Undoing Historical Wrongs: Law and Indigeneity in India

Pooja Parmar

Follow this and additional works at: http://digitalcommons.osgoode.yorku.ca/ohlj

Part of the Constitutional Law Commons Article

Citation Information
http://digitalcommons.osgoode.yorku.ca/ohlj/vol49/iss3/3

This Article is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.
Undoing Historical Wrongs: Law and Indigeneity in India

Abstract
Beginning with a close look at a recent call by the Supreme Court of India to undo the historical injustices done to the "original inhabitants" of the country, this paper examines similar calls for justice made by Jaipal Singh Munda, the most vocal representative of Adivasis in the Constituent Assembly of India between December 1946 and January 1950, when both the possibilities and limitations of addressing past injustices were being written into the Constitution of India. While drawing attention to debates and disagreements over righting certain past wrongs that remain largely absent from historical accounts of the Constitution's drafting, this paper also invites reflection on the problematique of addressing calls for reparation made by dispossessed peoples as original inhabitants in modern liberal democracies.

Keywords
Constitutional law; Indigenous peoples--Legal status; laws; etc.; India; Adivasis

This article is available in Osgoode Hall Law Journal: http://digitalcommons.osgoode.yorku.ca/ohlj/vol49/iss3/3
Undoing Historical Wrongs: Law and Indigeneity in India

POOJA PARMAR *

Beginning with a close look at a recent call by the Supreme Court of India to undo the historical injustices done to the “original inhabitants” of the country, this paper examines similar calls for justice made by Jaipal Singh Munda, the most vocal representative of Adivasis in the Constituent Assembly of India between December 1946 and January 1950, when both the possibilities and limitations of addressing past injustices were being written into the Constitution of India. While drawing attention to debates and disagreements over righting certain past wrongs that remain largely absent from historical accounts of the Constitution’s drafting, this paper also invites reflection on the problematics of addressing calls for reparation made by dispossessed peoples as original inhabitants in modern liberal democracies.

Débutant par une étude détaillée d’un jugement récent de la Cour Suprême de l’Inde cherchant à redresser les injustices historiques faites aux aborigènes du pays, cet article examine de semblables recours en justice intentés par Jaipal Singh Munda, représentant le plus éloquent des Adivasis à l’Assemblée constituante de l’Inde de décembre 1946 à janvier 1950, époque où l’on a enchâssé dans la Constitution de l’Inde tant la possibilité de remédier aux injustices du passé que les entraves en découlant. Tout en attirant l’attention sur les débats et les discordes relatifs au redressement de certains torts du passé qu’escamotent largement les comptes rendus historiques de la rédaction de la Constitution, l’article invite à réfléchir sur la problématique des demandes judiciaires de réparations intentées dans les démocraties libérales modernes par les premières nations à titre de peuples dépossédés.

I. TIME TO UNDO A PAST ................................................................. 493
II. HISTORY AND LAW................................................................. 495
III. JAIPAL SINGH MUNDA ........................................................... 500
IV. AN ADIVASI IN THE CONSTITUENT ASSEMBLY OF INDIA ....... 504
V. PEOPLES AND NATIONS......................................................... 506

* Osgoode Catalyst Fellow, Osgoode Hall Law School, York University. I am grateful to Wesley Pue, Marc Galanter, Renisa Mawani, Bhavani Raman, and the three anonymous reviewers for their thoughtful comments and questions. I would also like to thank Lisa Philipps and the Osgoode Hall Law Journal.
OFTEN AS NATIONS ARE IMAGINED and re-imagined, previously unrecognized histories are remembered, wrongs are named and recounted, and nations and peoples are called upon to acknowledge and address past injustices. India and Canada, with their distinctly layered and contested pasts yet shared colonial legacy, are no exception. Each country continues to encounter and struggle with many such calls for undoing past wrongs. In this paper, I focus on calls for reparation made by or for dispossessed and displaced peoples as original inhabitants of India. I begin with a closer look at a recent call by the Supreme Court of India to undo past injustices done to the peoples it refers to as the most likely original inhabitants of the subcontinent.\(^1\) The Court describes these peoples variously as tribal people, Adivasis, Aborigines, and Scheduled Tribes.\(^2\) Noting both the promise and the limits of this call for justice from the highest court in the country, I turn to similar calls made during the framing of the Constitution of India (Constitution),\(^3\) in particular, those made by Jaipal Singh Munda, a member of the Constituent Assembly and a tireless advocate of Adivasi rights. I do so with the aim of inviting further reflection on the problematique of addressing certain historical wrongs in modern liberal democracies.\(^4\)

While the focus of this paper is on the legal response to claims for remedying particular past wrongs in India, the underlying insights arise from my continuing efforts to understand the nature of the relationship between Aboriginal claimants and the state, both in India and Canada. While reading about confrontations between Aboriginal protestors and Canadian authorities at Oka and Caledonia, my thoughts often turned to Muthanga in Kerala.\(^5\) Just as conversations about

1. *Kailas & Ors v State of Maharashtra*, [2011] 1 SCR 94 (India) at paras 17, 24, 34 [*Kailas*].
3. *India Const*, 1950 [*India Const*].
5. The Oka and Caledonia conflicts in Canada in 1990 and 2006, respectively, drew attention to the unsettled land disputes between First Nations and the Government of Canada when members of First Nations communities occupied disputed lands in protest of certain
residential schools during my research in Kerala reminded me of stories shared at academic conferences in Canada, dreams of a better future for Indigenous peoples in Canada bring to mind similar aspirations expressed in a different language in India. Even as constitutional recognitions and remedies differ, political and legal decisions in both countries have often deployed similar rationales towards similar outcomes.

Though indicative of commonalities, these observations also point to vital differences between the two countries—one a country of old and one a country of new immigrations. A comparative history of these two nations, with distinct yet somewhat similar pasts and presents, is likely to offer new ways of understanding contemporary dilemmas; however, the conversations that would make that possible have only just begun. What I offer here, therefore, is not a comparative analysis but instead a reflection on critical moments in India’s engagement with, and attempts to right, certain past wrongs through law. I offer this reflection from an in-between place, as I write in one place about the other, trying to dwell in and on both, with the hope of adding another dimension to the transnational conversations in this volume.

I. TIME TO UNDO A PAST

On 5 January 2011, the Supreme Court of India dismissed a criminal appeal, concluding its judgment with a call to address historical wrongs done to the nation’s tribal peoples. “It is time now,” the Court noted, “to undo the historical injustice” done to these peoples. One of these people is Nandabai, a woman who belongs to the constitutionally recognized Bhil tribe. In 1994, three men and one woman—all “powerful persons” in her village—stripped, beat, and kicked a pregnant Nandabai in her house. The four assailants then forced Nandabai
to walk naked through the streets of her village. Throughout this parade they continued to beat and abuse her because they wanted her to end what the Court described as her “illicit relations” with Vikram, a “higher caste” man who was the father of her daughter and unborn child. While it is not apparent whether anyone in the village intervened at the time of the assault, the judgment notes that the eyewitnesses “turned hostile” during the course of the trial, due either to “fear [of the accused] or some inducement.”

The convictions were based on the medical report, evidence gathered by the local police during investigations, Nandabai’s statements, and Vikram’s corroborating evidence, in spite of the fact that “he did not support the actual incident.” The accused appealed their convictions to the High Court of Bombay with limited success before being heard by the Supreme Court.

One of the arguments advanced by the appellants was that members of “the Bhil community live in torn clothes as they do not have proper clothes to wear,” by which they meant to suggest that publicly stripping a woman who belongs to such a community was not as serious a crime as similar treatment of a woman from a different community would have been. It is not clear from the judgment whether this argument was also part of their defence at trial, but it is obvious that the appellants perceived it as a mitigating factor, at least in their appeal to the Supreme Court. This “mentality” of regarding “tribal people as inferior or sub-humans,” the Court noted, is “totally unacceptable in modern India.” In dismissing the appeal, the Court observed that the gravity of the offence called for a harsher punishment than what the appellants had been given at trial and that the appellants’ partial success before the High Court on “hyper technical grounds” was regrettable.

Going beyond the facts of the specific crimes committed against Nandabai, the Court situated her experience and the legal response to it within a broader social and historical context. At the very outset of the judgment, the Court framed the case as “a typical instance” of the manner in which many Indians treat those who are “probably the descendants of the original inhabitants of India.” These Adivasis (translated as “original inhabitants”), the Court noted, make up about 8 per cent of...
India’s population. They are among the country’s “most marginalized and vulnerable communities,” with the everyday realities of their lives marked by a “high level of poverty, illiteracy, unemployment, disease, and landlessness.”

In order to single out the injustices done to Adivasis as “a shameful chapter” in India’s past, the Court relied on historical accounts of the persecution of Bhils, especially in the seventeenth century, when entire communities were either “wiped out” or forced to the “hills and forests” to escape the “oppressions and atrocities” committed by “other communities.” It called for a change in mentality towards these peoples, who have been “victimised for thousands of years.” As the original inhabitants of India, the Court noted, “they must be given the respect they deserve.”

