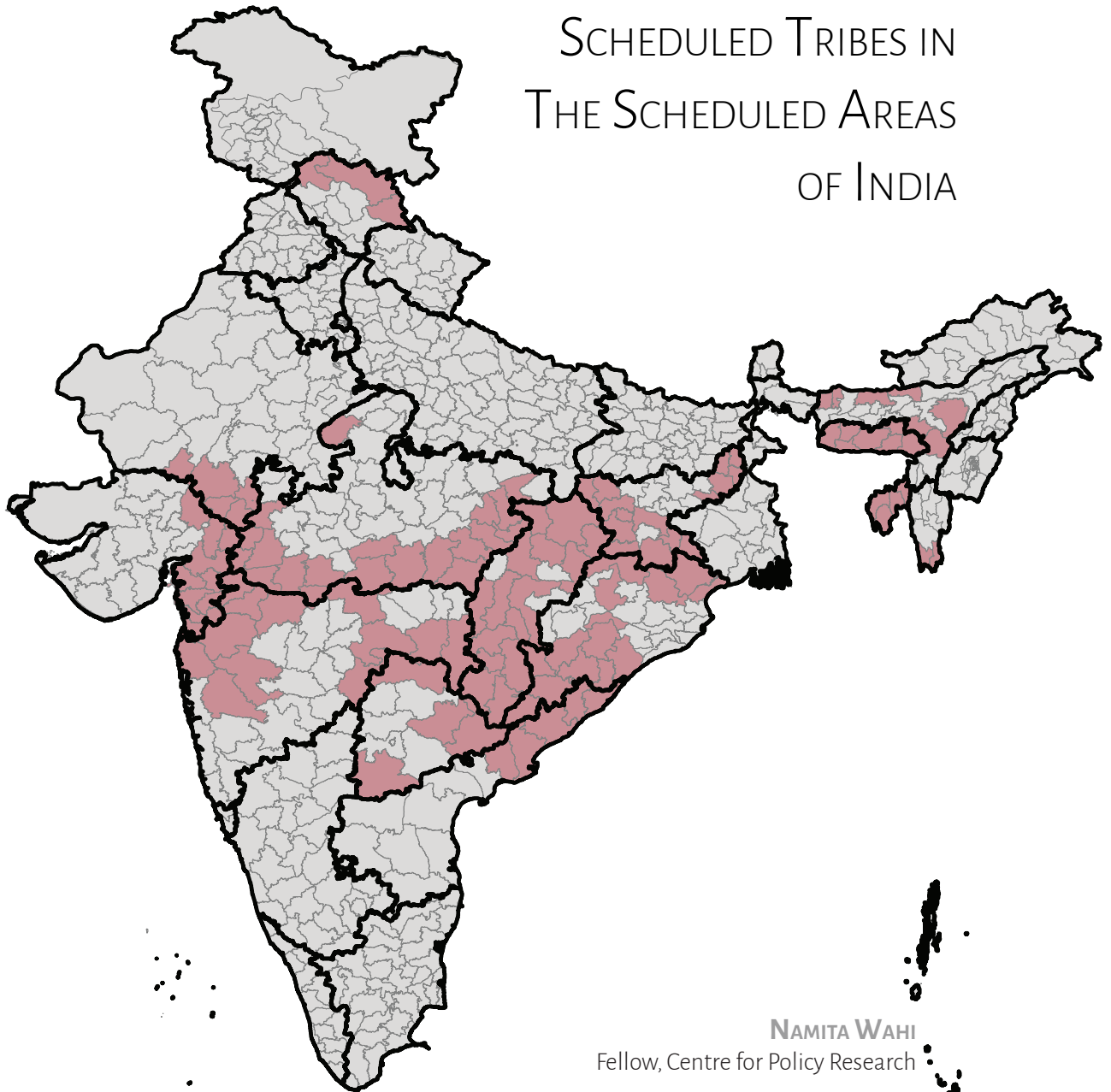


THE LEGAL REGIME AND POLITICAL ECONOMY OF LAND RIGHTS OF SCHEDULED TRIBES IN THE SCHEDULED AREAS OF INDIA



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ABOUT LAND RIGHTS INITIATIVE

The CPR Land Rights Initiative was created in November 2014 as an institutional space for building systematic knowledge on land rights issues. The Initiative currently houses research projects on the constitutional right to property, land acquisition, and land rights in the Scheduled Areas.

The constitutional right to property project is reviewing the chequered trajectory of the right to property in the Indian Constitution, from its inclusion as a fundamental right in 1950, through numerous amendments and ultimately its abolition as a fundamental right, and inclusion as a constitutional right in 1978.

The land acquisition project seeks to comprehensively review the law of land acquisition in India starting from the Land Acquisition Act, 1894 and up to the drafting and enforcement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This Report is an outcome of research done pursuant to this project.

The land rights in the Scheduled Areas project examines why despite the existence of a protective legal and administrative framework in the Fifth and Sixth Schedules of the Constitution, the Scheduled Tribes continue to remain the most vulnerable and impoverished sections of the population. Through archival research and case studies of four states, Gujarat, Andhra Pradesh, Telangana, and Meghalaya, the first three of which are Fifth Schedule states, and the last is a Sixth Schedule state, we analyse the separate constitutional and legal framework governing property rights in the Scheduled Areas, and how the special protections envisaged by this regime are eviscerated by a contrary legal and administrative framework of land acquisition, forest, and mining laws.

The “Mapping Land Legislation in India” project is a first attempt to create a comprehensive database of all land laws in India. As part of this ongoing project, we have created a database of 556 laws for a representative sample of seven states, including Andhra Pradesh, Assam, Bihar, Gujarat, Jharkhand, Meghalaya, and Telangana.

The Land Rights Initiative also promotes stakeholder engagement on land rights issues through our conferences and seminars, and the Land Rights Initiative Speaker Series.

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The Centre for Policy Research (CPR) has been one of India's leading public policy think tanks since 1973. The Centre is a non-profit, independent institution dedicated to conducting research that contributes to a more robust public discourse about the structures and processes that shape life in India.

CPR's community of distinguished academics and practitioners represents views from many disciplines and across the political spectrum. Senior faculty collaborate with more than 50 young professionals and academics at CPR and with partners around the globe to investigate topics critical to India's future. CPR engages around five broad themes: economic policy; environmental law and governance; international relations and security; law, regulation and the state; and urbanisation.

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CENTRE ON LAW AND SOCIAL TRANSFORMATION

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FOREWORD

The Indian Constitution pioneered the protection of tribal communities, especially their rights to land, as land was considered central not only for their livelihood and development, but also for their identity. Despite this protective regime, the Scheduled Tribes continue to be among the poorest and most marginalised groups in Indian society. This Report contributes to a deeper understanding of why this is so, thus bringing in new perspectives, not only to the debates around these questions in India, but also to the international literature around land rights, social inclusion and development.

Surprisingly little is known about the political economy of land in the Scheduled Areas, which is why the Report is such an important achievement and contribution. It provides a unique guide to the legal regime regulating land rights of Scheduled Tribes in the Scheduled Areas and how it interacts with other laws and regulations, most importantly institutions of land governance and legal provisions for land acquisition, forest conservation, and mining laws. The Report grounds this legal analysis in an insightful account of the historical development of the laws concerning tribal groups from colonial times, and of the diverging narratives that have shaped the current legal regimes of Scheduled Tribes' land rights.

One of the most significant achievements of the Report is that has for the first time provided an extensive map of the geographic areas falling under the Scheduled Areas of India, as designated in the Fifth and Sixth Schedules of the Constitution. The Report uses these maps to examine the overlays of these areas with forests, dams and mines - land intensive developments that may potentially cause displacement of individuals and groups residing on that land. The report further contributes to a deeper understanding of the marginalisation of the tribal communities, by examines how policies relating to the Scheduled Tribes have been institutionalised and implemented.

The Report forms part of the research project on Land Rights, Environmental Protection and Inclusive Development within India's Federal Political System, funded by the Norwegian Research Council's INDNOR program. As the Project Leader, and on behalf of the CMI and the Centre on Law and Social Transformation, I warmly congratulate Namita Wahi and Ankit Bhatia, and their team at the CPR Land Rights Initiative on this comprehensive and important Report. It is a significant contribution to our ongoing collaboration with partners around the world to advance the understanding of dynamics of land and social inclusion. I also want to thank and acknowledge Namita for leading the work on the project on the Indian side and for innovatively using it as a foundation for building the Land Rights Initiative, which has already developed into a significant hub for research and policy dialogues on land rights issues in India.



DR SIRI GLOPPEN

Director, Centre on Law & Social Transformation

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This Report is the outcome of a deep commitment on part of the Land Rights Initiative research team to create systematic knowledge on land issues in India with a view to meaningfully evaluating legal and policy initiatives that can contribute to creation of more equitable land regimes for all. The Report has been in the making for five years and yet remains a work in progress. The dismal plight of the Scheduled Tribes in India is the result of complex current and historical, institutional, social, political, and economic dynamics that have been difficult for us to assess in their totality. This Report is but a modest attempt to shed some light on the question: why despite the existence of constitutional protections safeguarding the rights of STs to land, the only group to enjoy this protection, they continue to be the most vulnerable and impoverished of all groups in India?

My first words of gratitude go to Siri Gloppen, Professor of Comparative Politics, University of Bergen, Pratap Bhanu Mehta, Vice Chancellor, Ashoka University and former President, CPR, Duncan Kennedy, Emeritus Professor, Harvard University, Professor Joseph Singer, Bussey Professor of Law, Harvard Law School, Partha Mukhopadhyay, Senior Fellow, CPR, and Ravi Rebbapragada, Founder and Executive Director, Samata, for believing in the project and helping conceptualise and execute it over the past five years.

Many serendipitous encounters and stimulating conversations provided the intellectual and material conditions to make this study possible. I am grateful to Dr. V.N.V.K. Sastry, Mr. Ambrish Mehta, Mr. Suneel Kumar, Mr. Ashok Shrimali, Mr. Achyut Yagnik, Prof. Pavan Mamidi and Prof. Ashish Nanda, for helping us enormously in designing our field research in the states of Andhra Pradesh, Gujarat, and Telangana. Conversations with Mr. Chinaveerabhadhrudu, from the Andhra Pradesh Department of Tribal Welfare, Mr. Yadagiri, from the Telangana Department of Tribal Welfare, Justice Ramalingeshwara Rao, Ms. Nupur, Dr. Sivaramakrishna and Ms. P. Sarada Devi, Prof. Kalpana Kannabiran, Mr. Anand Yagnik, Ms. Paulomee Mistry, Prof. Walter Fernandes, and Ms. Patricia Mukhim greatly enhanced our understanding of the tribal issues in both Fifth and Sixth Schedule areas. I am grateful to the Norwegian Research Council for providing the material resources for this study as part of the research project on “Land Rights, Environmental Protection, and Inclusive Development within India’s Federal Political System”. This research project is part of a series of ongoing research collaborations between CPR and the Centre on Law and Social Transformation (LawTransform) at the Chr. Michelsen Institute (CMI) in Norway. I also want to thank Johan Loov and Baard Hjelde at the Norwegian Embassy for their support of the project.

The research team grew organically over a period of five years. I am deeply grateful to the research associates and research interns whose tremendous individual contributions and team work have made this project a reality. I also want to thank Pragya Akhilesh, Revathy Krishnan, and Nikita Garg for useful research support to the project. Conferences and workshops held at the Centre for Policy Research (2014, 2017), Harvard University (2014), and LawTransform in Bergen (2013, 2015, 2016, 2017), provided valuable feedback and enabled stimulating conversations that helped us unpack the complexities of our narrative. Critical inputs from the CPR community, including doyens like late Mr. B.G. Verghese, late Mr. Ajit Mozoomdar, and Mr. Ved Marwah, and colleagues especially Neelanjana Sircar, Shyam Babu, and Kanchi Kohli helped us greatly in analysing and interpreting our data. The creation of maps in our report would not have been possible without the help of Shamindra Nath Roy and Kanhu Charan Pradhan. I am deeply grateful to all of them. Last, but not the least, I am grateful to the communications team at CPR, including Bipin Nayak and Neha Gour who helped design and layout the report.

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1. INTRODUCTION: THE CENTRAL QUESTION

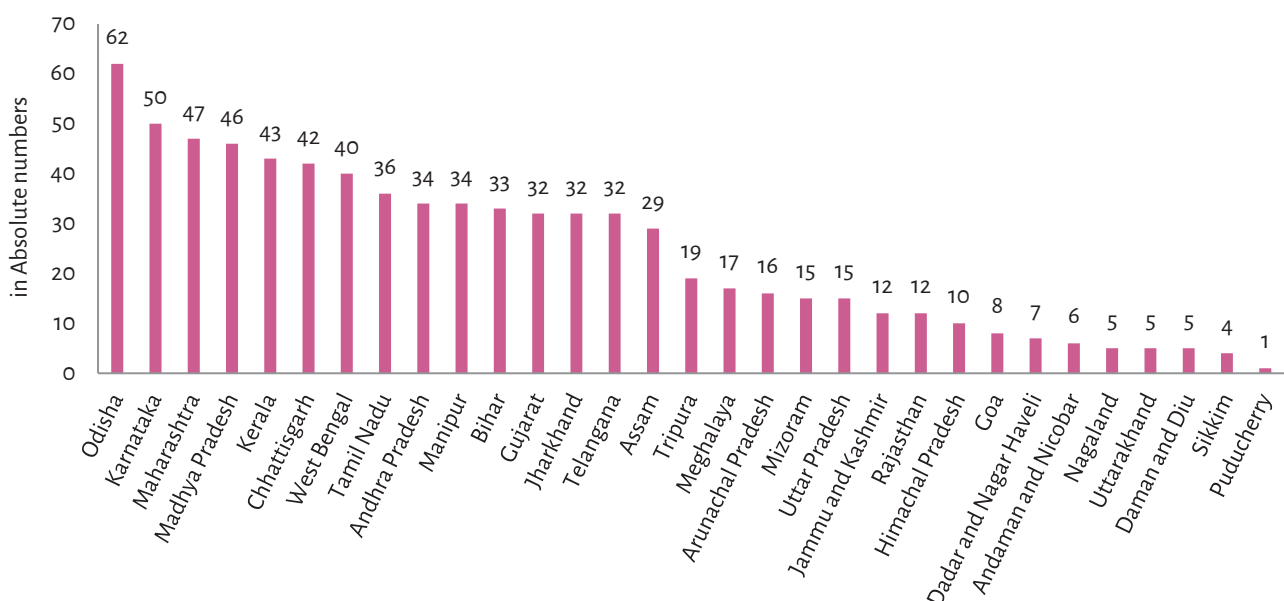
India holds the unique distinction of being both the world's largest constitutional democracy¹ and one of its fastest growing economies.² The Indian Constitution stipulates a parliamentary system of representative government that reflects the will of the majority of the Indian people, but safeguards the rights of, and creates special protections for, India's many ethnic and religious minorities. One such minority are the tribal communities, composed mostly, though not exclusively of what are known as the "Scheduled Tribes".

The Scheduled Tribes ("STs") or adivasis³ consist of a number of heterogeneous tribal groups that have historically self identified and been identified by the British colonial and independent Indian state, as lying outside the mainstream of Hindu society, partly because of their "distinctive culture and way of life as a group" and partly because of their "geographical isolation".⁴ The geographical isolation of the STs arose from the fact that the STs lived in hilly or forested areas that were relatively less accessible to the majority of the population that was settled in the plains. Unlike the settled agricultural activities of the majority of the Indian population at the time of independence, the STs were historically engaged in a variety of traditional occupations including shifting cultivation, collecting minor forest produce, and hunting gathering. Various described as "primitive" and "backward", the STs were considered to have much lower levels of economic and social development compared to the rest of the Indian population. Embedded within the characterisation of "tribes"

in India, are both evolutionary and historical perspectives, the former describing tribal identity as deriving from a particular level of economic and social development, whereas the latter identifying tribes by their aloofness from state and dominant culture at a particular point of time in history.⁵ However, the separation between the tribes on the one hand, and castes of Hindu society, on the other, has never been a rigid one. Tribal communities have coexisted alongside mainstream Indian society since times immemorial, with often a blurring of the boundaries between caste and tribe.⁶

Article 366(25) of the Constitution defines Scheduled Tribes to mean "tribes or tribal communities or parts of or groups within such tribes or tribal communities" as are deemed to be Scheduled Tribes ("STs") under Article 342 of the Constitution. Article 342 vests the President with the power to declare by public notification "the tribes or tribal communities or parts of or groups within tribes or tribal communities" as STs for a state or union territory. Pursuant to Article 342, the President originally made two orders, in relation to the Part A and Part B states, the Constitution (Scheduled Tribes) Order, 1950, and in 1951, a third order with respect to the Part C states, called the Constitution (Scheduled Tribes) Order, 1951. Pursuant to these orders, the President had notified 744 tribes in 22 states in India. These orders were modified in subsequent years pursuant to state reorganisation. Currently, there are 750 tribes in 26 states and 6 union territories of India.⁷ Figure 1 indicates the distribution of tribes across all states and union territories of India. This indicates the heterogeneity of tribal identity in all these states and across the country.

Figure 1: State wise distribution of Notified Tribes



The relative percentage of the tribal population in India's total population has gone up over the last 68 years. The STs constituted 7% of the total population at the time of independence but today, they constitute 8.6% of the total population, equivalent to 10.43 crore people.

The Constitution delineates special protective provisions for the Scheduled Tribes which differentiates them from the rest of the Indian population along three parameters. First, the STs have both individual and group representation within the Indian federal constitutional framework, as opposed to individual representation for the vast majority of the Indian population. Article 330 of the Constitution read with the Representation of People's Act, 1950 provides for reservation of electoral constituencies in tribal majority districts for STs in both Parliament and state legislative assemblies. The only other group that enjoys the privilege of separately reserved electoral constituencies in Parliament and state legislatures are the Scheduled Castes, who are historically disadvantaged communities within the mainstream of dominant Hindu society.

Second, the Constitution stipulates affirmative action provisions that reserve 7% seats in government funded educational institutions and government jobs for the STs.⁸ The percentage of reserved seats for STs was allocated in accordance with their proportional percentage in the population at the time of independence, and is not indicative of their proportional percentage in the Indian population today. Again, the Scheduled Castes also enjoy this privilege of proportionate population reservations in educational institutions and government jobs.

Third, Articles 244(1) and 244(2) of the Constitution carve out tribal majority areas from the geographical land mass of India, that are designated as Scheduled areas in the Fifth and Sixth Schedules of the Constitution, respectively. Here the Scheduled Tribes are unique because unlike the rest of the population and unlike even the Scheduled Castes who have group based representation and affirmative action provisions, the Scheduled Tribes are the only minority group that have specially recognised rights to land in particular geographic areas.

