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**Settling the citizen, settling the nomad: ‘Habitual offenders’, rebellion and civic consciousness in western India, 1938 – 1952**

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**Abstract**

This article explores the politics of civic engagement during India’s long decolonization between 1938 and 1952 for communities (the erstwhile ‘criminal tribes’) whose lifestyles were complicated by controls on movement before and shortly following India’s independence. It argues that their varied and contingent strategies of mobilization increasingly identified community particularities – notably, their marking as ‘criminals’ and a history of movement – as a basis for negotiating their problematic inclusion within the evolving citizenship frameworks of the late colonial, then postcolonial state. These early forms of civic consciousness set the parameters for later strategies that sought to mobilize communities by engaging with ‘universal’, ‘differentiated’ and indigenized conceptions of civic responsibility and rights. The most surprising finding of this research is that these strategies (via anti-colonialism) often embraced and celebrated forms of illegality and criminality. The romanticism of the dacoit (bandit)-cum-freedom fighter charged Dhaku Sultan-like figures with political heroism. In the context of independence and the founding of the Constitution, strategies turned to the (un)realized promises of freedom and citizenship rights. The final part of the article turns to the implications of ‘denotification’ for the so-called criminal tribes in the early 1950s, which provided both obstacles and avenues to strategies of mobilization after independence.

**Introduction**

At a meeting of elders of the Sansi community at Bishala village, Barmer, Rajasthan on 15 March 2013, Ravaliyaji Sansi spoke of the dispersed community of ‘ex-criminal tribes’, Sansis and Chharas of Gujarat, Rajasthan and Punjab, and what happened to them around the time of independence:

In Delhi we are known as Bherkut. In the Ganganagar district of Rajasthan we are known as Sansis. In Punjab we are known as Kapadias and in Pakistan we are known as Kucharas. Before partition we used to live together, but after partition some of our people decided to stay there [Pakistan]... *When there was war between Maharana Pratap and the Mughals in Chittor many people ran away. Bhandus did not flee but went to the forests where many were starving and died. When this ended, some returned to Chittor and began a new life... earlier we used to wander around Chittor and hide ourselves from the mainstream of society and the government. We used to steal and rob at that time.*<sup>1</sup>

While describing the Sansi-Kanjar-Bhat communities of western/north-western India and Pakistan, Ravaliyaji stressed the common Rajput lineage of these nomadic communities via memory of their historical deployment as military bondsmen in the sixteenth and seventeenth centuries.<sup>2</sup> Inherent in his words was a

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<sup>1</sup> This term denotes the approximately 200 communities who were notified under the Criminal Tribes Act (1871, 1924). The term ‘ex-criminal tribe’ is rarely used as it invokes prejudice and discrimination. Vimukta jati (liberated community) or denotified tribe is preferred. Interview with Ravaliyaji Sansi, 15 March 2013, Bishala.

<sup>2</sup> Dirk H. A. Kolff, *Naukar, Rajput and Sepoy: The Ethnohistory of the Military Labour Market in Hindustan, 1450-1850* (Cambridge: Cambridge University Press, 2002), p. 18; Malavika Kasturi,

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sense of a common bond of stigma (Sansis, Bhandus and Kanjar-Bhats as ex-criminal tribes) – distribution, dispersal and control by internal and national borders. His description connoted a tension in movement – on the one hand, freedom to travel and move between states and regions and to associate via kinship; on the other, a sense of control and restriction in broad societal terms. Yet, at the same time, Ravaliyaji hinted at forms of community identity, kinship, or cultural specificity that defined particular kinds of citizenship or civic consciousness despite, and in fact shaped by, these controls.

Central to this process was the notification of communities like Ravaliyaji's as criminal tribes through a succession of amendments rooted in the original 1871 Criminal Tribes Act (hereafter CTA) and its predecessor Moghia legislation.<sup>3</sup> The official scrutiny this produced set the parameters for community strategies of civic mobilisation, which were intimately linked to community notions of movement and association across space and territory via longer-term historical memories. The category of those legislatively marked as 'criminal', however, was fluid and contingent with no coherent or consistent boundaries: 'Tribes', castes and sub-castes moved in and out of the process of 'notification'.<sup>4</sup> Community descriptors, although not colonial 'inventions', often obscured fluid, nuanced and inconvenient realities which rendered them clumsy bureaucratic devices. Recent research has also shown how associations with criminality related to much longer histories that predated formal European power in India, which has implications for how we apply Saïdian frameworks of 'colonial knowledge' to India's criminal tribes.<sup>5</sup> Yet, if the idea of the criminal tribe was not entirely a colonial stereotype, the mid-twentieth century concrete instruments of control – settlements, restrictions on movement, and, most importantly, modern interpretations of 'criminality' as a cultural obstacle to 'rights' – affected how these communities envisaged civic and (eventually) civil rights across the transition to independence.

This article explores the politics of civic engagement during India's long decolonisation between 1938 and 1952 for communities like Ravaliyaji's in western/north-western India whose notification as criminal tribes imposed controls on movement and lifestyle. It argues that their varied forms of mobilisation identified community particularities – notably, their marking as 'criminals' and a history of movement – as a basis for negotiating their problematic inclusion within the evolving citizenship frameworks of the late colonial, then postcolonial, state. These civic strategies, like the frameworks and debates they engaged with, had local resonances and were constantly shifting. From the 1920s, as individualized protests against the CTA took a more political stance in the context of anti-colonial agitation and labour disputes in western India, communities began to mobilize using their specific identity as criminal tribes. These early articulations of civic consciousness engaged with the emergent discourse on the rights and responsibilities of citizenship, but reflected both 'universal' and indigenized conceptions of civic responsibility. From 1947, and especially after 1950, these strategies centred more conclusively on the tension

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Rajput Lineages and the Colonial State in Nineteenth Century North India (Oxford: Oxford University Press, 2002).

<sup>3</sup> Anastasia Piliavsky, 'The Moghia Menace, or the Watch Over Watchmen in British India', *Modern Asian Studies*, 47.3 (2013), 751-79.

<sup>4</sup> The Criminal Tribes Act gave provincial governments the power to declare communities, or parts thereof, as 'criminal tribes' through notification in the local Gazette.

<sup>5</sup> Anastasia Piliavsky, 'The "Criminal Tribe" in India before the British', *Comparative Studies in Society and History*, 57.2 (2015), 323-54.

between a free India and the promise of 'Fundamental Rights' of the citizen, and their denial of the same. From the 1970s, and beyond the focus of this article, cross-communal movements emerged in certain regions which began to position the now ex-criminal – or 'denotified' – tribes as a distinct political category, one which deserved group differentiated rights akin to Scheduled Caste and Scheduled Tribe. The meanings of citizenship, therefore, were multiple and contingently shaped by the varied stakes communities invested in them.<sup>6</sup> Despite their divergences, central to each of these civic strategies was the articulation of an alternative form of 'rights' which deployed community histories in ways that forged links across ethnic and geographic boundaries, and centred on shared experiences of freedom fighting, movement, and misrecognition.

That citizenship rights in the subcontinent were generated by a (still) unresolved set of contingent political processes around movement has been shown in some of the latest historical work on citizenship in India and Pakistan.<sup>7</sup> For these scholars, citizenship definitions were configured via events of violence, movement and state reaction at the grassroots in the late 1940s, which for Joya Chatterji entailed a shift between *Jus Soli* and ethicized conceptions of citizenship.<sup>8</sup> Work on the idea of the 'border' or 'borderline' in South Asia, too, has shown these to be unresolved spaces where certain communities continue to disrupt the bounded ideas of Indian and Pakistani citizenship.<sup>9</sup> For communities like Ravaliyaji's around 1947, this irresolution meant decisions to move or not across borders, and forms of sedentarization that were quite different to those experienced by other Indian and Pakistani citizens.<sup>10</sup> The evolving, contingent and fluid administrative applications of law created different kinds of spaces for the articulation of rights by certain criminal tribes, even while it theoretically produced unequal citizens. James Holsten has explored how marginal urban communities in Brazil, excluded from formal civic frameworks, innovate alternative (and what he describes as) autoconstructed citizenship strategies around everyday living affairs.<sup>11</sup> Most pertinent here by way of comparison are vernacular claims of citizens' rights that developed out of processes of rapid urban settlement, in a context of democratisation. In the case of criminal tribes, the key concepts in their assertions of civic/civil rights across independence revolved around similarly marginal spaces: the idea of their role as 'freedom fighters', historically inverting the implications of their status as 'law breakers'; and a revalorisation of their traditional nomadism in new contexts of work and settlement. These strategies of civic mobilisation were effective, precisely because they

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<sup>6</sup> Frederick Cooper, *Citizenship between Empire and Nation: Remaking France and French Africa, 1945-1960* (Princeton: Princeton University Press, 2014), p. 4.

<sup>7</sup> Joya Chatterji, 'South Asian Histories of Citizenship 1946-1970', *The Historical Journal*, 55.4 (2012), 1049-1071; Vazira Fazila-Yacoobali Zamindar, *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries, Histories* (New York: Columbia University Press, 2010).

<sup>8</sup> *Ibid.*

<sup>9</sup> Ananya Kabir, 'Cartographic Irresolution and Line of Control', *Social Text*, 27.4 (2009), 45-66. See also Anastasia Piliavsky, 'Borders without Borderlands: On the Social Reproduction of State Demarcation in Rajasthan', in *Borderland Lives in Northern South Asia*, David N. Gellner (ed.) (Durham, NC: Duke University Press, 2013), 24-46.

<sup>10</sup> *Ibid.* Piliavsky argues that the thief-Kanjars were typically restricted in their movements by involvement with the police administration. In contrast, the bard-Kanjars (not treated as hereditary 'criminals') moved effortlessly across vast spaces. The latter were never brought under the CTA's measures which suggests that movement itself was not necessarily treated as deviant.

<sup>11</sup> James Holsten, *Insurgent Citizenship: Disjunctions of Democracy and Modernity in Brazil* (Princeton: Princeton University Press, 2009), pp. 3-35.

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simultaneously drew on existing vocabularies, entitlements, roles and identities. Yet, they did not exclude the appropriation of English rights discourses either.<sup>12</sup>

Section I considers the criminal tribes in relation to concepts of the citizen in India, and especially the tensions and contradictions in how they might be positioned within a theoretical rights framework based around the idea of the 'marked' and 'unmarked citizen'. India's 1950 Constitution contained what scholars have described as two broad categories: of 'universal' citizenship rights on the one hand, and 'differentiated' or 'group' citizenship rights on the other.<sup>13</sup> Communities historically defined as criminal tribes were theoretically marginalized from both the legal and civic rights of the former, but in many cases and certainly collectively failed to negotiate 'group' rights like Scheduled Caste or Dalit organisations. Key to these exclusions were demographic and ethnographic logics, and histories of movement and migration.

Section II turns to debates in Bombay Presidency over how to incorporate the criminal tribes into a liberal democratic polity, in the context of devolution to the provincial governments and the coming to power of the Congress Ministry. Central to this was the first concrete attempt to scrutinize the CTA with a view to its reform through the first of a series of provincial, then central, CTA Enquiry Committees. The Committee framed the debate using political maturity or readiness as a measure of how fit these communities might be to enjoy civic rights. Despite its liberalising intent, criminal tribes continued to be associated with cultures – often defined in terms of movement and criminality – which were considered inimical to the 'duties' and responsibilities of citizenship.

Section III explores the forms of civic consciousness which emerged amongst criminal tribes in western/north-western India which, although at varying times drew on notions of the 'marked' and 'unmarked' citizen, ultimately articulated an alternative form of 'rights'. Some of these adhered to the formal notion of the Indian citizen by emphasising their reformed and 'law-abiding' nature. Most interestingly, however, others articulated specific liberation narratives which celebrated activities defined as 'criminal' by the state and drew on community narratives relating to movement and border crossing: from historical memories of local authority in an undefined or loosely defined past, to ideas about the encounter with modernity, its social mores and its resultant occupational degradation.<sup>14</sup> As Shail Mayaram expresses it, these strategies employed forms of memory and the continual performance or recovery of memory to mythologize the past, told as multiple, episodic stories in the present.<sup>15</sup> Key to these narratives were the instruments of stigmatisation used against certain ethnicities by the colonial, and subsequently postcolonial, state. Yet, as this article will show, these very forms of stigmatisation were taken up and mobilized by communities themselves.

Section IV follows the history of how the Indian state maintained instruments of control after independence by replacing the CTA with Habitual Offenders

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<sup>12</sup> Sumi Madhok, 'Five Notions of Haq: Exploring Vernacular Rights Cultures in South Asia', London School of Economics Gender Institute New Working Papers Series, Issue 25, (November 2009), 1-52.

<sup>13</sup> See Niraja Gopal Jayal, 'A False Dichotomy? The Unresolved Tension between Universal and Differentiated Citizenship in India', *Oxford Development Studies*, 39. 2 (2011), 185-204.

<sup>14</sup> Although related to a very different context, these ideas of independence and citizenship rights represent a form of political proliferation of rights comparable to what scholars have described in phases of digital globalisation, see Engin F. Isin, *Citizens without Frontiers* (New York: Bloomsbury, 2012).

