

The “Criminal Tribe” and Independence: Partition, Decolonisation, and the State in
India's Punjab, 1910s-1980s

Sarah Eleanor Gandee

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The candidate confirms that the work submitted is her own, except where work which has formed part of jointly authored publications has been included. The contribution of the candidate and the other authors to this work has been explicitly indicated below. The candidate confirms that appropriate credit has been given within the thesis where reference has been made to the work of others.

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Abstract

On 14-15 August 1947, India obtained freedom from British colonial rule. For the so-called ‘criminal tribes’, however, freedom did not come at the midnight hour but five years later, on 31 August 1952, when the Government of India repealed the Criminal Tribes Act. Enacted by the colonial government in 1871, this draconian legislation sought to control a disparate set of supposedly criminal communities (and later gangs and individuals) through a raft of punitive and surveillance measures. This study examines the postcolonial afterlives of the ‘criminal tribe’ in the region of Punjab. Specifically, it traces the ways in which the postcolonial state re-embedded this ostensibly colonial category of identification in its legislative, discursive and material practices, at the same time as it dismantled the Act itself.

The study is primarily situated in the 1940s and 1950s, as Partition and decolonisation wrought enormous changes upon the subcontinent. It argues that state actors, whether politicians, bureaucrats or local officers, infused the ‘criminal tribe’ with heightened salience in the years *after* 1947 in response to the exigencies of independence and nation-building. Its findings reveal that the ‘criminal tribe’ remained a tangible and intelligible category for the postcolonial state long after its legal abolition, whether in the refugee regime, legal structures and penal practices, or welfare policies for disadvantaged citizens.

This sheds light on a hitherto overlooked period of the Criminal Tribes Act, namely the early post-independence years. It examines the continued relevance of the ‘criminal tribe’ within postcolonial statecraft not as an inevitable colonial hangover but the product of more contested lineages and developments rooted both pre- and post-1947. This also offers new insights onto the state at this critical juncture. In contrast to the existing scholarship on the Act, which emphasises its unwavering dominance, this study illustrates the uncertainties, contingencies, and tensions of the late colonial and decolonising state.

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Abbreviations

CrPC	Criminal Procedure Code
DCCT	Deputy Commissioner for Criminal Tribes
DCTO	Divisional Criminal Tribes Officers
DSA	Delhi State Archives
HPP	High Power Panel on Minorities, Scheduled Castes, Scheduled Tribes and other Weaker Sections
HSA	Haryana State Archives
IOR	India Office Records
MHA	Ministry of Home Affairs
NAI	National Archives of India
NMML	Nehru Memorial Museum and Library
PEPSU	Patiala and East Punjab States Union
PSA	Punjab State Archives
RSA	Rajasthan State Archives

Glossary

<i>adivasi</i>	a term used for 'tribal' groups, meaning 'original inhabitants'
<i>ajlaf</i>	converts to Islam from the lower castes
<i>Arya Samaj</i>	a Hindu reform movement based on belief in the <i>Vedas</i> (Hindu scriptures), founded in 1875 and especially active in Punjab
<i>arzul</i>	lowest strata of Muslim society, most commonly found in Bengal
<i>baoli/bawari</i>	a step well
<i>begar</i>	a system of forced labour
<i>Bhat</i>	an ethnic group notified under the Criminal Tribes Act in Punjab
<i>Brahman</i>	one who belongs to the highest of the Hindu <i>varna</i> castes; traditionally priests
<i>Buddhuks</i>	peasant mercenaries who were patronised by local landowners to raid neighbouring territories; believed to be a criminal fraternity whose activities were suppressed in the early nineteenth century
<i>chak</i>	village
<i>challan</i>	to issue someone with a notice of an offence
<i>Chamar</i>	an untouchable community in northern India who often practice leather tanning; classified as a Scheduled Caste in Punjab
<i>Chubra</i>	also known as <i>Bhangi</i> and <i>Balmiki</i> ; an untouchable community in northern India who often practice sweeping; classified as a Scheduled Caste in Punjab
<i>dacoity</i>	armed robbery; banditry
<i>dalit</i>	<i>lit.</i> 'ground down or 'broken to pieces'; term employed by untouchables in recognition of their historic discrimination

Denotified and Nomadic Tribe	also known by the acronym ‘DNT’; the designation given to the erstwhile criminal tribes and nomadic and semi-nomadic communities, later adopted by some of the communities as a term of self-reference
<i>durree</i>	carpet or rug
<i>gotra</i>	clan
<i>harijan</i>	‘people of god’; the Gandhian term to refer to <i>dalits</i> /untouchables
<i>ilaqa</i>	a district
<i>jamabandi</i>	record of land rights
<i>Jat</i>	a non-elite ‘peasant’ caste in northern India
<i>jus soli</i>	an interpretation of entitlement to citizenship based on birth
<i>khanabadosh</i>	term used to refer to nomadic and peripatetic peoples
<i>Khatri</i>	a caste group in northern India who claim <i>Kshatriya</i> status, commonly associated with warriors
<i>kisan</i>	peasant, farmer
<i>kôt</i>	reformatory enclosures built on government waste land in the 1850s and 1860s to house nomadic Sansis and Pakhiwaras
<i>Kshatriya</i>	one who belongs to the second highest of the Hindu <i>varna</i> castes; traditionally warriors
<i>lambardar</i>	a hereditary position afforded to powerful landholding families with accompanying powers to collect revenue and maintain law and order in villages
<i>Lok Sabha</i>	House of the People, the lower house of India’s Parliament
<i>Moghia</i>	a community employed as raider-protectors by local landowners in central India until the nineteenth century