In recalling this history, the Court understood Nandabai’s ordeal as a continuation of past injustices. For Nandabai, a decision from the highest court in the country might have brought some closure to an ordeal that had begun over sixteen years earlier. Insofar as the decision centres past wrongs in the present pursuit of meaningful justice, it is a welcome decision; furthermore, it considers not only the particular crime, but also the history and the social conditions that made it possible. The decision is also significant for its recognition, however cautious, of a history that remains largely unacknowledged in India. However, even as it calls for more respect for the descendants of those it considers to be the probable original inhabitants of the country, this decision does not depart enough from similar attempts at undoing past wrongs to bring about the change that the Court undoubtedly desires. Herein lies the challenge of righting past wrongs in a modern liberal democracy where legal institutions engage with layered and contested histories.

II. HISTORY AND LAW

Having framed Nandabai’s experience in the context of the past injustices suffered by her community, the Court devoted several paragraphs of its judgment to considering evidence in support of the proposition that “India is

18. Ibid. The 2001 census records the population of Scheduled Tribes at a little over 84.3 million.
19. Ibid.
20. Ibid at paras 17-18, 36.
21. Ibid at para 34.
22. Ibid.
23. For an overview of the challenges faced by legal institutions, see Galanter, supra note 4.
broadly a country of immigrants.” It noted, however, that unlike the United States and Canada, both of which are countries of “new immigrants,” India “is a country of old immigrants.” Roughly 92 per cent of people in India are descendants of immigrants. In order to arrive at this conclusion, the Court relied on multiple sources of historical knowledge, including The Cambridge History of India, an Urdu couplet, the Mahabharata (a major Sanskrit epic regarded by many as a source of history of the subcontinent), academic scholarship, and a Google search. The Court was not, however, oblivious to the fact that the past that it invoked remains contested. The particular account of immigration offered by the judgment contains an implicit acknowledgement of the disputes over the veracity of this history. This caveat is most notable in the judgment’s repeated use of “probably” in association with “original inhabitants.”

Even as scholarly debates over the applicability and relevance of the term “Indigenous peoples” in India continue, the position of the permanent Indian delegation at the United Nations is that no “category of people in India can be singled out” as Indigenous peoples. The terms Adivasi and Scheduled Tribes, which the Court uses interchangeably, also have their own distinct origins and, in their invocation, tell different stories. Scheduled Tribes refer to “tribes or tribal communities” that are explicitly identified for the purposes of implementing the country’s affirmative action programs in a periodically revised schedule of the

24. Kailas, supra note 1 at para 19.
26. Ibid.
27. Ibid at paras 18, 23-25.
28. Scholars cite several reasons for caution in relation to the term, including concerns over a lack of attention to particular histories of the region that include the complex history of migrations into and within the subcontinent, as well as concerns over distinguishing with certainty tribes from other castes and communities classified by the colonial administration. Other reasons for caution include the long history of interactions and cultural exchange, a questioning of colonial knowledge production, and the perceived imposition of a Western concept of “Indigenous peoples.” See generally Bengt G Karlsson & TB Subba, eds, Indigeneity in India (London: Kegan Paul, 2006); Sumit Guha, Environment and Ethnicity in India, 1200-1991 (London: Cambridge University Press, 1999); Irfan Habib, “The Formation of India: Notes on the History of an Idea” (1997) 25 Social Scientist 3; Virginius Xaxa, “Transformation of Tribes in India: Terms of Discourse,” Economic & Political Weekly 34:24 (12 June 1999) 1519. For more nuanced histories of the relations between Adivasis and non-Adivasis in particular regions of India, see Ajay Skaria, Hybrid Histories: Forests, Frontiers and Wilderness in Western India (New Delhi: Oxford University Press, 1999); Nandini Sundar, Subalterns and Sovereigns: An Anthropological History of Bastar, 1854-2006, 2d ed (New Delhi: Oxford University Press, 2007).
Constitution of India. As indicated later in this article, the term replaced the word “Aboriginal” in the draft Constitution. Unlike the term “Scheduled Tribe,” the word “Adivasi” has no legal recognition in India. The word, “a combination of adi, meaning ‘beginning’ or ‘of earliest times,’ and vasi, meaning ‘resident of,’” is generally translated as “original inhabitants.” It is believed to be a “recent term” that originated in the 1930s in the Chota Nagpur region of Bihar.

Despite questions about the identity of the original inhabitants of various regions of the country, the term Adivasi is recognized by some as a “social fact.” It is also preferred over other terms by Adivasis themselves and by others who see in its use the recognition of a particular history of “subjugation during the nineteenth century of a wide variety of communities which before the colonial period had remained free, or at least relatively free, from the controls of outside states.” Extending beyond the connotations of “autochthonicity” conveyed by its literal meaning, the articulation of “[b]eing Adivasi” in contemporary India is also “about shared experiences of the loss of the forests, the alienation of land, repeated displacements since independence in the name of ‘development projects’, and much more.” So understood, the term also refers to “a distinctive way of being outside the narratives of the Indian nation state.” As mentioned above, the Court in Kailas did not engage with these distinct meanings and origins of the two terms, instead using them (along with the word “tribal”) as synonyms, as is common in India.

After its foray into history and before reaching its conclusion, the Court returned to the source of its own authority: the Constitution of India. This return coincided with its turn to the language of “help” and “protection,” terms used in reference to the peoples it describes as Adivasis, Aboriginals, and Scheduled.

30. India Const, art 366(25). Various provisions in the Constitution provide the framework for the country’s comprehensive affirmative action (or “compensatory discrimination”) policies.
31. See Part VI below, entitled “The ‘Backward’ Tribes.”
33. Ibid.
35. Hardiman, supra note 32 at 15.
37. Ibid.
The Court noted that the Indian Constitution, which guarantees equality and freedom to all citizens, does not stop at formal equality. Rather, it makes extensive provisions for extending “special protection and help” to “historically disadvantaged groups” so that they may be “uplifted from their poverty and low social status.” Since Adivasis are the most marginalized peoples in the country, “living in terrible poverty with high rates of illiteracy, disease, [and] early mortality,” the Court recognized that they must be accorded all possible help.

The Court’s turn to the language of help and protection was inevitable, because it is as people who need to be uplifted and protected that the Adivasis are promised justice in the Constitution. The framers of the Constitution acknowledged existing inequalities that were the result of past injustices. This recognition forms the basis of the special provisions for members of the Scheduled Tribes (along with similar ones for the Scheduled Castes) in the Constitution. These provisions were aimed at undoing certain past wrongs by providing the legal basis for what are at times referred to as the country’s affirmative action policies. The Constitution does not, however, recognize either Adivasis or Scheduled Tribes as original inhabitants; indeed, such recognition was not extended to any of those claiming such status.

As citizens, therefore, Adivasis cannot make a claim for justice as original inhabitants. Any claims must necessarily arise from their need for special protection and help.

The existence of constitutional protections—as well as other statutory protections and affirmative action policies—has not, however, brought about the shift in mentality that the Court in Kailas acknowledged is necessary if things are going to change in any meaningful way. The Court attempted, therefore, to marshal morality, ethics, benevolence, and nationalism in the interest of justice to those members of the nation who have been wronged in the past. It declared: “[I]t is the duty of all people who love our country to see that no harm is done to the Scheduled Tribes.”

39. Kailas, supra note 1 at para 34.
40. Ibid.
41. Ibid.
42. See India Const, arts 15(4)-(5), 16(4), 16(4A), 17, 46, 244(A), 330, 332, 335, 338(A), 339, Schedule V, Schedule VI.
43. The Hindu Right claims that only Hindus—not Muslims or Christians—are India’s original inhabitants; Members of Scheduled Castes, or dalits, also claim to be original inhabitants; tracing their past to the Dravidians, who were subjugated by Aryan invaders said to be the ancestors of Hindu upper-castes. See e.g. Baviskar, supra note 34; André Bétélille, “What Should we mean by ‘Indigenous Peoples?’” in Karlsson & Subba, eds, supra note 28 at 19.
44. See especially India Const, art 46; India Const, Part XVI; The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, No 33 of 1989, India Code.
45. Kailas, supra note 1 at para 34.
language of help and protection even as it attempted to escape such language through references to the “superior … character” and “higher level of ethics” of Adivasis as compared to non-Adivasis.46

The Court concluded with a declaration: “It is time now to undo the historical injustice [done] to them.”47 This almost-anguished call for justice for Adivasis comes at a time when the debates over their continuing dispossession and displacement have re-emerged in India, triggered largely by the ongoing violence in parts of central India that are home to several Adivasi communities and have become valuable to others because of their considerable forest cover and substantial mineral reserves. Although a deeper analysis of the Court’s jurisprudence on issues concerning Adivasis is needed, in at least two previous decisions the Court has held that the “displacement of the tribals” does not in itself violate their “fundamental or other rights” and has accepted the government of Kerala’s contention that Scheduled Tribes do not have any constitutional or common law rights to the restoration of lands already alienated.48 The Court in Kailas, however, recognized the injustice in these past displacements. The ruling is significant for this reason, despite the fact that the case did not involve a land dispute. Yet while Kailas made a strong case for respecting India’s original inhabitants, it also revealed the impossibility of finding a legal basis for the change the Court desired for Adivasis. The decision is inherently limited in its potential application because of the confines of the very foundation of India’s formal legal system: its Constitution.

In order to explain this proposition more fully, I now turn to a time when both the promise for addressing old wrongs and the limitations of such a project were written into the Constitution as it was being framed, when the “soul of a nation, long suppressed, [found] utterance.”49 The calls made during the debates of the Constituent Assembly of India by Jaipal Singh Munda, an Adivasi leader, for righting old wrongs, as well as his complex relationship with the process through which the foundations of the legal system of the postcolonial nation were laid, offer insights for a better understanding of the dilemma that underlies the promise and limits of a decision such as Kailas.