<sup>15</sup> Shail Mayaram, *Against History, Against State: Counterperspectives from the Margins* (New York: Columbia University Press, 2003), pp. 14-15.

legislation. One of the abiding themes in historical work on criminality in colonial India, and criminal tribes in particular, is how the social effects of colonial penal and disciplinary structures survived into India's postcolonial democratic state.<sup>16</sup> Most work has shown that communities previously defined as criminal tribes have been subject to penal controls that effectively reproduce older, colonial forms of order. The final part of the article will show that this was, however, a complex and contingent process that was intimately tied with the process of 'denotification' as criminals itself. Discussions about the legal relationship between criminal tribes and the new categorisation of the habitual offender, as it formed in the transitional period of the late 1940s/early 1950s, were crucial in setting limits to the enjoyment of full rights.

### I. Criminal tribes and concepts of the citizen in India

India's Constitution, inaugurated in 1950 remains the largest document of its type with one of the world's most extensive and intricate statements of 'Fundamental Rights' of the citizen. The Constitution, however, also grew out of colonial frameworks: the Government of India Act (1935), which in turn was shaped by the system of 'Dyarchy' that operated under the prior Government of India Act (1919). The latter not only partitioned the subjects of legislation on the basis of a temporal concept of political 'responsibility'; it also physically excluded regions in an 'uncivilized' state from its jurisdiction. These spatial exclusions contributed to the idea of the 'margin' both within India's unchartered interior and its geographical limits, such as the Andamans. Here, the notion of terra nullius (land belonging to no-one), was an idea that established the principle that the expansion of constitutional rights could be related to processes of further colonisation.<sup>17</sup> By extension, exclusions also took place via the differential application of constitutional rights, and formal (i.e. nationality) as well as substantive (concerned with legal rights) citizenship values marking some parts of India's population as putative inhabitants of wild and uncivilized frontiers, both in terms of itineracy/habitation and culture. 'Tribal' communities, especially those explicitly marked by law as existing outside the boundaries of social convention such as 'nomadic' tribes, therefore challenged the boundaries of constitutional rights in different ways.

Scholars have reflected on a bifurcation within substantive citizenship rights in India, particularly around the relationship between universalist concepts of the citizen, produced in different ways by both liberal Nehruvian and ethno-nationalist Hindu right conceptions on the one hand;<sup>18</sup> and an idea of citizens' rights that relate to differential treatments (associated with first Law Minister, B. R. Ambedkar) on the basis of ethnic group or caste on the other.<sup>19</sup> These two strands of rights, however,

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<sup>16</sup> See Mark Brown, 'Postcolonial Penalty: Liberty and Repression in the Shadow of Independence, India c. 1947', *Theoretical Criminology*, (2016), 1-23; Meena Radhakrishna, *Dishonoured by History: Criminal Tribes and British Colonial Policy*, rev. edn (New Delhi: Orient Longman, 2008); Dilip D'Souza, *Branded by Law: Looking at India's Denotified Tribes* (New Delhi: Penguin, 2001); Henry Schwarz, *Constructing the Criminal Tribe in Colonial India: Acting like a Thief* (Oxford: Wiley-Blackwell, 2010); Ganesh Devy, *A Nomad Called Thief: Reflections on Adivasi Silence* (New Delhi: Orient-Longman, 2006).

<sup>17</sup> Udit Sen, 'Developing Terra Nullis: Colonialism, Nationalism and Indigeneity in the Andaman Islands' conference paper delivered at University of Nottingham, 2013).

<sup>18</sup> Ornit Shani, 'Conceptions of Citizenship in India and the "Muslim Question"', *Modern Asian Studies*, 44.1 (2010), 145-173.

<sup>19</sup> See Valerian Rodrigues, 'Citizenship and the Indian Constitution', in *Politics and Ethics of the Indian Constitution*, Rajeev Bhargava (ed.) (New Delhi: Oxford University Press, 2008), pp. 164-188.

were not necessarily mutually incompatible.<sup>20</sup> In effect, ‘differential rights’ led to (over time) affirmative action for certain categories of disadvantaged citizen as outlined within The Directive Principles of State Policy and Fundamental Rights. Yet this grew out of an older colonial notion of differentiation around caste and community privilege in which basic fundamental rights were absent. These older colonial reservations around caste were not based on social justice but in notions of *esprit de corps* and configured in legal structures that separated out the domain of the family from that of the public sphere, allowing the colonial system to forego social reform. Longer colonial processes of consociationalism in the state therefore shaped these frameworks,<sup>21</sup> and caste-based claims for bureaucratic employment or political representation formed the background.<sup>22</sup>

Crucial to the working of ‘group’ or ‘differential’ rights just after independence was the idea of the citizen who was marked by modern definitions of ‘caste’ and/or ‘tribe’ – identities forged largely through strategies from an earlier era. Some scholars have described the act of ethnic group definition therefore as a historical process that was flexible and reflexive, involving a dialogue between the state and the object of its gaze, transforming the social and political meaning of such ethnicities.<sup>23</sup> The category of the criminal tribe, however, is not well described by this framework, since it involved the uneven superimposition of both modern (and early-modern) concepts of ‘criminality’ on a broad array of highly differentiated pre-existing ethnicities. In many cases, these identities were already associated with law breaking.<sup>24</sup> But, as we will see below, the cultures of illegality that such definitions implied hardly lent themselves to a straightforward strategy of community based rights claims.

Unlike Scheduled Castes or Dalits and more recently Backward Castes, groups described as criminal tribes were structurally hindered in negotiating strategies of ethnic mobilisation. Any concept of disadvantage they might publicize in this milieu would always imply a heritage of law breaking, and therefore voluntary social marginality. Yet, as we will see in Section III, there were means by which community heritage, including that of law breaking, could be mobilized to demand certain rights, which anticipated the more explicit negotiation of the group-rights framework from the 1970s. That these have not been recognised in most accounts of criminal tribes is, itself, a function of the colonial record: The key documents setting out late colonial definition of caste by region by-pass such histories: The 1931 Census detailed the range of caste organisations that were, among other projects, re-representing their status and demography in response to the Census Commissioner but such terms of negotiation for criminal tribes in most regions were absent.<sup>25</sup> Most groups defined as criminal tribes were exotic footnotes in ethnographies of social

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<sup>20</sup> Jayal, ‘A False Dichotomy?’.

<sup>21</sup> Steven Wilkinson, ‘India, Consociational Theory and Ethnic Violence’, *Asian Survey*, 40.5 (2000), 767-91.

<sup>22</sup> William Gould, *Bureaucracy, Community and Influence: Society and the State in India, c. 1930-1960s* (London: Routledge, 2012), pp. 48-76.

<sup>23</sup> Nicholas Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton: Princeton University Press, 2001).

<sup>24</sup> Piliavsky, ‘The Criminal Tribe in India before the British’.

<sup>25</sup> Census of India, 1931, Report, p. 533. It was noted by A.C. Turner that ‘... the caste return has been impugned by some who contend that it is likely to perpetuate by official action what they consider to be undesirable, viz, caste differentiation, and by others who think the returns are vitiated for demographic purposes by the attempts of the lower castes to return themselves as belonging to groups of higher status.’

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custom in caste panchayats; curiosities of the official gaze, viewed as custodians of highly internalized and 'pre-modern' community practices, these communities were often represented as potentially dangerous marginals. Rather than being marked by political, social or reformist organisations, groups of related criminal tribes were, in these documents, marked by everyday customs, and bodily practices.<sup>26</sup>

There was another important logic to why group rights were unsuited to the criminal tribes: The 'group' itself, compared to those defined only by social disadvantage (as was seen in the 'Scheduled Caste' and latterly Dalit movements) was highly contingent, spatially uncertain and often chimerical. Despite apparent detailed ethnographic scrutiny, it was very difficult to arrive at a clear or consistent estimate of the population of criminal tribes in the Bombay Presidency. This uncertainty was partly due to demographic inaccuracies and partly because the definition of which communities might be described as such, changed over time and administrative space. The demographic recording of criminal tribes was an example of colonial biopolitics par excellence. Its features are worth tracing for a sense of the powerful fault lines in the demographic experiment itself, which had significant effects on civic mobilisation later on. For most of the period between 1930 and 1952, between 21 and 28 'tribes' were notified in the Bombay Presidency, amounting to a population that varied between 875,500 and 1,175,469 (of a total all India population of between 13 and 15 million), but anywhere between 2 per cent and 7 per cent of this population were directly brought under the provisions of the CTA.<sup>27</sup> There was therefore a considerable margin for change and redefinition within the structure of marking 'criminals' which has implications for how we might view administrators' own attachment to the notion of 'hereditary' criminality.

Further uncertainties arose around movement and space. The communities 'named' in Bombay within this loose demography included groups defined as 'nomadic' and a dynamic of their movement was that they could not be easily enumerated by district, region or state: Bauriah, Mang Garudi, Marwar Baori, Oudhia, Pardhi, Sansia, Waddar; and others including Berads, Bhamptas (Rajput and Takari), Bauria, Bhars, Pasis, Bhils, Chapparbands, Dharalas, Futgudis, Kaikadis, Kammis, Katbus, Kathodis, Kolis, Lamanis, Minas, Ramoshis, and Tadviss, did not necessarily have fixed territorial populations due to movement and sometimes eviction.<sup>28</sup> Indeed, the names themselves changed rapidly over time and space.<sup>29</sup> Equally, the number of 'settlements' or open prisons for those directly controlled under the CTA varied over time, being, for example, 17 in 1928 to 12 in 1946.<sup>30</sup> Settlement populations ranged from 12,861 in 1924<sup>31</sup> to 5,622 in 1933<sup>32</sup> and 4,402 in 1946.<sup>33</sup> They could spring up

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<sup>26</sup> Ibid., Appendix B, pp. 545-50: The Census remarked with macabre interest, that Bhandu, Sansia and Dom communities, for example, had derived systematic fines for 'misconduct with a young girl' and it was noted that Bhandus would claim from another party Rs.30 for the loss of a tooth

<sup>27</sup> Report of the Criminal Tribes Act Enquiry Committee, 1939 (Bombay: Government of India Press, 1939), p. 3.

<sup>28</sup> Ibid, pp. 1-2.

<sup>29</sup> Piliavsky, 'The Moghia Menace'.

<sup>30</sup> Annual Administration Report on the Working of the Criminal Tribes Act in the Province of Bombay. For the year ending 31<sup>st</sup> March 1946 (Bombay: Government Central Press, 1947).

<sup>31</sup> Working of the Criminal Tribes Act in the Bombay Presidency, Part 1, for the Year 1924 (Government Central Press, Bombay, 1924).

<sup>32</sup> Annual Admin report on the Working of the Criminal Tribes Act in the Bombay Presidency, Part 1, (Bombay, 1934).

<sup>33</sup> Annual Administration Report on the Working of the Criminal Tribes Act in the Province of Bombay. For the year ending 31<sup>st</sup> March 1946 (Bombay: Government Central Press, 1947).



with the opening of new settlements, such as that focussed on Chharas in Ahmedabad which added around 1,100 to the total settlement population in one year.<sup>34</sup> But whilst there was no fixity to official definitions of so-called hereditary criminality, the stigma of communities once notified as ‘criminal’, or being part of a larger/related ethnic category that were defined as such, was palpable for generations. In many ways, generational continuity in the idea of ‘hereditary’ criminality was therefore often a function of colonial ethnography, especially as officials would often attempt to clearly define certain ‘sections’ of tribes as ‘criminal’ and other sections as ‘non-criminal’.<sup>35</sup> This uncertainty led to a variation in civic strategies from the 1930s, which were inextricably linked to (and limited by) the contingent and fluctuating colonial project itself.

Moreover, these difficulties in precisely defining the criminal tribes saw their gradual exclusion as a distinct, if ill-defined, category in the development of the group rights framework from the 1910s.<sup>36</sup> One of the most vexed debates at the successive conferences that aimed to bring India closer to ‘responsible government’ during the interwar period was representation for the ‘depressed classes’. The problem, however, lay in who exactly this term encompassed. As stated by the 1932 Franchise Committee, ‘the term “depressed classes” has been used to cover various classes of people such as criminal and wandering tribes, aboriginal tribes, untouchables and sometimes other backward and economically poor classes’.<sup>37</sup> Importantly, in at least some of its incarnations, the depressed classes had included the criminal tribes as a separate category.<sup>38</sup> Although the category itself, as noted above, was time and space contingent, in most provinces the communities who fell within the ‘criminal and wandering tribes’ were defined by their ‘nomadic and thieving habits’.<sup>39</sup> The 1930s, though, saw a closer alignment of the depressed classes with ritual untouchability – defined by ‘pollution by touch or approach’.<sup>40</sup> This shift can be traced in large part to B. R. Ambedkar’s project of creating the Dalit as a separate political minority.<sup>41</sup> In order to establish political legibility within the vast array of other ‘depressed’ groups, clear boundaries and definitions needed to be drawn. On 23 October 1928, Ambedkar gave evidence before the Simon Commission, asking that body to grant depressed classes separate representation and reservations in the new Constitution. Ambedkar’s estimate of the depressed classes’ population was relatively high, but he made it clear that he did not include criminal tribes.<sup>42</sup> He told the Commission that he considered criminal tribes to be among the most oppressed, alongside Dalits. However, when asked whether they too should be given special representation, he stated, ‘I do not

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<sup>34</sup> Annual Admin report on the Working of the Criminal Tribes Act in the Bombay Presidency, Part 1, (Bombay, 1934).

<sup>35</sup> Piliavsky, ‘The Moghia Menace’.

<sup>36</sup> Sarah Gandee, ‘Contesting Categories: Caste, Tribe and “Criminal/Denotified Tribes” in Punjab, 1910s-1982’ conference paper delivered at University of Leeds, 2017.