<i>Mohammedanism</i>	an outdated term for Islam
<i>munj</i>	a grass used for rope and baskets
<i>Musalman</i>	a term for Muslims
Notification	the process through which communities and gangs, or parts thereof, were declared as criminal tribes under the Criminal Tribes Acts, through a notification in the local gazette; hence the term ‘notified’ or, since 1952, ‘denotified’ community
oil <i>ghani</i>	a form of oil extraction
Other Backward Class	a collective term used to refer to communities who are socially, educationally or economically disadvantaged, and are entitled to compensatory discrimination measures as per the constitution
<i>panchayat</i>	village or caste council
<i>peon</i>	a low-ranking worker, often in offices
<i>Rajput</i>	a term used to refer to several caste and kinship groups, often in northern India, who claim <i>Kshatriya</i> status; traditionally warriors
<i>Rajya Sabha</i>	Council of States, the upper house of India’s Parliament
<i>Rani</i>	a Hindu queen
<i>sabha</i>	society, assembly
<i>sangh</i>	association
<i>sarpanch</i>	the head of a village
Scheduled Caste	the official term used since 1935 to refer to <i>dalit</i> /untouchable communities who are recognised by the constitution as entitled to compensatory discrimination measures

Scheduled Tribe	the official term used since 1950 to refer to <i>adivasi</i> /tribal communities who are recognised by the constitution as entitled to compensatory discrimination measures
<i>shikari</i>	a hunter, hunting
<i>tapriwas</i>	one who lives in temporary housing, often denoting nomadic groups
<i>tehsil</i>	administrative subdivision of a district
<i>thana</i>	administrative subdivision of a district; also refers to district police station
<i>thuggee</i>	acts of robbery and murder carried out by the thugs, an organised gang of criminals ‘discovered’ and suppressed in the 1800s
untouchable	a discriminatory term that denotes one who belongs to the lowest of the Hindu castes, beyond the <i>varna</i> hierarchy; traditionally performed tasks or occupations considered polluting by higher castes
<i>varna</i>	the classes of the hierarchic system of social stratification found in Hindu texts
<i>Vidhan Sabha</i>	the lower house of the state legislature in the states of India
<i>vimukta jati</i>	<i>lit.</i> liberated people; the term used to refer to the erstwhile criminal tribes after the repeal of the Criminal Tribes Act, later adopted by some of the communities as a term of self-reference
<i>zamindar</i>	landowner

A note on terminology

This study examines the ‘criminal tribe’ of India. For the sake of style, it foregoes the use of inverted commas hereafter. It is concerned with the criminal tribe as a category of state identification, rather than the subjective histories of particular communities or individuals. As such, it makes an explicit demarcation between its use of criminal tribe (or ex-criminal tribe, after the repeal of the Criminal Tribes Act in August 1952) – in the singular, denoting the category – and criminal tribes (or ex-criminal tribes, similarly) – in the plural, referring to the numerous communities and individuals declared as such. When narrating case studies, it refers to specific ethnic groups, communities and individuals where possible to ensure that we do not lose sight of the fact that this category, whilst bureaucratic, often had profound impact upon everyday lives. Using such terminology is clearly problematic, and the study does not suggest that it was just nor appropriate. Its use is not meant to offend. The study recognises, too, that using the term further reifies it. Yet, this was the term employed by the colonial and postcolonial state, which is this study’s frame of reference. Since 1952, *vimukta jati* (trans. liberated community) and denotified tribe/community have been variously employed by the government, welfare organisations, and certain individuals from the communities themselves. Given the limited and uneven adoption of these terms by members of the ex-criminal tribes today, this study avoids them. The only departure from this is in the final section of Chapter IV where I used the terminology employed by community activists, namely *vimukta jati*.

The study also uses the term ‘untouchable’. It does so partly for the sake of consistency throughout and partly as it recognises that *dalit*, despite being the term most commonly used by those who have suffered from the stigma of untouchability today, has certain political connotations. Similar to the use of criminal tribe outlined above, it intends no offence and abhors its use generally.

INTRODUCTION

Categories, Decolonisation, and the State

The [Criminal Tribes Act] has affected our nationality, mind and heart so much that we are left not less than a lump of dust. We are treated like slaves by other nations of our motherland [...] In view of our foregoing changed conditions, we deserve liberty. We must be released now [...] It is respectfully requested, therefore, that we must be exempted from the C.T. Act 1924 of the Government of India [...] We shall be highly obliged to you for this act of kindness if we are liberated in this age of freedom. We also aspire for freedom like our other Indian brethren.¹

Petition from Kishan Datt, village Basdhara, Karnal, 6 September 1945

In September 1945, Kishan Datt, President of the Sansi community in the village of Basdhara, Karnal, sent the above petition to Ram Sharma, Member of the Punjab Legislative Assembly. Declared as a criminal tribe in 1874 by way of the Criminal Tribes Act (1871), the Sansis – and the approximately 200 other communities in the subcontinent like them – had long been marked out by the colonial state as dangerous, deviant, and in need of punitive state control.² Once notified, in the official parlance, the individuals who belonged to these communities could be subjected to an array of punitive and surveillance measures.³ These measures were variable, shifting in accordance with local imperatives and the changing criminological theories of the time. Once registered, however, an individual could have their movements restricted to specified areas, be forced to attend daily roll call and carry identification forms, and faced internment within labour or reformatory settlements.⁴ At its most excessive, the Act granted local governments the

¹ 'Petition from Sansis, village Basdhara, P.O. Gharaunda, Karnal district, 6 September 1945', Home/Judicial B Progs., 1947, File no. 202, Punjab State Archives (hereafter PSA), Chandigarh.

² The Act went through several amendments, in 1876, 1897, 1911, 1924, and 1947. The exact number of communities who were notified as criminal tribes is difficult to ascertain. The Criminal Tribes Act Enquiry Committee (1949-50) estimated 136 ethnic groups, plus mixed-caste gangs. In 1968, Clarence H. Patrick estimated 198 ethnic groups. In 2008, the National Commission for Denotified, Nomadic and Semi-Nomadic Tribes estimated 150. *Report of the Criminal Tribes Act Enquiry Committee (1949-50)* (New Delhi: Government of India Press, 1951); Clarence H. Patrick, 'The Criminal Tribes of India with Special Emphasis on the Mang Garudi: A Preliminary Report', *Man in India*, 48 (1968), 244–57; *Report of the National Commission for Denotified, Nomadic and Semi-Nomadic Tribes - Volume 1* (New Delhi: [n.pub], 2008).