The Fifth Schedule provides for the administration of tribal majority areas in ten states within peninsular India that have tribal minority populations. That is, the population of STs in these states is in a minority, compared to the population of the remainder of the state. The currently designated Fifth Scheduled areas are in the states of Andhra Pradesh, Telangana, Gujarat, Jharkhand, Chhattisgarh, Himachal

Pradesh, Madhya Pradesh, Maharashtra, Orissa, and Rajasthan.⁹

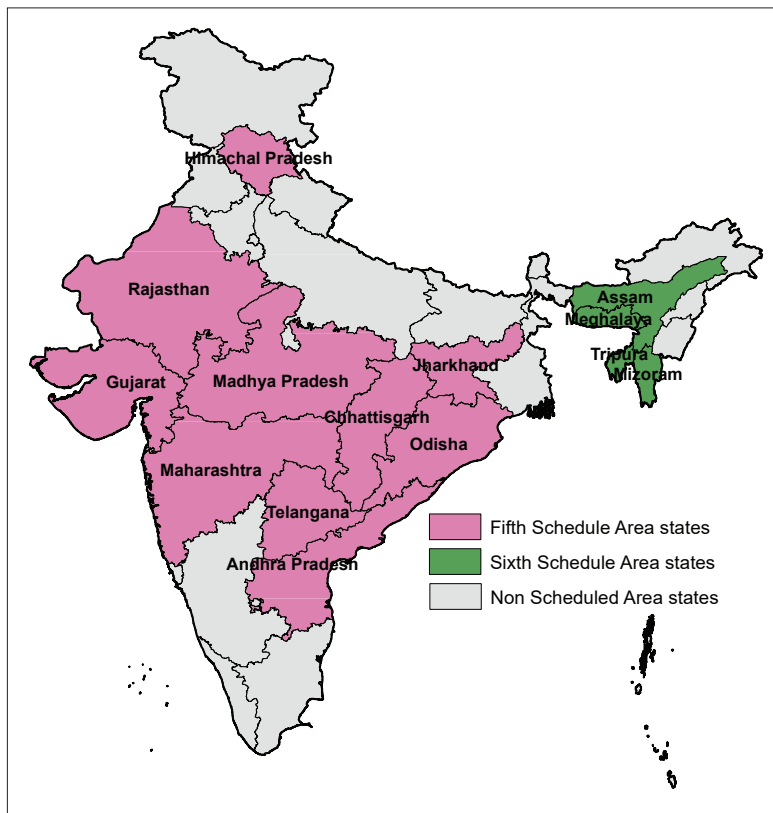
The Sixth Schedule provides the broad framework for the administration of tribal areas in the northeastern states of Assam, Meghalaya, Tripura and Mizoram. Meghalaya and Mizoram are tribal majority states, whereas Assam¹⁰ and Tripura¹¹ are tribal minority states. The Schedule envisages the creation of Autonomous Districts and Autonomous Regions (within the districts) to be administered democratically by the indigenous tribal population of such scheduled areas as opposed to the state legislatures.¹² Meghalaya is the only state in the country where the President has declared the area of the entire state as Sixth Scheduled Area. Map 1 indicates the states that have demarcated Fifth and Sixth Scheduled areas.

Following the adoption of the Constitution, Parliament and state legislatures also enacted several laws to safeguard tribal rights to land. These laws prohibit the transfer of land in the Scheduled Areas from STs to non tribals.¹³ States like Sikkim, West Bengal, and Uttar Pradesh that do not have any designated scheduled areas under the Fifth and Sixth Schedules have also enacted legislation prohibiting transfer of land belonging to tribals, to non tribals.¹⁴ Moreover, Parliament has also enacted the Panchayat Extension to Scheduled Areas Act, 1996 to devolve greater political autonomy to tribals within the Fifth Schedule Areas and the Forest Rights Act, 2006 to safeguard the rights of tribals and other forest dwelling communities to forestland. The Forest Rights Act was enacted to overturn centuries of injustice involved in outlawing of forest dwelling communities, mostly STs, by the British forest laws of the nineteenth and twentieth centuries.¹⁵ Moreover, Parliament and state legislatures have also enacted a number of laws to protect the Scheduled Tribes against atrocities.¹⁶

The special constitutional and legal provisions were not only made in recognition of the STs' distinct identity and geographic isolation, but also on account of their "underdevelopment" vis-à-vis the rest of the Indian population and their interdependence with land, especially forestland. These provisions represented a compromise between competing policy goals of "integrating" and "developing" the STs on the one hand, and "isolating" and "retaining their distinctive tribal identity and culture", on the other.

However, despite these special protective provisions, in a country that is rapidly developing and is currently the world's fastest growing economy, we find that the Scheduled Tribes lag behind the general population we find that the Scheduled

Map 1: Geo spatial representation of Fifth and Sixth Scheduled Area states



Tribes lag behind the general population on various social and economic indicators, like health, literacy, poverty, and landlessness. Data from the Ministry of Tribal Affairs (“MoTA”) indicates that while the national child mortality rate is 18.4 per 1000 live births, the same figure for the STs is almost double at 35.8 per 1000 live births.¹⁷ Similarly, while the national literacy average in India is 73%, the national literacy average for the STs is an abysmal 59%.

Poverty and landlessness is rampant amongst the STs. 47.1% of all STs are below the poverty line in rural areas as compared to 33.8% for the national average, whereas 28.8% of all STs are below the poverty line in urban areas.¹⁸ In spite of being the only group with constitutional protections for their land rights, 9.4 % of the STs are landless compared to 7.4% for the national average.¹⁹

While STs constitute 8.6% of the total population, it is estimated that they have constituted 40% of all people who have been displaced from 1951 to 1990, some more than once, due to the construction of dams, mines, industrial development, and the creation of wildlife parks and sanctuaries.²⁰ Only 24.7% of the ST population that was displaced during this period was rehabilitated.²¹ Therefore, it is clear that these groups have disproportionately borne the burden of economic development. And yet statistical

evidence to document the correlation between dams, mining and other forms of economic activity with the displacement of the STs does not exist.

The above dismal description of the plight of the Scheduled Tribes leads us to question why despite the existence of special constitutional and legal provisions safeguarding tribal representation and also the rights of the STs to land and natural resources, as well as special affirmative action provisions for the STs, they continue to remain the most displaced, most vulnerable and impoverished of all groups in India.

There is a plethora of secondary literature on the Scheduled Tribes that has focused on questions of their tribal identity,²² poverty²³, vulnerability²⁴, displacement, and alienation from the Indian State.²⁵ But there doesn't exist as much literature on the Scheduled Areas, or the specialised relationship between the Scheduled Tribes and the Scheduled Areas.²⁶ In fact, we do not even know how much of India's geographical landmass is in the Scheduled Areas. Yet land, and especially forestland is central to tribal identity, culture, and development. Displacement of the STs from their land does not only make them economically vulnerable, but it also threatens to destroy their cultural identity as a tribal group. This omission is particularly puzzling given that the

STs are the only group in the country that have recognised constitutional protections for their land rights. This Report seeks to redress this omission.

But the Report goes further than that. Through an investigation of the constitutional, legal and policy frameworks grounding the specialised protection of the STs, and the administrative and financial apparatuses that effectuate those protections, as well as analysis of data regarding the current distribution of dams and mines in the Scheduled Areas, the Report presents some insights on how the STs have been increasingly marginalised by the processes of economic development.

First, our Report finds that though India was a pioneer in recognising special protections for tribal or indigenous peoples in the Constitution, the fragmented protections for the Scheduled Tribes and Scheduled Areas in the Constitution contradict the centrality of land to the identity, economy and culture of the Scheduled Tribes. The creation of these fragmented protections was in turn a product of two factors. First, it arose in part from the reality of the tribal situation, in that even at the time of drafting of the Constitution, many tribal communities were no longer located within the geographically isolated scheduled areas, while many non tribal communities were resident there, some for several generations. The Constitution makers had to create safeguards both for the tribal populations' resident in the Scheduled areas and those that were residing outside the Scheduled Areas. Second, it arose from the inherent contradiction in creating geographically protected areas for the Scheduled Tribes, while at the same time imposing no limitations on the movement of tribals outside those areas, and no restrictions on the movement of non tribals to those areas. Indeed, given that the Constitution guaranteed to all citizens the fundamental right to move freely throughout the territory of India, it is not clear how it could have imposed such a limitation.

Second, our Report finds a fundamental contradiction between two narratives. One, that has characterised the policies of the British colonial state; And the other, those of the independent Indian state. The first narrative, that we call the "identity based isolation" narrative, identifies the tribals as a "distinctive group outside mainstream Hindu society both in terms of their cultural traits and geographical isolation", who are keen to preserve their distinctiveness and their isolation. The second narrative called the "development through integration" narrative identifies the tribal way of life as backward compared to the mainstream Indian population, and seeks to improve their economic and social indicators to "integrate" or "assimilate" them within the mainstream

population. The Report notes that while both the "identity" and "development" narratives characterised the drafting of the constitutional protections for the STs, post independence policy making was guided primarily by the "development" narrative. However, the Scheduled Tribes have regarded the "development" narrative as both paternalistic and patronising, alleging that this narrative does not seem to capture the aspirations of the tribal people to "develop according to their own genius".

Finally, through an excavation of archival data pertaining to the extent of geographical area in the Scheduled areas, an evaluation of the shortfalls in financial allocations to the tribal peoples, along with a plotting of the distribution of dams, forests, and mining in the Scheduled areas which have been known to have caused the displacement of the tribal peoples, the Report notes the successes and failures of state policy making guided by the "development" narrative, and indicates how and why STs continue to be impoverished groups in India.

2. TRIBAL COMMUNITIES, EXCLUDED AREAS AND THE BRITISH COLONIAL STATE: DOMINANCE OF THE IDENTITY/ISOLATION NARRATIVE AND THE STATE'S POWER OF EMINENT DOMAIN FROM 1871 TO 1930

2.1 "Criminal Tribes", "Hill Tribes", "Eminent Domain", and the "Scheduled Districts" under late nineteenth century British rule

The British colonial state's attempt to classify the Indian population faced many challenges, but none greater than the problem of classifying the tribal communities. The Report of the Ethnological Committee, 1868²⁷, classified tribal communities in India into the Kolarian (northern) and Dravidian tribes. Through a comparative study of the customs and dialects of various tribal communities described as "aboriginal", the Report concluded that it was impossible to generalise anything about the tribal communities, since their manner and customs were peculiar to those communities. Though there were affinities of dialect amongst many of the northern tribes, the classification of the tribes was based as much on their geographic location as on their peculiarities of custom. Following this Report, significant legislative efforts were made to classify and administer the tribal communities.

The Census Report, 1871, originally classified the tribes as "aboriginal tribes", under the three categories of "Aborigines", "Semi-Hinduised Aborigines", and "hill tribes".²⁸ That same year, the British enacted the uniquely draconian Criminal Tribes Act for North India, which criminalised millions of tribal communities as "habitually criminal" simply upon their

birth in a particular community, imposing restrictions on the movements of every member of these groups, and forcing adult males from these communities to report weekly to the local police station. The “criminal tribes” fell within the category of “semi Hinduised” aborigines and operated on the margins of mainstream Hindu society.²⁹ On the other hand, the “hill tribes” who lived primarily in hilly and forested areas, were geographically isolated from mainstream Indian society. Upto the decade of the 1870s, the Governor General in Council declared these tracts across the country piecemeal as “backward areas”, and made special laws applicable to them on his executive discretion or that of the Chief Commissioner of the provinces. These laws prescribed simple and elastic forms of judicial and administrative procedures for “simple, primitive, unsophisticated and frequently improvident” tribal people and sought to protect their lands from the “more civilised” non tribals and save them from the “wiles of the moneylenders”. In 1874, the British Parliament enacted the Scheduled Districts Act, which was the first measure to deal with all the areas declared “backward areas” as a class. The Act formally vested the Governor General in Council with the power to decide whether provincial laws should be applied to the particular districts listed in the First Schedule to that Act. However, the British gradually acknowledged that the term “aboriginal” didn’t quite capture the identity of tribal communities. The Memorandum on the Census Report, 1881, even as it classified the tribes as “aboriginal”, noted that the use of this terminology was “dubious”. “Aboriginal” indicated more that these groups did not belong to the dominant Hindu, Muslim, or Christian religions, rather than having a unified religion of their own. Indeed, there was little to unite the “hill tribes” with the “criminal tribes”, and significant differences persisted between tribal groups within each category.

It may be noted that even as the British state created legal and administrative provisions to “protect” the largely hilly and forested “backward areas”, where the “hill tribes” lived predominantly, it exerted its absolute control over these areas pursuant to its claim of sovereignty over Indian territory and its powers of eminent domain. The British state claimed “universal ownership” over all land within British territory. In doing so, they claimed to have succeeded to the “claim” and “title” of the “native rulers” who had preceded them.³⁰ In pursuance of this claim, the British state enacted a number of laws that gave it enormous powers to reshape and redistribute property rights in India.³¹ Chief amongst these laws was a series of land acquisition laws, which authorised the compulsory taking of property belonging to private individuals by the state,³² forest laws that asserted state ownership of forests and derecognised the rights of forest

dwelling communities³³, and mining laws which asserted the right of the state to all resources in the subsoil³⁴. The Forest Rights Policy, 1854, had conferred limited rights on tribals to collect minor forest produce, but the Forest Rights Policy, 1894, diluted tribal “rights” into “rights and privileges” to be conferred at will by the British state.

British legislative and administrative efforts towards the “hill tribes” were paternalistic, and sought to “protect” these tribes through “isolation”, even as the British state exerted increasing control over their traditional habitats through the forest laws of the nineteenth century in the exercise of its power of eminent domain. In contrast, the British isolated the “criminal tribes” in an effort to protect mainstream society from their so called “habitual criminal” activities. Thus, “isolation for protection based on identity” where the identity of the tribes was distinct from that of mainstream Indian society was the policy of administration of tribal communities and tribal regions until the end of the nineteenth century, even as these regions provided fertile terrain for exploitation of forests and mineral resources by the British state. The narratives of “identity based isolation”, either for protecting the tribes against “civilised society”, as in the case of the “hill tribes” or for protecting “civilised society” from the tribes, as in the case of the “criminal tribes” dictated state policy. Though cohesive internally within each tribe, the tribal communities were completely heterogeneous and sometimes as distinct from each other, as they were from mainstream “civilised society” in distinction from which they were identified.

2.2 “Defining Tribe”, “Excluding Hill Tribes”, and “Rehabilitating Criminal Tribes” under early twentieth century British rule

At the dawn of the twentieth century, for the first time, the British state attempted an organic definition of “tribe”, as a loose grouping of three different types of tribal communities identified on the basis of objective criteria and not simply in distinction from dominant Indian society. The Report on the Census, 1901, identified tribes on the basis of three criteria: religion, profession, and geographical location. Based on religion, the Report referred to tribal communities as “aborigines or animists”; on the basis of their geographical location, “hill tribes, mountain tribes, or forest tribes”; and on the basis of profession, “nomad and wandering tribes, gipsies, or wild tribes”. The 1901 Census defined “tribe” as *“a collection of families or groups of families bearing a common name which as a rule does not denote any specific occupation; generally claiming common descent from a mythical or historical ancestor and occasionally from an animal, but in some parts of the country held together rather by the obligations of blood-feud than by the tradition of kinship; usually speaking the same language and occupying, professing, or*

*claiming to occupy a definite tract of country.*³⁵ This definition of tribe for the first time included the geographical connection of the tribe and relationship to particular tracts of land.

By the time of the 1911 Census, the British further came to define “tribes” not as a “collection of families” but as a “social group” in distinction to “caste”. According to the Census, unlike caste whose basis was “economic or social”, the basis of the tribe was political. Though the members of a tribe believed that they had a common origin, what held them together was “community of interest” and “need for mutual defence”. Unlike “caste”, the “tribe” would also freely admit aliens who “were willing to throw in their lot” with them.³⁶ The 1921 and 1931 Censuses made only minor changes to the classification of tribal communities³⁷, and the 1941 Census was disrupted by budgetary constraints during World War II.

The twentieth century also saw the introduction of limited political reforms in British India in response to the increasing demands for political autonomy from British rule by the Indian freedom movement. The Montagu Chelmsford Report of 1918, which recommended dyarchy for India³⁸, only mentioned the Scheduled districts to note that the reforms would not apply to them. This was because the tribal people were “primitive”, and there was no material on which to found “political institutions”.³⁹

The Government of India Act, 1919 divided the backward tracts into two categories: wholly, and partially excluded areas. Some areas were wholly excluded from the purview of elected provincial legislatures and fell within the jurisdiction of the Governor acting with his executive council.⁴⁰ In these areas, the provincial ministers were excluded from having any share in the responsibility of the administration. A system of modified exclusion was applied to the other backward areas, the reserved half of the dyarchical government being vested with power to apply, or to refrain from applying any new provincial enactment.⁴¹ The focus of government policy with respect to these backward tracts was to ensure to these primitive inhabitants, security of land tenure, freedom to pursue their traditional means of livelihood, and a reasonable exercise of their ancestral customs.⁴²

However, even under these new provisions, the rights of the tribal inhabitants were always subordinate to the rights of the state under its forests and land acquisition laws. The Indian Forest Act, 1927, which replaced the Indian Forest Act, 1878, allowed the state to “acquire” lands for the purpose of constitution of forests very much in the manner of the Land Acquisition Act, 1894.

On a parallel trajectory, the British state continued to be preoccupied with the situation of the “criminal tribes”. Following the enactment of the Criminal Tribes Act, 1871, the penalties against the criminal tribes had been stiffened between 1871 and 1911. In 1876, the Criminal Tribes Act was extended to the Bombay Presidency and in 1911, to the Madras Presidency covering all of British India. The introduction of the Criminal Tribes Act, 1911, was a turning point insofar as it recognised that crime had declined significantly amongst the tribes and that they had taken to a more settled life. Apart from protecting mainstream society from the criminal acts of the tribespeople, for the first time in forty years, this Act also included provisions for reforming the “criminal tribes” and integrating them into mainstream society. The shift in British policy towards rehabilitation and integration of the “criminal tribes” within mainstream “civilised society” continued in subsequent decades of the early twentieth century. The All India Jails Committee Report, 1919⁴³, urged government to do more to rehabilitate and integrate the “criminal tribes”. In 1924, a new Criminal Tribes Act was enacted which consolidated the legislative changes made in various provinces.

3. FROM “EXCLUDED AREAS” IN BRITISH INDIA TO “SCHEDULED AREAS” IN INDEPENDENT INDIA: OLD WINE IN NEW BOTTLE, OR RADICAL CHANGE?

In 1930, the Simon Commission⁴⁴, sent to India to evaluate the reforms initiated by the Montagu Chelmsford Report of 1918 and instrumentalised by the Government of India Act, 1919, for the first time recognised that perpetual isolation from mainstream Indian society was not the long term solution for protecting tribal communities from exploitation. Instead, the “*principal duty of the administration [was] to educate these peoples to stand on their own feet*”, noting that this process had “scarcely begun”. The Commission’s observations reflected the beginning of a debate about the future of the excluded areas, between British anthropologists like Verrier Elwin⁴⁵ and W. Grigson⁴⁶ on the one hand, and leaders of the Indian National Congress and Indian anthropologists like G.S. Ghurye,⁴⁷ on the other.

The Congress opposed exclusion of the tribes, regarding it as a cynical attempt by the British to cling onto power in India, and as harmful to the tribes, whose best interests lay in assimilation with mainstream Indian society. British anthropologists, and later tribal activists like Jaipal Singh however believed that some sort of isolation – whether temporary or even permanent – was in the best interest of the tribes, because it allowed them to assert their autonomy from the mainstream.

Nevertheless, the Government of India Act, 1935 pretty much retained the classification of “excluded areas” and “partially excluded areas” created by the Government of India Act, 1919. In addition to these areas, the Act also defined certain “tribal areas”, which were notified as “areas along the frontiers of India or Baluchistan which are not part of British India or Burma or of any Indian or foreign state.”⁴⁸ The “tribal areas” in the Northwest frontier became part of Pakistan post-independence and need not concern us here.

The British Parliament justified the decision⁴⁹ for creating the excluded areas on three main grounds. The first ground was one of “culturally distinct primitive identity”, the second ground was that of “protection from exploitation by the mainstream” and the third ground was “development” of the tribes, all of which supported the continuation of a policy of isolation of the “hill tribes”.

The leaders of the Indian National Congress however repudiated these provisions for exclusion in the Government of India Act, 1935, as “yet another attempt to divide the people of India” and “to obstruct the growth of uniform democratic institutions in the country”, by a resolution adopted at the All-India Congress Committee meeting in Faizpur. The Congress Resolution noted that these provisions were “intended to leave a larger control of disposition and exploitation of the mineral and forest wealth in those areas” with the British state and to keep the inhabitants of those areas apart from the rest of India for their easier exploitation and suppression”.⁵⁰ The Congress Resolution articulated an alternative narrative of “development through integration” that would characterise Indian government policies throughout the post-independence period.