<sup>37</sup> Report of the Indian Franchise Committee (Calcutta: Government of India, 1932), pp. 108-9.

<sup>38</sup> The three categories agreed upon during deliberations in the Indian Legislative Council in 1916 were ‘untouchables’, ‘aboriginal tribes’, and ‘criminal and wandering tribes’. Similar denominations of ‘aboriginal and hill tribes’, ‘depressed classes’, and ‘criminal tribes’ were used in 1917 by Henry Sharp, Educational Commissioner for the Government of India.

<sup>39</sup> Imperial Legislative Council Debates, April 1916, Proceedings 40-43. Oriental and India Office Collections (hereafter OIOC), British Library.

<sup>40</sup> Report of the Indian Franchise Committee, p.109.

<sup>41</sup> Anupama Rao, *The Caste Question: Dalits and the Politics of Modern India* (Berkeley: University of California Press, 2009).

<sup>42</sup> Ambedkar also excluded ‘aborigines’ from his definition of the depressed classes. Later, he reluctantly conceded that adult suffrage could be extended to aborigines but not to criminal tribes.

think it would be possible to allow them the privilege of adult suffrage'.<sup>43</sup> As expressed by Hari Singh Gaur during the debates, 'depressed classes' and 'untouchables' became practically synonymous.<sup>44</sup> In 1954, whilst reflecting on his stance, Ambedkar referred to the 'mangarudis for instance, who were criminal tribes but were not untouchables in the technical sense of the word; they were practically outside the pale of society and yet were not untouchables'.<sup>45</sup> It was this tension which ultimately excluded the criminal tribes from the development of group rights in the late colonial period. As Ambedkar put it, political representation needed 'something more precise, more definite'.<sup>46</sup>

As the boundaries of the depressed classes narrowed, no alternative categorisation was suggested for the criminal tribes. In 1930, a Depressed Classes and Aboriginal Tribes Committee was presided over by pivotal administrator-expert and writer on 'vagrancy' O. H. B. Starte in Bombay. It recommended the use of the term 'backward classes', which would include three groups: (a) 'the depressed classes', meaning the untouchables only, (b) 'the aboriginal and hill tribes', and (c) 'other backward classes' which could include criminal tribes.<sup>47</sup> Tellingly, however, in the first Administration Report by the newly-constituted Backward Class Department for 1931-3 there was not a single mention of the criminal tribes.<sup>48</sup> It was from this point, then, that the Bombay Government eroded a separate criminal tribe category in favour of their assimilation within more the economically-determined 'backward classes' – a point to which we return in section IV.

The difficulties faced by criminal tribes in negotiating the late colonial ethnographic state had particular effects once questions of citizenship rights became more central to Indian politics from the 1930s. The Indian National Congress had set out its 'fundamental rights of the citizen' in the Karachi Resolution in 1931. After the elections of 1937, the party was able to articulate and shape some of the resolution's principles at the level of provincial government, in the eight provinces where Congress ministries were formed. But it was not until the establishment of the Constituent Assembly and the role of Ambedkar within it as first Law Minister, that a tension between competing citizenship visions, viz, universal (non-marked) and group-based (or 'differentiated') rights fully emerged.<sup>49</sup> This tension was never resolved, both in terms of how far caste and community should be valorised as a basis for rights, but also how categories of 'marked' communities are defined and what their specific categories of rights are. Groups and communities who had at some point been defined as criminal tribes faced specific difficulties not only in relation to basic citizenship rights but also those of differentiated rights. Group-based rights contain an inherent tension, whereby individuals must negotiate their position as part of an

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<sup>43</sup> 'Evidence of Dr. Ambedkar before the Indian Statutory Commission on 23rd October 1928', in Dr. Babasaheb Ambedkar: Writings and Speeches, Hari Narke (ed.), 2nd edn, 17 vols (New Delhi: Dr. Ambedkar Foundation, 2014), II, pp. 459-90.

<sup>44</sup> 'Evidence of Dr. Ambedkar before the Indian Statutory Commission on 23rd October 1928', p. 463.

<sup>45</sup> 'Representation of the People (Amendment) Bill', in Dr. Babasaheb Ambedkar: Writings and Speeches, Vasant Moon (ed.), 2nd edn, 17 vols (New Delhi: Dr. Ambedkar Foundation, 2014), XV, pp. 483-4.

<sup>46</sup> *Ibid.*

<sup>47</sup> *The Tribune*, 25 June 1933.

<sup>48</sup> Bombay Backward Class Department: First Administration Report, 1931-33 (Bombay: Government Central Press).

<sup>49</sup> See Christophe Jaffrelot, *India's Silent Revolution: The Rise of the Lower Castes in North India* (New York: Columbia University Press, 2003).

ascriptive community, yet still commit to the idea of a civic community.<sup>50</sup> This was an irreconcilable difference for criminal tribes, as their group identity itself was in direct contestation of the idea of civic culture. The crux of the matter was that any potential ‘group’ recognition that they might aim to mobilize would automatically affect the citizenship rights of others, since the rights and freedoms of other citizens were putatively threatened by their ‘criminality’, which itself was the key marker of their historic social disadvantage.

Criminal tribes, therefore, were not easily mobilized by either universalistic or differentiated (for example, Ambedkarite or Adivasi) forms of rights claims, nor did they necessarily attempt to do so. As the next section explores, the unstable and highly variable application of the CTA on the ground itself rendered any collective political mobilisation against it, in terms of citizenship movements, problematic. Yet, as the Act began to be scrutinized in detail, with a view to its repeal, and crucially in the context of emergent citizenship models, its meanings came to be generalized for those who were (or were potentially) subject to its provisions. It was the detailed and contingent discussion of its repeal, then, that came to define how easily the soon to be ex-criminal tribes – the range of very different communities affected by its provisions – might enjoy citizenship rights. Equally, the forms of civic organisation and strategies that particular communities mobilized in the criminal tribe settlements from the late 1930s shadowed changing constitutional generalisations and debates about legislative reform. Importantly, these nascent forms of community mobilisation laid the foundations for more direct negotiations of citizenship values in the 1950s and, later, group-rights claims for reservations from the 1970s.

## II. Criminal tribes and civic responsibility

The late 1930s to the early 1950s were a period in which the status of criminal tribes was the subject of new debates around political rights, institution building, and regimes of citizenship. On the one hand, the evident discrepancies in the administration and ideology of the CTA led to official enquiry into its potential reform. On the other was a pervasive sense that these communities were incapable of civic responsibility, and thus not yet ready to enjoy the rights of the citizen. Accompanying these ‘rights’ were what the drafters of the 1931 Karachi Resolution and Part IVA (51A) of the 1950 Constitution described as ‘Fundamental Duties’. In this period, when such rights were being settled and discussed, certain putative categories of citizen were seen as potentially forgoing the enjoyment of such rights, by virtue of being unable to respect the duties and responsibilities that went with them. For example, section i) of the Fundamental Duties stipulated the protection of ‘public property’ and the duty to ‘abjure violence’. Yet, theft and violent crime, if not seen as ‘hereditary’ behaviours, were still viewed as largely immutable community cultures. Key to reformative efforts in Bombay Presidency, then, was the question of how to incorporate communities considered inimical to civic culture into an increasingly liberal, democratic polity.

A central outcome of this process was an increasing sense, both by legislators and community activists, of the general predicament faced by criminal tribes, as a specific group. The politics of identity transformation within communities thus related to the points where such communities and ‘the state’ interacted around occupation and movement. Principally, this lay partly in the fragile logic of the CTA from an

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<sup>50</sup> Niraja Gopal Jayal, *Citizenship and its Discontents: An Indian History* (Cambridge, MA.: Harvard University Press, 2013), p. 3.

earlier period and, crucially, the debates surrounding it. In the 1910s and 1920s, even as the Act was being amended to implement increasingly draconian controls of settlement and repeat offence,<sup>51</sup> those administering it on the ground were in no doubt about the problems of its implementation. Many officials found the idea of group criminality distasteful and had done decades previously.<sup>52</sup> Debate about its local efficacy therefore had a long legacy. The CTA, many realised, was applied in a haphazard, often arbitrary and reactive way.<sup>53</sup> For example, in the Kaira district in Bombay Province in 1919, a so-called criminal tribe of Dharalas made up around 40 per cent of the total population, even though only a small proportion of the total community were ever found to be involved in criminal activity, leading to the complaint that ‘the view that Dharalas are, as a class, addicted to crime, appears to be a misreading of the statistics.’<sup>54</sup> Officers in the district also pointed out the means by which *hazri*, or roll call, had become a new means for headmen to exercise power and authority over this particular community, even to the extent of extorting money and extending threats.<sup>55</sup> This focus on the Dharalas was important in later reform efforts in the late 1930s, as we will see below, linking the failed logic of colonial administration of the CTA to the views of the emergent national leadership.

This problem was not just confined to specific districts where there were relatively large, albeit internally differentiated populations such as the Dharalas. The policy of ‘notification’ was riddled with inconsistency and uncertainty. For example, in late 1924 in the Satara district of Bombay Province, the local government estimated that despite the collective population of *Kaikadis* being 726, only one person had ever been convicted. It was therefore not clear why they had been notified under the CTA at all. The Deputy Superintendent of Police of Satara was dismayed to find ‘that many *Kaikadis* of other districts have criminal tendencies is true, but this cannot be said of the Satara *Kaikadis*’. Therefore, in Satara their registration (which went right back to 1912) was cancelled.<sup>56</sup> If the physical and static identification was not difficult enough, given the logic that particular ‘tribes’ were habitually criminal, further problems existed around conversion and change in status. In January 1919, a group of *Mangs* in Satara requested exemption from roll call because they had converted to Christianity and were, therefore, theoretically no longer able to take part in caste proceedings.<sup>57</sup>

Looked at from the perspective of an entire province, it was clear that the interlaced problems of tribal identification, regional differences, and movement rendered the Act in many places either obsolete, or a license for arbitrary repression. The Inspector General of Police, Bombay pointed out in 1925 that policies often

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<sup>51</sup> In 1897, the CTA was amended to allow for the separation of children from parents within ‘reformatory’ institutions. The 1911 amendment formally established the setting up of ‘settlements’ or open prisons and the 1924 amendment introduced new severe penalties, including transportation for life for repeat offenders under the CTA.

<sup>52</sup> Piliavksy, ‘The Moghia Menace’.

<sup>53</sup> This was the case with other forms of penal legislation. See Taylor Sherman’s treatment of the failed implementation of collective fines and punishments, *State Violence and Punishment in India* (Abingdon, Oxon: Routledge, 2010), pp. 22-6.

<sup>54</sup> Report on the Working of the Criminal Tribes Act in the Bombay Presidency (including Sind) for the Year 1918 (Government Central Press: Bombay, 1919), V/24/630, OIOC, p. 21.

<sup>55</sup> *Ibid.*

<sup>56</sup> ‘Letter from Deputy Superintendent of Police, Satara to the District Magistrate, Satara, 9 Nov 1924’, Home Dept. Resolution No. 7003, 6 February 1925, pp. 253-4, Bombay Home Proceedings 1925, P/11466, OIOC.

<sup>57</sup> ‘J. Ghosal, District Magistrate, Satara to the Commissioner, 28 January 1919’, Serial no. 38, Bombay Judicial and Home Proceedings P/10542 – 10543, OIOC, p. 101..

revolved around the will of individual officers: 'The degree of activity displayed in different districts in the administration of the Act has depended largely on the interest taken by the District Superintendent of Police (SP) and the extent to which he has interested his District Magistrate in the matter'.<sup>58</sup> The result of this was that, 'Different policies and different methods have been evolved in dealing with the same tribe in different districts and much confusion and waste of energy appears to me to have taken place.'<sup>59</sup> Differential responsibility (or claimed lack of responsibility) for 'wandering tribes' also characterised the working of the CTA in collaboration with princely states.<sup>60</sup>

Two administrative problems undermined the working of the CTA: firstly, spatial/regional differentiation; and secondly, that of defining the specific ethnicities of communities. As we will see in the next section, it was these two themes that became part of the liberation narrative articulated by inmates of some of the larger settlements in Bombay Province. Yet, despite continually entering debates about the administration of the CTA through the 1910s and 1920s,<sup>61</sup> neither of these problems were fully addressed in the period when India's late colonial Congress regimes (elected in 1937 under provincial autonomy), often hand in hand with 'backward classes' officers, attempted to reform the system. Both problems, too, were ultimately carried into debates leading to the Habitual Offenders legislation from the late 1940s. Throughout the drawn out process of reform and repeal surrounding the CTA, older assumptions about caste and the spatial management of criminal law and control continued to dominate. Juxtaposed to these administrative and ideological dynamics, therefore, the question remained for India's emergent national leadership of how the targets of the CTA could be transformed into responsible Indian citizens.