³ The Act gave local governments the power to declare communities, or parts thereof, as criminal tribes through notification in the local gazette, hence the term. The notion of having been 'notified' influenced the postcolonial terminology of 'denotified tribe' which indicates their supposedly liberated status.

⁴ Act II of 1897 and Act III of 1911 introduced more punitive provisions, such as heightened penalties for contravention of the rules. Act III of 1911 also introduced the practice of taking finger prints. In 1924 and 1947, revisions to the Act toned down its provisions.

power to forcibly remove children from their parents and to transport certain communities, mostly the Bhanus, to penal colonies on the Andaman Islands.⁵ In 1936, Jawaharlal Nehru decried the Act as a ‘monstrous provision’ which constituted ‘a negation of civil liberty’.⁶

Sent less than two years before India obtained independence, Datt’s petition was couched in terms of nationality, liberty, and freedom. The implications, and indeed opportunities, of the impending end of empire were clear. Like their ‘Indian brethren’ across the subcontinent, the Sansis of Basdhara, in Datt’s words, also sought freedom and liberation. The petition reflected just one of the multiple and competing ‘vocabularies of freedom’ that were in circulation in the final months of colonial rule.⁷ For individuals like Datt, however, freedom did not come on 15 August 1947. It took another five years and sixteen days – until 31 August 1952 – for the Government of India to repeal the Criminal Tribes Act and remove the ‘80-year old bondage’ from these communities.⁸ Freedom was not merely delayed, though, but conditional, contested, and often incomplete. The criminal tribe remained a pervasive category of state identification, in both national policies and local practice, for years after the Act’s repeal. Indeed, it has yet to lose its relevance even in the present day, as numerous instances of discrimination and violence attest.⁹ The study therefore questions why the criminal tribe remained such a tangible and intelligible category for the state after independence, given its legal abolition in 1952.

⁵ Act II of 1897 first enabled local governments to establish separate reformatories for children under eighteen of parents designated as members of a criminal tribe. On the Andamans, see Clare Anderson, ‘The Andaman Islands Penal Colony: Race, Class, Criminality, and the British Empire’, *International Review of Social History*, 2018, 1–19.

⁶ ‘Criminal Tribes Laws (Repeal) Bill – Discussion on motion to consider, 27 February 1952’, *Parliamentary Debates: Parliament of India, Official Report. Part II - Proceedings Other than Questions and Answers, Vol. I, No. 17* (New Delhi: Government of India Press, 1952), col. 1451.

⁷ Yasmin Khan argues that nationalist histories constructed since independence have obscured the multiple and fluid meanings of notions like *swaraj* (self-rule), freedom and Pakistan for people in 1947. Yasmin Khan, *The Great Partition: The Making of India and Pakistan* (London: Yale University Press, 2007), pp. 5, 25.

⁸ The Government of India repealed the Act centrally on 31 August 1952. The state governments of Madras and Bombay had already repealed the Act in 1947 and 1949, respectively, whilst it had become a ‘dead letter’ or had been replaced by legislation targeting individual ‘habitual offenders’ in many other states. *Tribune*, 1 September 1952, p. 8.

⁹ For examples, see Milind Bokil, ‘De-Notified and Nomadic Tribes: A Perspective’, *Economic and Political Weekly*, 37.2 (2002), 148–54; Dilip D’Souza, *Branded by Law: Looking at India’s Denotified Tribes* (New Delhi: Penguin Books, 2001); Ganesh N. Devy and others, *Waiting For Freedom: Report of the Technical Advisory Group on Denotified, Nomadic and Semi-Nomadic Tribes* ([n.p.], 2006); Malli Gandhi and Vakulabharanam Lalitha, *Tribes Under Stigma: Problem of Identity* (New Delhi: Serial Publications, 2009); Sanjay Kolekar, ‘Violence Against Nomadic Tribes’, *Economic and Political Weekly*, 43.26/27 (2008), 569–71; Meena Radhakrishna, ‘Crime of Vigilante Justice’, *Economic and Political Weekly*, 43.2 (2008), 16–18; Gayatri Chakravorty Spivak, ‘The Denotified and Nomadic Tribes of India: Appeal for Justice and Struggle for Rights’, *Interventions: International Journal of Postcolonial Studies*, 1 (1999), 590–604.

To answer this question, the study delves into the transitional years of the 1940s and 1950s – an under-researched period within the existing scholarship on the Criminal Tribes Act, which has overwhelmingly focused upon the years of colonial rule. These were decades of upheaval, transformation, and change. In August 1947, India obtained independence and Partition irrevocably altered the geography of the subcontinent. In the following decade, the nascent postcolonial states attempted to consolidate themselves after the colossal displacement of refugees and embarked on projects of modernisation, development, and nation-building. At the same time, there were clear continuities in terms of state governance and practice, not least regarding the Criminal Tribes Act. Broadly, this study explores the historical trajectory of India's so-called criminal tribes in the north-western region of Punjab during this tumultuous period. More specifically, it is concerned with the fate of the *category* of the criminal tribe – a distinction elaborated upon below. It traces the ways in which the postcolonial state re-embedded this ostensibly ‘colonial’ category of identification in its legislative, discursive and material practices at the same moment that it, somewhat paradoxically, sought to legislatively dismantle the Act itself.¹⁰ The study argues that the postcolonial state infused the category with heightened salience and tangibility in the years *after* 1947 as state actors – whether politicians, bureaucrats or local officers – reacted to the exigencies of independence and nation-building, especially in light of Partition. In order to understand the continued relevance of the category of the criminal tribe, in both the years after 1947 and the present day, we must explore this integral, but overlooked, transitional phase.