46. Ibid at para 39.
47. Ibid.
48. See Narmada Bachao Andolan v Union of India, 2000 AIR SC 3751 at 3787; State of Kerala & Anr v People’s Union for Civil Liberties, Kerala State Unit & Ors, [2009] 11 SCR 142 (India) [PUCL].
49. Debates of the Constituent Assembly of India, vol V (14 August 1947) at 4 (Jawaharlal Nehru) [Debates].
III. JAIPAL SINGH MUNDA

Over six decades ago, not far from the place where the *Kailas* decision was delivered, Jaipal Singh Munda, the most vocal representative of Adivasis in the Constituent Assembly, made repeated calls for respect and justice for India’s original inhabitants. Like the Court in *Kailas*, he too saw the existing mentalities and the treatment of Adivasis as unacceptable in a new India. Singh tried unsuccessfully to locate a basis for undoing some of those past wrongs in the *Constitution* as it was being written.

Very little has been written about Singh, and even less about his insistence on bringing an uncomfortable history into the Assembly at every possible chance. However, some details of Singh’s early life emerged after the publication of his autobiography in 2004, thirty-four years after his death. The manuscript itself came to light after it was handed to a visiting researcher by an Oxford professor. It is not clear how or when the professor acquired the manuscript, or why it was not revealed for so long, but according to Singh’s son, his father wrote it as he sailed to England in 1969, the year before his death. This autobiographical account, noted for its “bubbly sense of humour” and its “matter-of-fact” tenor, is also said to reflect the author’s “sharp mind and intellect, a rebellious spirit, humility and a zest for life.”

Born Pramod Pahan, Singh acquired a new name and date of birth in 1911, on the day his father enrolled him in the St. Paul’s School in Ranchi. Singh describes his family as “rich,” albeit “[a]ccording to Adivasi reckoning.” The highlights of his childhood appear to be the all-night melas—or gatherings—and the annual community hunts where the elders “met in council to judge outstanding village disputes” while the younger members of the community barbecued the gains of the hunt. At St. Paul’s School, Singh met Canon Cosgrave, the man to whom Singh considered himself most indebted. Cosgrave, who had spent his own money building St. Paul’s, as well as a separate school for

---


52. Ibid.


54. Ibid.
girls, was also the chaplain of St. Paul's Cathedral. In his autobiography, Singh reminisces that, against his mother's "innermost feeling," he "developed a leaning for the Canon's religion" over time, and was baptized by him.55

When Cosgrave returned to England, he took Singh with him, overriding the bishop's concerns that this would "spoil" Singh.56 Subsequently, Singh attended St. Augustine's College in Canterbury for two terms. He then joined St. John's College at Oxford, from which he graduated in 1926 with honours in economics.57 It was at Oxford that he began his exceptional career in field hockey, a sport with which he would remain connected for the rest of his life.58 From being "the star full-back of Oxford," Singh went on to captain the Indian field hockey team at the Amsterdam Olympics in 1928.59 He did not, however, play in the crucial final match that won the team the gold medal. While the reasons for Singh's absence remain a mystery, his teammate and Indian hockey legend, Dhyan Chand, indicated some conflict at the management level, as well as unconfirmed stories about "communal and racial issues" as possible reasons.60

When Singh was offered the captaincy of the Indian Olympic hockey team, he was working in Oxford as a "probationer for the Indian Civil Service."61 He took up the position in defiance of the India Office, which had turned down his request for a leave of absence.62 Upon his return, Singh resigned from the Indian Civil Service, a decision he describes as "stupid" in his autobiography.63 Thereafter, he became the first Indian to be appointed as a "covenanted mercantile assistant" by the Royal Dutch-Shell Group and began work in its Calcutta office.64

55. Ibid.
58. For details of his personal achievements in field hockey, as well as his leadership in encouraging "Indian students from Oxford, Cambridge, London, Edinburgh and Manchester" in the sport, see ibid at 766.
60. Ibid.
61. Sen, supra note 57 at 767.
62. Ibid.
64. Sen, supra note 57 at 768. In Calcutta, Singh married Tara Majumdar, the granddaughter of WC Bannerjee, the first president of the Indian National Congress.
On his second day at work, Singh was summoned by the branch manager and reminded to not use the “Baboos’ lift” in the building.\(^{65}\)

From Calcutta, Singh moved to British West Africa, where he took up a position as the “senior house master of the junior and unnamed house” at the Prince of Wales College at Achimota.\(^{66}\) He was appointed to his post by the principal of the college, despite objections from the “colonial office.”\(^{67}\) After a successful stint there, Singh returned to India as the principal of the Rajkumar College in Raipur.\(^{68}\) Later, he worked for some time in the then-independent State of Bikaner before returning home.\(^{69}\) In his autobiography, Singh mentions a subsequent employment-related meeting in Patna with Doctor Rajendra Prasad, who would later serve as the chairman of the Constituent Assembly and, thereafter, as the first president of India. The interview, Singh notes without providing too many details, “ended [his] propensity for the Congress [Party].”\(^{70}\)

Around this time, his longtime associate, Maurice G. Hallett, then the governor of Bihar, offered to nominate Singh to the Bihar legislative assembly, an offer that Singh declined.\(^{71}\) Later, in early 1939, Singh accepted the leadership of the newly formed Adivasi Sabha (Adivasi Assembly), which he renamed as the Adivasi Mahasabha (Adivasi Grand Assembly).\(^{72}\) The organization was regarded as “anti-Congress” at the time, and various Congress Party members expressed doubt over Singh’s ability to last as its leader.\(^{73}\) Singh notes in his autobiography that this doubt was because a man “used to comfort” was not expected to be able to “work in the jungle.”\(^{74}\)

\(^{65}\) Ibid. Baboo is a title of respect in some Indian languages, like the English mister. The baboos and sahebs that Singh encountered in that elevator wore “sola topees,” or pith helmets, usually worn by the Europeans in India at the time.


\(^{67}\) Ibid.

\(^{68}\) Ibid.

\(^{69}\) Sen, *supra* note 57 at 768.

\(^{70}\) “Around the world and return to Ranchi for the native son,” *The Telegraph* (9 January 2004), online: <http://www.telegraphindia.com/1040109/asp/ranchi/story_2767202.asp>. While Jaipal remained a strong critic of the Congress for a long time, he formed an alliance with the Congress Party in the 1960s. His son has described this much-criticized move as a personal and political failure that Singh “had to live with.” For a very brief summary of the events that led to this alliance, and to Singh’s subsequent disappointment with Nehru for not creating a separate Adivasi state, see Sen, *supra* note 57 at 771-72.

\(^{71}\) Ibid.

\(^{72}\) Ibid.

\(^{73}\) Ibid.

\(^{74}\) Ibid.
Singh’s many journeys had indeed taken him far from his home in significant ways. His education and economic status set him apart from the everyday realities of the people he wished to represent. His commitment was suspect because he was no longer ‘backward,’ the characteristic that defines a tribal person for many, even today. As comments made during debates in the Constituent Assembly reveal, this was a charge he encountered more than once. In an Assembly where many others were similarly distanced from the lives and struggles of the people they claimed to represent, it was Singh who encountered suggestions that a man who lived and dressed like him could not claim to speak on behalf of Adivasis. But by then Singh was prepared to meet that charge. He had spent considerable time travelling and speaking with Adivasis across India. In response to a charge that he did not know “anything about the tribals outside ... his own province,” Singh pointed out:

I go about quietly, moving about among my own folk, and I try to understand them and I do not come to hasty conclusions. I have for the last eleven years tried my best to educate non-tribal people to appreciate the self-respect, the imponderables of Adibasi culture.

The man referred to by Adivasis of his region as marang gomke (translated most often as supreme chief or leader), and the significant role that he played in highlighting the concerns of Adivasis and their demands for justice across India, appear to have been largely ignored by legal researchers. Despite all that his presence in the Assembly, his speeches and silences, and his claims and disagreements offer for understanding the possibilities and limits of justice for Adivasis as original inhabitants, Singh remains absent from the history of the Indian Constitution. Even the works specifically focused on constitutional provisions for Scheduled Tribes offer only a passing reference, if any, to Singh as the man whose proposals were rejected. The little attention that he has received

75. See e.g. Debates, supra note 49, vol IX (5 September 1949) at 993, 995 (Jaipal Singh).
76. See Ibid, vol I (21 December 1946) at 159.
77. Ibid, vol IX (5 September 1947) at 987 (AV Thakkar).
78. Ibid, vol IX (5 September 1949) at 990 (Jaipal Singh). “Adibasi” is synonymous with Adivasi. The difference in spelling simply indicates a different pronunciation.
79. While scholarship on the Indian Constitution from which Singh remains absent is too voluminous to list, it is worth noting that several portions of the debate on the Fifth Schedule of the Constitution held on 5 September 1949 are inexplicably missing from the records of the Debates available on the website of the Parliament of India. Anyone relying only on an online search of the database is therefore likely to never find many of Singh’s speeches or the responses of other members.
is limited to his role in the Jharkhand movement that culminated in the formation of a separate State of Jharkhand in 2000.81

Just as Singh's interesting life and "many journeys"82 await a biographer, the ways in which his leadership shaped political mobilization around Adivasi identity in independent India await further research and more serious engagement. While my account here is based specifically on his calls for reparation on behalf of Adivasis in the Constituent Assembly between December 1946 and January 1950, there is no doubt that a fuller account of the trajectory of his political career and the decisions he made outside the Assembly before, after, and during the debates would offer a more comprehensive understanding of the role that he played as a leader of Adivasis in India.