This “integration narrative”, expounded by Z. A. Ahmad in a 1937 paper called “The Excluded Areas under the New Constitution”, was premised on the view that the British policy of divide and rule, had preserved the tribal people in a state of underdevelopment, denying them education and medical facilities in order to prevent them from developing a political and economic consciousness.⁵¹ The British had inflicted economic wrongs on the tribes via special forest and game laws, land laws, excise laws and a number of other enactments, all of which “were hitting at the very root of the economic life of these people”, “virtually reducing them to the position of chattel slaves or serfs of tea planters and other European adventurers”.⁵² Moreover, the British had actively strengthened the tribal chiefs and moneylending classes to safeguard their own interests, vesting them with enormous powers at the expense of the tribal communities.⁵³ And finally, British government had failed to take measures to provide extra funds to these areas for the economic and social

development of the peoples and impeded development of local self-government.⁵⁴

Ahmad proposed an extensive list of policy alternatives for the tribal areas, which involved political, legislative, and administrative integration of the tribal communities with the rest of the Indian population; reform of land laws to protect tribal land rights, material development of tribal areas through provision of economic and social infrastructure, including health and education facilities.⁵⁵

It is clear that protecting tribal rights to land was central to the Congress agenda, but the Congress was not prepared to recognise the sovereignty of the tribal peoples to lands in both the excluded and partially excluded areas. Nor was it prepared to reform the land acquisition, forests, and mining laws that would enable the independent Indian state to retain the same powers of control over disposition of natural resources in the tribal areas.

The Congress was consistent in its philosophy of “development through integration” in their approach towards the “criminal tribes”. The Report of the UP Criminal Tribes Act, 1947⁵⁶ noted the complete absence of any data to suggest that even 25% of the members of the notified criminal tribes were involved in a life of crime. Consequently, it recommended a complete repeal of the Criminal Tribes Act and denotification of all listed tribes. Instead, the Committee recommended the adoption of a “Habitual Offenders and Vagrants Act” in the province that would be applicable to all tribes irrespective of caste, class, religion, sex and creed, thereby abolishing the category of “criminal tribes” altogether. In 1952, the Indian Parliament adopted this recommendation and enacted the Habitual Offenders Act, applicable to habitual offenders of any religion, caste, or creed and repealing the infamous Criminal Tribes Act, 1871.

4. THE CONSTITUTIONAL FRAMEWORK GOVERNING THE SCHEDULED AREAS AND SCHEDULED TRIBES

From the very outset, the Constituent Assembly was preoccupied with the situation of the tribal communities and the excluded and partially excluded areas.⁵⁷ The Advisory Committee on Fundamental Rights and Minorities, constituted to represent the interests of all minorities was tasked with preparing a scheme for the administration of the tribal and excluded areas. The Committee’s preoccupation with the tribal communities however did not extend to the “criminal tribes”, who while they experienced legislative reform during this period, did not receive any special constitutional protections like the “hill tribes”.

In line with the Congress' position, the Advisory Committee recognised that the solution to the problem of the excluded areas was "development", not "isolation". The Committee recommended that the development of these areas should not be left to the provincial governments with their limited financial resources and competing claims. Instead, the Centre should play an active role in making schemes for these areas and ensuring their implementation by the Provinces.⁵⁸

Within the Constituent Assembly, the debates on the tribal question are characterised broadly by the narratives of both "identity based isolation" and "development based integration", with much greater emphasis on the latter. The narrative of integration encapsulates provisions for political representation and affirmative action for tribal communities in the form of reservations in government and educational institutions. On the other hand, the narrative of identity intertwined with geographic location resulted in the creation of relative autonomy of tribal peoples in the Fifth and Sixth Scheduled areas.

Nowhere is the contrast between the "identity based isolation" and "development based integration" narratives stronger than in the views of Jaipal Singh on the one hand, and those of Shibban Lal Saksena, Brajeshwar Prasad, and K.M. Munshi, on the other. Jaipal Singh, a member of the Munda tribe from the forested plateau of South Bihar peopled by numerous tribes, was the only tribal representative in the Constituent Assembly who spoke on the debates on the Fifth Schedule. Describing the tribals as adivasi, or "original inhabitants" of the subcontinent⁵⁹, Singh argued broadly in favour of the schedules as well as for reservation of seats in the legislature and government jobs for the tribals. Singh saw the previous "6000 years" of tribal history as the history of continuous exploitation and dispossession of the "non aboriginals" by the "newcomers"—and saw the proposed constitutional provisions as a means to make amends.⁶⁰

In contrast to Jaipal Singh's views, Shibban Lal Saksena regarded the existence of the Scheduled Tribes and the Scheduled Areas as a "stigma" and hoped "that the STs and SAs would be developed quickly so that they became "indistinguishable" from the rest of the population.⁶¹ Thus, while Jaipal Singh highlights the "tribal problem" as one involving the "development of the tribal peoples' according to their own genius in accordance with their distinctive culture and way of life", for Shibban Lal Saksena, the problem of the tribals is no different from that of the Dalits who have been systematically discriminated in Indian society. However, Saksena's characterisation is not true because while the "Dalit narrative" is one of "systematic historical discrimination within

the mainstream of caste Hindu society", the "tribal narrative" is that all these heterogeneous tribes have a distinct culture and way of life that is outside the mainstream of Indian society. In other words, Dalits are seeking integration and respect within mainstream Hindu society which has been denied to them for centuries. But the tribals are seeking development on their own terms outside mainstream Indian society.

Nevertheless, the difficulty with Jaipal Singh's characterisation of the tribal narrative is highlighted by K M Munshi. Munshi notes that the tribal community is not one "conscious corporate collective whole in this country so that someone can speak in its name or can lead a movement combining them into a single unit."⁶² Indeed, the problem of heterogeneity and disunity amongst the tribes has remained a significant problem in articulation of their interests in the national discourse throughout the course of independent Indian history.

Haunting the Constituent Assembly debates on the Fifth and Sixth Schedules is the spectre of political disintegration given that the debates took place during the bloodbath of partition. The fear of political disintegration is articulated by several members in the Constituent Assembly particularly with respect to the debates in the Sixth Schedule, which provided for a significant measure of political and administrative autonomy to indigenous tribal populations as compared to the Fifth Schedule.⁶³

As ultimately adopted, Article 244(1) of the Constitution read with the Fifth Schedule provided for the administration of variously described "tribal majority" and "backward" areas in nine states within peninsular India that have tribal minority populations, that is the population of STs is in a minority compared to the population of the remainder of the state. The President of India can by order declare any area to be a Scheduled Area. According to the Fifth Schedule, these areas are to be administered by the Governor of the State, in consultation with the Tribes Advisory Councils to be appointed by the Governor. The Governor has powers to regulate the application of laws of the State and the Acts of Parliament to the Scheduled Areas and to make regulations for "good governance" of these areas.

Now, India is often described as a union of states. What that means is that we have a federal system of government with a unitary bias. We have a parliamentary system of government where the President and the Governors make decisions mostly on the basis of the recommendations of their Council of Ministers. The implication of this for how Fifth Schedule areas are governed is that there is considerable centralisation

of power in the tribal areas with Parliament and state legislatures.

Article 244(2) read with the Sixth Schedule provides the broad framework for the administration of tribal areas in the north eastern states of Assam, Meghalaya, Tripura and Mizoram. It provides for a system of scheduled areas called Autonomous Districts and Autonomous Regions (within the districts) to be administered democratically by the indigenous tribal population of such scheduled areas. Article 244(2) mandates that there shall be a district council for each autonomous district consisting of not more than thirty members, of whom not more than four members will be nominated by the Governor and the rest shall be elected on the basis of adult suffrage. The Governor shall make rules for the first constitution of the District Councils and Regional Councils in consultation with the existing tribal councils or other representative tribal organisations within the autonomous districts or regions concerned. The elected members of the district council hold office for a period of five years.

The Regional Councils have enormous legislative, financial, and administrative powers with respect to allotment, occupation and use of land, the management of any forest not being a reserved forest, the use of canals and watercourses, the regulation of shifting cultivation, inheritance of property, the establishment of village and town committees, marriage and divorce, and other social customs. The Regional Councils for an autonomous region and District Councils within the Autonomous Districts have the powers to assess and collect land revenue, levy taxes on lands and buildings in accordance with the principles of the state of which such councils and districts are a part. But the federal and state governments retain powers to acquire land in exercise of the power of eminent domain. In addition, they have the powers to grant licenses for prospecting for mining in the Autonomous Regions and Districts, except that the state has to share royalties with the District Councils as agreed to upon by the state governments. Like in the Fifth Schedule areas, the President may by notification apply or restrict the application of central acts, and the Governor may do so with respect to state Acts in the autonomous districts or regions of any of these states.

Despite these provisions that grant relative autonomy to the tribal peoples, it is clear that the Constitution does not recognise tribal sovereignty over land and natural resources in the Fifth or the Sixth Scheduled areas. In line with its predecessor, the independent Indian State has claimed sovereignty over these areas. There is only recognition of the special status of the tribal population and state directed laws for their protection.

5. THE POST-COLONIAL DEVELOPMENT STATE'S TREATMENT OF THE SCHEDULED TRIBES AND SCHEDULED AREAS: THE DOMINANCE OF THE "DEVELOPMENT THROUGH INTEGRATION" NARRATIVE FROM 1950 TO 2000

Although both the "development through integration" narrative and the "identity based isolation" narrative directed the formulation of the constitutional provisions for safeguarding the rights of the STs in the Constituent Assembly, post-independence, we find that the "development through integration" narrative dominated policy making with respect to the tribal population.

The Report of the Backward Classes (Kalelkar) Commission, 1955 classified the Scheduled Tribes and Denotified (ex-criminal tribes) along with Scheduled Castes, women, and other socially, economically and educationally backward classes as backward classes.⁶⁴ It also identified certain "backward" districts and recommended their classification as Scheduled Areas. The Committee recommended various measures for the removal of social, educational, and economic backwardness, all of which were aimed at the integration of all the backward classes, including the Scheduled Tribes and denotified tribes in society.

A few years later, the Renuka Ray Committee on Social Welfare and Welfare of Backward Classes, 1959 again defined "backward classes" to mean the "Scheduled Castes, Scheduled Tribes, Denotified Communities, and other backward classes"⁶⁵. Again, the Commission expressly recommended that the major objective of all social programmes that were targeted to benefit the "backward classes" including the STs and denotified communities was their eventual integration into a "normal community". The broad priorities for the STs included their "economic development and communications, education, and public health". The principles guiding the welfare services included not "imposing things on tribals" but rather helping them evolve in accordance with their own genius and through their own social and cultural institutions. Following a directive in the Constitution, in 1960, a commission was constituted to report on the administration of Fifth Schedule areas, in particular the functioning of the Tribes advisory councils, the application of laws to Fifth Schedule areas, and the exercise of the Governor's powers in these areas. This Commission known as the Dhebar Commission⁶⁶, after the name of its chairman, recommended consideration of the following factors in the declaration of any area as a scheduled area: (a) preponderance of tribals in the population; (b) the compactness and reasonable size of the area; (c) the underdeveloped nature of the area; and (d)

marked disparity in the economic standard of the people. This Commission for the first time post independence reiterated the “identity based isolation” narrative based on geographic location, but at the same time, included the “backwardness” criteria that had been enunciated by the Kalelkar and Renuka Ray committees, respectively.

The Dhebar Commission recommended that the benefit of the Fifth Schedule should also be extended to the Union territories. It recommended the inclusion of additional areas of 58,897 sq km along with a tribal population of approximately 45,00,000 to the Fifth Schedule areas. The Commission noted its disappointment with the functioning of the Tribes Advisory Councils and in line with Jaipal Singh’s recommendation in the Constituent Assembly, recommended the creation of TACs in all states and UTs with powers to advise on and review all matters pertaining to tribal areas. This was more so in relation to legislation for protecting tribal rights to land and against exploitation by moneylenders. Finally, the Commission recommended special financial allocations by the state governments to the scheduled areas. While the recommendation with respect to special financial allocations by state governments to the scheduled areas was later implemented as part of the tribal sub plan, the recommendation with respect to the creation of TACs in all states and UTs was not.

The 1969 Report of the Advisory Committee on the Revision of the List of SCs and STs, popularly known as the Lokur Committee Report, noted that while the Constitution has not expressly prescribed any principles or policy for drawing up lists of STs, “primitiveness” and “backwardness” were the tests applied in preparing the lists in 1950 and 1956 that were notified by the President pursuant to Article 342⁶⁷. In submitting their revisions to those lists, the Lokur Committee noted that they had adopted the following five criteria: (a) indications of primitive traits, (b) distinctive culture, (c) geographical isolation, (d) shyness of contact with the community at large and (e) backwardness. Correspondingly, they had excluded from the lists those tribes whose members had largely integrated with the mainstream population.

Thus, despite reference to the “identity” narrative in the identification criteria of the STs, “development through integration” remained the goal of the government’s policy objective regarding the tribal communities in the first two decades post independence. This narrative dominated the Lokur Committee’s recommendations, because they noted that the more advanced communities in the ST list should be gradually descheduled, because only then could “complete integration” be achieved.

In line with the “development through integration” narrative, in 1978, the Government of India created a multi member Commission for Scheduled Castes and Scheduled Tribes, to conduct studies on the social and economic conditions of both backward communities. Following a constitutional Amendment in 1990, the first National Commission for Scheduled Castes and Scheduled Tribes was set up in 1992 under the chairmanship of Ram Dhan. The NCSC&ST was charged with investigating and monitoring all constitutional and legal safeguards for Scheduled Tribes, and to enquire into specific complaints regarding the violation of these safeguards and rights, to participate and advise on the planning process regarding the socio-economic development of Scheduled Tribes, and to evaluate their progress in discharging any other functions related to the protection, welfare and development of Scheduled Tribes.⁶⁸

However, following this, there was a growing realisation on part of Parliament and the executive, of the need to attend separately to the needs of the Scheduled Tribes from those of the Scheduled Castes and other backward communities. This resulted first in the creation of a separate department for tribal affairs within the Ministry of Welfare in 1985, and then in the Ministry of Social Justice and Empowerment in 1998, followed eventually by the creation of a separate Ministry of Tribal Affairs in 1999.

Even as these changes were happening, in 1994, the Ministry of Rural Development constituted a select committee of experts led by Dileep Singh Bhuria, to consider the extension of the provisions of the 73rd and 74th constitutional amendments, which introduced elected local governments in the form of Panchayats and municipalities in rural and urban areas, also to the Scheduled areas. The Bhuria Committee recommended the enactment of the Panchayat Extension to Scheduled Areas Act (“PESA”), and the Municipalities Extension to Scheduled Areas Act (“MESA”). In 1996, Parliament accepted the Bhuria Committee’s recommendation to enact the PESA, but almost twenty-five years after its recommendations were made, MESA has still not been enacted.

The recognition of the need for separate and focused treatment of the Scheduled Tribes continued into the twenty first century with the Bhuria Committee Report, 2002⁶⁹, which for the first time in the post-independence era seriously questioned the dominance of the “development through integration” narrative with respect to the Scheduled Tribes. It noted that the tribal people rejected the oft reiterated “dictum” in previous government reports that “objective of tribal policy should be that the tribal people join the mainstream”. Finding this approach “not only paternalistic but patronising”, the

Bhuria Committee noted that the tribal people were “averse to attempts, overt or covert that aim at their assimilation.” Instead, they wished to “preserve the integrity of their culture, and personality.”

The Bhuria Committee Report further stressed the importance of “land and forests” as the two basic resources of the tribal life support system, which had been “assaulted” by the processes of “accelerated urbanisation and industrialisation”. The Commission made a series of recommendations, including maintaining the sanctity of the Scheduled areas, introduction of prohibition of ST land alienation prohibition laws in urban areas, and their application to non-agricultural land in rural areas.

6. TRANSLATION OF POLICY INTO ACTION BY THE POST COLONIAL STATE THROUGH LEGISLATIVE, FINANCIAL AND ADMINISTRATIVE REFORMS

6.1. Land Alienation Prohibition laws

Post the adoption of the Constitution, the first major legislative reform introduced sought to safeguard tribal rights to land. Noting the centrality of land to tribal identity, economy, and culture, and the need to protect the Scheduled Tribes from exploitation and displacement, during the 1950s-1970s, Parliament and legislatures of all states with Fifth and Sixth Schedule areas enacted legislation to safeguard tribal rights to land⁷⁰ by prohibiting transfer of land in the Scheduled Areas from tribals to non tribals. States like Sikkim, West Bengal, and Uttar Pradesh that do not have any designated scheduled areas under the Fifth and Sixth Schedules also enacted legislation prohibiting transfer of land belonging to tribals, to non tribals.⁷¹

These protective laws for the land rights of tribals were however arrayed against numerous displacing laws, including the land acquisition, forests, and mining laws. A CPR Land Rights Initiative study has shown that there are 102 land acquisition laws in India, including 15 central and 87 state laws.⁷² Moreover, the effects of the land alienation prohibition laws are also countered by the effect of land reform laws, which protect the rights of non tribals who have settled in tribal areas for a certain period of time. Since the non-tribal population is more sophisticated than the tribal population, when laws protect land rights of both, the non-tribal population is able to use laws more effectively to displace the tribal population.

6.2. The Tribal Sub Plan

Pursuant to the recommendations of the Dhebar Commission, within India’s planned economy, the second

major institutional reform was the creation of a targeted plan of financial allocations and expenditures for the benefit of the tribals. This took shape in the form of introduction of a tribal sub plan in the Fifth Five Year Plan (FYP) (1974) which provided a platform for targeted funding to be channelised appropriately for tribal welfare all the way to the village level. Continued in successive Five Year Plans since the Fifth FYP, the tribal sub plan sought to supplement the financial allocations made by state governments with respect to tribals and provide an additional targeted grant for the overall development of the tribal communities. Tribal sub plans exist for twenty three out of twenty five states in India that have tribal communities, the exceptions being the states of Meghalaya and Mizoram that are tribal majority states. There are no tribal sub plans for the union territories that have tribal populations.

The Tribal Sub Plan consists of allocations from the following four sources: (a) central TSP; (b) state TSP; (c) Ministry of Tribal Affairs and (d) institutional finance. Whereas the central TSPs of different ministries in coordination with the state governments support the major chunk of infrastructural development in the tribal areas, state governments fund the provision of basic amenities to tribal people through the state TSPs. The Ministry of Tribal Affairs also provides additional resources to close gaps in funding for both infrastructural development and provision of basic amenities to the tribal people. These funds are provided through the ‘Special Central Assistance’ to Tribal Sub-Plan (SCA to TSP) apart from Grants-in-Aid under Article 275(1) of the Constitution for the overall development of tribal people in the country. Institutional finance includes funds received under a number of different heads, including, Corporate Social Responsibility funds, and funds from various marketing and financial institutions set up by the state governments to provide institutional support for marketing and development of tribal products.

We analysed the allocations made under the Tribal Sub Plan for a period of five years (from 2012-13 to 2016-17).⁷³ Encouragingly, we found that the TSP allocations have consistently increased from INR 76,875 crore in 2012-13 to INR 129,005 crore in 2016-17 with a Cumulative Average Growth Rate (CAGR) of 13.8%. See Figure 2.

Analysing the relative proportion of various TSP components during this period, we found that on average for the five-year period under study, almost 4/5th of funds for the TSP came from the state TSP (78.4%), while the remaining 1/5th came from the central TSP (18.3%) and MoTA (3.3%). The contribution of institutional finance to the TSP was miniscule.⁷⁴ See Figure 3.