The study makes several key interventions which shift our understanding of both the criminal tribe and the nature of the decolonising state. First, it provides an empirical analysis of a largely overlooked period in the history of the Act, namely the immediate post-independence years. As this introduction will highlight, scholars have tended to draw a direct causal connection between the enactment of the legislation in the 1870s and the continued relevance of the category of the criminal tribe in contemporary India.¹¹ They fail to acknowledge, however, the important effects wrought by Partition and decolonisation. Secondly, the study offers a more nuanced interpretation of the state during the later colonial and early postcolonial period. Whilst much of the existing scholarship on the Act has attributed the state with a totalising dominance, the archival

¹⁰ I use inverted commas here to indicate that the Act relied upon widespread indigenous acceptance and implementation and so cannot be considered exclusively colonial.

¹¹ See Bokil and Raghavan; Schwarz; Tolen.

evidence points to its multiple fragilities, contradictions and fractures. The very persistence of the criminal tribe as a category of state identification after independence, as we shall see, relied on these tensions, ambivalences and ambiguities.

A Historiographical Overview

This study draws upon, develops, and in many ways departs from the existing scholarship on the Criminal Tribes Act. Whilst frequently alluded to in South Asian historiography, particularly in works concerned with colonial penal policies or racial and ethnological categorisation, the Act has received relatively slight historical attention in its own right.¹² Beyond a handful of articles and a couple of monographs, mostly authored in the 1990s and early 2000s – the insights and limitations of which are outlined below – there is a dearth of historical investigation centred concretely on the criminal tribe. In recent years, the subject has begun to attract renewed interest, with new research examining the criminal tribe in relation to borders, citizenship, gender, conservation, and its pre- and early colonial forebears.¹³ Outside of history, there have been several sociological and anthropological studies conducted since the 1950s.¹⁴ More recently, the criminal tribe has drawn scholarly attention from such diverse fields as development studies, criminology, and performance studies.¹⁵ These, however, tend to focus upon particular communities rather than broader processes.

¹² For example, the Act receives a paragraph in a wider discussion about western conceptions of caste in Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age* (New York, NY: Cambridge University Press, 2001), p. 118.

¹³ Sarah Gandee, 'Criminalizing the Criminal Tribe: Partition, Borders, and the State in India's Punjab, 1947-55', *Comparative Studies of South Asia, Africa and the Middle East*, 38.3 (2018), 557-72; William Gould, Sarah Gandee, and Dakxin Bajrange, 'Settling the Citizen, Settling the "Nomad": "Habitual Offenders", Rebellion and Civic Consciousness in Western India, 1938-1952', *Modern Asian Studies*, forthcoming; Jessica Hinchy, 'Gender, Domesticity, Emotion and the Criminal Tribe Project in Nineteenth Century North India' (presented at Re-centring the 'Pariah': Caste, Tribe and Criminality in South Asia, University of Leeds, 2017); Anastasia Piliavsky, 'The "Criminal Tribe" in India before the British', *Comparative Studies in Society and History*, 57.2 (2015), 323-54; Varun Sharma, 'Disciplining Nature: Of Tigers, Tribals and Misfits' (presented at Re-centring the 'Pariah': Caste, Tribe and Criminality in South Asia, University of Leeds, 2017).

¹⁴ See, for example, P. C. Biswas, *The Ex-Criminal Tribes of Delhi State* (Delhi: Hindustan Publishing House, 1960); Malli Gandhi, *Denotified Tribes: Dimensions of Change* (New Delhi: Kanishka, 2008); Vakulabharanam Lalitha, *The Making of Criminal Tribes: Patterns and Transition* (Madras: New Era Publications, 1995); Y. C. Simhadri, *The Ex-Criminal Tribes of India* (New Delhi: National, 1979); Birinder Pal Singh, *'Criminal' Tribes of Punjab: A Socio-Anthropological Inquiry* (London: Routledge, 2010); Sher Singh Sher, *The Sansis of Punjab: A Gypsy and De-Notified Tribe of Rajput Origin* (Delhi: Munshiram Manoharlal, 1965).

¹⁵ See, for example, Milind Bokil and Vijay Raghavan, 'Women and Children as Victims and Offenders: The Case of De-Notified Tribes in India', in *Women and Children as Victims and Offenders: Background, Prevention, Reintegration*, ed. by Helmut Kury, Slawomir Redo, and Evelyn Shea (Cham, Switzerland: Springer International Publishing, 2016), pp. 755-90; Dia Da Costa, 'Subjects of Struggle: Theatre as Space of Political Economy', *Third World Quarterly*, 31.4 (2010), 617-35; P. Kerim Friedman, 'From Thugs to Victims: Dakxin Bajrange Chhara's Cinema of Justice', *Visual Anthropology*, 24.4 (2011), 364-83; Caleb Johnston and Dakxin Bajrange, 'Street Theatre as Democratic Politics in Ahmedabad: Democratic Politics', *Antipode*, 46.2

One of the key contributions of this study, then, though not an exhaustive overview, is an in-depth, empirical and rigorous examination of the later years and aftermath of the Criminal Tribes Act and the category of the criminal tribe. It offers an innovative interpretation by situating its analysis within two burgeoning fields of historiography on South Asia: the nature of the late colonial and early postcolonial state; and the contested processes of decolonisation and nation-building after 1947. By doing so, it not only contributes to these fields of research but provides fresh perspectives on hitherto overlooked or underdeveloped aspects of the criminal tribe. Before the study's interventions are outlined, it elaborates on the theoretical underpinning behind its use of the *category* of the criminal tribe.

(Post)Colonial Categories

The criminal tribe is, quite clearly, a modern neologism. Like the categories of tribe, untouchable or *dalit*, it is the product of a distinct genealogy and historical trajectory.¹⁶ Perhaps the most contentious debate on the criminal tribe has been whether it was a *colonial* construction. Sanjay Nigam most forcefully grounded his examination of the 'disciplining and policing' of the criminal tribes within this paradigm, arguing that the colonial project of systematising knowledge through 'an elaborate corpus of revenue, juridical and police records' reduced the notified communities to an ahistorical 'colonial stereotype' – i.e., the criminal tribe.¹⁷ Nigam was influenced by the work of Ronald Inden, who in turn had been heavily influenced by the postmodern insights of Edward Said.¹⁸ Inden, like others, emphasised the power of colonial discourse and knowledge in the construction of social categories, especially of religion, caste and tribe.¹⁹ Whilst scholars like Bernard Cohn and Nicholas Dirks foregrounded the role of institutions in

(2014), 455–76; Santanu Panda and Abhijit Guha, *'Criminal Tribe' to 'Primitive Tribal Group' and the Role of the Welfare State: The Case of Lodhas in West Bengal, India* (New York, NY: Nova, 2015).