IV. AN ADIVASI IN THE CONSTITUENT ASSEMBLY OF INDIA

On 11 December 1946, the chairman of the Constituent Assembly introduced Singh as the representative of the "aboriginal tribes of Chhota Nagpur."83 Singh, a member of the Munda tribe of the region, considered himself the representative of the thirty million original inhabitants of India, a point he emphasized over and over again during the debates.84 Even his insistence on using the word "Adibasi" over all others indicates the centrality of the histories of dispossession in his claims for justice.85 While not the only one, Singh was the most vocal advocate of Adivasi interests in the Assembly. Most significantly, he remained dissatisfied by the Assembly's approach to what was repeatedly referred to

---


82. For a brief introduction to some of these journeys, see Sen, supra note 57 at 765.


84. See e.g. ibid, vol I (19 December 1946) at 46, 143 (Jaipal Singh); vol II (24 January 1947) at 337 (ibid); vol III (30 April 1947) at 462-463 (ibid); vol IV (22 July 1947) at 751 (ibid).

85. See ibid, vol IX (5 September 1949) at 992-93 (Jaipal Singh). Singh strongly opposed the use of the word "vanjati" (forest tribes), which he described as an "old abusive epithet" due to its connotations of barbarity and wildness at the time. While that word was discarded in the Hindi translation of the Constitution, Singh was equally opposed to other suggestions of "adimjati" or "janajati." According to him, Adivasi was the most appropriate word, as it had been used for long and was understood by all Adivasis. In his words: "I am an Adibasi, I call myself an Adibasi. I cannot understand why you wish to give us another name."
as the “tribal question.” He was critical, at times even suspicious, of the commitments to undoing past wrongs professed repeatedly in the Assembly. And yet he was enthusiastic about the hopes of a future free from colonial rule, willing to put his faith in the new India that was being imagined and shaped.

One fact that Singh emphasized the very first time he spoke in the Assembly, and that he repeated throughout the debates, was that the dispossession of Adivasis did not begin with the arrival of the British, nor would it end with their departure. Singh pointed out that “for the real rehabilitation and resettlement of the original people of India,” it was necessary not only that the British quit, but that others who had exploited and dispossessed Adivasis for thousands of years do so as well.

He elaborated on this in his next long and impassioned speech in response to a resolution introduced by Jawaharlal Nehru laying out “an outline of the plan” for the nation. In asking all “intruders” to “quit,” Singh was not, however, foreclosing the possibility of working together. Singh appears to have held at the time a genuine belief that it was possible for Adivasis and non-Adivasis to work together for a more just future in the new India. An early indication of this belief was his decision to open up the membership of the Adivasi Mahasabha to non-Adivasis.

His many utterances during the debates indicate that he held on to this belief for a long time, despite his many differences and disagreements throughout the framing of the Constitution. The following extract from his speech, delivered in response to Nehru’s resolution regarding the aims and objects mentioned above, is instructive in understanding the significance under Singh’s approach of both remembering the past and building bridges for the future:

Mr. Chairman, Sir, I rise to speak on behalf of millions of unknown hordes—yet very important—of unrecognised warriors of freedom, the original people of India who have variously been known as backward tribes, primitive tribes, criminal tribes and everything else, Sir, I am proud to be a Jungli, that is the name by which we are known in my part of the country. Living as we do in the jungles, we know what it means to support this Resolution. ... The whole history of my people is one of continuous exploitation and dispossession by the non-aboriginals of India punctuated by rebellions and disorder, and yet I take Pandit Jawahar Lal Nehru at his word. I

86. Ibid, vol II (24 January 1947) at 338 (Jaipal Singh). The ‘tribal question’ or the ‘question of tribes’ was at the time framed mainly as an issue of whether the tribes should be assimilated or isolated. E.g. Sundar, supra note 28 at 156-90.
88. Ibid, vol I (19 December 1946) at 143-44 (Jaipal Singh). For the Resolution and Nehru’s speech, see ibid, vol I (14 August 1947) at 57-65.
89. Ibid, vol I (11 December 1946) at 47 (Jaipal Singh); vol I (19 December 1946) at 143 (ibid).
90. Sharma, supra note 81 at 41.
take you all at your word that now we are going to start a new chapter, a new chapter of Independent India where there is equality of opportunity, where no one would be neglected. …

I have heard of resolutions and speeches galore assuring Adibasis of a fair deal. If history had to teach me anything at all, I should distrust this Resolution, but I do not. Now we are on a new road. Now we have simply got to learn to trust each other. … I am convinced that not only the Mover of this Resolution, Pandit Jawahar Lal Nehru, but every one here will deal with us justly.

It is only by dealing justly, and not by a proclamation of empty words, that we will be able to shape a constitution which will mean real freedom.93

This attempt to reconcile past injustices and the suspicions they created with dreams of a different future being imagined by many at the time, underlies much that Singh said in the Assembly. At every stage, he aired his fears of being deceived, of inadequate Adivasi representation in decision making in the Assembly as well as outside of it, and of moves and proposals that amounted to nothing more than "political window-dressing."92 Like his compatriots, he was living at a time when many old wounds were being recalled and named. As another member of the Assembly, Professor N.G. Ranga, pointed out during the third reading of the draft Constitution, in “an ancient country” like India there is inevitably “a lot of debris of the past which has got to be cleared.”93 This time of doubt and conflict was also, however, a time for hope in new beginnings. In this difficult time, Singh chose to follow what he refers to as the “common sense” of his people; it was this common sense that led him to believe that every one of them had to “march in that road of freedom and fight together.”94 With these words, he supported Nehru’s resolution, not because, as he made sure to point out, it had been moved by “a leader of the Indian National Congress,” but rather for the reason that it gave “expression to sentiments that throb[bed] in every heart in [the] country.”95

V. PEOPLES AND NATIONS

Singh’s first speech in the Assembly was received with what the record identifies as “cheers,” and his second impassioned presentation of the hopes of Adivasis ended with “applause.”96 This reception did not, however, make his task any easier. As

92. Ibid at 144.
93. Ibid, vol XI (17 November 1949) at 627 (NG Ranga).
94. Ibid, vol 1 (19 December 1946) at 143 (Jaipal Singh).
95. Ibid.
96. Ibid, vol 1 (11 December 1946) at 47; vol 1 (19 December 1946) at 145 (ibid).
the Assembly moved on from its initial euphoria to the hard work of finalizing each sub-clause and proviso over three readings of a long Constitution containing hundreds of articles, Singh repeatedly found his ideas—fundamental for ensuring justice for Adivasis in his view—opposed, ignored, and even ridiculed by many.

The words "freedom" and "democracy" were repeated innumerable times during the debates. In an Assembly of few women and many men (a fact pointed out by Singh more than once) with various ideological leanings representing different parts of a diverse country, these two words inevitably held different meanings for different individuals and groups. For Adivasis, freedom from British rule was "only a stage," a significant milestone, but by no means the end of the journey. As Singh pointed out to the Assembly, now that the British administration could not be blamed for the policies adopted in the country, everyone in that Assembly was "on trial" and had to behave differently. "Real freedom," according to him, required a lot more than the departure of the colonial rulers. Not only did the non-Adivasis have to acknowledge the treatment that had been meted out to the original inhabitants of the country by all outsiders whether British or not, they also had to make an effort to understand what needed to be done to undo "the injuries of six thousand years."

Reminding the Assembly of the history recounted in Nehru's book The Discovery of India, Singh indicated what the Adivasis expected of the new nation. Freedom for them would mean nothing short of a return of the tribal republics that had existed. "[T]here will again be many tribal republics," he said, adding that these republics would "be in the vanguard of the battle for Indian freedom." This is how the concepts of democracy and freedom would make sense for him. While neither of these two concepts, he pointed out repeatedly, were new for his people, this is how they had to work together in the new India being imagined at the time if they were to hold meaning for the Adivasis. His calls for a fair and equitable deal for Adivasis in the postcolonial nation seemed to have been predicated on his faith in the Assembly and, despite his mistrust of the Congress, on the faith that he placed in Nehru's leadership at the time.