The first place in which we can see this playing out was in the Bombay Congress Government's own Criminal Tribes Act Committee of 1938-9, and the events leading up to it. This Committee, chaired by the then Home Minister for Bombay, K. M. Munshi, was attended by high levels of expectation from criminal tribes in Bombay settlements, and was tasked to investigate necessary changes in policy and the existence of 'grievances'. In its opening chapters it proceeded to list all of the defined criminal tribes of the province, using the same *modus operandi* contained in police ethnographies used by the colonial state. Bhamptas were described as experts in disguise and passing themselves off as Marathas and mendicants; Kaikadis committed house dacoities in groups; Mangs were cattle lifters who also used poisoning and armed themselves with particular kinds of weapons; among Mang Garudis, women were more criminal than men. To frustrate the police, Mang Garudi women, it was written, had been known to 'strip off their clothes and stand naked before them' or to 'seize a child by its legs and threaten to dash its brains out on the ground'; Thankankar Pardhis made and repaired grindstones as a pretext to spy out localities and are 'expert cheats'; Sansi gangs settled outside villages before they attacked.<sup>62</sup> The report's authors cited the case of the Dharalas of Kaira district as an example of the immense and varied difficulties in administering the Act. Yet, they

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<sup>58</sup> 'Letter from Inspector General of Police, Bombay Presidency, no. 2538, 20 August 1925', Home Dept. Resolution 8579, 23.10.25, Bombay Home Proceedings 1925, P/11466, OIOC, pp. 1755-7.

<sup>59</sup> *Ibid*

<sup>60</sup> 'Criminal Tribes Settlement Officer, Bijapur to the Commissioner, SD, 11 July 1918, Serial No. 55', P/10547 – Political Proceedings, Bombay Province, 1919 P/1057, OIOC, pp. 217-21. For this situation in relation to Scindia, see Piliavsky, 'Moghia'.

<sup>61</sup> See P/10547 – Political Proceedings, Bombay Province, 1919 P/1057, OIOC.

<sup>62</sup> Report of the Criminal Tribes Act Enquiry Committee, 1939, pp. 3-23.

did not consider that the logic of tribe-focussed group criminality was therefore thrown into question, but rather the administrative difficulties of 'tribal' recognition: 'We would have no objection' the report concluded, 'if well defined classes with not too large numbers can be brought under the machinery of the Act on a very clear base being made out against them as regards their abnormal criminality.'<sup>63</sup>

This apparent acquiescence in ideas about group and habitual criminality on the basis of 'tribe' was given a new kind of significance as the authors of the report began to envisage that these communities could be incorporated into a liberal democratic polity. Integral to this project was the reconciliation of two problems: Firstly, the existence of a criminal law system in which normal civic rights were suspended or withheld on the basis of ethnicity; and secondly, the extent to which those who had been subject to this system could be designated as Indian citizens, when their supposed lifestyles arguably hindered their ability to exercise civic rights responsibly. This was presented most starkly as the report considered a specific moment when internees in the Umedpur criminal tribe settlement in Sholapur involved themselves in mill strikes growing out of the Red Flag Union actions in the city in 1937-8. In the official account, the Union deliberately targeted the settlement during the government enquiry, comparing in their mobilising rhetoric the fencing around the settlement with the fencing around India fixed by British imperialism.<sup>64</sup> For the report writers, '...such influences and propaganda are not conducive to the main purpose of settlement life, as its discipline becomes irksome at a stage when the settlers have not yet been "nursed" to a non criminal life. The criminal tribes by heredity and temperament fall an easy prey to any irresponsible agitation which does not impose self control.'<sup>65</sup>

This view that the inmates at the Sholapur settlement were not yet ready for civic responsibilities, being unable fully to recognise and therefore exercise their democratic rights, was shared by Munshi. In a speech on 13 January 1938, he argued that the criminal tribes

had a propensity to commit certain classes of offences. Except for that, they are *as innocent and excitable as a little child...* When I received a deputation from these criminal tribes with regard to their grievances, they first of all told me parrot-like what they had been taught to say by the Red Flag Union. Having spoken about human rights and everything else, when they were asked to tell us something which they immediately wanted, the leader turned round and said: "*Sir, what we want is a nice Maruti temple in the settlement.*" That is the naïve kind of people there. They are uncultured and highly excitable.<sup>66</sup>

In reality, a well-organised movement did develop from within the settlement, as we will see in Section III, and put forward a range of specific demands relating to the Commission of Enquiry and set out under a defined leadership.<sup>67</sup>

Munshi's concept of civic rights and responsibilities, and their effective absence among these communities, arose from a more widespread ambivalence

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<sup>63</sup> Ibid, p. 51.

<sup>64</sup> 'Report of a Labour Meeting 18 January 1938 and 2 February 1938', Home Department (SPL), No. 543 (82), pt. 1, Maharashtra State Archives.

<sup>65</sup> Report of the Criminal Tribes Act Enquiry Committee, 1939, p. 58.

<sup>66</sup> 'Criminal Tribes Settlement Sholapur – Attempts to stir up trouble among the members of', Home Department (SPL), No. 543 (82) pt. 1, Maharashtra State Archives.

<sup>67</sup> Cutting from The Bombay Sentinel, 19 January 1939, contained in 'Criminal Tribes Settlement Sholapur', Home Department (SPL), no. 543 (82) pt. 2. Maharashtra State Archives.

surrounding the definition and targets of social reform. The Bombay Congress had never advocated a programme of reform or rehabilitation for criminal tribes before the formation of the 1938 government. Even where they advocated the 'uplift', as they put it, of 'depressed classes', social reformers focussed on the removal of presupposed cultural habits as a means of moving more towards a majoritarian (often Brahmanical) ideal.<sup>68</sup> These projects never included communities defined as criminal tribes. Some 'Scheduled Caste' leaders in the Bombay Presidency recognised the idea of a coherent, self-defining group of criminal tribes in many regions. But they, too, were ill disposed, not least for strategic reasons, to consider criminal tribes as a separate category; Ambedkar's refusal to acknowledge them as part of the 'Depressed Classes' movement is a case in point.

Munshi's stance on the (lack of) civic culture among criminal tribes is also partly explained by the historical milieu of the Congress party in Bombay Province. Both B. G. Tilak and G. K. Gokhale had expressed support for the continuation of the CTA, and in the case of Tilak, the exclusion of criminal tribes from special consideration in military recruitment. In opposing the recruitment of Berads and Ramoshis into the Indian Army, the latter argued that 'Thieving is their occupation. To receive beating is their occupation. They will not stand the discipline of the army.'<sup>69</sup> Although the Congress governments in Bombay and the United Provinces were ostensibly committed to progressive social reform, the voices of cultural conservatism were strong.<sup>70</sup> In the same year that the Committee undertook its work in 1938, Munshi founded the Bharatiya Vidya Bhavan, which focussed on Sanskrit research and had as one of its objectives a promotion of 'faith' in the culture of the land and in particular its epics and the Bhagavad Gita. Not surprisingly, his response to the work of Christian missionary organisations in the criminal tribe settlements was highly reactive. Rather than encourage the promotion of community-specific religious cultures, Munshi stressed the need for a Hindu Kritankar and Muslim moulvi once a week, with the banning of bible classes and Sunday schools.<sup>71</sup>

Implicit in the 1939 Report and Munshi's views was the idea that the criminal tribes were not only not ready for release, but also incapable of civic responsibility. Indeed, any alternative claim of rights that they might propose could only ever be viewed not just as a challenge to mainstream ideas of the rights-bearing Indian citizen (as came to be the case with Dalits), but actually a direct threat to it, in everyday terms of presumed criminality. This tension can be illustrated by the debates over the Bombay Police Act Amendment Bill in 1938. When the Bill's restrictive provisions were called into question by some members of the Legislative Assembly, Ambedkar responded: 'there are occasions when, in order to protect the liberty of the large mass of the people, the liberty of the hooligans, the criminal sections in the society, can be suspended'.<sup>72</sup> A notion of this threat to the general 'rights' of society at large was

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<sup>68</sup> See John Zavos, *The Emergence of Hindu Nationalism in India* (Delhi: Oxford University Press, 2000); William Gould, 'The U.P. Congress and "Hindu Unity": Untouchables and the Minority Question in the 1930s', *Modern Asian Studies*, 39.4 (2005), 845-60.

<sup>69</sup> 'Kesari 25<sup>th</sup> June, 1918, p. 2, Speech at Kirloskar Theatre'. I would like to thank Dr. Robert Upton for drawing my attention to this reference.

<sup>70</sup> See the work of Tommaso Bobbio on Congress leaders' responses to municipal and civic reform in the 1930s. Tommaso Bobbio, 'Migrants, Slums and the Construction of Citizenship in Gandhi's Ahmedabad (1915-1930)', *Journal of the Royal Asiatic Society*, 25.1 (2015), 99-115.

<sup>71</sup> 'Note, 22 April 1938', in Munshi Collection, Reel 27, Bombay Ministry, Nehru Memorial Museum and Library.

<sup>72</sup> 'On the Bombay Police Act Amendment Bill: 1', in Dr. Babasaheb Ambedkar: *Writings and Speeches*, II, pp. 140-1.

## Settling the citizen, settling the nomad

repeatedly illustrated in debates about where to settle criminal tribes, and was particularly sharp in larger cities. For example, in the summer of 1929, the Bombay government proposed setting up a criminal tribe settlement and ‘free colony’ in the Worli Chawls area of Bombay City. However, the Commissioner of Police, Bombay, objected on the basis that the Chawls were situated near Worli Marine Drive on which much money had been spent to provide building sites for ‘better class residences’: ‘it is obvious that the better classes will not care to take up their residence in that part of the city’ if criminal tribes were to move there.<sup>73</sup>

Key here too was the idea of the public good. In the quantitative calculations underpinning the maintenance of settlements in the 1920s, as viewed by O. H. B. Starte, in budgetary discussions surrounding the costs of maintaining settlements, custody was viewed in stark terms as a quantifiable public good which could be measured by the reduced effect of free criminal tribes on civil society

*...by the expenditure of less than two lacs of rupees [Rs. 200,000] a year the public have been saved being robbed of an amount not less than Rs 4,60,000/- during the year...Thus I think it is arguable that even apart from the hope for the future of the reformation of these people it pays the public to have these people in settlements.*<sup>74</sup>

For Starte, ‘settlement work was a paying proposition for the public’, which had quantifiable results at multiple levels, sometimes connected to criminal tribe cultures themselves: The amount of ‘false coinage’ in circulation, Starte argued, had dropped since the Chapparband community had been systematically ‘reformed’ in settlements.<sup>75</sup>

Moreover was the long-standing colonial conceit that connected characteristics of indigeneity to an intrinsic inability to understand or enjoy civic rights. In the early government debates about the uses of reformation in the criminal tribe settlements, Starte argued that criminal tribes ‘had to be governed from a personal point of view... he tends to bring all the problems to one man. He will not easily learn the art of petition sending and of lobbying government – they may be a curse to him’.<sup>76</sup> From the late 1920s, however, organisations and associations amongst criminal tribes in western/north-western India did begin to mobilize and exercise civic consciousness. These instances (as explored below) were often uncoordinated and locally rooted, but they revealed an essential moment of proto-citizenship claim-making. By mobilising around their specific identity as criminal tribes, and the attendant denial of civic rights, these organisations foregrounded the ‘criminal tribe’ as a particular type of political subject.

### III. Civic mobilisation and mobilising criminality

India got freedom in the year of 1947, but our community was still in jail. Why?  
Why did the Indian govt keep all Chharas in the jail even after India's freedom?

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<sup>73</sup> ‘Objection from P. A. Kelly, Commissioner of Police, Bombay to Secretary to Govt., Letter no. 8370/95-A, 5<sup>th</sup> August 1929’, in Establishment of a Settlement and a Free Colony in Bombay City (Worli Chawls), Government of Bombay Home Department Proceedings 1928, P/11838.

<sup>74</sup> ‘Criminal Tribes Act: Working of – Note prepared by Mr O. H. B. Starte for budget discussion’, Home Dept – File 5651 1924 – Maharashtra State Archives.

<sup>75</sup> Ibid.

<sup>76</sup> ‘Criminal Tribes; certain proposals of General Booth of the Salvation Army for the reclamation of Criminal Tribes in India’, Judicial Department, Vol 102, no. 457 1911, Maharashtra State Archives.



## Settling the citizen, settling the nomad

We got our freedom five years and sixteen days after India got independence. And we celebrate 31<sup>st</sup> August 1952 as our independence day...<sup>77</sup>

One of the abiding narratives of the contemporary Denotified and Nomadic Tribe – or ‘DNT’ – movement is the many-guised account that criminal tribe freedom was ‘delayed’ by five years following independence.<sup>78</sup> Celebration of ‘independence’ for those associated with the movement does not take place on 14-15 August, with reference to 1947, but on the occasion of Vimukti Divas on 31 August, with reference to 1952, when the legal status of the communities changed.<sup>79</sup> In fact, criminal tribes in Bombay Province were denotified in 1949, not 1952, suggesting that a larger and more generalized narrative of DNT identity has gradually transformed, over time, processes of memorialisation. The creation of the universal category of DNT is itself therefore part of this memorialising project and its subsidiary characteristics – the narrative of how a ‘people’ were denied justice in relation to a larger national movement of liberation, but were architects of something autonomous of it. It is also the product of a process of redefinition of these communities that took place over a longer period of negotiation, and which has been galvanized by the likes of Ganesh Devy and Mahasweta Devi in the formation of the DNT Rights Action Group (RAG) from 1998. Some of the key themes of the DNT RAG’s agenda around civic consciousness, justice and citizenship can be traced back into the late 1930s in western/northern-western India, and especially to the Munshi Report of 1939. Although clearly deployed for contemporary political ends, the key message is that criminal tribes were active agents in their eventual freedom, able to determine and define their own narratives of liberation, and not simply passive recipients of the repeal of the CTA.