¹⁶ On 'tribe', see the articles in 'Special Issue: Reading the Archive, Reframing "Adivasi" Histories', ed. by Sangeeta Dasgupta, *Indian Economic & Social History Review*, 53.1 (2016). On 'untouchable' and 'dalit', see Anupama Rao, *The Caste Question: Dalits and the Politics of Modern India* (London: University of California Press, 2009); Ramnarayan S. Rawat, *Reconsidering Untouchability: Chamars and Dalit History in North India*, Contemporary Indian Studies (Bloomington, IN: Indiana University Press, 2011).

¹⁷ Sanjay Nigam, 'Disciplining and Policing the "Criminals by Birth"', Part 1: The Making of a Colonial Stereotype - The Criminal Tribes and Castes of North India', *Indian Economic & Social History Review*, 27.2 (1990), 131–64 (p. 131).

¹⁸ Ronald B. Inden, *Imagining India* (Bloomington: Indiana Univ. Press, 2000); Edward Said, *Orientalism* (London: Routledge & Kegan Paul, 1978).

¹⁹ Bernard S. Cohn, 'The Census, Social Structure and Objectification in South Asia in Culture and History of India', *Folk*, 26 (1984), 25–49; Nicholas B. Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton, NJ: Princeton University Press, 2001); Thomas R. Metcalf, *Ideologies of the Raj*, The New Cambridge History of India, 3, pt. 4 (Cambridge: Cambridge University Press, 1994).

transforming these categories of colonial knowledge into embodied identities, for Inden (and Nigam) they could be reduced down to little more than the imaginings of European administrators.²⁰

Similarly, Henry Schwarz later argued that, ‘Observable differences became inherent tendencies. When combined with poorly understood Indian notions of community, such tendencies became essential, unchanging certainties.’²¹ Indeed, he claims, the ‘petty crime’ committed by the Chhara community ‘became identified with the totality of the tribe’s behavior and became synonymous with its identity as a whole. Thus was created the notion of a criminal tribe, a community of people predisposed by birth to commit crime’.²² The title of Schwarz’s book, *Constructing the Criminal Tribe in Colonial India* (2010), exemplifies his line of argument – that the criminal tribe was an artificial colonial construct.²³

Not all the earlier scholarship on the Act worked within this theoretical underpinning, though. Andrew Major, in contrast, argued that ‘the stereotype of the wandering heredity criminal was not entirely constructed out of thin air’.²⁴ Instead, he acknowledged the existence of pastoral groups who had been driven to crime through poverty, alongside a vagrant and criminal class, who were grouped loosely together by terms such as *chubra* and *khanabadosh*. Stewart N. Gordon pointed to the confluence of European anxieties with those of their *Brahman* subordinates, who cast the hunter-gatherer and pastoralist nomadic communities of the subcontinent in a criminal light.²⁵ Susan Bayly, in a broader critique of the constructionist view of caste, notes that it was the Mughals who first developed techniques that allowed officials to ‘record standardised descriptions of criminals, rebels and other troublemakers’ by way of caste or racial characteristics – a practice which was adopted and expanded by the colonial police.²⁶

²⁰ Amal Chatterjee makes a similar argument, describing the phenomenon of *thuggee* as a mere ‘fiction that served all the interests of British power in India’. Amal Chatterjee, *Representations of India, 1740-1840: The Creation of India in the Colonial Imagination* (Basingstoke: Macmillan, 1998), p. 128.

²¹ Henry Schwarz, *Constructing the Criminal Tribe in Colonial India: Acting like a Thief* (Chichester: Wiley-Blackwell, 2010), p. 4.

²² Schwarz, p. 2.

²³ Similarly, see Meena Radhakrishna, ‘Colonial Construction of a “Criminal Tribe”’: Yerukulas of Madras Presidency’, *Economic and Political Weekly*, 35.28–29 (2000), 2553–63.

²⁴ Andrew J. Major, ‘State and Criminal Tribes in Colonial Punjab: Surveillance, Control and Reclamation of the “Dangerous Classes”’, *Modern Asian Studies*, 33.3 (1999), 657–88 (p. 661).

²⁵ Stewart N. Gordon, ‘Bhils and the Idea of a Criminal Tribe’, in *Crime and Criminality in British India*, ed. by Anand A. Yang (Tucson, AZ: University of Arizona Press, 1985), pp. 128–39 (p. 139).

²⁶ Susan Bayly, *Caste, Society and Politics in India*, p. 104.

The more nuanced picture provided by these works fed into a wider body of scholarship which challenged the arguments made by Inden and the like, by foregrounding the important developments in socio-political structures and governance that took place prior to British expansion in the subcontinent.²⁷ As Norbert Peabody notes, ‘Colonial discourses often built on indigenous ones in ways that inflected local politics about which the British initially were only dimly aware’.²⁸ The transformation of social categories can be better understood, therefore, in terms of longer historical trends in the subcontinent and, in Ann Laura Stoler’s words, ‘the product of an historically layered colonial encounter’ that takes account of both the impact of colonialism and the active agency of colonised peoples.²⁹ Moreover, as Crispin Bates has argued, the impulse to categorise, record and bureaucratised group difference is not an innately imperial practice, but a hallmark of the modern, centralised state.³⁰