97. See ibid, vol I (19 December 1946) at 144; vol II (24 January 1947) at 338 (ibid).
98. Ibid, vol I (11 December 1946) at 46 (Jaipal Singh).
100. Ibid, vol I (19 December 1946) at 145.
102. Ibid, vol I (19 December 1946) at 145. Here Singh was invoking Nehru's reference to autonomous "tribal republics" that "in all probability" existed along with small kingdoms and states in "ancient India." See Jawaharlal Nehru, The Discovery of India (New York: John Day Company, 1946) at 88-89.
103. See Debates, supra note 49, vol I (19 December 1946) at 144-45; vol II (24 January 1947) at
Singh’s vision for the *Adivasis’* future in India—in particular, the nature of their relationship with the nation-state—emerges clearly from the speech he delivered in response to the resolution proposed by Nehru regarding India’s national flag. Speaking on behalf of “the real owners” and the “most ancient aristocracy of India,” Singh said:

> On behalf of these my people, I have great pleasure in acknowledging this Flag as the Flag of our country in future. Sir, most of the members of this House are inclined to think that flag hoisting is the privilege of the Aryan civilised. Sir, the Adibasis had been the first to hoist flags and to fight for their flags. ...[Y]ear after year, in the *melas, jatras* and festivals in Chota Nagpur, whenever various tribes with their flags enter the arena, each tribe must come into *jatra* by a definite route by only one route and no other tribe may enter the *mela* by the same route. Each village has its own flag and that flag cannot be copied by any other tribe. If any one dared challenge that flag, Sir, I can assure you that that particular tribe would shed its last drop of blood in defending the honour of that flag. Hereafter, there will be two Flags, one Flag which has been here for the past six thousand years, and the other will be this National Flag which is the symbol of our freedom as Pandit Jawaharlal Nehru has put it. This National Flag will give a new message to the Adibasis of India that their struggle for freedom for the last six thousand years is at last over, that they will now be as free as any other in this country. I have great pleasure, Sir, in accepting and acknowledging on behalf of the Adibasis of India the Flag that has been presented to us by Pandit Jawaharlal Nehru.104

In addition to foregrounding the dispossession of *Adivasis* and reconstructing their rich past, this passage is a clear indication of Singh’s vision for what he had described earlier as tribal republics. The original inhabitants would be a part of the nation-state, but without giving up their autonomy. Even as he made it clear that any challenge to the traditional flag of each tribe was unacceptable, he also accepted the national flag for its “new message.”105 It was a “symbol of freedom” for the *Adivasis* as well, albeit of a freedom that they had been struggling to achieve for much longer than the rest of the peoples of the nation.106

In speaking about freedom, Singh was not talking about separation.107 Rather, he appears to have offered the Assembly a chance to imagine the nation differently. By freedom, he meant autonomy in decision making and a relationship based on

---

104. *Ibid.*, vol IV (22 July 1947) at 751 (Jaipal Singh) [emphasis added].
107. This is reflected in much of what Singh said during the *Debates*. See e.g. *ibid*, vol IV (30 July 1947) at 947; Ramachandra Guha, *supra* note 81 at 275.
respect and reciprocity—words and themes that recur in his speeches. In critical ways, Singh’s understanding is analogous to the Indigenous understanding of the two wampum belts presented by William Johnson, a representative of the British Crown, to Aboriginal representatives at the Niagara Conference in 1764. The belts represented the promise of “interaction and separation” and a “political relationship that incorporates autonomy and integration” to those who received them. They had accepted them in hope of a future where they would “travel the river together, side by side, but in [their] own boat.” In a different place and time, Singh had hoped to find a similar promise for the future.

Singh extended his understanding of autonomy not only to relations between Adivasis and the nation-state, but also to relations between different tribes. As indicated in the passage quoted above, even as Singh spoke on behalf of all Adivasis, he was always mindful of respecting the autonomy of each individual tribe. According to him, it would have indeed been ideal if each tribe could speak for itself. During a discussion concerning the membership of a proposed advisory committee for the Assembly, Singh regretted the fact that it was not possible to include a representative of every one of the 177 tribes listed in the census of 1941. He considered the absences problematic given the advisory committee’s mandate to resolve the so-called tribal question.

However, Singh’s proposals, which emphasized tribal autonomy as a means for ensuring an equitable deal for his people, were largely ignored in the Assembly. Responding to Singh’s “vigorous criticism” of what he perceived as inadequate representation, Govind Ballabh Pant noted that Singh “was chafing and the vehemence of his utterances seemed to [Pant] to compensate for the poverty of [Singh’s] ideas.” Instead of responding directly to the issue, Pant chose to state his belief that the tribes had “not received that attention and active service … to which they were entitled.” He then added: “I think we owe them a duty and we should do all we can to raise their general level.”

108. Singh repeatedly called for respect for Adivasi ways of life, languages, and practices. For his views on Adivasi languages, see Debates, supra note 49, vol IX (14 September 1949) at 1439-41.
110. Ibid at 126-27.
111. Ibid at 126.
112. Debates, supra note 49, vol II (24 January 1947) at 338 (Jaipal Singh). In fact, he also urged the Assembly to seriously consider the fact that no tribal woman had been nominated to this important committee.
113. Ibid at 346 (Govind Ballabh Pant).
114. Ibid.
Not one to be discouraged by such a response, Singh continued to raise questions about more representation not only for Adivasis, but also for others who he thought would challenge the majority opinion. As he bluntly pointed out on the very next day while commenting on the composition of a committee appointed to examine and advise the Assembly on the assignation of subjects to the central and state governments, “Looking at the list, it seems to me that the plan is not for unity but for uniformity.” What Singh expected for his people was equal participation in all decision making; in his view, it was the totality of the vision for the nation that was going to determine the future of Adivasis. The tribal question could not be considered in isolation of the plans for the nation-state being shaped in that Assembly. Unfortunately, as became clearer to him over the course of the debates, this was not a vision shared by most others.

This radical difference in approach emerged clearly during a debate on fundamental rights guaranteed by the Constitution. These justiciable rights, representative of the liberal underpinnings of the Constitution, comprise the most important rights guaranteed to citizens. One of them was envisaged at the time as the right of every citizen to reside and settle in any part of the “Union,” to “acquire property and to follow any occupation, trade, business or profession.” This right was meant to remove caste-based restrictions with regard to occupations. Despite the fact that a proposed proviso to the draft language permitted “reasonable restrictions” on the right as considered necessary “in the public interest including the protection of minority groups and tribes,” a fundamental right of every citizen to acquire land anywhere in the country was a cause for considerable concern among tribes.

Singh wanted any discussion on the draft language to be deferred until after the reports of the two tribal sub-committees had been considered. He was most emphatic in pointing out that such a provision that was “vital to the Adibasi millions” could not be discussed without taking account of the recommendations

116. See India Const, Part III. It is worth noting that liberalism is a significant ideology, but not the only one that finds representation in the Constitution. The Directive Principles of State Policy in Part IV of the Constitution were informed by socialist and other ideas. These, unlike the Fundamental Rights set out in Part III of the Constitution, are aspirational in nature and non-justiciable.
118. Ibid at 458.
119. Ibid at 462 (Jaipal Singh). Two separate sub-committees for Tribal and Excluded and Partially Excluded Areas in Assam and outside of Assam had been appointed by the Assembly.
of the sub-committees. Given the centrality of the issue of past and ongoing dispossession for Adivasis, he felt it would be "unwise, inexpedient and premature" to consider such a provision then. He repeated what he had said before: "[L]and is and must be the bulwark of aboriginal life." The provision under consideration, he said, was "going to mean the life or death" not only of those Adivasis who lived in designated tribal areas, but also of the "many more millions living outside these tracts." He insisted that it be made unequivocally clear that certain protections under existing colonial laws that prohibited transfer of Adivasi lands would not be discontinued. In fact, he reported that members of various tribes with whom the sub-committee—of which he was a member—had met while preparing its report had urged them to ensure "that for several years to come, the aboriginals' land must be inalienable." The reasons for his concern become apparent from the fact that this demand—fundamental to the Adivasis' conception of freedom and justice—was disregarded and even ridiculed by other members in the Assembly.

Nehru neither disregarded nor ridiculed this demand for inalienability, but his response to Singh exhibits a complete failure, shared by many in the Assembly, to acknowledge the centrality of dispossession and displacement to the tribal question. Protection against further dispossession from lands traditionally used and occupied by Adivasis was fundamental to them. To Nehru, however, even though the issue raised by Singh was valid, he did "not see what it has to do with fundamental right[s]." The issue of Adivasi lands would be considered separately, he pointed out, but "thinking of this [issue] in terms of a fundamental right would be ... entirely wrong." Nehru admitted that he did not know about the existing legislation relating to the alienation of tribal lands at the time, but that did not lead him to doubt the correctness of his opinion. He was certainly not unsympathetic towards the plight of tribes. In fact, he assured the "people

120. Ibid at 462.
121. Ibid.
122. Ibid at 463.
123. Ibid at 462.
124. Ibid at 463.
125. Ibid.
126. Ibid at 466 (Jawaharlal Nehru).
127. Ibid.
128. For Nehru's middle-path approach to Aboriginal issues in India, see Jawaharlal Nehru, "The Tribal Folk" in The Tribal People of India (New Delhi: Government of India Press, 1973) 1; Verrier Elwin, "Do We Really Want to Keep Them in a Zoo" in The Tribal People of India (ibid) 8. For the five principles enunciated by Nehru, see SC Dube, "Development Designs and Tribal People" in SC Dube, ed, Antiquity to Modernity in Tribal India: Continuity and
interested in tribal areas” that the sympathies of “the whole of India” were with them.129 Like him, there were others who also spoke in support of special provisions for the protection of the people Nehru referred to as their “backward” and “unfortunate brethren.”130 But their sympathy did not translate into recognizing what the Adivasis considered fundamental to undoing past wrongs and justice in the future. The predominant view was that though the Adivasis could certainly be protected by constitutional recognition of their status as “backward peoples,” that recognition would not include a fundamental right not to be alienated from the lands they lived on.

