NAI.
114. On the CPI and the CA, see Overstreet and Windmiller, *Communism in India*, pp. 229-244, 470-478
115. Programme of Democratic Revolution, CPI Documents, p. 555.
116. Sundarayya, *Telengana People's Struggles*, Chapter IV.
117. Resolution adopted in the Assam Provincial Committee of the CPI, 8-10 November 1947. CA/39/47/Cons.
118. CA 19 (2) Cons 1949, NAI.
119. BN Rau was the Constitutional Advisor and HVR Iyengar was the Secretary to the Consambly (as the CA was known). Most of the correspondence for the excluded/partially excluded areas committees was handled by Deputy Secretaries KV Padmanabhan and RK Ramadhyani.
120. CA/16/GENL/46, NAI.
121. The CP Government forwarded Grigson's book on the Aboriginal Problems of CP and Berar, the Orissa government sent Elwin's pamphlet on Ganjam and Koraput, and the Bombay Government sent Symington's report. Ramadhyani himself was an expert on land revenue and related matters in the tribal dominated princely states of CP and Berar.
122. CA/9/Com/47, NAI.
123. Report of the 'other than Assam' sub-committee, Shiva Rao, Vol 3, pg 739-740
124. Correspondence between Thakkar, Ramadhyani and Iyengar, May 1947, CA/61/Com/47, NAI.
125. The committee was accompanied by 3 reporters, one personal assistant, one clerk and 2 peons.
126. CA/51/COM/47 Collection No. 3, NAI.
127. Shiva Rao, Vol 3, pg 764
128. The Singbhum District Adibasi Sabha consisted of the Adibasi Sabhas of Singbhum and Dhalbhum, the Adibasi Labour Singbhum, the Manki Association, Adibasi Mahila Sangh, Ho Mahasabha Singbhum, Adibasi Ex-soldiers Association, Kolhan & Porahat Consumers Association.
129. CA/51/COM/47 Collection No. 3, NAI.
130. See Damodaran, *Broken Promises*, chapter 6 on hunger, and the paddy levy in Bihar.
131. B.N. Rau to Thakkar, 30.5.1947, CA/61/Com/47, NAI.
132. Copy of a D.O. letter No. GH-183 dated 2.9.46 from HE Sir Olaf Caroe, Governor of the NWFP to Mr. H. Weightman, Secy, External Affairs Dept. In CA/16/GENL/46, NAI.
133. CA/16/GENL/46, NAI.
134. RP to Sachidanand Sinha, 5th July 1947, MISC-2-Bihar Adivasis, RP Papers, 1947, NAI.
135. Thakkar Sub-committee report, in Shiva Rao, vol 3, p. 764.
136. see Shiva Rao, Vol 4, p 381-388
137. CAD Vol VI, 2nd December 1948, p. 783.
138. In practice this quest for certitude has not been successful since there is tremendous jostling to be 'scheduled'. Article 366 (25) of the Indian Constitution tautologically describes scheduled tribes as those communities who are scheduled under Article

- 342, while Article 342 defines a Scheduled tribe as a community which has been notified as such by the President. It is not clear what entitles a community to be notified as such, apart from vague gestures towards ‘backwardness’, geographical isolation, or ‘primitiveness’.
139. BR Ambedkar, CAD, 2nd December 1948.
 140. Shiva Rao, *Framing*, Vol 4, pg 384, para 1.
 141. BR Ambedkar, CAD, 2nd December 1948.
 142. Jaipal Singh, CAD, 5th September 1949.
 143. CAD, 5th September 1949.
 144. BR Ambedkar, CAD, 31 May 1949.
 145. BR Ambedkar, CAD, 5 September 1949.
 146. Draft Constitution by the Constitutional Advisor, Clause 5 (3), Shiva Rao, Vol 3, p. 161.
 147. Austin, 1966, p. 18-25.
 148. CAD, Vol IX, 5th September 1949, pp. 993-5.
 149. Printed speech of Jaipal Singh at an ‘Akhand Chotangapur Rally at Jamshedpur’ on January 18, 1948. File No. 6-R- 46-47-48, RP Papers, NAI.
 150. Pommersheimer, *Broken Landscape*, p. 5.
 151. Thornhill, *Sociology of Constitutions*; However, as Ginsberg et al point out, the causal mechanics between participating in Constitution-making and legitimacy are not fully spelt out. Ginsburg et al, *Does the Process Matter?*

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