The importance of indigenous and pre-colonial conceptions of the criminal tribe has been revisited in a recent article by Anastasia Piliavsky, whose argument is largely a rebuttal of the earlier scholarship. In her anthropological study on the Kanjars of Rajasthan, Piliavsky traces the existence of a stereotype of ‘robber castes’ in the subcontinent back to the medieval and early modern period, and demonstrates that it had been widely used by a variety of pre-colonial actors – from Mughal rulers to the itinerant groups themselves – in numerous and distinctive ways.³¹ As she argues, colonial officers may have appropriated it for their own purposes but the idea of the congenital criminal in South Asia had ‘indigenous roots’.³² Piliavsky’s argument marks an important juncture in the historiography. While her central thesis – that the criminal tribe was not a colonial invention – may have been alluded to previously, she much more clearly emphasises the long and complex history of the stereotype in the subcontinent. Yet, whilst her argument is vital to nuancing our understanding of the criminal tribe in different time periods, it

²⁷ Christopher Bayly, for example, demonstrated that indigenous knowledge, gathered through networks of ‘spies, informers and collaters of gossip’, was embedded within, and indeed ‘integral’ to, colonial structures of power and legitimacy. Christopher Bayly, *Empire and Information: Intelligence Gathering and Social Communication in India, 1780-1870* (Cambridge: Cambridge University Press, 1997), p. 5. See also Susan Bayly, *Caste, Society and Politics in India*; Norbert Peabody, ‘Cents, Sense, Census: Human Inventories in Late Precolonial and Early Colonial India’, *Comparative Studies in Society and History*, 43.4 (2001), 819–50.

²⁸ Peabody, p. 819.

²⁹ Ann Laura Stoler, ‘Rethinking Colonial Categories: European Communities and the Boundaries of Rule’, *Comparative Studies in Society and History*, 31.1 (1989), 134–61 (p. 135).

³⁰ Crispin Bates, ‘Race, Caste and Tribe in Central India: The Early Origins of Indian Anthropometry’, in *The Concept of Race in South Asia*, ed. by Peter Robb (New Delhi: Oxford University Press, 1995), pp. 219–59 (pp. 221–22).

³¹ Piliavsky, ‘The “Criminal Tribe” in India before the British’.

³² *Ibid.*, p. 354.

does present a somewhat homogeneous and totalising picture. This obscures the many alternate experiences and subjectivities of the divergent communities notified under the Act, as well as the multiple and shifting understandings of criminality across time. For certain communities, such as the Kanjars, there may have been a long-standing association with behaviours that were later deemed criminal. In contrast, Meena Radhakrishna has shown that for the nomadic salt-trading Koravas of Madras, their association with criminality had a more recent history resulting from the economic changes of colonialism that led to their destitution.³³

By interrogating the validity of this stereotype, though, the historiographical debate has often slipped into questioning the ‘fact’ or the ontological truth of the criminal tribe. Was the invention, appropriation or transformation of the criminal tribe – depending upon one’s stance – an accurate portrayal of these communities? Was it rooted in long existing, indigenous practices, cultures and prejudices, or did it result from the colonial encounter, whether intentional or not? Conversely, this study does not deliberate on whether the notified communities, historically or presently, participated in criminal behaviour, nor does it delve far into the reasons why the colonial state marked them out as such. It intentionally avoids such judgements, given the diversity of peoples, cultures and notions of what even constituted ‘crime’ – now, then, or further back in India's (or Europe's) past. Instead, it suggests that a more useful task might be an exploration of how far the ‘fact’ of the criminal tribe, once written into law, became ‘a valid and true historical category’ – as Prathama Banerjee has suggested for ‘tribe’ – and the implications of this after 1947.³⁴ Indeed, as Stoler writes regarding the colonial archive, the ‘task is less to distinguish fiction from fact than to track the production and consumption of those facticities themselves’.³⁵ As such, the study interrogates the *category* of the criminal tribe – as a bureaucratic entity, rather than a stereotype or identity.³⁶

³³ Meena Radhakrishna, *Dishonoured by History: ‘Criminal Tribes’ and British Colonial Policy*, Rev. ed (New Delhi: Orient Longman, 2008).

³⁴ Banerjee argues that, ‘The recently constructed and highly problematic nature of the category “tribe”, however, does not make the category itself unreal or immaterial as “fact” of history. After all, if groups of people have been disciplined and politicised as such, then the tribe is indeed a valid and true historical category.’ Prathama Banerjee, ‘Writing the Adivasi: Some Historiographical Notes’, *The Indian Economic & Social History Review*, 53.1 (2016), 131–53 (p. 133).

³⁵ Ann Laura Stoler, ‘Colonial Archives and the Arts of Governance: On the Content in the Form’, in *Refiguring the Archive*, ed. by Carolyn Hamilton and others (Dordrecht: Springer, 2002), pp. 83–102 (p. 85).

³⁶ The study avoids the use of stereotype as it is less indicative of the bureaucratic connotations which category holds, as well as the fact that stereotype has been used in much of the current scholarship on the Criminal Tribes Act but with an alternate meaning. It avoids identity because this term suggests a more social analysis of forms of belonging which this study does not examine. The manifold issues of conceptualising myriad forms of affiliation or commonality using identity is explored in Frederick Cooper,

Unlike this more subjective terminology, it is beyond doubt that the criminal tribe *did* exist as a category of identification within the discursive, legislative and material practices of the state. It is for this reason that the study employs the terminology of criminal tribe (to refer to the category) and criminal tribes (to refer to the communities notified as such), despite their obviously problematic, discriminatory and uncomfortable nature.³⁷ Indeed, the category produced a vast bureaucratic edifice – from 1917, an entire government department – through which the state sought to identify, classify and control liminal, and therefore suspect, groups. This drew parallels with other colonial projects of legibility, in which identification techniques and classificatory exercises attempted to mark out, or make visible to the state, suspicious or different bodies.³⁸ Like these endeavours, the criminal tribe project was undermined by ‘epistemic uncertainties’; it was (and remains) a highly unstable category of identification.³⁹ Throughout the period under examination here, there was no consistency nor certainty to the definitions and boundaries of the criminal tribe. Yet, through its actions – to scrutinise and control – the state not only produced this vast bureaucratic enterprise but ascribed the category with legibility; the criminal tribe became a category of colonial (and postcolonial) common-sense.⁴⁰ The study therefore foregrounds the paradox of categorisation, wherein such bounded entities take on a generative function – in that they ‘do not simply mimetically represent the world but instead simultaneously *create it* and *limit it*’ – despite their obvious instabilities, contradictions, and frailties.⁴¹ It explores the processes through which the criminal tribe, which we know to be fluid, unstable and contingently-derived, not only became a tangible category for the colonial state but retained an intelligibility across independence, and indeed long after the repeal of the Criminal Tribes Act in 1952.