Figure 2: TSP Allocation from 2012-13 to 2016-17 (in INR crore)

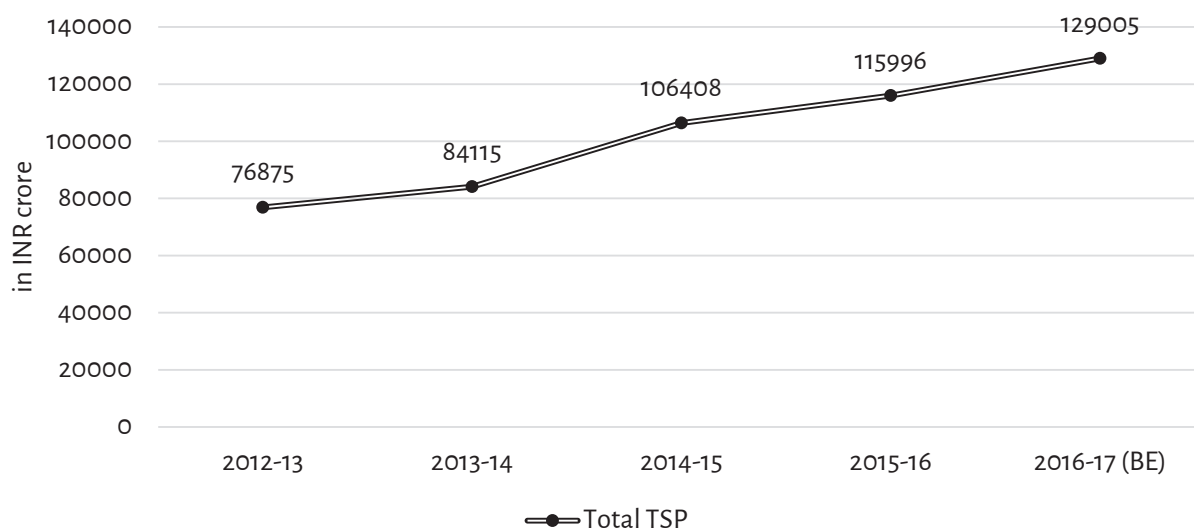
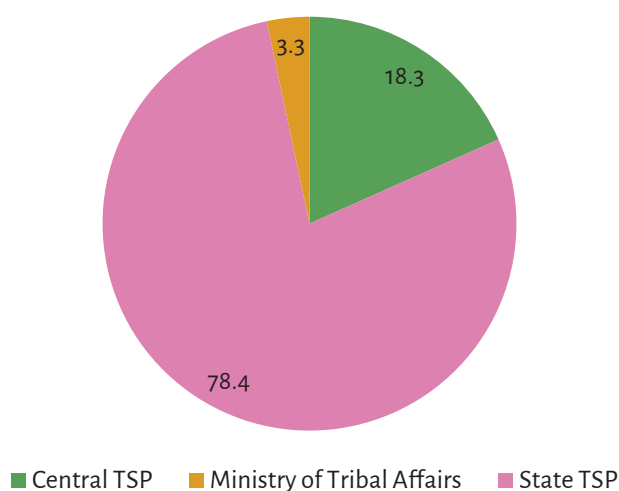


Figure 3: Relative share of TSP components from 2012-2013 to 2016-2017



It is also interesting to note from Figure 4 that the relative proportion of Central TSP has come down from 26.3% to 14.9% during this five year period, while that of the state TSP has gone up from 71.6% to 81.4%. This trend indicates that tribal development is increasingly dependent on state funds as opposed to central funds.

From the above review, it is abundantly clear that even though the Constitution envisages a centralised framework for the administration of tribal areas under the aegis of the President and the Governors of all the states, the responsibility of financing the costs of progressive changes for the tribals increasingly vests with the state governments. Consequently, we find that the fragmented nature of the constitutional protections for the STs is also replicated in the administrative and financial apparatuses designed to effectuate these

protections, thereby reducing the efficacy of provisions designed to safeguard the rights of the tribal peoples.

Moreover, the allocations made under the TSP fall far short of the recommended allocations under the central and state TSP as per the Planning Commission's Guidelines, 2006, that were further revised in 2014. In our analysis, we found that the total shortfall in the state TSP allocations made to 23 states as compared to the recommended allocations under the Planning Commission's Guidelines over a five year period (from 2011-12 to 2015-16) was INR 52,216 crore. Of this amount, approximately 87% of the shortfall amounting to INR 45,180 crore was contributed by the Fifth Schedule area states and the states of Assam and Tripura. See Figure 5.

Figure 4: Relative share of TSP components from 2012-13 to 2016-17

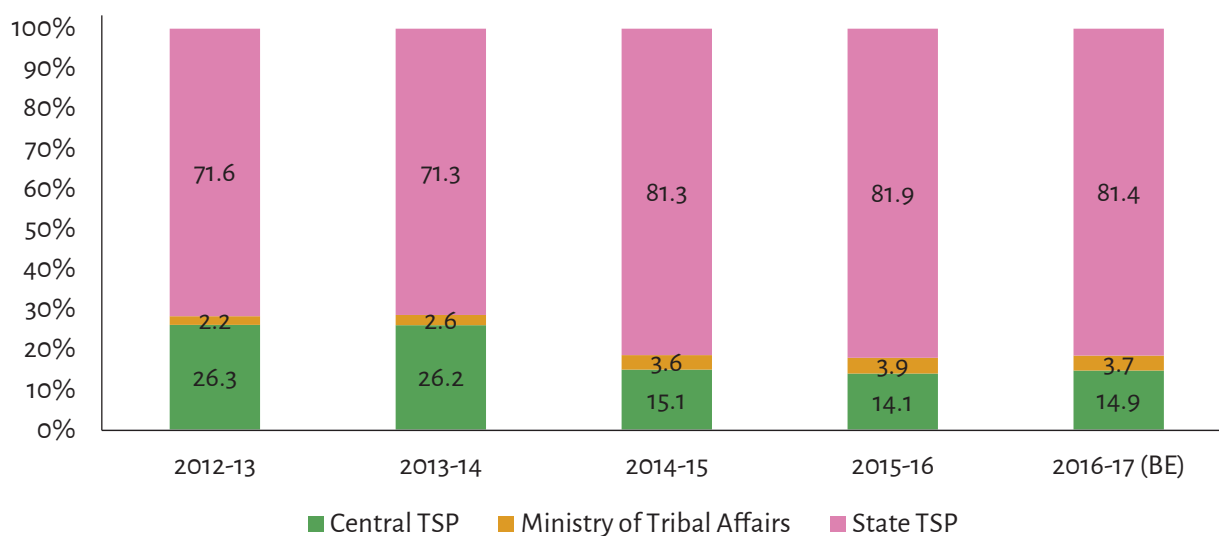
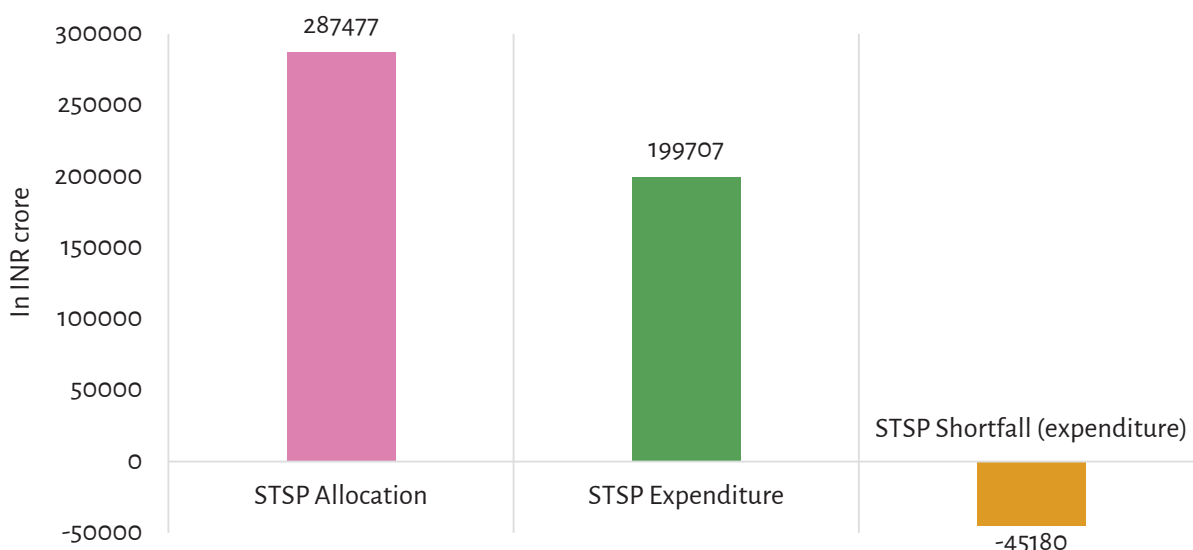


Figure 5: Shortfall in State TSP for Scheduled Area states from 2011-12 to 2015-16



When we computed the difference between actual and recommended allocations for Central TSP, we found a similar shortfall but of a smaller magnitude. Figure 6 shows that the total shortfall for the central TSP for the four-year period from 2013-14 to 2016-17 was INR 16,593 crore. Adding up the shortfalls from Figures 5 and 6, it is clear that both the central and state governments are failing to comply with the Planning Commission's Guidelines in discharging their responsibility for tribal welfare.

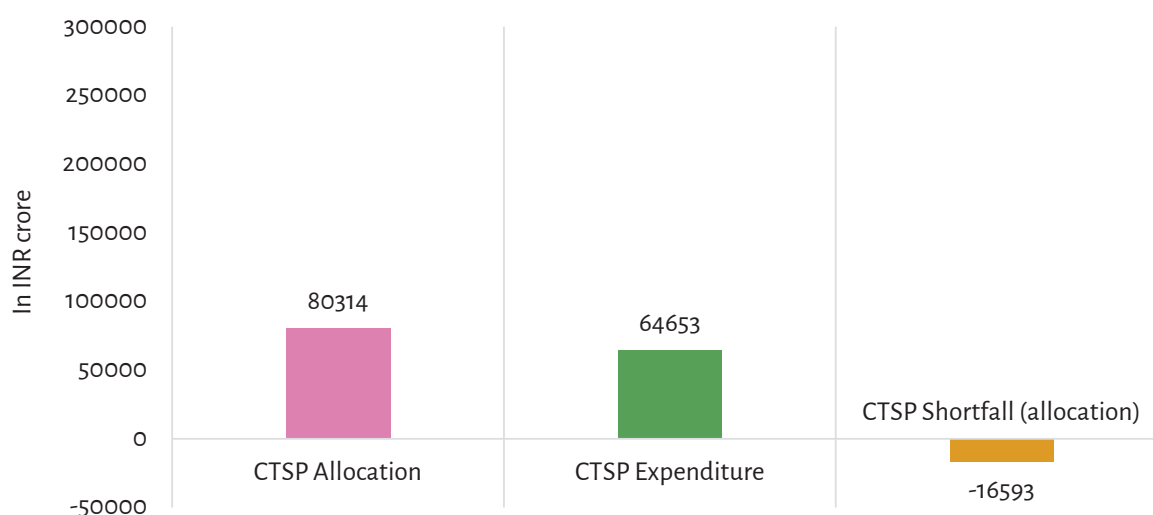
Our key informant interviews with officials at the National Commission on Scheduled Tribes and various state Tribal Welfare Departments have indicated that misguided expenditure of allocated funds in these areas compounds the problem of shortfall of funds intended for tribal

development. This occurs mostly because of a top down approach in the design of tribal welfare programmes, which is usually done without adequate consultation with the tribal communities and their representatives, as to their aspirations and requirements.

6.3. The Panchayat Extension to Scheduled Areas Act, 1996

Parliament enacted PESA in 1996 with a view to devolve greater autonomy and local self government to tribal communities in the Fifth Scheduled Areas. This law was enacted in response to a long standing demand by tribal communities and activists in the Fifth Schedule areas that they be granted the same autonomy and self government enjoyed by the Sixth Schedule areas. The PESA attempts to vest statutory powers with the Gram Sabha specifically in

Figure 6: Shortfall in Central TSP for Scheduled Area states from 2013-14 to 2016-17



areas relating to development planning, management of natural resources, and adjudication of disputes in accordance with prevalent traditions and customs. In pursuance of PESA, state legislatures are required to ensure that the Panchayats at the appropriate level and/or the Gram Sabha are endowed specifically with powers for management of land resources among other things. However, PESA was intended only as an umbrella framework under which respective state panchayat Acts have to be amended to incorporate the letter and spirit of PESA. A number of states which have adapted PESA under the statutory time line of one year as mandated by the Act have left a lot of operational issues subject to rule making powers and state prescriptions.

Moreover, the PESA only applies to Scheduled areas that are classified as rural areas. As described in section 7.1, our data shows that 1.05% of the total geographical area under the fifth Schedule areas, equivalent to 3873 square kilometres, falls within urban areas, to which PESA is not applicable. Of the 229 administrative units corresponding to district, taluk and block, that have been classified as Scheduled areas, 95 administrative units also include urban areas. Thus, the people living in urban areas in approximately 41% of the administrative units under the Scheduled areas do not enjoy the benefits of PESA.

6.4. The Ministry of Tribal Welfare

For more than fifty years since independence, the Central Home Ministry was charged with the responsibility of tribal welfare. Though some states had independent tribal welfare departments, a separate Ministry of Tribal Affairs was not created at the level of the central government until 1999. This inspite of the fact that the debates in the Constituent

Assembly had highlighted the role of the central government in the protection and uplift of the tribal communities. Once constituted, the MoTA sought to assume responsibility of the NCST, even though the latter was envisaged to be an independent body which would advise the government on matters of tribal policy. Since its creation, the MoTA has been the nodal agency for the creation of central tribal policy in consultation with the NCST and the national commissions created for tribal welfare, including the Bhuria Committee, 2002 and Xaxa Committee, 2014.

6.5. The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

In 2006, Parliament enacted the Forest Rights Act to reverse more than a century of injustice against forest dwelling communities, particularly the STs since the enactment of the draconian forest laws of the nineteenth century. Though expected to undo injustice to tribals, the independent Indian state's National Forest policy, 1952⁷⁵, further diluted the "rights and privileges" of STs in forest areas to "rights and concessions". It stated that tribal communities should not be allowed the use of forest produce at the "cost of national interest." When Parliament enacted the Forest Conservation Act, 1980, the Forest Department was further empowered to deprive tribals of their rights to collect minor forest produce and to cultivate forest lands.

It was not until the National Forest Policy, 1988⁷⁶, that a reversal of this position was attempted. Noting the uniquely symbiotic relationship between tribal people and forest land, the NFP, 1988, stressed that the primary task of all agencies responsible for forest management, should be to associate

the tribal people closely with the protection, regeneration and development of forests, as well as to provide gainful employment to people living in and around the forest. Pursuant to this policy, in the 1990s, the Ministry of Environment and Forests introduced guidelines for the “Joint Forest Management” policy introduced in several states, which envisaged joint management of forests between tribal communities and Forest Department officials.

The efforts to secure tribal people's forest rights culminated in the enactment by Parliament of the historic Forest Rights Act, 2006. This Act granted statutory recognition to individual and community rights of Scheduled Tribes, and other traditional forest dwelling communities, and gave them a participatory voice in forest management and conservation. The Act recognized rights of tribal communities to cultivate land in the forests, and also rights to use grazing lands, collect minor forest produce, and to protect and conserve forests.

6.6. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013

The power of “eminent domain”, inherent in the exercise of the state's sovereignty allows the state to compulsorily acquire property belonging to private persons for a public purpose and upon payment of just compensation, following procedure established by law. Starting with the Bengal Regulation I of 1824⁷⁷ and culminating in the Land Acquisition Act, 1894, the British experimented with a variety of procedures for acquisition of land. The Land Acquisition Act, 1894, originally enacted for the territory of British India was, following independence, extended to cover the entire territory of India except for the state of Jammu and Kashmir.⁷⁸

This Act remained in force for a period of 119 years although it was amended frequently during this time.⁷⁹ The last amendment to this law was made in 1984. The Land Acquisition Act, 1894, applied originally only to British India. Like other colonial laws, the application of the Land Acquisition Act, 1894 was grandfathered by Article 13(2) of the Constitution insofar as it was not in conflict with the fundamental rights of the people.

Moreover, apart from the laws that dealt directly with land acquisition, a number of other colonial and post-colonial central and state laws contained provisions for acquisition of land. A study by the CPR Land Rights Initiative of all Supreme Court disputes on land acquisition has estimated that there are at least 15 central and 87 state laws of land acquisition.

As mentioned previously, the special constitutional provisions safeguarding tribal rights to land in the Fifth Schedule areas

do not recognise the sovereignty of the tribals with respect to these areas. Although in the debates on the Sixth Schedule, Dr. Ambedkar, the President of the Drafting Committee on the Constitution acknowledged that the political and administrative autonomy guaranteed for the tribal areas under the Sixth Schedule was ‘somewhat analogous to the position of the Red Indians in the United States as against the white emigrants’⁸⁰, thereby signifying some sort of limited sovereignty over the land as “peoples”, the text of the Constitution makes these areas expressly subject to the land acquisition laws enacted by the federal and state legislatures of the respective states. Therefore, despite some political and administrative autonomy for the Sixth Schedule areas, the Indian state retains its eminent domain powers over these areas. Along with the forests and mining laws, the land acquisition laws have been the biggest source of state sanctioned displacement of the tribal peoples.

In 2013, the 1894 Act was repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (“RFCTLARR Act”).⁸¹ The RFCTLARR Act, 2013 recognises the special situation of the Scheduled Tribes. Section 42 of the Act mandates that “as far as possible”, no government shall acquire land in the Scheduled areas.⁸² Where such acquisition is done, it must be done only as a “demonstrable last resort”.⁸³ In case of acquisition or alienation of any land in the Scheduled Areas, the RFCTLARR Act mandates that prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, as the case may be, must be obtained, in all cases of land acquisition in such areas, including acquisitions in cases of urgency.⁸⁴ The Act further stipulates that in case of a project involving land acquisition on behalf of a Requiring Body which involves involuntary displacement of the Scheduled Castes or the Scheduled Tribes families, a Development Plan shall be prepared, in such form as may be prescribed, laying down the details of procedure for settling land rights due, but not settled and restoring titles of the Scheduled Tribes as part of the land acquisition.⁸⁵ Finally, the Act stipulates that the affected families of the Scheduled Tribes shall be resettled preferably in the same Scheduled Area in a compact block so that they can retain their ethnic, linguistic, and cultural identity and these areas would receive land free of cost from the government for community and social gatherings.⁸⁶

However, the RFCTLARR Act has from its inception been subject to intense political and legal contestation and has now been amended by several states, including those of Tamil Nadu⁸⁷, Telangana⁸⁸, Gujarat⁸⁹, Rajasthan⁹⁰, Maharashtra⁹¹ and Jharkhand⁹², to get rid of the requirements of consent and social impact assessment of proposed projects for a

large number of projects. Even as the Act came into force on January 1, 2014, tribal village lands were being acquired for the Polavaram Dam project in the state of Andhra Pradesh⁹³, without any regard to the text or spirit of the RFCTLARR Act. Therefore, it is not clear to what extent the RFCTLARR Act will be able to safeguard the rights of the tribal people.

6.7. Mining laws

Like its claim to forest resources under the forests laws, the Indian state has claimed succession to the British state's claim to all the mineral resources under the subsoil. Within India's federal constitutional structure, the power to make laws with respect to "regulation of mines and oilfields and mineral development" vests with the federal government.⁹⁴ But the state governments are empowered to frame rules and regulations in respect of mining activities and mineral development, subject to the provisions of List I.⁹⁵ This was in accordance with the structure of the colonial government under the Government of India Acts, 1919, and 1935.