As explored above, the debates on civic responsibility from the late 1930s increasingly positioned the criminal tribes as an identifiable group which (as for the Dalit movement) faced a specific predicament. In important respects, though, this was quite unlike the Dalit movement in which ‘organic’ intellectuals were able to posit convincingly an idea of *Acchuts* (untouchables) as original inhabitants.<sup>80</sup> Equally, they were unable to collectively articulate a clear ‘*adivasi*’ identity in terms of indigeneity, isolation and primitivism.<sup>81</sup> In certain regions, communities marked as criminal tribes did adhere to such characteristics, or fell within the scope of Dalit movements, but their internal heterogeneity and regional variation precluded the formation of a shared political identity on these terms. Unlike many early Dalit movements, groups marked as criminal tribes could not articulate autonomous identities within a framework that reconfigured Hindu religious culture in opposition to Brahmanism, since their ‘stigma’ was not principally related to ritual status. It was, however, inherently related to historical narratives of movement, occupation and settlement. And the latter were ultimately projects that posited the idea of the community in relation to the powers of the state – powers to define certain occupations and ways of life as ‘illegal’ and which imposed forms of settlement on the itinerant. In other words, the (largely hidden) community activists mobilized civic

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<sup>77</sup> Interview with Dr. Ketananand, 9 February 2013, Chharanagar, Ahmedabad.

<sup>78</sup> See DNT Rights Action group (RAG) accounts, for example in the *Budhan* newsletter over the period from 1998.

<sup>79</sup> See *Banjara Times*, 14 September 2009 for the 2009 celebration of *Vimukta Divas* in Mumbai.

<sup>80</sup> See Ramnarayan S. Rawat, *Reconsidering Untouchability: Chamars and Dalit History in North India* (Bloomington: Indiana University Press, 2011), pp. 120-54.

<sup>81</sup> Kriti Kapila, ‘The Measure of a Tribe: The Cultural Politics of Constitutional Reclassification in North India’, *Journal of the Royal Anthropological Institute*, 14.1 (2008), 117-34.

identities which valorised, on the one hand, a past occupational status around community 'skills', and on the other a past of free movement and spatial inter-community interaction that complicated geographical boundaries.

Within the official and public record of the late colonial period, there was no recognition of political/community organisations amongst criminal tribes. Yet, in direct interviews with 32 individuals across Maharashtra and through more careful archival work, we discovered that this was often a function of archival practices in the compiling of data for official circulation to government officers.<sup>82</sup> The formal administration reports on the working of settlements in Bombay in the 1930s, produced each year, contained sub-headings under 'health and education', 'sports', 'boy scouts and guides', and the products of small co-operatives and labour activities. Alongside these mundane reform activities were tabulated figures of offenders by 'tribe/caste', numbers of absconders, or figures released to the 'free colony' but nothing on political agitation, lobbying or civic movements.<sup>83</sup> However, although absent from the reports, government discussions around the opening and closing of settlements around Sholapur certainly suggested that officers already had experience of inmates getting involved in labour disputes. For example, the Kalyanpur Settlement was closed down in 1931, and residents sent to Umedpur, for fear of the effect of being so close to the city and its labour troubles over the late 1920s and early 1930s.<sup>84</sup>

Community mobilisation at the end of the decade was more obvious but still not properly documented in official reports. The 1939 Report made only passing reference to the role of criminal tribes in the Red Flag Union strikes in Sholapur.<sup>85</sup> Yet, in police reports the names of specific criminal tribe leaders who had taken an instrumental role in mobilising settlers for the strike were mentioned. Settlement inmates certainly had powerful motivations for mobilising against labour exploitation, given the use of criminal tribe labour in projects such as Nira in other parts of the province.<sup>86</sup> In police reports, Rhising Khanda Bhat, Garhya Shabhu Bhat, Mahadu Gurappa Bhat and Tippa Krishna Kaikadi were all named as leading rabble rousers. Reports on speeches included direct mention of how settlers would be encouraged to 'take the lead in any future strikes'.<sup>87</sup> Insubordination in the settlement, too, had led to the transfer of three other leaders on 10 November 1937, Shesya Gundi Kaikadi, Bhima Ambaji and Tuka Parsu, and as they were being transported other settlers threw stones at their transport. When those allegedly involved in the commotion were arrested, they claimed that they had been framed by the settlement management for

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<sup>82</sup> We carried out the interviews principally in the cities of Ahmedabad, Pune, Mumbai, Sholapur and Baramati over the first 6 months of 2013. Some additional interviews were carried out in Punjab and Delhi in April-May 2016.

<sup>83</sup> See Annual Administration Report on the Working of the Criminal Tribes Act in the Bombay Presidency (Bombay: Government Central Press, 1928); See also Bombay: Accountant General, Departmental Audit Manual (Jails and Convict Settlements and Criminal Tribes Settlement Departments) of the Office of the Accountant General, Bombay (Calcutta: Government of India Press, 1928), V/27/301/260, 1928, OIOC.

<sup>84</sup> 'Criminal Tribes Settlement Kalyanpur (Sholapur) – Removal to Umedpur, construction of additional buildings', Home Department, File 4411 – I, 1923-4, Maharashtra State Archives.

<sup>85</sup> Annual Administration Report on the Working of the Criminal Tribes Act in the Province of Bombay for the year ending 31 March 1939 (Bombay, Government Central Press, 1939)

<sup>86</sup> See for example, 'Criminal Tribes Settlement: Nira Projects – Providing Employment for Settlers at the', Home Department File 9528-I 1926, Maharashtra State Archives.

<sup>87</sup> 'Report at Degaon Naka, 17 January 1938, Criminal Tribes Settlement Sholapur – Attempts to stir up trouble among the members of', Home Department (SPL), No, 543 (82) pt. 1, Maharashtra State Archives.

attempting to organize a 'reception committee' for the arrival of the Premier of Bombay Presidency.<sup>88</sup>

It was during the late 1930s, too, that criminal tribes began to mobilize more concretely against the CTA. The existence of a criminal tribe-led strike/protest (andolan) in 1938 in Sholapur was discussed in debates on the Bombay Habitual Offenders' Act 1947 by Shivbishalsing Harpalsing representing the Railway Union: The movement had a clear set of aims, with the central one being the repeal of the CTA.<sup>89</sup> The mobilisation for demands which specifically related to their status as criminal tribes, as opposed to a certain category of exploited labourers, represented a significant shift. Although these demands were far from the group-rights claims that emerged in the 1970s, they revealed an early form of civic consciousness that related specifically to their status as criminal tribes. These demands for the repeal of the CTA, or exemption from it, were frequently couched in terms of formal civic responsibility. In north-western India, groups like the Adi Hindu Conference and the All-India Shradhanand Dalit Uddhar Sabha had lobbied for the exclusion of certain – although not all – communities from the CTA. They emphasised the contribution of groups like the Bawarias and Harnies to the war effort and their 'law abiding habits'.<sup>90</sup> By the mid-1940s, such narratives had been appropriated by individual communities who petitioned the government for their removal from the list of criminal tribes. When members of the Sansi community in Karnal lobbied the District Magistrate, for instance, they made sure to emphasise that, 'We are almost all voters of the P.L.A. [Punjab Legislative Assembly]'.<sup>91</sup> And Bawaria petitioners cited the jail returns of previous years to legitimize their argument that they were the 'most law abiding and peaceful citizens of the State'.<sup>92</sup> At the same time as the Congress government in Bombay was debating reform of the CTA, then, criminal tribes across a far-flung region had begun to mobilize using similar motifs of civic responsibility.

Interviews with a community elder who grew up in the Sholapur settlement corroborated and enriched the archival evidence of organised direct action, and challenged the Congress ministers' dim view of criminal tribes' ability to exercise civic responsibility. How this activity is remembered by ex-members of the settlement is now part of a larger discourse of anti-colonial struggle – a distinctive narrative of 'freedom fighting' which forms a repeated theme in the political strategies of the contemporary DNT movement. As we will see below, this criminal tribe anti-colonialism is also formed from usage of community 'law breaking' that inverts notions of criminality as socially productive and draws on anti-state discourses of the interwar period. Revealing an indigenized notion of civic responsibility, these strategies employed anti-colonialism as a means of celebrating illegality and criminality.

It was clear that the leadership in the Sholapur settlement during 1938-9 had framed specific demands that were neither purely political nor simply related to the actions of the Union. One set related to the strike itself, but further demands related to, on the one hand, release from the settlements under the new Congress government,

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<sup>88</sup> 'Hieb to Devadhar, 8 February 1938', *Ibid.*

<sup>89</sup> 'Legislative Assembly Debate on 8 October 1947', in 'Habitual Offenders', Law and Judiciary Department B. 41-52, Vol no. 63, Maharashtra State Archives.

<sup>90</sup> *The Tribune*, 31 December 1927; 27 May 1928.

<sup>91</sup> 'Petition sent to Superintendent of Police, Karnal, dated 6 September 1946', in 'Request by members of the Sansi community for the exemption of their tribe from the operation of the Criminal Tribes Act, 1924,' Home/Judicial Dept., B Proceedings, Punjab Government Civil Secretariat, 1947, File no. 202, Punjab State Archives, Chandigarh.

<sup>92</sup> *The Tribune*, 22 February 1947.

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and on the other, for the development of specific settlement facilities and welfare: a temple, better sanitation, and infrastructure in the area of the settlement and free colony. Inmates had also set up their own committees to respond to the work of the Red Flag Union. Bhimrao Jadav, a teenager at the time of the strike, articulated this in terms of a broader anti-colonial struggle:

When Mr. Munshi visited in 1939 the Sholapur settlement, we volunteers *actually established on organisation called "Settlement Sewa Sangha" through which we used to agitate against the C.T. Act... we volunteers came together and decided on the movement against the British and settlement act. We (in Sholapur Settlement) were the first to start an agitation against the settlement act.*<sup>93</sup>

The organisations were not exclusively or directly political, however. In the mode of public manifestations of popular performative anti-colonialism in the streets of Bombay, but crucially via specialist 'professional skills' of the community, Jadav described the use of theatre as a means of expressing frustration and solidarity in the face of the local administration and settlement management:

The people in the settlement also performed plays in front of the settlement officers... *It was a good media for all of us to show our anger to the settlement officer... Apart from this we also showed the different acts of Mahabharata and Ramayan. This was the media for volunteers to make awareness among the settlers. In this process we established one organisation named "Bal Hanuman Tarun Mandal"*<sup>94</sup>

There was a tension in these performances – publicity for the serious claims of settlement organisations for civic and political responsibility – yet at the same time the promotion of this via 'traditional' community skills, including those that might have been seen as 'criminal'. In a vein that was common to popular anti-colonial movements in cities across north India, this was a protest that revolved around the idea of reclaiming cultural space.<sup>95</sup> It also involved the inversion of consolidated ethnic 'traits' of communities themselves as a means of extending forms of protest, and appropriation of majoritarian Hinduism.<sup>96</sup> A common theme in European discussion of criminal tribes' 'traditional occupations' was that they were, not unlike the handloom, obsolete in the face of reform and 'modernisation' brought by colonialism.<sup>97</sup> Jadav pointed out that alongside the theatrical performances in the settlement, 'sometimes people would show the tricks they used in thieving. The women from the Kanjar Bhat community would dance before the officer. The Chapparband community would show how they make duplicate coins'.<sup>98</sup>

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<sup>93</sup> Interview with Bhimrao Jadav, Sholapur, 9 February 2013.

<sup>94</sup> Ibid.

<sup>95</sup> See Sarah Beth, 'Taking to the Streets: Dalit Mela and the Public Performance of Dalit Cultural Identity', *Contemporary South Asia*, 14.4 (2005), 397-410.

<sup>96</sup> This was a common occurrence in interwar U.P. too, see William Gould *Hindu Nationalism and the Language of Politics in Late Colonial India* (Cambridge: Cambridge University Press, 2004), 35-86.

<sup>97</sup> See the account of the Salvation Army leader William Bramwell Baird, unpublished manuscript, 'The Call of the Jackals', available in the Salvation Army William Booth College, London: 'the "traditional skills" of tribes people were useless in the "civilized world"', p. 291.

<sup>98</sup> Interview with Bhimrao Jadav, 9 February 2013, Sholapur. For contemporary notions of community honour around criminality, see Piliavsky, 'The "Criminal Tribe" in India before the British'.

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The local Congress organisation's response was less to the traditionally civic minded Settlement Sewa Sangh than to the anti-colonial possibilities of these skills. As with the Red Flag Union, the local Congress co-opted members of the settlement as foot soldiers into its movements – especially those requiring direct action: 'In the year of 1942, our group in the Settlement were asked to destroy the mills and thermal power centre with a bomb. But somehow it did not happen,' Jadav explained.<sup>99</sup> As a basis of their involvement in Quit India, settlers even thought it might possible to get a ticket for one of the constituencies in the Sholapur region for the 1946 elections: 'Me and Nagarkar went to Dr. Antrolikar (Congress Chairman in Sholapur) but that time he described us as "rats". He said you are not capable of contesting the election.'<sup>100</sup> Jadav's emphasis on criminal tribes as participants in the freedom movement therefore connected to some of the main 'moments' of national anti-colonial protest – the late 1930s strikes in industrial cities, and the 1942 Quit India movement.