Conceptualising the state

Much of the existing scholarship on the Criminal Tribes Act has considered it through the lens of colonial penology, criminology, and law.⁴² In the 1980s and 1990s, a field of

Colonialism in Question: Theory, Knowledge, History (Berkeley, CA: University of California Press, 2005), pp. 59–90.

³⁷ There is an extended explanation of the use of this terminology in the frontmatter to this study.

³⁸ Clare Anderson, *Legible Bodies: Race, Criminality and Colonialism in South Asia* (Oxford: Berg, 2004).

³⁹ Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton, NJ: Princeton University Press, 2009), p. 1.

⁴⁰ Stoler, *Along the Archival Grain*.

⁴¹ Italics in original. Reece Jones, ‘Categories, Borders and Boundaries’, *Progress in Human Geography*, 33.2 (2009), 174–89 (p. 177).

⁴² Notable examples include Mark Brown, ‘Crime, Liberalism and Empire: Governing the Mina Tribe of Northern India’, *Social & Legal Studies*, 13.2 (2004), 191–218; Sandria Freitag, ‘Sansiahs and the State: The

study emerged which was concerned with the nature of crime and criminality in South Asia.⁴³ Scholars analysed the definitions and perceptions of criminality in the subcontinent for insights into the ideologies and imperatives that underpinned colonial rule.⁴⁴ The criminal tribe, unsurprisingly, was of interest to these scholars, alongside policing and practices like *thuggee*, *dacoity*, and human sacrifice. Indeed, one of the formative works in this field, Anand A. Yang's *Crime and Criminality in British India* (1985), dedicated two chapters to investigating the process whereby the Magahiya Doms and Bhils, by Yang and Gordon respectively, became notified as criminal tribes.⁴⁵ For Yang, contemporary ideas about crime and criminality in Europe – notably, the habitual or hereditary criminal – coalesced with misconceptions about caste into a colonial ideology that justified and legitimatised British authority in India.⁴⁶

For these scholars, the Criminal Tribes Act was an element of colonial pacification and control – an ideological and punitive tool which was employed against the unruly, marginal and mobile of rural Indian society. Major, for instance, described it as a 'weapon' which was deployed against India's 'criminal tribes and gangs'.⁴⁷ As Yang, and others, have noted, the communities who were notified under the Act were primarily those 'who pursued lowly or marginal occupations' and 'were identified as "gipsies"'.⁴⁸ Through the legislation, the colonial state thus sought to transform what it perceived as

Changing Nature of "Crime" and "Justice" in Nineteenth-Century British India', in *Changing Concepts of Rights and Justice in South Asia* (Delhi: Oxford University Press, 1998), pp. 82–113; Major, 'State and Criminal Tribes in Colonial Punjab'; Nigam, 'Disciplining and Policing the "Criminals by Birth", Part 1'; Sanjay Nigam, 'Disciplining and Policing the "Criminals by Birth", Part 2: The Development of a Disciplinary System, 1871-1900', *Indian Economic & Social History Review*, 27.3 (1990), 257–87; Radhakrishna, *Dishonoured by History*.

⁴³ See, for example, David Arnold, *Police Power and Colonial Rule, Madras, 1859-1947* (New Delhi: Oxford University Press, 1986); Sandria B. Freitag, 'Crime in the Social Order of Colonial North India', *Modern Asian Studies*, 25.2 (1991), 227–61; Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi; New York: Oxford University Press, 1998); Anand A. Yang, *Crime and Criminality in British India* (Tucson, AZ: University of Arizona Press, 1985).

⁴⁴ David Arnold argues that there is 'a subjective element in all definitions of crime and perceptions of criminality' which provides 'insights into the nature of the elite (or hegemonic) classes and the character of their relations with subordinate classes'. David Arnold, 'Crime and Crime Control in Madras, 1858-1947', in *Crime and Criminality in British India*, ed. by Anand A. Yang (Tucson, AZ: University of Arizona Press, 1985), pp. 62–88 (p. 62).

⁴⁵ Gordon; Anand A. Yang, 'Dangerous Castes and Tribes: The Criminal Tribes Act and the Magahiya Doms of Northeast India', in *Crime and Criminality in British India*, ed. by Anand A. Yang (Tucson, AZ: University of Arizona Press, 1985), pp. 108–27. Studying the application of the Act to certain communities has been a pervasive trend in the literature. See Bhangya Bhukya, *Subjugated Nomads: The Lambadas Under the Rule of Nizams* (New Delhi: Orient Blackswan, 2010); Stuart Blackburn, 'The Kallars: A Tamil "Criminal Tribe" Reconsidered', *South Asia: Journal of South Asian Studies*, 1.1 (1978), 38–51; Mark Brown, 'Crime, Liberalism and Empire'; Sandria Freitag; Patrick; Radhakrishna, *Dishonoured by History*.

⁴⁶ Yang, 'Dangerous Castes and Tribes', p. 111.

⁴⁷ Major, 'State and Criminal Tribes in Colonial Punjab', pp. 679, 681.