**VI. THE “BACKWARD” TRIBES**

The “backward” peoples—or classes—of India featured prominently in several discussions and disagreements during the debates. The description was applied to various groups: religious minorities in specific regions, Hindu lower-castes, and Adivasis. Much was said about bringing such people up to the level of the rest of Indians. But, unlike the other groups, the definition of the tribes limited their identity to one of “backwardness.” In several framers’ view, to be a tribal person meant to be living in a state of social, cultural, and economic primitiveness, and once a person shed that status one also shed one’s tribal identity. Thus, while a Muslim would not cease to be a Muslim once she was deemed not backward and a member of any specific caste would not cease to belong to that caste once her ‘level’ was raised, a member of a tribe was tribal only as long as she was ‘primitive.’ Anyone who did not meet that criterion would simply cease to be an Adivasi.131

The backwardness of tribes was seen as a barrier to the formation of the modern nation that had to be overcome.132 Speaking during the debates, Vallabhbhai

---

2. Debates, supra note 49, vol III (30 April 1947) at 466 (Jawaharlal Nehru).
3. Ibid.
4. This was expressed in various ways over the course of the debates. See e.g. ibid, vol IX (5 September 1949) at 983-84. For a brief historical review and critique of this categorization, see Xaxa, supra note 28 at 1519 (arguing that this is a result of the tendency to view “tribes not as communities in their own right but in terms of affinity or non-affinity with mainstream communities”).
5. See Skaria, supra note 28 at xii (noting that “[t]he wildness of the tribe epitomized Indian backwardness; this backwardness had to be overcome for the nation to become modern, or
Patel suggested that the very word “tribes” would become redundant as soon as the tribal people “have come up to our level.” Many others echoed this sentiment over the course of the debates. The tribes must be uplifted, civilized, developed, and assimilated as fast as possible, stated some concerned members to whom the very existence of “backward tracts” was a matter of shame for the nation. One member declared that the Scheduled Tribes’ “sub-human state of existence” was “a stigma on our nation just as the existence of untouchability is a stigma on the Hindu religion.” They had to be developed and made “indistinguishable from the rest of the Indian population.”

Although the word “backward” was often used along with “tribe” during the debates, this association in both language and law was not born in the Assembly. It was a colonial legacy that made its way into the debates, and subsequently the Constitution, via the administrative policies and laws of the departing colonial regime. In the late eighteenth century, the colonial government in British India began to delineate areas occupied by particular “primitive” tribes as special legal and administrative zones. This action was taken to control the rebellions that erupted continually in many of these areas after immigrants began to settle on traditional tribal lands following the establishment of British rule. Taking advantage of the system of revenue under the “new reign of law,” the newcomers, often traders and moneylenders, began to take over lands that had previously been occupied by tribes. To maintain order, many of these areas were withdrawn from the purview of general laws. Ordinary courts ceased to have jurisdiction over them, even as local customary mechanisms of dispute resolution were codified. In many of these areas, the rights of tribes to lands occupied by them were given special protection under a system of “direct paternalistic government.” Over time, many of these areas came to be known as “backward tract[s],” inhabited by

---

134. See *ibid*, vol IX (5 September 1949) at 979-80, 984, 994.
135. *Ibid* at 979 (Shibban Lal Saksena).
136. *Ibid*.
137. These legal changes began under the rule of the English East India Company and continued after the take-over of the administration by the British Crown. See *Report of the Indian Statutory Commission: Volume 1 – Survey*, vol 1 (London: His Majesty’s Stationary Office, 1930) at 70 [Indian Statutory Commission: Volume 1 – Survey].
138. *Ibid*.
139. See Ghurye, *supra note 80* at 70-72. For the effects of the codification of local custom in some parts of India, see Sundar, *supra note 28* at 156-90.
"backward races"—that is, people who were considered primitive, simple, and unsophisticated. These people were considered in need of special "protection" so that they could be educated and enabled to "stand on their own feet."

At various times, depending on the specific legal regime in place, some of these delineated zones were classified as Agency Areas, others as Scheduled Districts. Subsequently, these backward tracts were renamed as "Excluded Areas" or "Partially Excluded Areas" by the Indian Statutory Commission, which considered constitutionally mandated political reforms in British India in 1930. The degree of these zones’ exclusion from political reforms proposed by the Commission depended on their estimated "degree of backwardness." The reason for their exclusion from representative politics was their backwardness based on their level of development and need for protection. Even as the Commission considered political reforms for the rest of the country, it excluded the various backward tracts from such reforms. According to its report:

They do not ask for self-determination, but for security of land tenure, freedom in pursuit of their traditional methods of livelihood, and the reasonable exercise of their ancestral customs. Their contentment does not depend so much on rapid political advance as on experienced and sympathetic handling, and on protection from economic subjugation by the neighbours.

Thereafter, the Government of India Act 1935 (significant portions of which were incorporated into the Constitution) also contained several references to backward areas and backward tribes. Finally, these tribal areas came to be known as Scheduled Areas, and in a move with far-reaching consequences, Adivasis came to be recognized as Scheduled Tribes in the Constitution. As reported by Bhimrao Ramji Ambedkar, chairman of the drafting committee, in response to Singh’s question regarding the substitution of the word “Scheduled” for the word “Aboriginal” in the draft Constitution, the category of Scheduled Tribes was

144. Ibid at 69.
145. For the ways in which these stages of backwardness were determined by anthropologists at the time, see Verrier Elwin, The Aboriginals (London: Oxford University Press, 1944). Elwin’s classification of Aboriginals in India ranges from “real primitives” and “wilder aboriginals,” to the more modern ones (at 7-10).
147. 26 Geo V, c 2 (repealed).
in fact "invent[ed]." The tribes enumerated in a specified schedule would be known as Scheduled Tribes. Ambedkar explained that this was done because the word *Adivasi* was "really a general term which has no specific legal dejure [sic] connotation." In contrast, a "precise definition as to who are these Adibasis" would enable a court to more clearly determine who could benefit from the privileges and rights being conferred on the *Adivasis* by the *Constitution*. In favouring a precise definition, the drafters claimed to be emulating the decision to substitute the word "untouchable" with "Scheduled Caste" in the *Government of India Act 1935*.

The fact that the reasons for the change were more complex than the ones pointed out above is perhaps best illustrated by Ghurye, who believed that *Adivasis* were basically "Backward Hindus." While revising his book, first published in 1943 as *The Aborigines-so-called and Their Future*, Ghurye changed the title to *The Scheduled Tribes*, "following the dictates of [the] Constitution." According to him, since the *Constitution* spoke of them as Scheduled Tribes, "any other designation [is] utterly wrong." Nonetheless, he welcomed this change, as in his view "terms like 'Aborigines' or 'Adivasis' are question-begging and pregnant with mischief." The claims of *Adivasis* as original inhabitants were thus effectively written out of the *Constitution*, foreclosing any possibility of a future recognition in the country's law. While the recurring political and legal demands for recognition as a Scheduled Tribe by various groups in India continue to challenge the legal specificity the drafters of the *Constitution* had hoped for, the phrase "Scheduled Tribe" has managed not only to eclipse a particular history, but also to change the terms of discourse in India. Since there are no recognized *Adivasis*, there is no legal basis for any claim as an original inhabitant. As Scheduled Tribes, on the other hand, many of them are certainly entitled to "protection" and "help."

The framework of backwardness and protection—underlying both colonial law and administrative language—was adopted uncritically, even by those nationalists who had viewed the segregation of these areas as yet another self-interested attempt

---

149. *Ibid.* Singh disagreed with the proposition that the word *Adivasi* was "likely to create any misconceptions." *Ibid*, vol IX (5 September 1949) at 993 (Jaipal Singh).
151. *Ibid*.
152. Ghurye, *supra* note 80 at 19.
153. *Ibid* at ix. Similarly, *The Tribal People of India, supra* note 128, was first published under the title "Adivasis" in 1955.
155. *Ibid*. 
by the British to keep India divided. While these nationalists had issues with the colonial government’s motives, they did not disagree with the classification of these areas or its peoples as backward. Backwardness, protection, and development continue to determine the framework within which policy is formulated and legal claims on behalf of Scheduled Tribes are adjudicated in India, even today. Despite the changes in the names by which Adivasis and the places they live in are known, it is their perceived backwardness that underscores the denial of agency to them, notwithstanding centuries of law-making.

Singh tried to dislodge this paradigm of backwardness, protection, and welfare in his own way, albeit without substantial success. Given that these words and expressions had come to define the very identity of Adivasis, he too was unable to escape using the same language at times, even while calling for change. The difference is that he did not use it in the same patronizing way as others. For him, most significantly, any perceived lack was not the defining feature of Adivasi identity. He always spoke of Adivasi traditions, languages, and practices with pride while repeatedly reminding the Assembly of their dispossession and impoverishment. His very insistence on the use of the word “Adibasi” throughout the debates indicates that what set them apart from all others was their claim of being the original inhabitants of the land. That status was the basis of their identity and their claim for justice. But they were definitely not “begging [for] anything,” as Singh stated during a debate on reservation of seats in the legislature for Scheduled Castes and Scheduled Tribes.

His speech during a debate on minority rights also shows the extent to which his views were in dissonance with the predominant rhetoric. He acknowledged the “social, economic and educational” disparities between Adivasis and the “general population” in India, and advocated strongly for change through legislation. But he distinguished the claims of his people from others with whom they had been grouped as backward. Singh’s language here indicates a conception of sovereignty and self-governance. He insisted that the original inhabitants and “owners” of the country could never be considered a minority. They had “prescriptive rights” that could not be denied. Yet they were not asking for those rights, he added, showing once again his desire to find ways of building bridges. Their demand

156. See Debates, supra note 49, vol IX (24 August 1949) at 654 (Jaipal Singh). Singh urged the members of the Assembly to "not be so condescending."
157. Ibid at 651.
158. Ibid, vol V (27 August 1947) at 209.
159. Ibid.
160. Ibid.
was to be treated with respect as equals. As his statement during the debate on reservations indicates, only an “equality of opportunity” that enables Adivasis “to stand on [their] own legs and regain the lost nerves” would lead to meaningful justice. Unlike others, however, Singh did not think that they were devoid of agency. He insisted that Adivasis could “play a part they have a right to play” in the country, if only they had the freedom to make that choice.