On the other hand, Jadav's narrative deliberately evoked the unique position of criminal tribes as 'law breakers', as figures legitimately 'fighting' or 'robbing' an illegitimate state, especially via 'brave' or life-risking activities. In this connection, some of our interviewees made reference to the famous Bhandu rebel-bandit, Sultana Dhaku.<sup>101</sup> The latter carried out dacoities in the United Provinces during the period of Gandhi's 'Non-Cooperation' movement. Official accounts related how the gang of 'Bhandus have informers and friends in every village from about Kashipur and Jaspur... the jungle dweller, be he forest guard or cowherd, zemindar or cultivator, is still ready to supply them with food and to give them news of the movements of the police'.<sup>102</sup> They also used the criminal tribe settlement itself as a base for operations, inverting the functions of colonial control.<sup>103</sup> Figures like Dhaku formed part of a larger theme in historical memory of the anti-colonial functions of the settlement: Avinash Gaikwad, a descendant of a member of a criminal tribe hostel in Baramati argued that

*These communities also fought for freedom of country...they never did thieving for oneself but also for the community like Daku. Elderly people have told me that our people would give shelter and work with the freedom fighter when they were fighting against the British, providing security, conveying messages from one place to the other sometimes through songs.<sup>104</sup>*

Western India had its own Sultana Dhakus – figures made popular in subsequent folklore by opposition to the administration or police. Mirkhan Sultan Khan Barouch, for instance, who assaulted revenue officers, escaped to Baroda state

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<sup>99</sup> Interview with Bhimrao Jadav, 9 February 2013, Sholapur.

<sup>100</sup> Ibid.

<sup>101</sup> For example, Avinash Gaikwad, 10 February 2013, Baramati; Girish Prabhune, 11 February 2013, Chinchwadgaon, Pune.

<sup>102</sup> 'F. S. Young, United Provinces: Report on Operations of 1922-24, against the Bhandu dacoity gang, dated 1923-24.' MSS Eur F.161/128, OIOC (1922-24). Frederick Young's account of Dhaku read not unlike a Boys Own Annual adventure story, with the story of a long duel over 1921 and 1923 between Young and Sultana.

<sup>103</sup> According to another account by a Salvation Army officer, Mrs Brigadier Smith, Dhaku's gang communicated with female family members staying in the settlement via a secret 'code' which made it impossible for them to decipher postcards which came to the settlement. Smith claimed that her son had learned the code and as a result was threatened with kidnap. 'The Inside Story of the Long Duel', by Mrs. Brigadier Smith (retd. Missionary officer), William Booth College, London.

<sup>104</sup> Interview with Avinash Gaikwad, 10 February 2013, Baramati.

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and who in April 1922, recruited ‘tribes’ of Minas.<sup>105</sup> Or Laxminarayan Jharwal, who led large protests in the streets of Jaipur and burnt effigies of the CTA during the 1940s.<sup>106</sup> Such narratives have been important in creating an internal, community hagiography which allow certain groups of ex-criminal/denotified tribes to identify and celebrate individuals who struggled against the British. In Chharanagar, Ahmedabad, one of our interviewees who was related to a member of the Ahmedabad settlement, Dr. Ketananand reported that

The Chhara fought against the British during their rule over India. Jalam Singh, Paroshi, Thoriyalal Indrekar, Bacchu Jetha Tamanche, Dadubhai Bajrange, etc. Some of our freedom fighters were from the Chhara and Adodiya communities. And therefore, we (Chharas) were earlier known as freedom fighters.<sup>107</sup>

Contemporary DNT activists thus position the criminal tribes as forgotten ‘warriors’ in the freedom movement:

The Britishers considered fighters like Azad Subhas Chandra Bose, Bhagat Singh as criminals, but their contribution paid off and they are remembered as warriors. But, we as tribals also contributed, but there is no recognition in history as we are tribals.<sup>108</sup>

The emphasis on recognition, or a lack thereof, has been key in the formation of cross-communal DNT movements since the 1970s.<sup>109</sup> Not only has their historic contribution to the freedom struggle been overlooked by society at large, the narrative goes, but their invisibility has been reproduced within citizenship frameworks. Recognition, therefore, is two-fold: reclaiming community prestige by reinterpreting their ‘criminality’ in terms of freedom fighting, and utilising this to define the parameters of their difference for group rights.

The contemporary movement stands in contrast to the earlier instances of civic mobilisation during the late colonial period in its efforts to attain group differentiated citizenship rights. But it has also clearly inherited certain narrative strategies based in community histories of movement which were first articulated by the nascent and individualised demands for rights from the 1930s. On the one hand, movement was a powerful idea in relation to direct and local opposition to the state. A number of our interviewees who had spent time in criminal tribe settlements, whether traditionally defined as ‘nomadic’ or not, argued that it was the lifestyle of wandering and movement that marked independence. By extension, in the 1940s and 1950s, movement and dispersal became, too, a claim for special status in relation to the state. For Ladooben, who had been confined variously in Ludaki jail, Ahmedabad settlement and Ambernath settlement, the experience of movement, travel, absconding from settlements and the links with kin in Saurashtra was a matter of community pride.<sup>110</sup> On the other, movement was also the basis of community histories which established a status of both respectability and regional power. Most

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<sup>105</sup> ‘Dacoities in Gujarat’, MSS Eur F.161/56, OIOC.

<sup>106</sup> Laxminarayan Jharwal, unpublished memoir, Freedom Fighter Laxminarayan Jharwal (translation).

<sup>107</sup> Interview with Dr. Ketananand, 9 February 2013, Chharanagar, Ahmedabad.

<sup>108</sup> Interview with Balak Ram Sansi, April 2016, Patiala.

<sup>109</sup> It is important to note that the DNT identity only has purchase amongst certain sections of the community as a whole.

<sup>110</sup> Interview with Ladooben, 14 February 2013, Ahmedabad.

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'caste' organisations from the early twentieth century narrated a transition in status to that of a 'pariah' from a past, regionally fixed association with Brahmanical or Rajput status.<sup>111</sup> Freedom of movement for many criminal tribes, for example Chharas and Sansis, was also closely related to the trans-regional links between different communities marked as 'criminal' and the idea of a common Rajput ancestry, which itself was lost because of migration or movement. Here then, was a claim of state misrecognition of the community's historical importance. Ketananand, in a similar vein to the Sansi elder at the beginning of this article, described the relationship between space, identity and political mobilisation:

The Chhara people are originally from Rajasthan and belong to the royal Rajput clans. Some people know us as Marwad because our ancestors are from the Marwar area of Rajasthan.<sup>112</sup>

This historic mythologizing of a fall from grace, as it were, from a glorious past of Rajput respectability to degradation and eventual classification as criminals forged a distinct political narrative, one which was articulated across several regions and divergent communities, and for multiple aims. From the 1930s, individual communities adopted these narratives to negotiate their problematic incorporation within the evolving frameworks of citizenship rights. In their petition to the government, the Bawarias earlier cited contended that 'they once lived in Marwar as Chohan, Rauthor, Puar, Bhatti and Scongrey Rajputs but were driven out of their ancestral province after the fall of Maharana Pratap'.<sup>113</sup> Before independence, then, such civic strategies were largely utilized to contest their status as 'criminals'. After 1947, and especially after the founding of the Constitution in 1950, communities employed their mythological pasts to directly engage with the promise of universal citizenship rights. Lobbying the government for exemption from the CTA was taken up in earnest between 1947-52 as criminal tribe activists recognised the tension between a liberated India and their lack of freedom. In a petition to the Home Ministry in 1949, migrants from Pakistan in Karnal district, East Punjab, lamented that:

The Indian Sub Continent is free but we are yet a prey to the tyranny of the *Criminal Tribes Act* [...] We belong to the Rajput Tribes [who] struggled hard for the Fort of Chittor Garh under the banner of Maharana Partap[sic] Singhji but were ultimately compelled to leave our home-land for Punjab due to the tyranny of the Moughals.<sup>114</sup>

In the context of independence, greater emphasis was placed upon their active fight against invading Muslim marauders. Denied the possibility of civic responsibility in the present day, as they were considered ill-suited to the duties and obligations such rights bestowed, these narratives articulated their historic contributions to society, namely in the form of a symbolic sacrifice of their 'home-land' and consequent

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<sup>111</sup> Lucy Carroll, 'Colonial Perceptions of the Indian Society and the Emergence of Caste(s) Associations', *Journal of Asian Studies*, 37.2 (1978), 233-50.

<sup>112</sup> Interview with Dr. Ketananand, 9 February 2013, Chharanagar, Ahmedabad.

<sup>113</sup> *The Tribune*, 22 February 1947.

<sup>114</sup> 'Letter from Yash Pal and Surinder Singh, village Gumthala Gehru to S. P. Mahna, Ministry of Home Affairs', in 'Appointment of a Committee to enquire into the workings of the CTA, 1924, into the Provinces with a view to modifying or repealing it', Home Dept., Police-I Section, 22/1/49, National Archives of India (NAI).

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degradation. In the vein of nationalising histories, such a narrative posited the criminal tribes as actors within a heroic landscape of struggle against invaders.

Reflection on movement and migration also formed a way of connecting the lifestyles of 'pariah' migrants to the national rehabilitation of partition migrants in the late 1940s. A further repeated refrain from those recollecting the period of independence was the tension between post-partition rehabilitation for migrants from Pakistan and the failures of the Indian government to incorporate criminal tribes within its welfare regimes. Ketanand told us that:

After the partition, the Indian government provided all the necessary facilities to the Sindhi community who had migrated from Pakistan. The government also provided them with help to start livelihoods and businesses but at the same time the all the NT-DNT groups in the India were ignored and left to their fate.<sup>115</sup>

Implicit in such reflections was the idea of the temporary 'encampment' for migrants, akin to the criminal tribe settlement but which eventually resulted in re-housing and full integration into regimes of citizenship. In contrast, criminal tribes faced a more permanent form of 'encampment', both spatially, in terms of their continued physical placement within settlements, and politically as the government failed to incorporate them within its citizenship regime. Recognition of this tension is not merely an element of the contemporary DNT movement's historical memorialisation, though. After the founding of the Constitution, this failure was seized upon by members of the criminal tribes who increasingly positioned their claims in relation to principles of citizenship. In Delhi, the local Sansi Mahasabha lobbied the State Congress Committee in the early 1950s to place the repeal of the CTA on their agenda.<sup>116</sup> Recognising their new-found voting power, the Sabha threatened, 'we will not exercise our right to vote' unless the Act was repealed before the next elections. In addition to their new democratic powers, the freedoms supposedly promised by their status both as citizens of independent India and also, from 31 August 1952, as ex-criminal tribes – and therefore as theoretical recipients of full citizenship rights – were deployed for political ends. In 1954, for instance, Joginder Singh and Bhagwan Singh sent a petition to Delhi's Chief Commissioner after his visit to the Kasturba Nagar Colony:

We listened to your speech and saw a flame of hope and success in it that we were also going to be counted among the free citizens[sic] of free India after a slavery of countless years.<sup>117</sup>

In the early 1950s, the demands being made were still far from the cross-communal claims for group-differentiated rights that emerged from the 1970s, or that we see in the contemporary DNT movement today. Often, bar the larger settlements such as Sholapur, individual community identities or associations remained the primary means of mobilising for group recognition. Yet, a more cohesive political identity predicated upon their status as criminal tribes, and especially as not-yet liberated citizens in a free India, was emerging. The earlier repeal of the CTA in

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<sup>115</sup> Interview with Dr. Ketananand, 9 February 2013, Chharanagar, Ahmedabad.

<sup>116</sup> Indian News Chronicle, 27 October 1951.

<sup>117</sup> 'Representation from Joginder Singh and Bhagwan Singh, 25-11-1954' in 'Miscellaneous correspondence relating to ex-Criminal Tribes and Habitual Offenders', Chief Commissioner's Office, Home Branch, 1954, 8(8)/54, Delhi State Archives (hereafter DSA).



Madras (1947) and Bombay (1949) was seized upon by activists in other regions, such as Delhi, which had yet to do so.<sup>118</sup> Similar forms of strategies were adopted by a heterogeneous and geographically diffuse set of communities across the western/north-western region. These drew upon the longer, historic narratives of movement, occupation, and criminality which were evident in the anti-colonial protest of the late colonial period but more explicitly engaged with the idea of a political or civic culture.

#### IV. The nomadic citizen and ‘rehabilitation’

Just as the criminal tribes recognised the tension between a free India and their ‘delayed’ freedom, the government too had to reconcile the question over their problematic incorporation within the liberal democratic state. Central to this was the decision not simply to repeal the CTA but to replace it with a new regime of controls on habitual offenders. The early state level Habitual Offenders legislation passed in Bombay (1947) and Madras (1948) were implemented, effectively, on the basis of continuity of administration and commitment to control, as envisioned by the 1939 Munshi Report. This legislation, containing many of the same provisions regarding control of movement and settlements as the CTA, formed the basis for discussions surrounding a centrally-enacted All-India repeal Bill and possible Habitual Offenders Act (hereafter HOA). These debates presupposed that the objects of the legislation would be problematic recipients of civic rights. Compared to the context of the state level observations in the Munshi Report, the Fundamental Rights of the citizen had been recognised (or were about to be recognised) in the Constitution of independent India. This brought urgency to the subject of substantive citizenship rights, especially as its themes were being debated and defined around partition migrants. Most importantly, the promise of such rights had to be squared with regionally specific forms of penal control that maintained some features of the CTA.