Following the Mineral Policy Conference, 1947, Parliament enacted the Mines and Minerals (Development and Regulation) Act, 1957, to regulate the mining sector in India, which specifies requirements for obtaining and granting mining leases for mining operations. Under the MMDR Act, Mineral Concession Rules, 1960, and the Mineral Concession and Development Rules, 1988, outline the relevant procedures and conditions for obtaining a Prospecting License or Mining Lease.

Read in conjunction with the land acquisition laws, the mining laws applicable both to Fifth and Sixth Schedule areas, empowered the state to displace the Scheduled Tribes from their lands. In 1997, following the historic *Samata* judgment⁹⁶, the NGO *Samata*, challenged the grant of mining leases to non-tribal people in the Scheduled Areas of the state of Andhra Pradesh as being violative of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, of 1959 and Forest (Conservation) Act of 1980. The Supreme Court held these leases to be null and void, declaring that "government lands, tribal lands, and forestlands in the scheduled Areas cannot be leased out to non-tribals or to private companies for mining or industrial operations". The Court advocated that mining activity should be taken up only by the State Mineral Development Corporation or a tribal co-operative if they are in compliance with the Forest Conservation Act and the Environment Protection Act. It also directed that at least 20% of the net profits should be set aside as a permanent fund for basic amenities like health, education and roads. In the absence of total prohibition, the court laid down certain duties and obligations to the lessee, as part of the project expenditure. The court also held that, as per the

73rd Amendment Act, 1992, "...every Gram Sabha shall be competent to safeguard...under clause (m) (ii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienation of land of a scheduled tribe."

In 2015, the MMDR Act was significantly amended by the Mines and Minerals (Development and Regulation) Amendment Act, 2015, which stipulated certain rules and conditions for issuance of mining and prospecting licenses. In line with the recommendations of the Supreme Court in the *Samata* judgment, this amendment also mandated the creation of District Mineral Foundations ("DMFs") in all districts affected by mining operations. By a notification dated 16 September 2015, the central government directed states to set up DMFs. As of 10 October 2016, DMFs have been set up in 263 districts across 12 mineral rich states and an amount of Rs. 3589 crores has been collected.⁹⁷ It is however not clear how the money collected by the DMFs will be spent for the beneficiaries, and who these beneficiaries are.

In the next section, we will present findings from original work done at the CPR Land Rights Initiative to study the intensity of mining in the Scheduled areas.

7. EVALUATING THE CONSTITUTIONAL, LEGAL, FINANCIAL AND ADMINISTRATIVE MEASURES FOR PROTECTION OF RIGHTS OF STs UNDER THE "DEVELOPMENT THROUGH INTEGRATION" NARRATIVE

The previous section delineated the various constitutional, legal, financial, and administrative measures taken by the independent Indian state for the welfare of the STs in order to reverse the centuries of injustice against these communities and for their protection and uplift pursuant primarily to the "development through integration", and secondarily to the "identity based isolation" narratives. In this section, we will present findings from the work done by us to evaluate the success and failures of some of these measures.

Our attempt to evaluate the efficacy of these measures was impeded by the complete absence of primary data on various aspects of the relationship between the Scheduled Tribes and Scheduled Areas. Therefore, we first worked on creating this primary data to answer the following five aspects pertaining to the relationship of the STs and Scheduled Areas. The compilation of this data would then help us evaluate in part the reasons for their displacement and deprivation relative to the rest of the population, despite the plethora of constitutional, policy, legislative, administrative, and financial measures for their protection.

1. How much geographical area within India's land mass falls within the Scheduled areas and what is the percentage of tribal population living within the Scheduled areas?
2. What is the overlap of forested land with the Scheduled Areas relative to other areas?
3. What is the overlap of dams with Scheduled areas as compared to other areas in the country?
4. What is the intensity of mining activity in the Scheduled areas? And are the Scheduled Tribes the beneficiaries of this activity?
5. How are the Governors discharging their constitutional responsibilities of reporting on the welfare of the measures taken for the Scheduled Tribes in the Scheduled Areas?

7.1. Geographical Area within the Scheduled Areas and Percentage of tribal population living in the Scheduled areas

The Ministry of Tribal Affairs (“MoTA”) or any other department of the Government of India did not have publicly available up to date data on the extent of geographical area within the Scheduled Areas or the percentage of tribal population living within the Scheduled areas. The Annual Report of the MoTA has a state wise list of the Scheduled areas, as provided in the Scheduled Areas (Part A and Part B States) Orders, and modified subsequently by other presidential orders.⁹⁸ But MoTA does not provide an updated map of the Scheduled Area districts. The only publicly available map of Scheduled Area districts in India that we are aware of has been put out by a group called Mines, Minerals and People (“MMP”). In a complete data void on this subject, the MMP map gives some sense of the Scheduled areas in India. However, the map is incomplete because it only lists the Fifth Schedule areas, and somewhat inaccurately, because the areas represented do not necessarily correspond with the Scheduled area districts listed in the presidential orders on the MoTA website.

In order to assess the problems of poverty and vulnerability of scheduled tribes in the scheduled areas, and to conduct a comparative assessment of the Scheduled Areas across different states, the logical first step was to create an accurate geospatial representation of the Scheduled areas.

We chose to map all the demarcated Scheduled Areas listed in the MoTA Annual Report to the administrative codes of districts, sub districts and villages as per the latest Census of India, i.e. the 2011 Census. The Census of India is the most comprehensive data gathering exercise conducted by the

Indian government. Pursuant to this exercise, the government collects both individual and household level data on a total of over sixty metrics, including area, population, literacy, work force, access to banking and physical assets, etc. for the entire Indian population.

The mapping of Scheduled Areas to the “location” or “administrative” codes in Census 2011 was a complicated exercise for multiple reasons. First, because the demarcated Scheduled areas were not always demarcated in the same administrative units as recorded in the Census 2011. Moreover, the terms used to identify scheduled areas, for instance, patwari circle numbers, panchayats, mahals, Agency area, Autonomous Areas etc. are peculiar to each individual state, which adds layers of complexity to the problem of correspondence of the demarcated scheduled areas with the Census codes.⁹⁹ Second, on multiple occasions, the demarcated regions have undergone alterations in name, boundary limits, and categorisation.

Despite considerable efforts to establish correspondence between all the demarcated Scheduled areas and the Census codes, we were unable to complete this exercise for all the villages of Maharashtra and Andhra Pradesh because neither the MoTA nor the tribal welfare departments of those states provided updated information with respect to these states. Subject to this caveat of missing information in case of Maharashtra and Andhra Pradesh, the analysis presented below must be seen as the best available estimate.

Upon completing this mammoth exercise, we have established that out of a total of 640 administrative districts in India, a total of 123 districts have listed Scheduled Areas. Of these districts, 104 districts have Fifth Schedule and 19 districts have Sixth Schedule areas. See Figure 7. Of these 123 districts, 51 districts are those where the entire district has been declared as a Scheduled Area while the remaining 72 districts have partial Scheduled Areas in varying proportions. In case of the 51 districts that have been declared entirely as Scheduled areas, 36 are Fifth Schedule Area districts while 15 are Sixth Schedule area districts. See Figure 8.

Once we identified all these districts, we used ‘Quantum Geographic Information Systems’ software (“QGIS”) to represent the fully and partially Scheduled area districts geospatially. Map 2 highlights the Fifth and Sixth Schedule area districts in India. Map 3 represents the partial and fully scheduled area districts in India.

Figure 7: Number of Fifth and Sixth Schedule Area districts

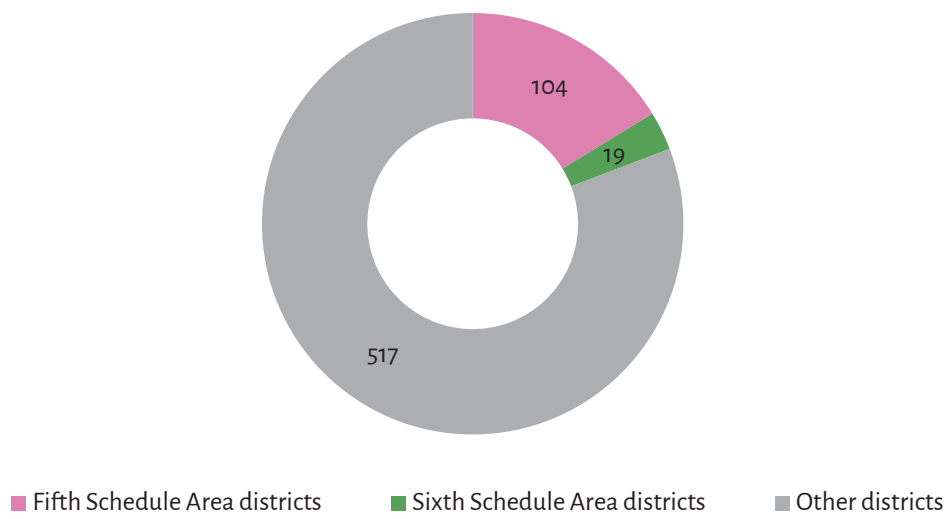
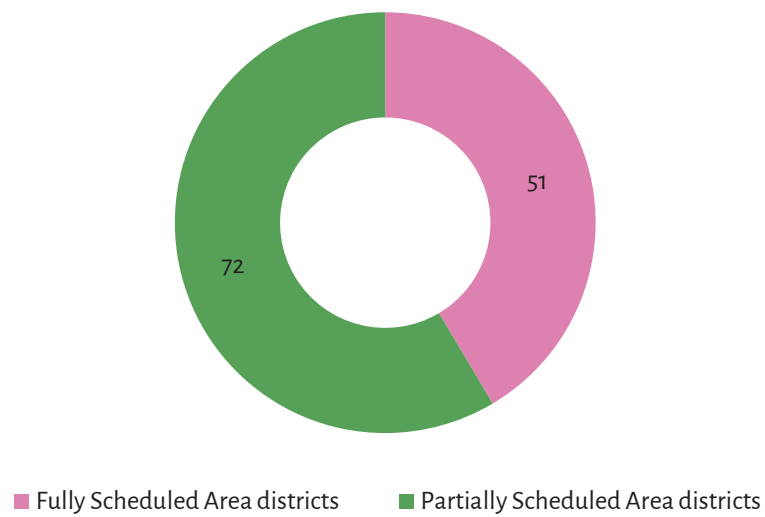
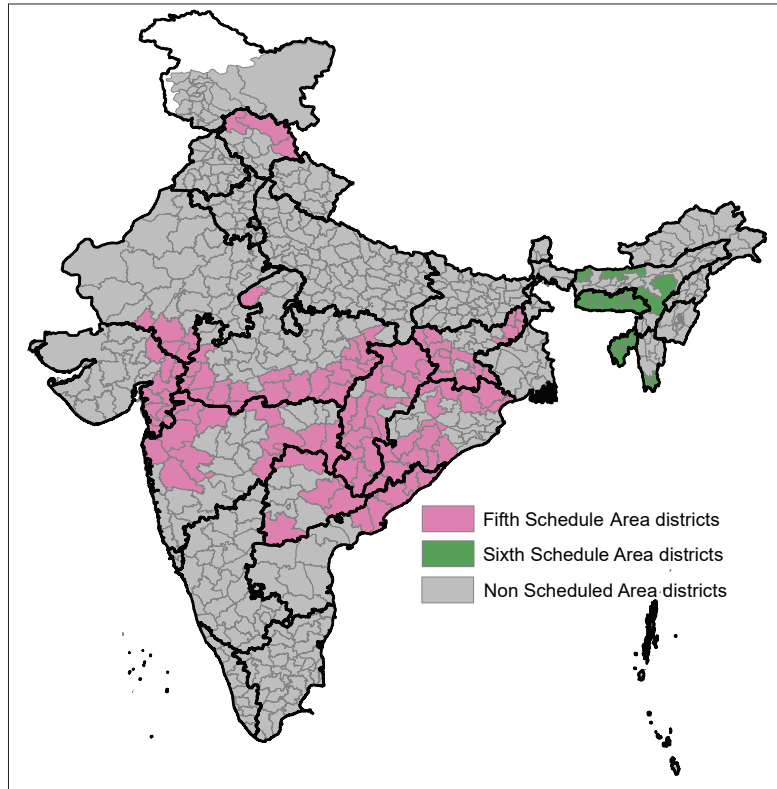


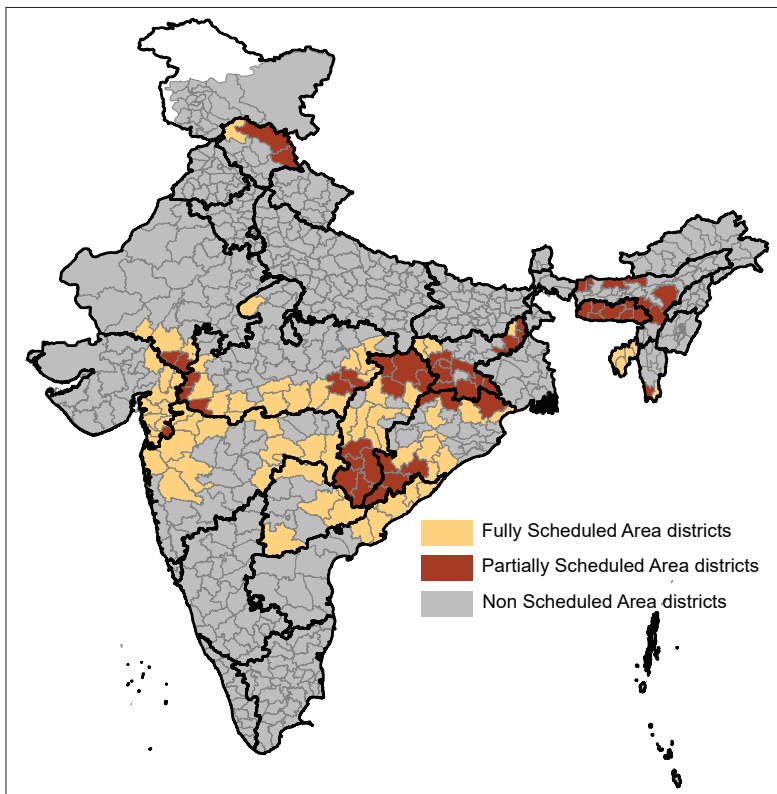
Figure 8: Number of Full and Partial Scheduled Area districts



Map 2: Geo spatial representation of the Scheduled Area districts



Map 3: Geo spatial representation of the full and partial Scheduled Area districts



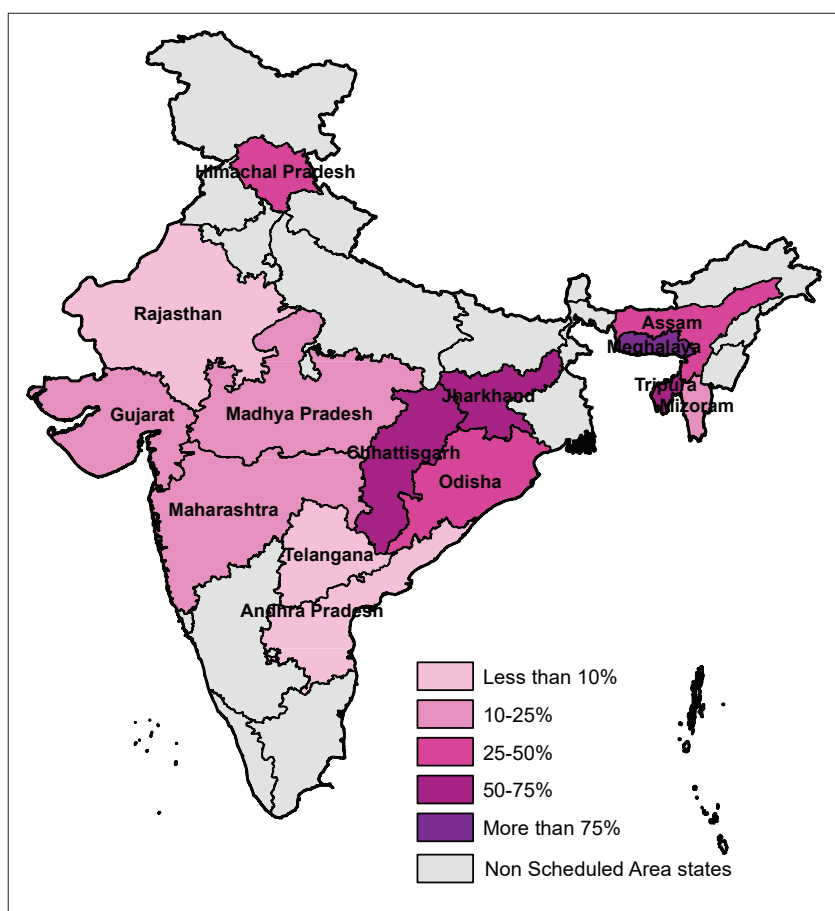
Once we had identified the sub-district level list of SAs as per the latest administrative setup, the next step was to assess the geographical area under the Scheduled Areas, its relative proportion to the total geographic area of India and respective states and even to understand the urban-rural distribution of SAs. Moreover, we wanted to assess the proportional distribution of Scheduled Tribe and non-Scheduled Tribe population residing in the SAs. In order to conduct this exercise, we relied upon the Primary Census Abstract (PCA) of Census 2011, to extract information with respect to the metrics mentioned above. To facilitate a better visual representation, we created graphs using this information and plotted maps using GIS software.

From the same dataset, we unearthed the proportion of total and ST population residing in the SAs. However, for the purposes of this report, we are presenting this information at the level of states. In cases where the point level information was not available (e.g. villages/panchayats in Andhra Pradesh, Maharashtra, Patwari Circle No. in Madhya Pradesh etc.), we relied upon the rural component of the respective sub-districts to make computations. Also, in case of Autonomous District Councils (ADCs) where the administrative boundaries

were not clear we extracted the information at the level of the corresponding districts. So, in that sense, our analysis is a slight overestimate but it does not affect the trend or broad message.

Based on our analysis of the PCA data, we concluded that the percentage of Scheduled area vis-à-vis total geographical area in the country is approximately 13%. Of this, 11.3% falls in Fifth Schedule area while 1.7% is Sixth Schedule area. Based on this, we calculated the state wise distribution of the Scheduled Areas. Map 4 shows the percentage of scheduled area as percentage of the total geographical area of each of the fourteen states that have demarcated scheduled areas. Other than the Shillong Area, the entire state of Meghalaya is designated as having Scheduled areas under the Sixth Schedule.¹⁰⁰ The states of Chhattisgarh, Jharkhand and Tripura have more than a majority of the land area as Scheduled area under the Fifth and Sixth Schedules, respectively. On the other end of the spectrum, less than 10% of the area in the states of Rajasthan, Telangana and Andhra Pradesh is designated as Scheduled area. Rajasthan has the least amount of scheduled area amongst the 14 states with designated scheduled areas.

Map 4: State wise geo spatial representation of percentage distribution of geographical area in the Scheduled areas.



Further, we computed that 6.3% of India's population is residing in the Scheduled Areas. This includes both the Scheduled Tribe and non-Scheduled Tribe population. It is to be noted that this estimate doesn't include information on Andhra Pradesh and Tripura as we could not perfectly map the Scheduled Area boundaries of these states with the latest administrative codes. We further computed that on average, about 39% of the total ST population of India is residing in the Scheduled Areas.¹⁰¹ A further breakup of these figures for Fifth and Sixth Schedule Areas is given below in Figure 9. Putting these estimates together, we can infer that on average, 53% of population in Fifth Schedule Area is ST while approximately 60% of the population in the Sixth Schedule Areas is ST. However, it should be noted that these estimates are slight overestimates for reasons explained earlier in this section. So, under this caveat it may be possible that in Fifth Schedule Areas on average ST population residing within them is in minority as this is true for some of the states like Maharashtra and Telangana.