In Singh’s vision, the undoing of past wrongs in the present required something other than the welfare work envisaged by some other members of the Assembly. As one of them suggested, some members of the Assembly had been working for tribal welfare for a long time, long before Singh began to advocate their cause. In sharp contrast to Singh’s position, these men saw themselves playing the prominent role in uplifting the Adivasis—which included deciding how best to achieve that goal. A complete denial of Adivasis’ agency is most clearly reflected in the following statement by a member who appears to be similarly committed to Adivasi welfare: “We know that the tribes are backward and we know for centuries past they are backward; but our approach should be not what the tribes would do for themselves, but what we should do for them.” Agitated by Singh’s repeated reminders of the past injustices, he pointed out that “irresponsible statements and baseless allegations” were unlikely to “advance the cause of the aboriginals.”

The same fundamental difference in approach between Singh and several others who spoke on behalf of Adivasis also appears to be the cause of Singh’s disagreement with A.V. Thakkar, highly regarded for his welfare work among Adivasis. Thakkar was appointed by the Assembly to be the chairman of the Sub-Committee for Excluded and Partially Excluded Areas (other than Assam).

Singh, who was also a member of this sub-committee, had repeatedly urged the Assembly to consider its report before arriving at decisions that he had unsuccessfully argued could not be made without considering the Adivasi perspective. Much to his disappointment, the report was not discussed in the Assembly due to delays in its submission. While Singh did not get a chance to explain the reasons for his disagreement with some of the recommendations made in the report, the minutes of dissent he submitted, as well as Thakkar’s response, indicate that the two had differences.

---

162. Ibid at 654.
163. See ibid, vol IX (5 September 1949) at 988 (AV Thakkar).
165. Ibid at 694 [emphasis added].
166. Ibid at 695.
167. See ibid, vol VII (4 November 1948) at 182, 189; vol VIII (1 June 1949) at 514-15 (ibid).
VII. THE FIFTH SCHEDULE

Many of the differences between Singh and his critics over the question of the Adivasis seem to have come to a head on 5 September 1949 during the few hours in which the Assembly considered and adopted the proposed Fifth Schedule of the Constitution. Considering that the Fifth Schedule appears to have failed to fulfill its intended purpose for exactly the same reasons that Singh considered it unacceptable, the discussions of the day offer insights into how things could have been different and why, in fact, they were not.  

The Fifth Schedule, as indicated by its title, Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes, applies to many areas formerly classified as Excluded or Partially Excluded, including the areas traditionally and predominantly inhabited by tribes that were demarcated as special legal and administrative zones by the British administration. Renamed Scheduled Areas, the Fifth Schedule extended the executive power of the various states within which they were located to these zones. Along with the importation of the idea of control over peoples and areas, the rationales and sensibilities that informed the colonial language were also carried over into the Constitution, as indicated by the debate on the Fifth Schedule.

On a Monday morning, B.R. Ambedkar presented a revised version of the Fifth Schedule that had been circulated to members of the Assembly on Friday. While presenting it, Ambedkar stated that it had "the approval of all the parties who are concerned in this matter." Singh, who was not among those consulted, proposed five amendments to the proposed schedule. He argued, first, that the entire schedule be applicable to all members of Scheduled Tribes regardless of where they resided. Unlike in the previous draft, certain key provisions, insofar

169. Tribal Areas within the former province of Assam are “autonomous districts” governed by the Sixth Schedule of the Constitution, which is not considered in this paper. Due to treaties and other legal and administrative arrangements between various tribes of this region and the British administration, the peoples of these areas have always had some degree of autonomy. The legal and political history of these areas and its tribes, both before and since the formation of the independent Indian state, is therefore not the same as that of Adivasis in the rest of India.
170. See India Const, Fifth Schedule, cl 2.
172. Ibid at 967.
173. K.M. Munshi remarked during this debate that Singh had in fact been invited to a meeting, which he failed to attend. See Ibid at 997 (KM Munshi).
as they related to members of tribes living outside the scheduled areas, had been left to the discretion of the president or the state governors.\textsuperscript{174} For the most part, this change affected the large number of tribes in independent states that had not been part of British India.

Singh had expressed concerns about tribes in independent states at the very outset, when he had unsuccessfully demanded that a tribal representative be included in the committee formed to negotiate with these states. Thereafter, he had on several occasions brought up the issue of tribes living outside the Scheduled Areas in British India. Whether the issue of tribal lands was part of the negotiations with the independent states is not known. What is apparent from the debates, however, is that Singh's concerns remained unappreciated and unheeded. The consequences of this are evident in states like Kerala, where the longstanding demand of Adivasis that the areas where they have traditionally lived be designated Scheduled Areas has not been met.\textsuperscript{175} In 2009, claims for restoration of lands unlawfully taken from them were defeated in the Supreme Court, partly on the ground that those lands are not within a Scheduled Area and are therefore not entitled to the constitutional protections available to tribes in Scheduled Areas.\textsuperscript{176}

Singh's other main concern was that the role and position of the Tribes Advisory Councils (TACs) had been considerably reduced in the proposed new schedule.\textsuperscript{177} He feared that, if accepted, the Fifth Schedule would effectively reduce these TACs to non-entities, making them more of a "farce."\textsuperscript{178} In opposing these changes, Singh stated:

\begin{quote}
I find that this new proposed Fifth Schedule has, somehow or other, perhaps without meaning it, emasculated the Tribes Advisory Council. The whole pattern of the original draft was to bring the Tribes Advisory Council into action. It could initiate, originate things, but, somehow or other, the tables have now been turned. The initiative is placed in the hands of the Governor or Ruler of the State.\textsuperscript{179}
\end{quote}

\textsuperscript{174} For example, at first it was prescribed that every state where there were scheduled areas or scheduled tribes must have a Tribes Advisory Council (TAC). This was changed in the new schedule. According to Ambedkar, it was considered unnecessary to create a TAC "by the Constitution" in a state where there was no scheduled area, even though there were tribes living in parts of the state. Under the new schedule, a TAC could be set up in those states if the president thought it necessary.


\textsuperscript{176} See \textit{PUCL, supra} note 48.

\textsuperscript{177} \textit{Debates, supra} note 49, vol IX (5 September 1949) at 975-76 (Jaipal Singh).

\textsuperscript{178} \textit{Ibid}, vol IX (5 September 1949) at 976.

\textsuperscript{179} \textit{Ibid}. 
He declared that this change was unacceptable to him, and that he “as an Adibasi had and must have the first claim to be consulted to the proposed change,” which had not been done. Another member proposed that the advice of the Councils not be limited to only the “welfare and advancement” of the tribes, but also include matters of administration. Reflecting Singh's concerns, this other member further urged the drafters to ensure that the powers of the TACs not be “limited by the whims and fancies of the executive authority.”

While two other members of the Assembly supported Singh's demand for a stronger role for the TACs, most other members, whose comments remained within the confines of the backward/uplift paradigm, did not support this view. The speech of Brajeshwar Prasad, who began by reading passages from an editorial criticizing the “reservation of seats for aboriginals in the Federal and State Lower Houses” because they were “ill-fitted for it by temperament and intellect,” is particularly illustrative of the perspectives of many who claimed to be concerned with the welfare of Adivasis. After reading out excerpts that, among other things, referred to “aboriginal outbreaks and evidence of reversion to old barbaric practices” that were causing “disquiet” and called for the “[r]e-examination of the entire aboriginal problem,” Prasad declared that he was “not in favour of the Tribes Advisory Council.” In language reminiscent of the report of the Indian Statutory Commission, he stated that what “the tribals want is not a Council, but a guarantee by the Constitution that means of livelihood, free education and free medical facilities shall be provided for all tribals.”