In 1949 The Bombay Chronicle reported on the imminent repeal of the CTA in the province:

On the 13<sup>th</sup> of August, the barbed wire fencing in the various settlements, where members of these unfortunate tribes were interned, will be cut, and not even a shred of this typical stigma attached to these veritable concentration camps will remain...<sup>119</sup>

G. D. Tapase, the Minister for Backward Classes in Bombay, was responsible for cutting the barbed wire enclosing the Sholapur settlement. More than mere spectacle, however, his ‘liberation’ of the criminal tribes symbolised a different kind of shift in their status. In 1947, Bombay Province had enacted its own Habitual Offenders Act which, in theory, suggested the categorisation of all ex-criminal tribes with ‘backward classes’.<sup>120</sup> Because of the communities’ real status within this putative category, and owing to the fate of ‘backward class’ recognition in the 1950s,<sup>121</sup> this remained theoretical. In 1951, the Government of India published the Report of its own Criminal Tribes Act Enquiry Committee (1949-50), which recommended the replacement of the CTA with central legislation along the lines of

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<sup>118</sup> Evening Chronicle, 12 November 1951.

<sup>119</sup> The Bombay Chronicle, 12 August 1949.

<sup>120</sup> Report on the working of the Criminal Tribes Act in the Bombay Provinces, 1947-8 (Bombay, 1950), available in the Gujarat State Archives, Gandhinagar.

<sup>121</sup> See Jaffrelot.

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the existing provincial Habitual Offenders legislation. The report was replete with references to CTA's iniquitous nature:

The Criminal Tribes Act in its present form is contrary to modern thought and ideas of civilization. A stigma of criminality by birth is as prosaic, untenable and illegal as untouchability by birth. The provision of forced labour in the Act is against article 23 of the Constitution and against the international Convention adopted on 19 June, against forced labour, which India is unable to ratify so far. There is no legislation in any other country comparable to the C.T. Act. A modification of the Act is, therefore, very necessary.<sup>122</sup>

Yet, in acting on the recommendations of the Committee, the Government of India was faced with two inter-related problems. Firstly, how was it possible to square the evident injustice of the CTA with the fact that society at large, and the administration and police in particular, favoured the continued direct control and surveillance of specific communities on the basis of their ethnicities and the supposed cultures of criminality that went with them? Secondly, given that the HOA would have to accommodate, according to commentators, aspects of how the CTA had been administered in different ways in different regions, how could it be modelled as a central piece of legislation?

The first problem was demonstrated clearly in the reactions and objections of a number of individuals and agencies, including the Chief Commissioner of Delhi and members of the Punjab Government, to the suggestions of a rapid move towards a more liberal HOA. These objectors were concerned that the new legislation might not incorporate, in substance, what they saw as the essential provisions and rules of the CTA. In response to concerns from the Punjab Government about the proposed pace of repeal, the Home Ministry gave assurances that there was 'no reason why those members of "criminal tribes" who are habitual offenders should be free from all restrictions even for a day'.<sup>123</sup> Certainly, the authors of the Report thought it possible to demographically quantify tribes by state. And Section 16 of the Madras Act, the Government of India pointed out, provided that in certain cases orders passed under the CTA will continue to subsist and will be deemed to have been issued under that Act. There was also no reason, they stated, that the settlements should be closed down. Both the Bombay and the Madras legislation, in Sections 15 and 8 respectively, provided for the establishment of settlements.<sup>124</sup>

The objections of the Chief Commissioner of Delhi were addressed by again stressing the similarities between the existing Habitual Offenders legislation and the CTA. In both Bombay and Madras – states considered to be the most 'enlightened' in terms of penal policy towards criminal tribes and whose acts would form the basis of a proposed central HOA – the legislation contained many points of continuity from the CTA. In Madras, for example, 4,300 members of notified criminal tribes were

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<sup>122</sup> 'Summary of Recommendations' in 'Criminal Tribes Act Enquiry Committee Report', Ministry of Home Affairs, Police-I Branch, 1950, 19/9/50, NAI.

<sup>123</sup> The 1949-50 Committee enumerated 136 separate 'tribes' with, for example, populations of 1,668,845 in UP; 623,809 in Bombay; 595,440 in Madras; 201,321 in Mysore; 76,722 in MP; 76,564 in Punjab; 74,762 in Orissa, 69,601 in Hyderabad; 65,400 in Rajasthan; and 13,311 in Bihar. See Y. C. Simhadri, *Denotified Tribes (A Sociological Analysis)* (New Delhi: Classical, 1991).

<sup>124</sup> 'Ghoshal, 31 January 1952, re. letter from Govt. of Punjab, 24 January 1952', in 'Criminal Tribes Act Enquiry Committee Report', NAI.

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still retained under the new act in 1951.<sup>125</sup> Under its provisions, a ‘habitual offender’ – so classified after three offences – was required to notify his or her place of residence under section 5, which was directly analogous to section 10 of the CTA. They also had to report change of residence under section 6, which was analogous to section 11 of the CTA. They were also potentially liable to detention in industrial and reformatory settlements on fourth offences under section 8, which was analogous to section 16 of the CTA.<sup>126</sup>

Perhaps the most important parameters of this question, however, focussed on identifying the ‘unreformatable subject’ – one who could not be identified clearly as an individual rights bearer, but belonged to a community whose tradition involved movement that could be defined as ‘vagrancy’. This was seen in the Bombay Legislative Assembly debates on the passage of the Bombay Habitual Offenders Act in 1947. On 8 October of that year, Morarji Desai presented the new bill, pointing out that the Munshi Report had recommended the replacement of the CTA with legislation along the lines of the Restriction of Habitual Offenders (Punjab) Act of 1918. Desai’s views shadowed that of the central Congress organisation: ‘...we are emphatically not of the opinion that the so-called criminal tribes are inherently criminal in the sense either that their criminality is necessarily hereditary or that no amount of attempts at improving them can alter their habits.’<sup>127</sup> However, Desai did believe that

...it is necessary to remove the danger to society from sections of people who easily lapse into criminality on account of their surroundings and on account of their traditions. But this should not be along the lines of tribe. We find crime in practically all sections of society. It is possible that in some sections some form of crime is more persistent than in others, but that is because of traditions and of unhealthy influence.<sup>128</sup>

For these reasons, Desai proposed that it was necessary to continue to ‘restrict movement’ and to ‘maintain some settlements’. Desai’s argument was stretched further: the criminality of criminal tribes was inherently linked to traditions of nomadism and movement:

Some of these tribes are nomadic, but the criminal tendencies are now disappearing from among the nomadic tribes because the circumstances of the present day society discourage all forms of nomadic movement which was very common in the old days.<sup>129</sup>

The second problem of how to create a central HOA also reinforced the sense that this legislation was a direct continuation from the CTA. Moreover, its justification as such was based on a constitutional device which firmly linked it to the CTA’s stress on ‘vagrant and nomadic tribes’. The competence of the central government to repeal the CTA was based on items 3 (preventative detention) and, more importantly, item 15 (vagrancy, nomadic and migratory tribes) of the

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<sup>125</sup> ‘Govt. of Madras, 7 March 1951 – Repeal of the Criminal Tribes Act and working of the Restriction of Habitual Offenders Act in Madras’, in ‘Criminal Tribes Act Enquiry Committee Report’, NAI.

<sup>126</sup> Ibid.

<sup>127</sup> Legislative Assembly Debate on 8 October 1947’, in ‘Habitual Offenders’, Law and Judiciary Department B. 41-52, Vol. 63, Maharashtra State Archives.

<sup>128</sup> Ibid

<sup>129</sup> Ibid.

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Concurrent List of the Constitution. The Ministry of Law took the view that the CTA was concerned with nomadic tribes and was therefore relatable to entry 15. This was also supported by the fact that criminal tribes were recognised in the Government of India Act (1935) as a separate subject for legislation, and that the CTA (1924) was held by the reforms office to be relatable to this entry. This gave the central government competence to repeal and enact.<sup>130</sup> Overall, these legal arguments conceptually linked the CTA to the newly proposed HOA, via the notion that both essentially dealt with vagrancy arising from nomadism and movement.

Recent work on the state in India has explored how the superstructure of legislative enactment, administrative rules and even constitutional ‘rights’ are part of an imaginative or discursive edifice, in reference to which most Indians struggle with day-to-day parochial bureaucratic engagement.<sup>131</sup> Given the underlying relationship between the CTA and the raft of Habitual Offender legislation enacted in the early 1950s, both at the level of ideology and provision, the new legislation could effectively become as close to the old as officers desired it. Beyond this legislative link – but also because of it – the CTA could be kept alive through police manuals and the usual extra-constitutional forms of control and punishment. Ultimately then, the rhetoric of a new, enlightened penology was somewhat empty, given the nature of how the state’s coercive control often transgressed formal systems of punishment.<sup>132</sup> As we can see running through even the highest level discussions around the proposed HOA, too, there was a clear discrepancy between the intention of the new legislation and its concrete administration on the ground. At one level, this led to a noticeable delay in the expected implementation of the new legislation on the basis of individual criminality (or the continuation of a presupposition of collective/hereditary criminality). In response to repeated complaints from individuals about this, the Government of India reported that:

Min. of state for home affairs has expressed concern about the fact that the daily attendance and surveillance of CTs went up to the 2<sup>nd</sup> January 1952, and now desires to know – who is responsible for this abnormal delay after the notification extending the Madras Act to Delhi and despite frequent reminders given to the state government?<sup>133</sup>

Letters of complaint poured into the state and central governments that police departments continued to use the same methods of control and policing as in the colonial period. In January 1952, for example, one complainant who had migrated from Multan in Pakistan to India was challaned by the Rohtak police in 1950 simply because he was identified as belonging to a criminal tribe.<sup>134</sup> Another appellant from Ludhiana in January 1952 complained that the Deputy Commissioner for Criminal Tribes aimed to ‘have some hold over and links with the released criminal tribes members’ by roping ‘as many of them within the purview of the Habitual Offender’s

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<sup>130</sup> ‘Extracts from Parliament of India, dated 28 February 1952, relating to the assurances given by the Hon’ble Minister of State for Home Affairs while speaking on the Criminal Tribe Laws (Repeal) Bill’, in ‘Criminal Tribes Act Enquiry Committee Report’, NAI.

<sup>131</sup> See Akhil Gupta, *Red Tape: Bureaucracy, Structural Violence and Poverty in India* (Durham: Duke University Press, 2012).

<sup>132</sup> Sherman, pp. 4-13.

<sup>133</sup> See ‘C. P. S. Menon to Y. N. Varma, Chief Commissioner, New Delhi, 4 January 1952’ in ‘Criminal Tribes Act Enquiry Committee Report’, NAI.

<sup>134</sup> ‘Letter from Uttam Singh, son of Dalip Singh Bhedkut, of village Mohamadpur Rohi, tahsil Fatehabad, district Hissar, 12 January 1952’, in *Ibid.*

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Act as possible'.<sup>135</sup> The contemporary arguments of DNT activists of a 'delayed independence' can therefore be found directly in the archive.

These features of the hangover of the CTA were an early sign of a much longer-term tendency in the interpretation of the provincial Habitual Offenders legislation. The Bombay State rules accompanying the Habitual Offenders Act, as set out in 1949, still granted considerable authority and autonomy to village level police patels in the issue of passes for movement restriction.<sup>136</sup> This was in spite of the, by then, widespread recognition of local police corruption in the administration of the CTA.<sup>137</sup> A police officer recruited in the 1960s described in an interview how methods arising from the police manual continued to identify forms of criminality in connection with criminal tribe *modus operandi*.<sup>138</sup> In the police manuals that he showed us from the early 1960s, the term criminal tribe was still used. This explains how the newly denotified communities still experienced the same kind of penal system, despite the ostensible change in law regarding registration and group/ethnically defined criminality. As we have seen in the sections above, the CTA was always differentially administered on the basis of local knowledge and preference, particularly around the uncertain view of ethnic identity.

There were other factors at play in how these continuities in criminal law affected potential rights to state welfare. It was clear that the legislative and political associations between CTA and the proposed HOA were recognised by governments as part of a larger project in which the soon to be ex-criminal tribes might enjoy potential rights to state relief and rehabilitation as Indian citizens. There were several organisations and government projects to provide grants and subsidies to 'denotified' communities in the early 1950s in some parts of India. They developed, for example, educational institutions, scholarships, midday meals, and employment exchanges. However, this was not applied uniformly and was certainly insufficient, to the extent that questions were repeatedly addressed in the Lok Sabha to ask 'what was being done' in the area of rehabilitation.<sup>139</sup> Some help was provided by the state

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<sup>135</sup> 'Letter from Lalchand, Ludhiana, dated 15 January 1952 to L. M. Shrikant, Commissioner for Scheduled Castes and Scheduled Tribes', in *Ibid*.

<sup>136</sup> 'Bombay Habitual Offenders Restriction Rules, 1948: Insertion of certain conditions in form 'E'', Home Department C, No. 1402, 1949, Maharashtra State Archives. 'In accordance with rule 12 of the Bombay Habitual Offenders Restriction Rules, 1948, a person in respect of whom an order of restriction of movement has been made is not to leave or be absent from the limits of the area to which his movements have been restricted without having obtained a pass in form 'E'. In accordance with rule 13(1), the police patel of the village where the restriction is based, is to grant such a person this pass, authorising him to leave the area to which his movements have been restricted, for one day between the hours of sunrise and sunset.'