The Constituent Assembly demarcated Scheduled areas as tribal majority areas in India. But, in our analysis, we find that 75 out of 205 administrative regions (districts or sub-districts), that is 37% of all administrative regions are ST minority areas. This confirms the widespread belief that the Scheduled Tribes have been either voluntarily or involuntarily displaced from the tribal majority Scheduled Areas.

7.2. Overlap of Forested areas with Scheduled Areas

Given the nature of the special relationship between tribals and forests, we wanted to establish the extent of overlap between forested areas and Scheduled area district wise total forest cover for all States in India from the Forest Survey of India, 2013.¹⁰² However, we note at the outset that the figure for the percentage of forest cover¹⁰³ lying in Scheduled Area districts, although the best possible estimate, is an overestimation. This is because forest cover has been calculated at a district level, not a sub-district/taluk level or villages in terms of which Scheduled Areas are demarcated. This was because the lowest level at which forest cover data is available, is the district level.¹⁰⁴

Based on this analysis, we have computed that the total forest cover in India is 697,898 sq. km, which is 21.2% of India's total geographical area. Map 5 represents the state wise percentage of forest cover in India. By mapping district wise forest cover to Scheduled Area districts we have now estimated that 38% of the Forest Cover in India lies in the Scheduled Areas districts (123 districts of 640), which means that the intensity of forest cover is slightly more than two and a half times in Scheduled Areas districts as compared to other districts. See Figure 10.

Figure 9: Summary findings on Geographical Area, Total Population and ST population with respect to the Scheduled Areas

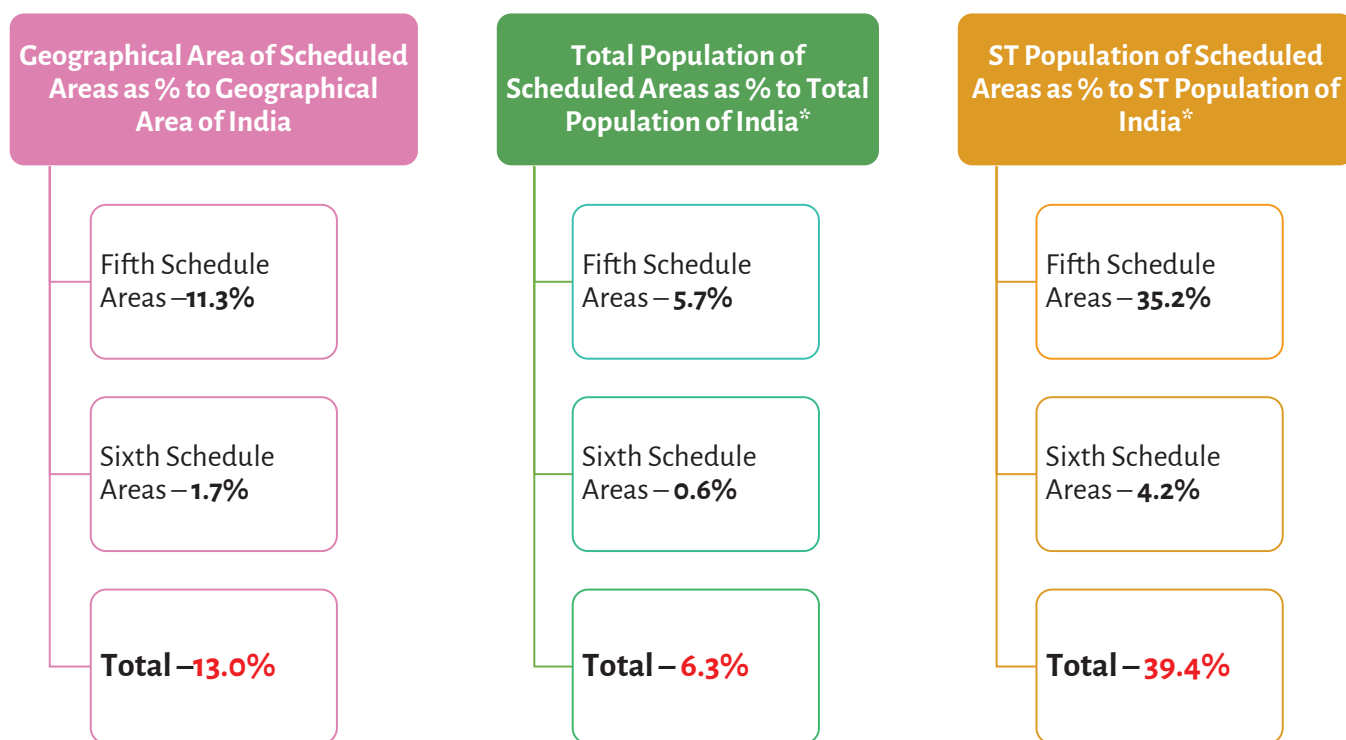
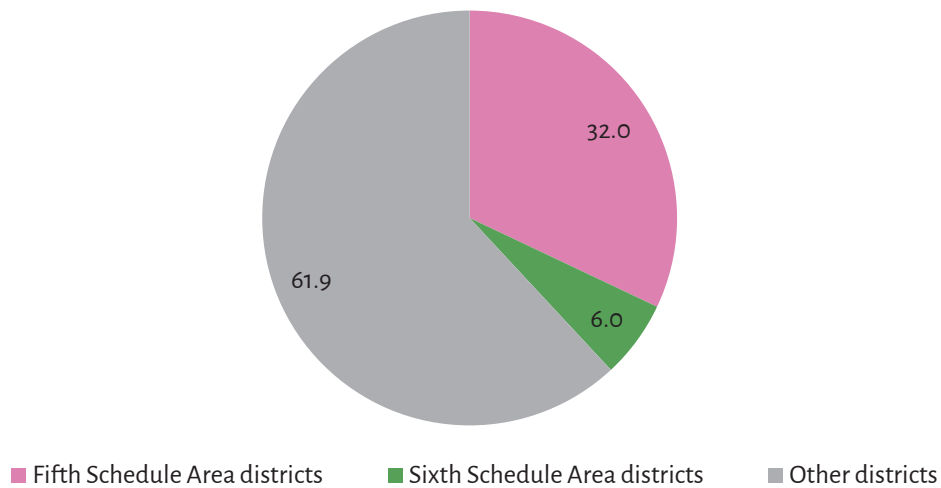


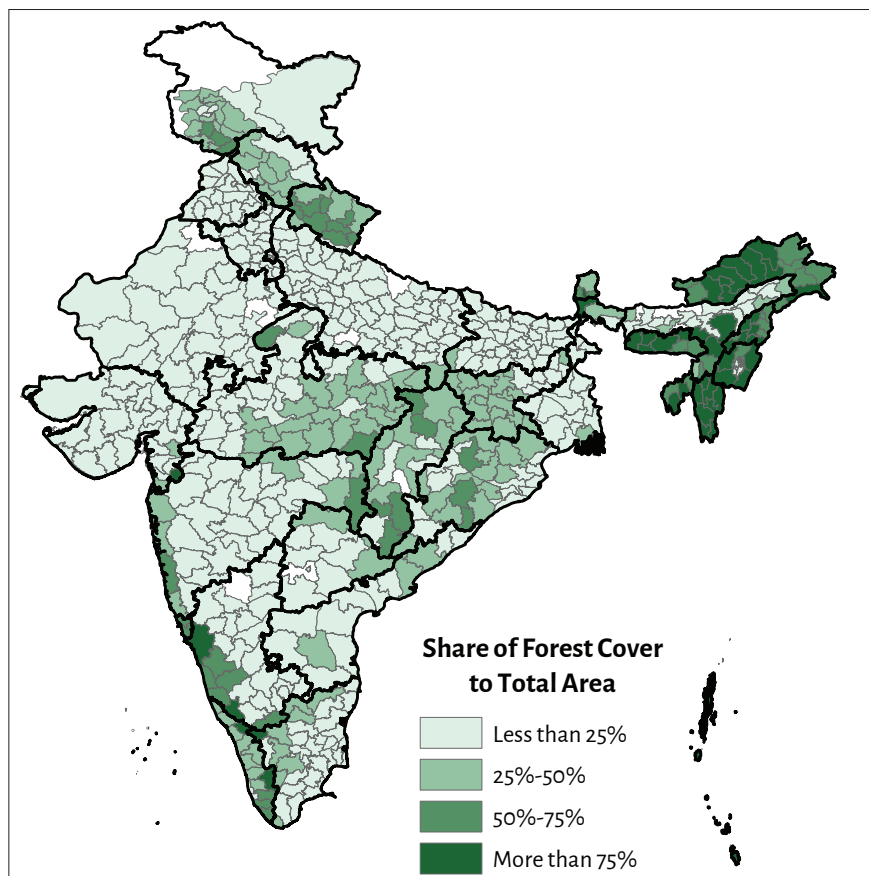
Figure 10 Distribution of Forest Cover in Scheduled Area districts



We found that on average almost 30% of the Fifth Schedule Area districts and 76% of the Sixth Schedule area districts are under forest cover. From this we can conclude that the Scheduled Areas have significantly more forest cover compared to the rest of the country. Also, within the Scheduled Areas, Sixth Schedule Areas have more forest cover than the Fifth Schedule Areas.

Given the special nature of the STs to forestland, it is unsurprising that the concentration of forest cover in the Scheduled Areas is just over two and half times than that compared to the rest of the country. However, since there were no existing estimates of the distribution of forest cover in the Scheduled areas, our study goes a long way in shedding light on the geography and topography of the Scheduled areas.

Map 5: District wise geo spatial representation of Forest Cover



7.3. Overlap of Dams in the Scheduled Areas

Dams are widely believed to be one of the biggest causes of displacement of the Scheduled Tribes. We attempted to establish the veracity of this claim by identifying the distribution of dams in the Scheduled Areas vis-à-vis the distribution of such dams in non-Scheduled areas. In order to create the dataset on the spatial and temporal distribution of dams in India, we relied on two sources, 1) Water Resource Information Systems (WRIS) and; 2) National Register for Large Dams (NRLD). For us to understand the intensity of dams in SAs and to assess their impact on the socio-economic development of the local people, we needed to establish data on several characteristics of dams, including their geographical location, reservoir area, storage capacity, and purpose of the dam. But neither dataset contained complete information on any of these variables. Therefore, we had to collate this information from two datasets to create a consolidated dataset on dams in India.

Extracting information from two different datasets and reducing it into a singular form for the purposes of analysis was the biggest challenge. The WRIS dataset contains information on 4657 dams, whereas the NRLD dataset

contains information on 5190 dams. We used a matching algorithm to correlate the data from the two datasets, but also had to manually collate the data on location for around 700 dams.¹⁰⁵ Based on this exercise, we created a consolidated database of 3,771 'Large Dams'¹⁰⁶ and 59 'Dams of National Importance'¹⁰⁷ in India. We note that this dataset does not contain data on dams which are under construction, reservoirs, tanks, barrages and weirs.

Map 6 shows the numeric distribution of dams across various states in India. This includes both large dams and dams of national importance. Figures 11 and 12 show the distribution of dams of national importance and large dams in the Fifth and Sixth Schedule area districts. Around 25% and 37% of Dams of National Importance and Large Dams, respectively, lie within Scheduled Area districts (123 districts out of 640), respectively, accounting for a total of 1437 dams.

From the above analysis, we can conclude that 38% of all dams lie within the Scheduled areas, which implies that the intensity of dams is slightly over two and half times in the Scheduled Areas.

Map 6: District wise geo spatial representation of distribution of dams

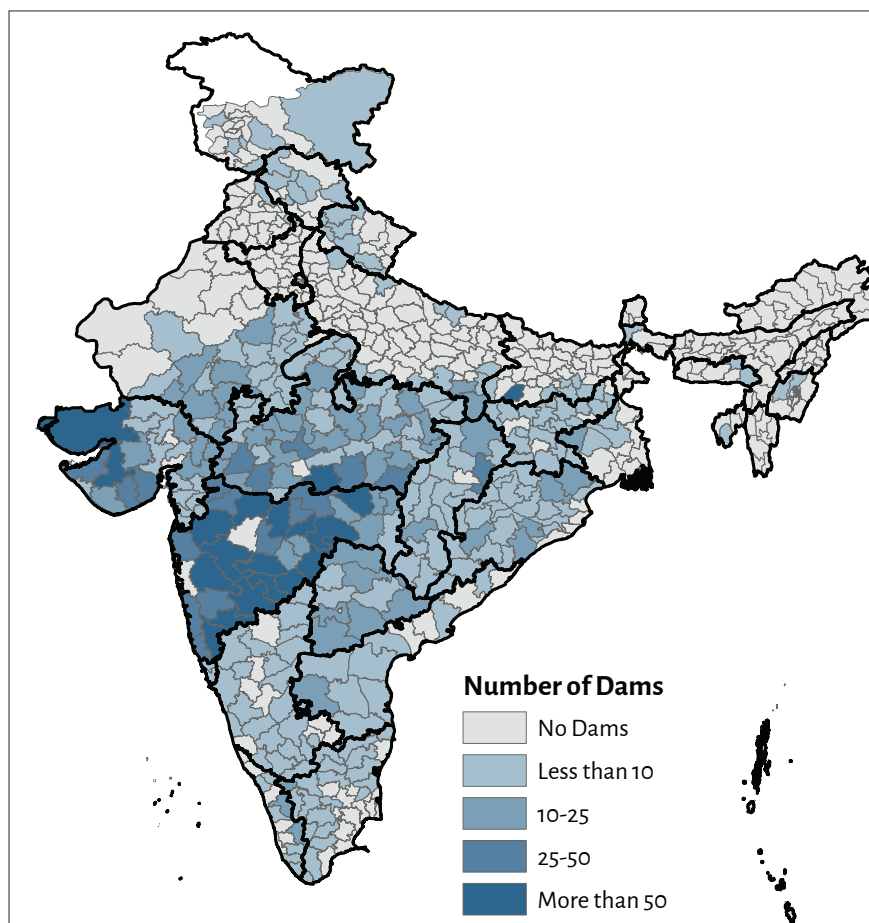


Figure 11: Distribution of 'Dams of National Importance' in the Scheduled Areas districts

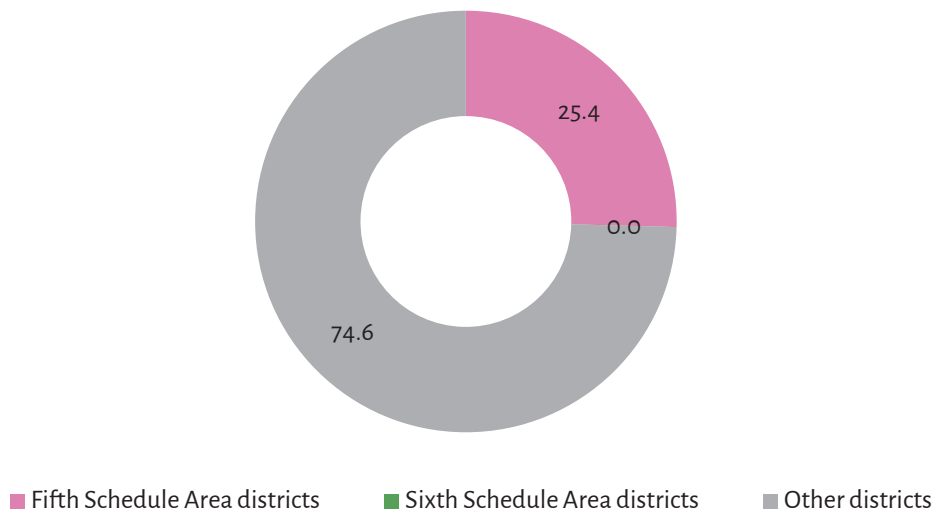
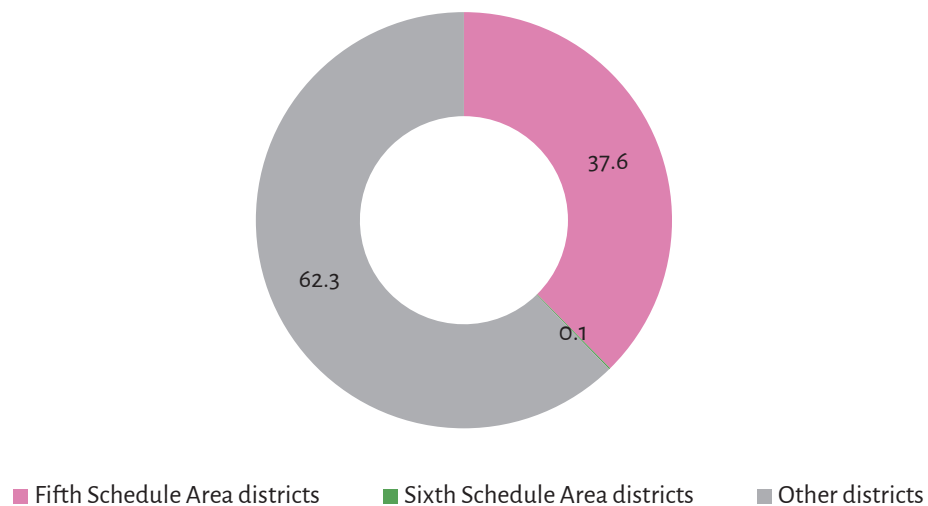


Figure 12: Distribution of 'Large Dams' in the Scheduled Area districts



We further investigated the state wise distribution of 1437 dams that are in the Scheduled Areas. We found that two thirds of all dams within Scheduled area districts are in the states of Maharashtra (42.4%) and Madhya Pradesh (25%). Refer to Figure 8.

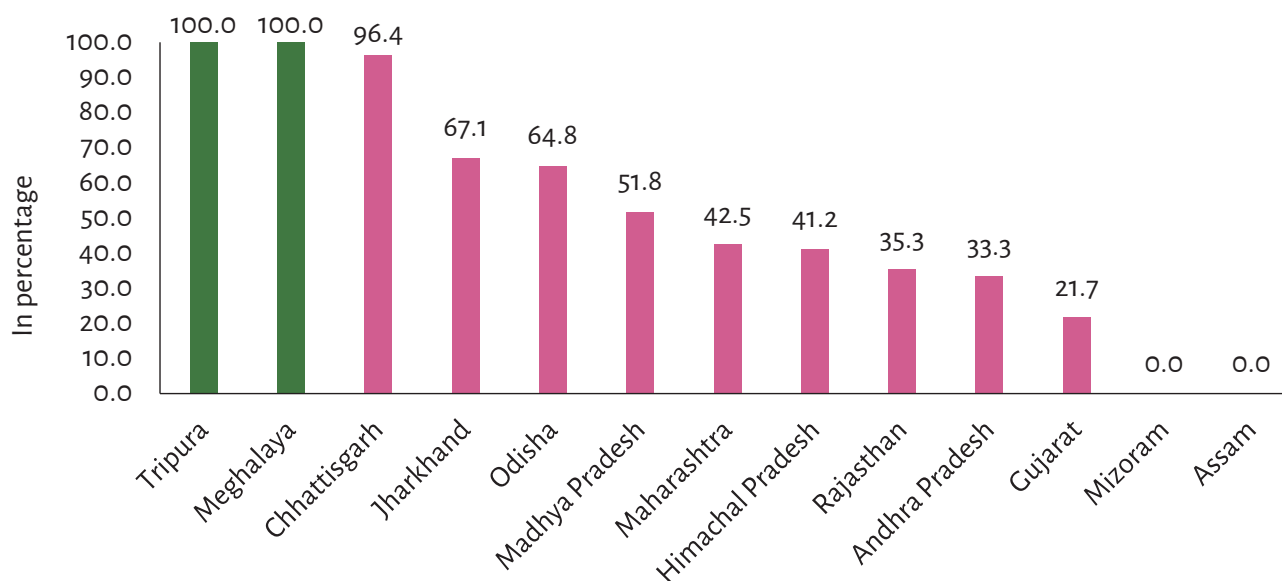
Next, we examined the distribution of dams between Scheduled area and non scheduled area districts of particular states. We found that both the states of Meghalaya and

Tripura have all their dams in the Scheduled Areas but these are outliers, because almost all the territory of the state of Meghalaya falls within Scheduled Area, while Tripura just accounted for one dam in our dataset. Among the Fifth Schedule Area states, Chhattisgarh (96.4%), Jharkhand (67.1%), Odisha (64.8%) and Madhya Pradesh (51.8%) have a majority of their dams in the Scheduled Area districts. Gujarat (21.7%) has comparatively the lowest proportion of dams in the Scheduled Area districts. See Figure 14.