Some other members spoke about the welfare of tribals along similar lines, while a few congratulated the drafting committee for the Fifth Schedule, which was seen as “a new chapter in the history of the elevation of the depressed and oppressed communities.” Thakkar, while speaking in favour of the schedule, looked forward to the assimilation of tribal people, simultaneously undermining the issues raised by Singh by suggesting that he did not know anything about the tribals outside his own province. Singh emphatically denied this charge, but his

180. Ibid.
181. Ibid at 977 (Yudhishthir Mishra).
182. Ibid.
183. See ibid at 977, 986.
184. Ibid at 981-83 (Brajeshwar Prasad).
185. Ibid at 981-82.
186. Ibid, vol IX (5 September 1949) at 982 (Brajeshwar Prasad).
187. Ibid at 989 (Muniswamy Pillay).
188. Ibid at 987 (AV Thakkar).
earlier confidence appears to have diminished by this time.\(^\text{189}\) It is hard to say to what extent this change was brought about by the enthusiastic reception of the amended schedule in the Assembly, the "coldness" with which his amendments were received, and perhaps his exchange with Thakkar over who could validly speak on behalf of Adivasis.\(^\text{190}\) It appears, however, that it must have become clear to him that the changes he proposed—both to do away with the distinction between Scheduled Areas and non-Scheduled Areas for purposes of the application of the Fifth Schedule and to give a stronger role to the TACs—were not likely to be accepted. Therefore, in contrast to his initial, vehement opposition to the amended schedule, he later expressed a hope that the drafting committee would "incorporate the ideas" he had put forward in his amendments.\(^\text{191}\)

Towards the end of his speech, Singh returned to a dilemma that seems to underlie many of his speeches in the Assembly, that of living in a time of hope with memories of a past that make it difficult to believe in a better future. His words to those who professed to be promoting Adivasi interests indicate his fears clearly:

I would like to emphasise that such friends should bear in mind that unless they have genuine respect for the people whom they propose to serve, they would not have earned the right or acquired the capacity to serve. If, however, your mission of amelioration of the lot of the Adibasis is of the kind that the British professed to have, coming to India over all this distance of six thousand miles, I would ask you mercifully to leave us alone, and quit the Adibasi regions.\(^\text{192}\)

He then went on to remind everyone that the "most ancient" peoples, to whom the country belongs, had yet to take their rightful position in the "national life" of the country.\(^\text{193}\) He spoke, yet again, about Adivasis' long struggle for honour and self-respect, underscoring for those who asked the Adivasis to forget the past a fact he had highlighted at the very outset: Colonialism did not end for his people with the end of British rule.\(^\text{194}\) He again emphasized the need for reciprocity and cooperation and concluded by reassuring the Assembly that Adivasis would ensure that "the honour of India" is not impaired in any way.\(^\text{195}\)

Despite Singh's assurances regarding his peoples' commitment to India, many who failed to see beyond the form of nation that had been imagined in

---

\(^\text{189}\) See \textit{ibid} at 990-92 (Jaipal Singh).

\(^\text{190}\) See Ghurye, \textit{supra} note 80 at 384.

\(^\text{191}\) \textit{Debates, supra} note 49, vol IX (5 September 1949) at 991 (Jaipal Singh).

\(^\text{192}\) \textit{Ibid} at 993.

\(^\text{193}\) \textit{Ibid}.

\(^\text{194}\) For Singh's view on how the biggest problem for Adivasis after Independence was the replacement of "British imperialism" by "Bihari imperialism," see Guha, \textit{supra} note 81 at 272.

\(^\text{195}\) \textit{Debates, supra} note 49, vol IX (5 September 1949) at 994 (Jaipal Singh).
other places understood his position simply as “separatist.” In an appeal to Singh and his supporters, Biswanath Das pleaded that such distinctions not be encouraged. He suggested that by establishing the TACs, they were creating a “racial virus.” He repeated what others had opined on other occasions: The scheduled areas had been created by the British to segregate the tribes from the rest of India for their own interests. To Das and others, it was lamentable that this separation that they had opposed under British rule was not being discarded in the new India. Even the word Adivasi, which Singh had hoped would be used in place of Scheduled Tribe, at least in the Hindi translations of the Constitution, spoke of separation to some. Disputing the history of dispossession that Singh had reiterated so often, Das pleaded that the country be “saved” from the “unfortunate expression ‘Adibasis.”

Another speaker, Brajeshwar Prasad, who had similar concerns over what he perceived as “disloyalty and … extra-territorial sympathies” among minorities at the time, called for a removal of conditions that lead to such disloyalty and sympathies. While not in favour of dispossessing those non-tribals who had already acquired lands in the Scheduled Areas, he considered a constitutionally mandated restriction on any further transfer of lands from tribals to non-tribals to be appropriate, not only “on humanitarian grounds,” but more crucially as an appropriate solution to separatism. “This concession,” he observed, “will generate a feeling of loyalty in the hearts of the tribal peoples.”

Finally, the most comprehensive rejection of Singh’s concerns was presented by K.M. Munshi, who declared that Singh’s position was at odds with that of the Assembly and the Congress Party with regard to both facts and perspective. Firstly, he questioned the basis on which Singh could speak on behalf of an ethnically and linguistically diverse group of tribes, which could not be considered

198. Ibid. A British proposal for the reservation of Aboriginal areas in India had, in fact, been denounced by the Indian National Congress in 1936, right after the enactment of the Government of India Act of 1935. See Elwin (1944), supra note 145 at 23.
200. Ibid at 996 (Biswanath Das).
201. Ibid at 983 (Brajeshwar Prasad). It is worth remembering that these fears owed much to the violence and suffering that had accompanied the recent partition and formation of Pakistan, as well as the anxiety over the decision of certain independent States to not join India at the time.
202. Ibid at 982.
203. Ibid.
as "a single community." Rather, Munshi asserted that “[t]he Adibasis are not one conscious, corporate, collective whole” in such a way “that somebody can speak in its name or lead a movement combining them into a single unit.” Such an approach, he declared, “would be fatal to the tribals themselves.”

The second difference Munshi indicated was that, unlike Singh, others did not want the tribes to become “little republics.” He suggested that Singh’s proposal with regard to the TACs would have the effect of turning them into “miniature senates,” which he declared to be “an utter absurdity.” Singh’s demand for an advisory role for the TACs in the administration was similarly “unwarranted.” According to Munshi, since all that the Assembly was concerned with was “welfare and advancement of the tribals,” it was appropriate that the TACs be consulted for those purposes only. Administration, he noted, would include the appointment of administrative and police personnel and the management of forests. Having to consult the TACs on all these matters would, according to Munshi, make it impossible to function. Moreover, Munshi doubted the Adivasis’ abilities to understand complicated administrative issues and did not wish for the state governors to be bound by advice that may not be correct. A requirement of consultation only as and when considered appropriate by the governors was all that he believed was necessary.

Ultimately, Singh withdrew one of his amendments, the rest were rejected, and the Fifth Schedule was added to the Constitution. While Singh’s foresight remains unrecognized, the dangers of which he had alerted the Assembly have turned out, over time, to be real in many ways. The plight of Adivasis in states such as Kerala tells its own story of how the members of Scheduled Tribes have fared in states where their demands for designation of tribal areas as Scheduled Areas have long been ignored. Even in states with Scheduled Areas, the Fifth Schedule is largely considered a failure, and the TACs are today the non-entities that Singh had feared they would be.

204. Ibid at 997 (KM Munshi).
205. Ibid at 997-98.
206. Ibid at 998.
207. Ibid.
208. Ibid.
209. Ibid.
210. Ibid.
211. Ibid.
212. Ibid at 999 (KM Munshi).
VIII. CONCLUSION

Jaipal Singh Munda’s repeated calls for righting old wrongs in the Constituent Assembly of India, the responses to those calls, and the disagreements between him and his fellow drafters arose from fundamental differences in their visions for the nation and the place of Adivasis in it. Taken together, these interactions offer valuable insights into both the promise and the limits of undoing certain past wrongs in a modern democracy. In particular, India’s largely unacknowledged history indicates that the very terms on which it recognized the original inhabitants as citizens required any claim prior to, or outside the nation-state, to be discarded. Some of the ideas and debates set out in this paper, recalling a time when the possibilities and limitations of addressing past injustices were written into India’s Constitution, offer a way of understanding why the Supreme Court of India’s recent call to undo past injustices represents more an empty promise than any real possibility for the change that the Court clearly desires.

For Canadian readers, the speeches, silences, hopes, and disappointments presented in this paper might have a familiar resonance. They are, indeed, not dissimilar to the experiences of those Canadians whose everyday lives lie somewhere between the promise of the two-row wampum belts and the limitations of a modern democratic nation state. In India, the speeches and silences that form part of the nation’s legal foundations—and their connection to contemporary Adivasi realities—remain largely unacknowledged. Reports by commissions set up in independent India have repeatedly pointed to the connection between Adivasi marginalization and impoverishment, on the one hand, and their alienation from lands and familiar ways of life, on the other. Despite this, Adivasi lands, forests, and rivers continue to be appropriated for development purposes—industry, mining, electricity, water, universities—that will not benefit them. Not only have the central and state governments repeatedly failed to consult with Adivasis with respect to the relevance and purpose of various development projects, in most cases lands are appropriated without informed consent. Left with no recognized legal basis for opposing their displacement or demanding the restoration of alienated lands, many Adivasis continue to live the life described by the Supreme Court in Kailas.

214. See e.g. ibid; Kerala Development Report, supra note 175; Govinda Chandra Rath, ed, Tribal Development in India: The Contemporary Debate (New Delhi: Sage, 2006) at 21, 29.
Even as laws are enacted for the betterment of Adivasis, and even as government-funded “tribal departments” and similarly motivated independent organizations go about promoting their welfare and the legal system that exists to “protect” them, Adivasis’ lives remain marked by high levels of malnutrition, disease, illiteracy, and unemployment. The promise and the limitations of language and law that I have highlighted, both in the Kailas decision and in the debates of the Constituent Assembly, remain. Meanwhile, the unchanged mentality of the majority of the India’s people, as noted with regret in Kailas, ensures that Adivasis are still not considered “uplifted” enough to be allowed to disagree on decisions that fundamentally affect their lives. Even though political mobilization for Adivasi rights continues in varied forms, a meaningful engagement with what it means to be Adivasi, with the relationship of such a claim to the Adivasis’ continuing displacement and lack of autonomy, and with the notions of freedom and mutual respect—all of which were raised by Jaipal Singh nearly seven decades ago—remains largely absent.