<sup>137</sup> Police patel corruption and 'inefficiency' was mentioned in the Report of the Criminal Tribes Act Enquiry Committee, 1939, and in the early 1930s Home Department discussions on police administration and settlements. See for example, 'Letter from F. C. Griffith, Inspector General of Police, Bombay, 13 September 1930', in *Administration Report, Police, Bombay Presidency, excluding Sind, 1929*, Home Department P-132-II, '...the weak point in the present system is in the inefficiency of the police patels, on whom important duties are imposed under section 26 of the CTA 'which they are too ignorant to be able to perform satisfactorily' (pp. 4-5). It was also extensively covered in reports in 1911-12, see G. H. White to District Magistrate, Kaira, 27 June 1911, 'Looking at the number of police patels who have been deprived of their "Matas" or punished judicially for misbehaviour, it appears to me impossible to expect the police patels of these villages to enforce the restrictions of the Act honestly and impartially', in 'Criminal tribes: revised rules framed under section 3 of Act of 1911', Judicial Department, File 591, 1912, Maharashtra State Archives.

<sup>138</sup> Interview with S. R. Arun, 20 April 2013, Lucknow.

<sup>139</sup> For example, 'Question in the Constituent Assembly of India (Leg) by Shri Kasava Rao regarding reclassification of Criminal Tribes and steps taken to make them usual citizens', Ministry of Home

governments. In Delhi, the government allotted funds to the Ex-Criminal Tribes Welfare Board who conducted rehabilitative work.<sup>140</sup> But funds were not distributed evenly, or with consideration of the specific problems faced by the communities. In 1954, residents of the Kasturba Nagar colony complained to the Chief Commissioner that the Welfare Board, rather than facilitating their rehabilitation, were instead ‘always trying by fair means or foul to make us quarrel with each other’.<sup>141</sup> And in 1958, the same year the Board was dissolved, Kartar Chand of the Andha Moghal colony accused it of embezzlement.<sup>142</sup> Recognition, albeit unevenly applied, of their distinct status within welfare schemes, then, failed to translate into a differentiated political category. Official documents from the period pointed out that some denotified communities would benefit from the normal policies set aside for Scheduled Castes and Scheduled Tribes. But many were not included in those categories. For those, there would be ‘inclusions in the lists of Backward Classes in due course’.<sup>143</sup>

The rhetoric surrounding rehabilitation and welfare clearly foregrounded similar themes of political maturity or readiness, the problems for ‘society’ and the ‘Indian citizen’ in dealing with unreformed communities allegedly prone to criminal activity as found in the 1930s. This was one of the clear contexts in which those ‘fit’ for denotification were separated from those who, along the lines of ethnicity and cultural practice, were still considered explicitly ‘unfit’ for the full enjoyment of rights. For example, in the Report of the Criminal Tribes Act Enquiry Committee set up in the United Provinces in 1947, this differentiation was made clear in its suggestion that the existing ‘gipsies’ currently registered under the CTA should be treated differently to most other communities. The report found that ‘... on scrutiny [they] are not yet found fit for complete freedom we propose that provision should be made under the HOA for their restriction to Settlements and industrial or agricultural colonies... They don’t have, yet, “moral anchorage”’.<sup>144</sup>

Crucially, for legal and administrative officers whose opinions were sought on the passage of a central HOA, this meant that certain groups of citizens could not be subject to the same rules of penal policy as others. For the Chief Commissioner of Delhi in 1951, the main targets of the new legislation would continue to be ex-criminal tribes, for whom special powers of detention would ideally need to be incorporated into any replacement legislation. Once again, it was the identification of

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Affairs, Police Branch, 8/35/48, NAI; ‘Question in the Parliament of India by Shri Chandrika Ram regarding a) whether Government have received the report of the CTA Enquiry Committee b) If so what are the main recommendations of the committee and c) how long with the government take in implementing them’, Ministry of Home Affairs, Police-I Branch, 8/66, NAI; ‘House of the People – question by Shri Muniswamy regarding steps taken by the Central Government for the amelioration of the former CTs’, Ministry of Home Affairs, P. I., 8/68/53, NAI; ‘House of the People – Question by Shri Bheeka Bhai regarding the conference held recently under the chairmanship of the Deputy Minister for Home Affairs to discuss the rehabilitation of ex CTs’, Ministry of Home Affairs, P.I., 8/52/53, NAI; ‘Question in the House of the People by Shri R. S. Tiwari regarding the population of CTs in India, the state that has the largest number of people belonging to CTs and the facilities provided by government to them’, Ministry of Home Affairs, P. I., 8/138/53, NAI.

<sup>140</sup> ‘Council of States – Question by V. K. Dhage regarding the CT Welfare Board constituted by the Govt. of India’, Ministry of Home Affairs, P.I., 8/7/53, NAI.

<sup>141</sup> ‘Representation from Joginder Singh and Bhagwan Singh, 25-11-1954’, DSA.

<sup>142</sup> ‘Letter from Shri Kartar Chand and others, representative of Andha Mughal, 22-1-1958’, Education Dept., 9(9)/1958, DSA.

<sup>143</sup> ‘Ghoshal to CS of Govt. of Hyderabad, 15 March 1952’, in ‘Criminal Tribes Act Enquiry Committee Report’, NAI.

<sup>144</sup> Report of the Criminal Tribes Enquiry Committee, United Provinces 1947 (Allahabad, 1948), p. 19.

traditions of movement that cemented the argument. He pointed out that existing rules of restriction of movement outside the old CTA, such as those contained in the Code of Criminal Procedure, could take a long time to implement: 'a possible consequence could be that, since most members of the criminal tribes are nomadic in character and origin, a person proceeded against might jump his bail and disappear for good before an order of restriction could be made final or effective.'<sup>145</sup> Secondly, these were still considered people who did not abide by the laws to which 'normal' citizens were subject and that special penal procedures would still need to be applied – 'Most of the criminal tribes do not have a bias to crime against the person, but against property, and the offences are notoriously theft, burglary, and cattle lifting. The last has always presented a problem and they have been known to march cattle to long and unknown destinations through forced and quick marches'.<sup>146</sup> He concluded that 'The problem is essentially one of moral and material rehabilitation.'<sup>147</sup> At state levels, too, efforts were made to 'interpret' the Habitual Offenders legislation to make it easier to identify ex-criminal tribes rather than those who had committed multiple offences. Although opposed by the High Court and Sessions Judiciary, the Home Department in Bombay pointed out the insufficiency of habitual offender definitions in the Bombay Jail Manual in setting out numbers of offences for such a categorisation. However, the Home Department proposed that a 'first offence' could be the result of habitual behaviour, if the probation officer of the court can prove this not in the strict legal sense of the evidence act, but in the moral sense.<sup>148</sup>

Until such time that 'moral and material rehabilitation' was theoretically achieved, denotified communities could still be subject to executive rather than judicial actions, which in some cases had dubious constitutional validity. Critically, the limits to their civic freedoms, especially around 'movement', were directly related to 'public interests' as defined by the Constitution. This tension was evident in the Constituent Assembly. Questioning H. V. Kamath's proposition that every citizen should have the right to bear arms, Ambedkar decried, 'it would be open for thousands and thousands of citizens who are today described as criminal tribes to bear arms... [I]t is not possible to allow this indiscriminate right'.<sup>149</sup> A similar discrepancy arose with regard to the right to move freely throughout the territory of India. H. J. Khandekar argued that through the use of sub-clauses in the Constitution, 'what had been granted by the right hand has been taken away by the left'. He noted that it would be 'extremely unjust' if the principle was not intended to apply to the criminal tribes 'who are also citizens of India'. But as Deshbandhu Gupta replied, Khandekar did not have in mind 'the right type of freedom'. '[W]hy should not restrictions be imposed on the movement of the criminal-tribe people, when they are a source of danger to other law-abiding citizens,' he asked. Freedom of movement without qualifications for those like criminal tribes would be a 'freedom of the jungle'. As Algu Rai Shashtri put it, the government now had 'certain obligations and responsibilities' to protect society at large.

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<sup>145</sup> 'Shankar Prasad, Chief Commissioner, Delhi to R. N. Philips, 30 April 1951', in 'Criminal Tribes Act Enquiry Committee Report', NAI.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> 'Change of definition of "Habitual Criminals"', Home Dept., Box 102, 5388/5, 1948, Maharashtra State Archives.

<sup>149</sup> All the references in this paragraph refer to: Constituent Assembly Debates, Vol. VII: 2 December 1948. <http://parliamentofindia.nic.in/lis/debates/debates.htm> [accessed 21 February 2018].

## Conclusion

Although the strategies of civic mobilisation amongst India's criminal tribes cannot be adequately explained using the framework of universal/group differentiated rights, the notion of the unmarked/marked citizen can help us understand the transition from 'criminal' to 'denotified'. Just as liberal concepts of citizenship theoretically posited the unmarked citizen so, too, did the Habitual Offenders legislation theoretically transform the offender to an unmarked (or denotified) individual. However, in the same way that Indian citizenship was negotiated in the years following Partition, as a result of contingent processes and fluent/flexible constitutional developments, so was the ostensibly unmarked/denotified individual compromised by older continuities. Perhaps here, too, as Eleanor Newbiggin has argued, it is worth emphasising that the notion of universal citizenship, based on the homogenous construction of the unmarked citizen, was never actually neutral or secular.<sup>150</sup> Despite regional variations, the same practices and approaches underpinned the Habitual Offenders legislation as the CTA. Penal rehabilitation also showed similarities, and frequently physical continuities by means of settlements, and formed one of the bases of welfare provision for denotified communities. Whereas welfare for Scheduled Castes or Scheduled Tribes in general stimulated their mobilisation of alternative citizenship values, rehabilitation and welfare for denotified communities became part of a broader developmental discourse which could be constitutionally sanctioned – it involved the theoretical protection of Indian society at large from the dangerous cultures and lifestyles of communities who would be reformed through welfare.

All minorities are effectively transcribed by the state, and mobilize on that basis, especially where it involves social disadvantage. India's so-called criminal tribes fitted into many existing groups,<sup>151</sup> but their specific stigma, although based on rapidly changing administrative definitions, remained for generations and in that sense was not substantially different to the historic stigmas of untouchability. In other ways, however, their civic strategies for rights could not be at all like those of the Dalit movements, since stigma could not be primarily related to ritual status, but was connected to state control and societal marginality. Since independence, denotified communities have been effectively unable to collectively mobilize a form of citizenship around existing discourses of citizenship rights, unless, like Holston's 'autoconstructors', they create new paradigms. This was clearly the case in the specific political mobilisation of criminal tribes in the Sholapur settlement, for example, between 1938 and 1947. And, although engaging with new discourses of citizenship, in the case of criminal tribe activists after independence who challenged their status as not-yet citizens of a free India. Importantly, these approaches have often involved a dual strategy of promoting liberal citizenship values, but also focussing on two key areas in their relationship to the state: the idea of rebellious criminality on the one hand, in fighting illegitimate regimes; and the idea of movement and trans-local identity linkages on the other.

The obscurity and effective silencing of these civic and mobilisational practices, epitomized by Bhimrao Jadav's 'Settlement Sewa Sangh', is evident from the limitations of the archive itself. References to criminal tribe organisations appear only in relation to police action against 'leaders' or in the context of union activity.

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<sup>150</sup> Eleanor Newbiggin, 'Personal Law and Citizenship in India's Transition to Independence', *Modern Asian Studies*, 45.1 (2011), 7-32.

<sup>151</sup> Bombay Depressed Classes and Aboriginal Tribes Committee Report, 1930, p. 9.



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Yet fieldwork and more careful archive analysis shows that organisations of civic engagement existed and in some cases linked to local political leadership. This article has argued that the act of silencing these movements was tied up with the project of citizenship itself in the period from the late 1930s to the 1950s, and accounted for some of the key ideologies underlying legislative continuities between the CTA and its successor: India's denotified communities continued to be the focus of a legislative project which identified 'nomadism' and 'vagrancy' with ethnic categories, and which failed to identify their cross-community mobilisations. In settlements such as Sholapur, political and local movements cut across notified groups and focussed specifically on general issues of infrastructure and injustice. Even where communities mobilized individually, linkages across regions on the basis of a criminal tribe identity could be utilized effectively to posit an alternative political subjectivity. Yet, between 1939 and 1952, habitual offence was still defined by reference to ethnic traits.

Since the 1970s, the politics of recognition for denotified tribes (for those championing it) has involved the articulation of a special status for compensatory discrimination that does not quite fit either the Dalit or Adivasi movements. This article suggests that the forms of civic consciousness and mobilisation evident in the 1930s-50s in western/north-western India reveal evidence of proto-citizenship rights claims which arguably formed at least part of the background to these strategies. Ultimately though, the normative and universal rights of citizens who, as members of the public, had to be protected from the criminal, militated against any easy recognition of group-based rights on this basis. Here was an example of what Nivedita Menon describes as a clashing moral universes of 'rights' which are ineffectively adjudicated by law.<sup>152</sup> In this case, the very concept of the rule of law, as arbiter of civic equality could transform the clash of moral universes from a particular one of a battle between colonial state and 'tribe', to a universal one, of general public vs denotified community. Whereas the pre-independence nostalgia voiced in interviews could be celebrated in what Hobsbawm might have described as 'social banditry' or rebellious criminality,<sup>153</sup> epitomized in the image of Sultana Dhaku, after independence, the lifestyles of the denotified communities have continued to be pitched against newly legitimized ideologies of universal and group civil rights, leaving few avenues open for alternative articulations.

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<sup>152</sup> Nivedita Menon, 'State/Gender/Community: Citizenship in Contemporary India', *Economic and Political Weekly*, 33.5 (1998), pp. 3-10.

<sup>153</sup> Eric Hobsbawm, *Primitive Rebels* (Manchester: Manchester University Press, 1959).