Figure 13: State wise distribution of dams in the Scheduled Area districts



Figure 14: State-wise distribution of dams in the Scheduled Area vis-à-vis Non Scheduled Area districts



7.4. Intensity of Mining in Scheduled Areas

Along with dams, mining is widely regarded as the biggest cause of displacement of tribals. But systematic data on the extent of mining activity in the Scheduled areas and the distribution of revenue generated from such mining activity amongst different beneficiaries, namely, the government, mining companies, and the tribal population, is conspicuous by its absence. We have made a preliminary attempt at creating data on the intensity of mining in the Scheduled Areas.

At the outset, we identified three sources of data on mining with the government of India. The first two sources were government ministries, including the Central Ministry of Mines, and the Department of Mines of States. The third was the Indian Bureau of Mines, a government organisation under the Ministry of Mines engaged in scientific development of mineral resources and protection of environment in mines. After reviewing these three data sources, we proceeded to use data from the Ministry of Mines because the Ministry records data 'year-wise' and 'state-wise' and also the most recent data

was available with them, thereby enabling inter-state and temporal comparison. We extracted latest data on mineral production, number of reporting mines and royalty accruals from the Annual Report of Ministry of Mines 2016-17.

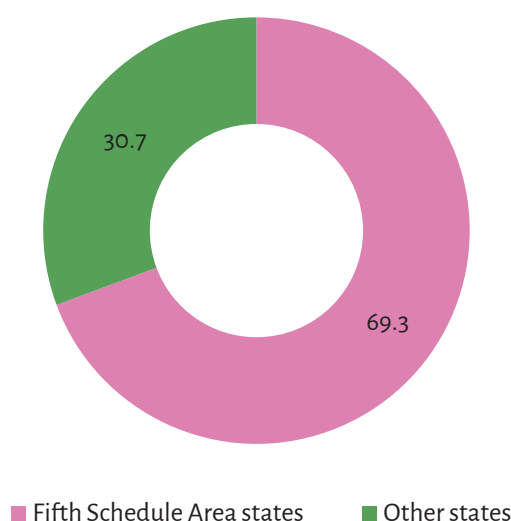
The MMDR Act 2015, classifies the mineral wealth of India into “major” and “minor” minerals. The Act defines “minor minerals” as “building stones, gravel, ordinary clay, and ordinary sand, other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral”. The Act makes clear that all other minerals not regarded as minor will be considered as major.¹⁰⁸

Based on the data collected from the Annual Report of Ministry of Mines 2016-17, for the year 2015-2016, the total

number of major mineral reporting mines were 2100. Out of this, 1463 mines i.e. roughly 70% of mines were in Fifth Schedule Area states. See Figure 15. This estimate excludes the share of states like Himachal Pradesh, Meghalaya, Mizoram and Tripura since information for these states was not available.

From the information contained in the Annual Report, we deciphered that the total value of mineral production for the year 2015-2016 was INR 276,638 crores.¹⁰⁹ The Report specified the value of “minor minerals” produced during this period, but did not contain information on the value of “major minerals”. This was computed by deducting the figures for value of “minor minerals” from the “total value of mineral production” mentioned in the Report.

Figure 15: Distribution of reporting mines (major mineral) in Fifth Schedule Area states



Our analysis of these mineral production values reveals almost 65% of mineral production is concentrated in the states that have Fifth Schedule Areas. See Figure 16. Royalty accruals from these states are as high as 88.5% of the total royalty accruals in India. See Figure 17. Consistent disaggregated district and sub-district mining data for Sixth Schedule area states was not available. Moreover, it must be noted, that state wise comparative mining data was available only at

the state level, but as described earlier, except for the state of Meghalaya, Scheduled areas in the remaining thirteen states are at the level of districts or sub districts. Therefore, any attempt to correlate the mining data with the Scheduled area districts and sub districts must necessarily be somewhat of an overestimation. However, such an overestimation does not affect the overall trend of the data.

Figure 16: Distribution of mineral wealth in the Fifth Schedule Area states vis-à-vis other states

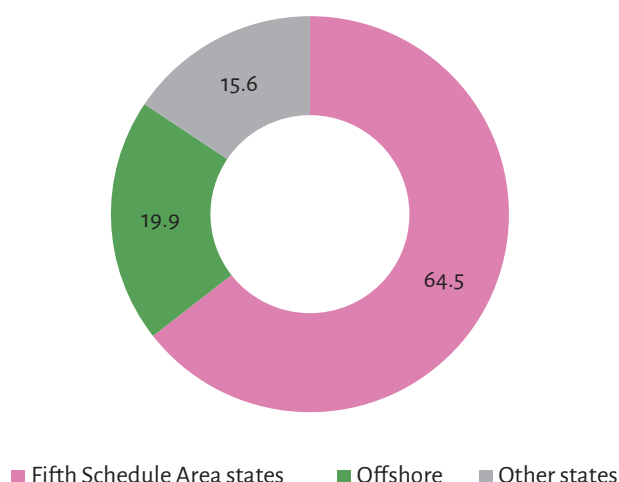
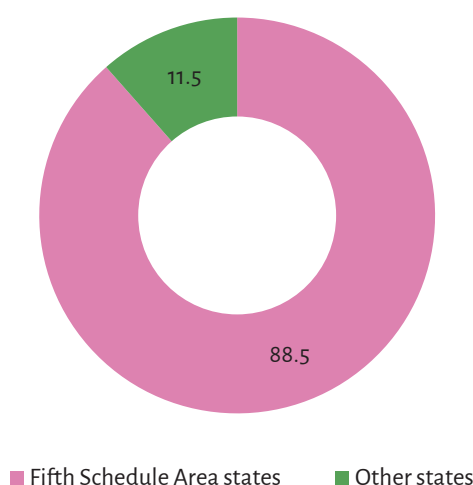


Figure 17: Distribution of royalties' accrual in the Fifth Schedule Area States



From the above analysis, it is clear that the Scheduled area states are bearing the costs of most of the mining activity in the country and contributing to almost 90% of the royalty accruals to the central and state governments. Though we do not have district level mining data, a Report by the Centre on Science and Environment based on information obtained through filing RTI requests with central and state governments, has identified 50 major mining districts in India.¹¹⁰ By comparing these districts with the district wise Scheduled area list in our database, we can conclude that 27 out of the 50 major mining districts in India are Scheduled area districts. That the STs remain the most vulnerable and impoverished people in the country shows that they are not

beneficiaries of the mineral wealth being generated from areas within which they have specialised constitutional protections. Clearly, the legal and administrative frameworks relating to mining in India, have facilitated the displacement and impoverishment of the STs and form a contrary legal framework to the protective provisions contained in the Constitution.

7.5 Evaluating the governors' reports

According to Article 244(1) read with the Fifth Schedule, the areas notified by the President under the Fifth Schedule are to be administered by the Governor of the State, in consultation with the Tribes Advisory Councils to be appointed by

the Governor. The Governor has powers to regulate the application of laws of the State and the Acts of Parliament to the Scheduled Areas and to make regulations for “good governance” of these areas. Clearly, the Constitution vests substantial powers with the Governor for the administration of tribal areas in accordance with the needs of tribal people.

Various commissions including the Dhebar Commission have noted that the Tribes Advisory Councils in most states are defunct and that there is a need to strengthen their functioning. The role of the Governor in these states has also received similar criticism and has remained largely opaque. At the CPR Land Rights Initiative, we decided to investigate how Governors of states with Fifth Schedule areas have in the past discharged their constitutional responsibilities with respect to the tribal people through a study of the yearly reports that the Governors are mandated to send to the President. However, even though these reports are such important public documents, we found that they were not available in the public domain.

In 2016, we filed Right to Information requests with the Ministry of Home Affairs¹¹¹ and Ministry of Tribal Affairs to obtain copies of Governors’ reports filed by all ten states with Fifth Schedule areas for the years 2008 to 2015, as the Ministry of Tribal Affairs website indicated that the government had received reports for these years from the Governors of all the states. A month later, the Ministry of Tribal Affairs agreed to furnish the details of seven reports to us for five states, namely, Chhattisgarh, Gujarat, Jharkhand, Madhya Pradesh, and Maharashtra. The MoTA response did not indicate

whether they had copies of the Governor’s reports that we had requested for the remaining years.

Upon receiving all the reports promised by MoTA, we filed another online RTI application to obtain all Governors’ reports for the remaining states for the years that were listed as received on the MoTA website, and also inquired about the status of reports prior to 2008. In response, MoTA informed us that they would share with us three more reports for two states, namely, Chhattisgarh (2008-09) and Himachal Pradesh (2007-08, 2008-09). With respect to our inquiry about the status of past reports, we were informed that the Public Information Officer did not possess any further information regarding our query. Thus far we have successfully obtained ten Governor’s Reports for six states and have made them publicly available on our website.

See, Table for list of Governor’s Reports marked as received by MoTA and those received by us.

Through key informant interviews with MoTA officials, we have come to understand that the Governor’s Reports once submitted to the President are deliberated upon by MoTA for years and shuttle between the state governments and MoTA for clarification and follow ups for some time and only once a report has been completely analysed is it made available in public domain. Some informants have also highlighted the fact that many archival documents have not been properly handled during their transfer from the Ministry of Social Justice and Empowerment to MoTA after the creation of the latter in 1999, and the inability of MoTA to make all the

Table 1: Status of Governor’s Reports

S. No.	State	Years for which Governor’s Report marked as received by Ministry of Tribal Affairs as on 31.12.2016 [*]	Years for which Governor’s Report is obtained by CPR Land Rights Initiative vide RTI dated 10.08.2016 ^{**}
1	Andhra Pradesh	2009-10, 2010-11	Not Available
2	Chhattisgarh	2009-10 to 2015-16	2008-09, 2009-10
3	Gujarat	2009-10 to 2013-14	2011-12
4	Himachal Pradesh	2009-10 to 2015-16	2007-08, 2008-09
5	Jharkhand	2009-10 to 2012-13	2011-12
6	Madhya Pradesh	2009-10 to 2013-14	2011-12, 2012-13
7	Maharashtra	2009-10 to 2014-15	2010-11, 2011-12
8	Odisha	2009-10 to 2012-13	Not Available
9	Rajasthan	2009-10 to 2014-15	Not Available

Note: ^{*}Annual Report 2016-17, Ministry of Tribal Affairs, p.242

^{**}RTI number - MOTLA/R/2016/80065

reports available is possibly because most Governor's reports are missing from the government's archives.

Based on a perusal of the limited number of Governors' Reports that we could access, we found that these reports mostly contain outlines of financial outlays and expenditures, and various institutional and administrative schemes and measures for the uplift of the STs in accordance with the "development through integration" narrative. They do not highlight the specialised protections for STs, in particular their land rights or the role and functioning of the Tribes Advisory Councils. Nor do they speak about extensive displacement of tribal peoples pursuant to eminent domain powers of the state, as enforced through the land acquisition, forests and mining laws. In short, even though the Governor is constitutionally mandated to have the most extensive charge for tribal welfare of people in the Fifth Schedule areas, the Governors' reports do not adequately capture the voices of the tribal people in seeking development not necessarily through integration, but "according to their own genius."

8. CONCLUSIONS

India was a pioneer in recognising special protections for her tribal or indigenous peoples in the Constitution, recognising their cultural, social, and economic identity as distinctive from that of the mainstream Indian society and that they needed some protection from exploitation by the mainstream. However, in spite of these special provisions, the Scheduled Tribes continue to be the most vulnerable and impoverished section of the Indian population. Through a review of the historical and contemporary policy frameworks that have defined both the "Scheduled Tribes" and the "Scheduled Areas", and primary archival data documenting the causes of the displacement of the tribes through contradictory policy discourses, displacing legislative and administrative frameworks, and the displacing and alienating processes of economic development initiated and facilitated by the colonial and independent Indian state, we have attempted to shed some light on why the STs continue to be the most vulnerable and impoverished groups in the country.

We conclude that despite the centrality of land to the identity, economy, and culture of the Scheduled Tribes, the protections for the Scheduled Tribes and Scheduled Areas in the Constitution were fragmented and somewhat contradictory in conception and execution from the time of their inclusion in the Constitution. The creation of these fragmented protections was in turn a product of two factors. First, it arose partly from the reality of the tribal situation, in that even at the time of drafting of the Constitution, many tribal communities

were no longer located within the geographically isolated scheduled areas, while many non-tribal communities were resident there, some for several generations. In the interest of doing justice to all communities, the Constitution makers chose to create safeguards both for the tribal people resident in the Scheduled areas and those that were residing outside the Scheduled Areas. Second, it arose from the inherent contradiction in creating geographically protected areas for the Scheduled Tribes, while at the same time imposing no limitations on the movement of tribals outside those areas, and no restrictions on the movement of non tribals to those areas. Indeed, given that the Constitution guaranteed to all citizens the fundamental right to move freely throughout the territory of India, it is not clear how such a limitation could have been imposed by law.

Thus, even though the Indian Constitution was progressive for its time, both generally in its recognition of rights for all its citizens, but also in terms of its recognition of protections for minority rights, including those of the Scheduled Tribes, the incoherence and contradictory nature of the provisions diluted their effectiveness in safeguarding the rights of the STs.

The Report also finds a fundamental contradiction between two narratives that have characterised the policies of the British colonial state and the independent Indian state. The first narrative, that we call the "identity based isolation" narrative, identifies the tribals as a "distinctive group outside the mainstream Hindu society both in terms of their cultural traits and geographical isolation", who are keen to preserve their distinctiveness and their isolation. The second narrative called the "development through integration" narrative identifies the tribal way of life, as backward compared to the mainstream Indian population and seeks to improve their economic and social indicators to "integrate" or "assimilate" them within the mainstream population. The Report notes that while both the "identity based isolation" and "development through integration" narratives characterised the drafting of the constitutional protections for the STs, post-independence policy making was guided primarily by the latter. However, the Scheduled Tribes have regarded the "development through integration" narrative as both paternalistic and patronising and alleged that this narrative does not seem to capture the aspirations of the tribal people to "develop according to their own genius". In order to have a coherent strategy for the uplift and protection of the tribal people, we therefore need clarity on how the "identity based isolation" and "development through integration" narratives can be integrated in policy discourse and lawmaking, so as to facilitate the design of laws and policies that can safeguard

the rights of tribals and help them develop according to their genius. Needless to state, the processes of law making must happen in consultation with the tribal communities and not be a paternalistic imposition on them by the state, where they are not only a minority, but a very special minority at that.

A contrary legal framework comprising of colonial and post-colonial forest, mining, and land acquisition laws has further diluted the constitutional protections for the STs. The land alienation prohibition laws only prohibit the transfer of tribal land to non-tribals. Nothing prevents the state from acquiring land in the Scheduled areas for its own purposes in the exercise of its power of eminent domain or assertion of its rights over forestland. The Samata judgment, which has been observed more in the breach, prohibited the grant of mining leases in the Scheduled areas by private companies, but not by state mining corporations. Based on the intensity of dams and mining in the Scheduled areas that we have calculated in our study, we can easily infer that land acquired in the Scheduled areas for the purposes of construction of dams and mining have displaced and impoverished millions of Scheduled Tribes.

Our research has revealed that while 90% of all mineral wealth generated in India comes from the Scheduled area states, this wealth is not channelised appropriately for the benefit of the tribal peoples. This is especially worrying when we find that there are huge shortfalls in expenditure in the special financial allocations made for the welfare of the Scheduled Tribes.

Our research has also revealed huge gaps in the study of the Scheduled areas and Scheduled Tribes. By establishing that 13% of all geographical area of India is in the Scheduled areas, and mapping these areas according to the latest Census data, we have created scope for further explorations of correlations with respect to representation of STs, and their impoverishment and landlessness. This is work that we and others can do in the future.

All of the above is not to say that the struggle for safeguarding the rights of tribal peoples has been a failure. The decriminalization of criminal tribes; the special constitutional provisions for representation, affirmative action, and recognising the land rights of tribals in the Scheduled areas; the creation of the tribal sub plan for special financial allocations for tribal population; the creation of the National Commission for Scheduled Tribes, and the Ministry of Tribal Affairs; the enactment of the Panchayat Extension to Scheduled Areas Act, 1996 and the Forest Rights Act, and the creation of the District Mineral Foundation under the MMDR Act, 2015; are important constitutional, legislative and administrative steps that have the potential of going a long way to redress the historic injustices against the tribal communities in India. But only the effective and coordinated functioning of all these mechanisms can truly safeguard the rights of tribals in India. And ultimately they may not be enough to protect the tribal communities' distinct way of life against the hegemonic mainstream, which seeks to "develop" them through "integration".

NOTES

1. Barring a two year period of emergency from June 1975 to 1977, India has remained continuously democratic for over 70 years.
2. "Why India Is the Fastest-Growing Economy on the Planet", Chazen Global Insights, Columbia Business School, 9 December, 2016. Available at: <https://www8.gsb.columbia.edu/articles/chazen-global-insights/why-india-fastest-growing-economy-planet>
3. Adivasi is a Hindi word that literally translates to "autochthonous".
4. These characteristics were enunciated in the 1931 Census: J.H. Hutton, 'Census of India, 1931: Vol. 1, Part 1 Report', (1933); followed by the Reports of the First Backward Classes Commission (Kalelkar), 1955: Kalelkar et al, 'Report of the Backward Classes Commission', Journal of Indian School of Political Economy, (1955); the Advisory Committee on the Revision of the SC and ST lists, 1965: B.N. Lokur et al, 'The Report of the Advisory Committee on the Revision of the Lists of Scheduled Castes and Scheduled Tribes', Department of Social Security, (1965); and the Joint Parliamentary Committee of on the Scheduled Castes and Scheduled Tribes Order (Amendment Bill), 1967.
5. Andre Beteille, "The Concept of Tribe with special reference to India", 27(2), European Journal of Sociology, 297-318 (1986) at 298.
6. G.S. Ghurye, "The Scheduled Tribes", 2nd Ed., Popular Book Depot (1959)
7. Ministry of Tribal Affairs, 'Annual Report', 2016-2017 Available at: <https://tribal.nic.in/writereaddata/AnnualReport/AnnualReport2016-17.pdf>. In the case of Lakshadweep, all the inhabitants of the Laccadive, Minicoy, and Amanidive islands, who and both of whose parents were born in these islands, are included as one tribe for this calculation.
8. Articles 15(4) and 16(4) in Part III of the Constitution of India, 1950
9. As per Declaration of the Ministry of Tribal Affairs, Government of India. Available at: <https://tribal.nic.in/declarationof5thSchedule.aspx>
10. 12.45% of the population of Assam is ST according to the 2011 Census.
11. 31.76% of the population of Tripura is ST according to the 2011 Census.
12. As per the text of the Sixth Schedule of the Constitution of India, 1950. Available at: [http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss\(34\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss(34).pdf)
13. List of Laws:
 - a). Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959: <http://www.aptribes.gov.in/tcrti/Pdfs/LTRAct.pdf>;
 - b). Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969: http://d2.manupatra.in/ShowPDF.asp?filename=The_Andhra_Pradesh_Scheduled_Areas_Land_Transfer_RAnPraSchArLaTraRul1969COM461701.pdf;
 - c). Madhya Pradesh Land Revenue Code, 1959: http://www.mprevenue.nic.in/documents/475863/13372292/Act_MPLRC_1959_0020_Pdf_F95_English.pdf;
 - d). Maharashtra Land Revenue Code, 1966: <http://bombayhighcourt.nic.in/libweb/acts/1966.41.pdf> & Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 (Mah. XXXV of 1974): <http://latur.nic.in/html/elibrary-new/e%20Library/Maharashtra%20Land%20Revenue%20Code%201966.pdf>;
 - e). Maharashtra Restoration of Land to the Scheduled Tribes Act, 1975: http://rajbhavan-maharashtra.gov.in/rajbhavan/pdf/20_Act.pdf;
 - f). Himachal Pradesh Transfer of Land (Regulation) Act, 1968: http://himachal.nic.in/WriteReadData/l892s/13_l892s/1392700211.pdf;
 - g). Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of transfer of certain lands) Act, 1978: [http://dpal.kar.nic.in/pdf_files/2%20of%201979%20\(E\).pdf](http://dpal.kar.nic.in/pdf_files/2%20of%201979%20(E).pdf);
 - h). Manipur Land Revenue and Land Reforms Act, 1960: <http://lawmin.nic.in/ld/P-ACT/1960/A1960-33.pdf>;
 - i). Orissa Scheduled Area Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956 & (Amendment), 2002: <https://www.igrodisha.gov.in/pdf/regulation2.pdf> & Orissa Land Reforms Act, 1960: <http://lawsfindia.org/pdf/orissa/1960/1960OR16.pdf>
14. a). The Uttar Pradesh Land Laws (Amendment) Act, 1982: http://www.lawsfindia.org/pdf/uttar_pradesh/1965/1965UP12.pdf @ pp.60 of the document;
b). West Bengal Land Reforms Act, 1955: <http://www.hooghly.gov.in/dllro/pdf/W.B.%20L.R%20ACT,1955.pdf>;
c). Sikkim Agricultural Land Ceiling and Reforms Act, 1977: <https://www.sikkim.gov.in/stateportal/UsefulLinks/Gazette1979.pdf>
15. These include the Indian Forest Act, 1865, Indian Forest Act, 1868 and 1927.
16. These include primarily, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989: <http://lawmin.nic.in/ld/P-ACT/1989/>

- The%20Scheduled%20Castes%20And%20the%20Scheduled%20Tribes%20%20(Prevention%20of%20Atrocities)%20Act,%201989.pdf, and state amendments to the same, and various state amendments to the Code of Criminal Procedure, 1973.
17. Ministry of Tribal Affairs, 'Annual Report', 2016-2017, at 47. Available at: <https://tribal.nic.in/writereaddata/AnnualReport/AnnualReport2016-17.pdf>
 18. Ministry of Tribal Affairs, 'Statistical Profile of Scheduled Tribes in India 2013', at 94. Available at: <https://tribal.nic.in/ST/StatisticalProfileofSTs2013.pdf>
 19. Ministry of Tribal Affairs, 'Annual Report', 2016-2017. Available at: <https://tribal.nic.in/writereaddata/AnnualReport/AnnualReport2016-17.pdf>, at 33
 20. During 1951-1990, 85 lakh tribal folk were displaced due to dams, mines, industries, wildlife sanctuaries, etc., which is 40% of total displacement of 2.13 crore people, against ST population percentage of 7.5%. Extracted from: Annual Report of the Ministry of Tribal Affairs, 2016-2017. Available at: <https://tribal.nic.in/writereaddata/AnnualReport/AnnualReport2016-17.pdf>, at 47
 21. Out of the 85 lakh ST people who were displaced, about 21 lakh tribal folk (24.7%) were rehabilitated. Extracted from: Report of the Steering Committee for 10th Five Year Plan "Empowering the Scheduled Tribes" of Planning Commission. Available at: <https://tribal.nic.in/writereaddata/AnnualReport/AnnualReport2016-17.pdf>, at 47
 22. Beteille, *Supra note 5*; Andre Beteille, "The Idea of Indigenous People", *Current Anthropology*, 39(2), (1998) at 187; Churye, *Supra note 6*; Stuart Corbridge, "Competing inequalities: The Scheduled Tribes and the Reservations System in India's Jharkhand", *The Journal of Asian Studies*, 59(01), (2000) at 62-85
 23. Y. Kijima, "Caste and Tribe Inequality: Evidence from India, 1983-1999", *Economic Development and Cultural Change*, 54(2), (2006) at 369-404
 24. G Khurana, "Approach to Education of Scheduled Tribes", *The Education Quarterly*, 20(1), (1978)
 25. Walter Fernandes, 'Displacement and Alienation from Common Property Resources', in *Displaced by Development: Confronting Marginalization and Gender Injustice*, 105, Lyla Mehta (ed.), 2009
 26. C.R. Bijoy, Shankar Gopalakrishnan and Shomona Khanna, "India and the Rights of Indigenous Peoples: Constitutional, Legislative and Administrative Provisions concerning Indigenous and Tribal Peoples in India and their relation to the International Law on Indigenous Peoples", Asia Indigenous Peoples Pact (AIPP) Foundation, (2010)
 27. 'Ethnological Report, Nagpore, 1868'
 28. H. Waterfield, 'Memorandum on the Census of British India of 1871-1872', (1875). The classifications under the section religion were: Hindu, Sikh, Muslim, Buddhists and Jains, Christians, Others, and Religion not known. According to the Memorandum, the five million people classified as "others" were chiefly composed of the hill tribes and aborigines, noting that "it [was] very difficult to draw the line between Hindooism and the rude religion of some of these tribes, and very possibly many have been classed under the one, when they might with equal propriety have been ranked in the other category'. "The category "Hindus" also included a sub category on "Aboriginal Tribes and Semi-Hinduised Aborigines."
 29. *Ibid*
 30. Baden Henry Powell, "The Land Systems of British India: Being a Manual of the Land Tenures and of the Systems of Land Revenue Administration Prevalent in the Several Provinces", (1), Oxford: Clarendon Press (1892), at 216.
 31. Namita Wahi, doctoral dissertation; Namita Wahi, "Property and Sovereignty: Creating, destroying and resurrecting property rights in British India" (2018)
 32. Namita Wahi, Ankit Bhatia et al., "Land Acquisition in India: A Review of Supreme Court cases from 1950 to 2016"; Atul M. Setalvad, "A Study into Certain Aspects of the Land Acquisition Act, 1894 JILL", (1), (1971), at 2.
 33. These included the Indian Forest Act, 1868 and Indian Forest Act, 1878.
 34. M. Hidayatullah, "Right to Property under the Indian Constitution", Calcutta: Calcutta University, (1983), at 114; Namita Wahi, *Supra note 31*
 35. E.A. Gait, "General Report of the Census of India, 1901", (1904)
 36. The other major change was that "animistic" was now classified as a sub category within "primitive".
 37. For instance, the 1921 Census replaced the category of, "Animistic" by "Tribal Religion".
 38. Pursuant to these reforms, some branches of the executive would be responsible to elected provincial legislators, while the remainder remained answerable to the Viceroy.
 39. B. Shiva Rao, 'The Framing of India's Constitution – Select Documents', Universal Law Publishing Co. Pvt. Ltd., Volume 5, (2nd edition, 2004; ed. Subhash C. Kashyap) at 570

40. These areas included the Laccadive Islands and Minicoy in Madras, the Chittagong hill tracts in Bengal, the small area of Spiti in the Punjab, and Angul in Orissa
41. Id. at 570.
42. Id. at 570.
43. A.G. Cardew et al, "Report of the Indian Jails Committee, 1919-1920", (1921)
44. 'The Simon Commission Report', 1930, Vol. II, paras 127-34
45. V. Elwin, "A Loss of nerve: A comparative study of the result of the contact of peoples in the aboriginal areas of Bastar State and the Central Provinces of India", (5), (1942). Quoted in *The Politics of Protection and Transformation*, 245. Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/20965/14/14_chapter%206.pdf
46. W. V. Grigson, "The Aboriginal Problem in the Central Provinces and Berar", (1944)
47. G. Ghurye, "The Aborigines – "so called" – and their Future", (1943)
48. Id. at 572.
49. The British Parliament relied upon the report of the Simon Commission of 1930, the Joint Select Committee report of 1933, and the contributions of Members of Parliament in the debates in Westminster in 1935.
50. 50th Session of All-India Congress Committee, Faizpur 1936, viewable in 'Excluded Areas under the new Constitution, Z. A. AHMAD B.SC., ph.D. (London) Ashraf on behalf of the Political and Department of the All-India Committee, Allahabad, (1937). Available at: https://archive.org/stream/in.ernet.dli.2015.276455/2015.276455.Excluded-Areas_djvu.txt, at 27-28
51. Ahmad, 1937, 6
52. Ahmad, 1937, 7
53. Ahmad, 1937, 7-9
54. Ahmad, 1937, 11
55. Ahmad, 1937, 28
56. G. Sahai et al, "Report of the Criminal Tribes Enquiry Committee, United Provinces, 1947", (1947)
57. The Cabinet Mission Statement of May 16, 1946 mentioned these areas as requiring the special attention of the Constituent Assembly. See, *supra note* 18, at 572.
58. Id. at 574.
59. Constituent Assembly Debates, Book 4, vol.9, 994.
60. Constituent Assembly Debates, Book 4, vol.9, 992-996.
61. Constituent Assembly Debates, Book 4, vol.9, 992-996.
62. Constituent Assembly Debates, Book 4, vol.9, 992-996.
63. Constituent Assembly Debates, Book 4, vol.9, 967-1008.
64. Kalelkar et al, "Report of the Backward Classes Commission", *Journal of Indian School of Political Economy*, (1955).
65. R. Ray et al, "Committee on Plan Projects, 'Report of the Study Team on Social Welfare and Welfare of Backward Classes", (1), (1959): The Renuka Ray Committee adopted the following criteria for the identification of backward communities:
 - (a) low social position in the traditional caste hierarchy of Hindu society;
 - (b) lack of general educational advancement among the major sections of a caste or community;
 - (c) inadequate or no representation in government service and,
 - (d) inadequate representation in the field of trade, commerce or industry.
66. U.N. Dhebar et al, "Scheduled Areas and Scheduled Tribes Commission", (1961).
67. B.N. Lokur et al, "The Report of the Advisory Committee on the Revision of the Lists of Scheduled Castes and Scheduled Tribes", Department of Social Security, (1965)
68. "Report on the National Commission for Scheduled Tribes", Centre for Policy Research, 20 January, 2010. Available at: <http://cprindia.org/search/site/t%2520on%2520the%2520national%2520commission%2520for%2520scheduled%2520tribes>
69. Dileep Singh Bhuria et al, "Report of the Scheduled Areas and the Scheduled Tribes Commission Government of India 2002-2004", (1), Scheduled Areas and Scheduled Tribes Commission, (2004)
70. Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969; Madhya Pradesh Land Revenue Code, 1959; Maharashtra Land Revenue Code, 1966 and the Maharashtra Land Revenue Code and Tenancy (Amendment) Laws, 1970 as well as Maharashtra Restoration of Land to the Scheduled Tribes Act, 1975; Himachal Pradesh Transfer of Land (Regulation) Act, 1968; Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of transfer of certain lands) Act, 1978; Manipur Land Revenue and Land Reforms Act, 1960; Orissa Scheduled Area Transfer of Immoveable Property (by Scheduled Tribes) Regulation, 1956 and (Amendment), 2002, and Orissa Land Reforms Act, 1960. *Supra note* 7

71. The Uttar Pradesh Land Laws (Amendment) Act, 1982; West Bengal Land Reforms Act, 1955; Sikkim Agricultural Land Ceiling and Reforms Act, 1977; *Supra note 8*
72. Namita Wahi, Ankit Bhatia et al., Land Acquisition in India: A Review of Supreme Court cases from 1950 to 2016; Atul M. Setalvad, A Study into Certain Aspects of the Land Acquisition Act, 1894 JILI (January-March 1971) 1, at 2.
73. The data on these allocations was collected from the Annual Reports of the Ministry of Tribal Affairs for the years 2015-16 and 2016-17.
74. Figures for the relative contribution of institutional finance to TSPs is not provided under Annual Reports of Ministry of Tribal Affairs.
75. Ministry of Environment and Forests, 'National Forest Policy', (1952). Available at: http://www.latestlaws.in/?page_id=52960 (accessed on January 31, 2018).
76. Ministry of Environment and Forests, 'National Forest Policy', (1988). Available at: <http://envfor.nic.in/legis/forest/forest1.html> (accessed on January 31, 2018).
77. H.M. Jain, "Right to Property under the Indian Constitution", Allahabad, Chaitanya Publishing House, (1968), at 12
78. The princely states passed their own Acts, for example, the Mysore Land Acquisition Act, 1894, the Hyderabad Land Acquisition Act, 1899, and the Travancore Land Acquisition Act, 1914.
79. Law Commission of India, Tenth Report, 3. The Land Acquisition Act, 1894 was amended by Acts 4 and 10 of 1914, 17 of 1919, 38 of 1920, 19 of 1921, 38 of 23, 16 of 1933 and 1 of 1938. The Amending Act of 1923, for the first time, gave an opportunity to the persons interested in the lands proposed to be acquired to state their objections to the acquisition and to be heard by the authority concerned in support of their objections.
80. Constituent Assembly Debates, Book 4, vol.9, 1027.
81. For the evolution and details of the changes made by this law to the 1894 Act see Namita Wahi, "Equity of Land Acquisition," The New Indian Express, November 29, 2011, Available at: <http://www.newindianexpress.com/opinion/article250235.ece?service=print> (Accessed on March 17, 2014); Namita Wahi, "Land Acquisition, Development and the Constitution" 642 Seminar Magazine February, 2012. Available at: http://india-seminar.com/2013/642/642_namita_wahi.htm (Visited on March 17, 2014); Namita Wahi, "Compromise over land takeover", The Indian Express, 11 September, 2013. Available at: <http://www.newindianexpress.com/opinion/Compromise-over-land-takeover/2013/09/11/article1778031.ece?service=print> (Visited on 17 March, 2014).
82. Section 41(1), RFCTLARR Act, 2013
83. Section 41(2), RFCTLARR Act, 2013
84. Section 41(3), RFCTLARR Act, 2013
85. Section 41(5), RFCTLARR Act, 2013
86. Section 41(7) and (8), RFCTLARR Act, 2013
87. Tamil Nadu Government Gazette, Chennai, Monday, 5 January, 2015.
88. K.V. Kurmanath, "Telangana gets new land acquisition Act", Hindu Business Line, 16 January, 2018. Available at: <http://www.thehindubusinessline.com/news/national/telangana-gets-new-land-acquisition-act/article9447900.ece> (accessed on 31 January, 2018).
89. A. Bhardawaj, "Did you know Gujarat and Rajasthan passed Land Acquisition Bills?", Newslandry, 19, July 2016. Available at: <http://www.newslandry.com/2016/04/29/did-you-know-gujarat-rajasthan-passed-land-acquisition-bills/> (accessed on 31 January, 2018).
90. Id.
91. Manju Menon et al., "In state-level changes to land laws, a return to land grabbing in development's name", The Wire, 28 September, 2017. Available at: <https://thewire.in/181933/state-level-changes-land-laws-return-land-grabbing-developments-name/> (accessed on January 31, 2018).
92. Id.
93. P. Sridhar, "Polavaram Dam to hit Kondi Reddi tribals the most", The Hindu, 11 February, 2014. Available at: <http://www.thehindu.com/news/national/andhra-pradesh/polavaram-project-to-hit-konda-reddi-tribals-the-most/article5676784.ece>
94. Entry 54, List I of the Seventh Schedule of the Constitution of India, 1950
95. Entry 23, "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union" as mentioned in List II (State List) in Seventh schedule of Indian Constitution. List II or State List is a list of 61 subjects (initially there were 66) on which state legislatures have exclusive power to legislate.
96. Samata v. State of A.P. and Others, AIR 1997 SC 3297
97. "District Mineral Foundation"; Available at: [http://arthapedia.in/index.php?title=District_Mineral_Foundation_\(DMF\)](http://arthapedia.in/index.php?title=District_Mineral_Foundation_(DMF)).

98. Madras Scheduled Areas (Cesser) Order 1951 (C.O. 50); Andhra Scheduled Areas (Cesser) Order, 1955 (C.O.30); Scheduled Areas (Himachal Pradesh) Order, 1975 (C.O. 102); Scheduled Areas (States of Bihar Gujarat, Madhya Pradesh and Orissa) Order, 1977, (C.O., 109); Scheduled Areas (State of Rajasthan) Order, 1981 (C.O. 114); Scheduled Areas (Maharashtra) Order, 1985 (C.O. 123); Scheduled Areas (States of Chhattisgarh, Jharkhand and Madhya Pradesh) Order , 2003 (C.O., 192); Scheduled Areas (State of Jharkhand) Order, 2007 (C.O. 229).
99. For instance, in states like Himachal Pradesh, Jharkhand, and Chhattisgarh, the demarcation of Scheduled Areas is at the level of district or sub-district, which is simpler to map successively over decades, because it corresponds with the administrative codes outlined in the Census. But in states like Maharashtra, Madhya Pradesh, and Andhra Pradesh, where demarcation of Scheduled areas has been done at sub-tehsil levels, like villages, panchayats or patwari circles, it is difficult to establish the correspondence of these areas with the Census 2011 administrative codes because the states have continuously reshaped the boundaries of these villages, panchayats and patwari circles through numerous executive orders over time.
100. Information available on the website of the Ministry of Development of the North Eastern Region: <http://www.mdoner.gov.in/node/755>
101. It is to be noted that this estimate as well doesn't include information on Andhra Pradesh and Tripura as we could not map the Scheduled Area boundaries of these states with the latest administrative codes.
102. Available at: www.data.gov.in
103. Forest Cover under this analysis does not include Tree Cover and Scrubs.
104. Data on forest cover for 51 newly formed districts is not available. It has been assumed that the Forest Survey of India has calculated the forest cover of newly formed districts under old district boundaries. So, in this data we have adjusted for such reorganisation of districts.
105. In the WRIS dataset, information was available separately for each state on their respective websites, in HTML version. In the NRLD dataset, on the other hand, the information was available in multiple PDF files. To collate and analyse this raw data, we consolidated the separate state-specific files and converted them into excel sheets. We conducted a similar exercise for the PDF files from NRLD dataset.
106. In NRLD the definition of "Large Dams" has been adopted as per the norms of International Commission on Large Dams (ICOLD). A large dam is classified as
- I. a one with a maximum height of more than 15 metres from its deepest foundation to the crest, or
 - II. a dam between 10 and 15 metres in height from its deepest foundation is also included in the classification of a large dam provided it complies with one of the following conditions:
 - a. length of crest of the dam is not less than 500 metres or
 - b. capacity of the reservoir formed by the dam is not less than one million cubic metres or
 - c. the maximum flood discharge dealt with by the dam is not less than 2000 cubic metres per second or
 - d. the dam has especially difficult foundation problems, or
 - e. the dam is of unusual design
107. In NRLD, "Dams of National Importance" have been defined as, "such dams with height 100 metre and above or gross storage capacity of 1 billion cubic metre and above."
108. Section 3(e) of the Mines and Minerals (Development and Regulation) Act, 1957
109. The total value of mineral production for the year 2015-2016 was not directly available and therefore it was calculated based on the production assessment for the year 2016-17. The value of total mineral production for the year 2015-16 was 6.78% more than the estimated value of mineral production for the year 2016-17, which was INR 257,882 crores. Thus, the value of mineral production for the year 2015-16 was calculated at INR 276,638 crores.
110. Available at: <http://www.cseindia.org/userfiles/District-Mineral-Foundation-DMF-Report.pdf> pg.
111. In a key informant interview with a former Governor, we were advised that since the reports are submitted to the President, they would be in possession of the Ministry of Home Affairs, and therefore we filed our first RTI with that Ministry. However, the Home Ministry transferred our request to MoTA the same day.



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