⁴⁸ Yang, 'Dangerous Castes and Tribes', p. 114. See also Major, 'State and Criminal Tribes in Colonial Punjab'; Radhakrishna, *Dishonoured by History*.

undesirable, threatening or illegitimate practices. Of central importance to this endeavour were the criminal tribe settlements established by governmental and philanthropic agencies across the subcontinent. As numerous scholars have argued, these encouraged, or indeed forced, sedentarised, agricultural lifestyles by way of technology, spatial surroundings, or moral instruction.⁴⁹ From this perspective, the Act seems a clear example of what would later be termed colonial ‘lawfare’ – the use of legal codes by the state ‘to impose a sense of order upon its subordinates by means of violence rendered legible, legal, and legitimate by its own sovereign word’.⁵⁰

One abiding feature of this scholarship, then, is its emphasis upon the *exceptional* nature of the Criminal Tribes Act. Sandria Freitag, Major, and Schwarz, amongst others, have analysed the legal innovations that preceded the Act, such as the measures used to suppress the phenomenon of *thuggee* in the 1830s or the Act’s direct precursor, Book Circular No. 18 (1856) in Punjab.⁵¹ According to Freitag, the exceptional measures employed by the Thagi and Dacoity Department, such as the use of approvers, heightened punishments and special trials, provided ‘certain leaps of legal logic that could be called upon when designing the Criminal Tribes Act’.⁵² These exceptional measures – that covertly existed alongside the ordinary rule of law – enabled the colonial state to exercise control ‘not only through the explicit workings of special police forces brought to bear on “extraordinary” crime, but also through knowledge, particularly the pseudo-scientific descriptions of group activities and beliefs’.⁵³ Indeed, it is the exceptional features of the Act – its highly punitive measures, the lack of legal recourse for notified communities,

⁴⁹ Meena Radhakrishna and Rachel Tolen have both analysed the role of the Salvation Army in the criminal tribe project. In a wider discussion on the importance of technology to the consolidation of colonial rule, David Arnold refers to the settlements on the Andaman Islands. William Glover has analysed settlements in Punjab in spatial terms. More broadly, C. Ramachandran and R. K. Maya examine criminal tribe labour on tea estates in the Annamalai Hills. David Arnold, *Everyday Technology: Machines and the Making of India’s Modernity* (Chicago, IL: University of Chicago Press, 2013); William Glover, ‘Objects, Models, and Exemplary Works: Educating Sentiment in Colonial India’, *The Journal of Asian Studies*, 64.3 (2005), 539–66; Meena Radhakrishna, ‘Surveillance and Settlements under the Criminal Tribes Act in Madras’, *Indian Economic & Social History Review*, 29.2 (1992), 171–98; Radhakrishna, *Dishonoured by History*; C. Ramachandran and R. K. Maya, ‘Colonial Labour Conditions in the Plantation Industry: The Case of Criminal Tribes on the Tea Estates of Annamalai Hills’, *Indian Journal of Social Work*, 58.4 (1997), 507–22; Rachel Tolen, ‘Colonizing and Transforming the Criminal Tribesman: The Salvation Army in British India’, *American Ethnologist*, 18.1 (1991), 106–25.

⁵⁰ John L. Comaroff and Jean Comaroff, ‘Law and Disorder in the Postcolony: An Introduction’, in *Law and Disorder in the Postcolony*, ed. by John L. Comaroff and Jean Comaroff (Chicago, IL: University of Chicago Press, 2006), pp. 1–56 (p. 30).

⁵¹ Sandria B. Freitag; Major, ‘State and Criminal Tribes in Colonial Punjab’; Nigam, ‘Disciplining and Policing the “Criminals by Birth”, Part 1’; Schwarz. More broadly, Radhika Singha has traced the development of legal innovations that shifted culpability for a crime from an individual to their village or community, see Singha, *A Despotism of Law*.

⁵² Sandria B. Freitag, n. 39, p. 244.

⁵³ *Ibid.*, p. 243.

and the collective nature of its application – that has most commonly drawn historical scrutiny. Through these measures, Major argues, the criminal tribes ‘felt the harsh impact of the colonial state’.⁵⁴ Notably, few scholars have analysed the implementation of similar legislation in the princely states.⁵⁵

Concentrating upon the spectacular and exceptional aspects of the legislation, however, obscures the more mundane and contested nature of its administration. Drawing upon recent work on state violence and forms of punishment in South Asia, this study emphasises the intrinsic and everyday forms of penalty that determined the colonial encounter and pervaded the criminal tribe project.⁵⁶ It engages with recent research that analyses the quotidian practices and interactions that constituted the ‘everyday state’ in colonial/postcolonial India – in other words, how the state was experienced by ordinary people and how it functioned in everyday life.⁵⁷ The state, from this perspective, is not a monolithic or homogenous entity.⁵⁸ Rather, it arises from the assemblage of material and often mundane practices that, whilst diffracted and uncertain, produce a coherent imagery of the state, albeit variously perceived.⁵⁹ The central figure of this study, so to speak, is not so much the criminal tribes, therefore, but the state. More specifically, the study examines the discursive, legal and material practices which constituted the ‘paraphernalia’

⁵⁴ Major, abstract.

⁵⁵ On this, see Bhukya; Mark Brown, ‘Crime, Liberalism and Empire’; Gordon; Anastasia Piliavsky, ‘The Moghia Menace, or the Watch Over Watchmen In British India’, *Modern Asian Studies*, 47.3 (2013), 751–79.

⁵⁶ Anderson, *Legible Bodies*; Elizabeth Kolsky, *Colonial Justice in British India: White Violence and the Rule of Law* (Cambridge: Cambridge University Press, 2010); Radha Kumar, ‘Seeing like a Policeman: Everyday Violence in British India, C. 1900–1950’, in *Violence, Colonialism and Empire in the Modern World*, ed. by Philip Dwyer and Amanda Nettelbeck (Cham: Springer International Publishing, 2018), pp. 131–49; Jonathan Saha, ‘Histories of Everyday Violence In British India: Everyday Violence In British India’, *History Compass*, 9.11 (2011), 844–53; Jonathan Saha, *Law, Disorder and the Colonial State: Corruption in Burma c.1900* (Basingstoke: Palgrave Macmillan, 2013); Taylor C. Sherman, *State Violence and Punishment in India* (Abingdon, Oxon: Routledge, 2010).

⁵⁷ See *The Everyday State and Society in Modern India*, ed. by Chris J. Fuller and Veronique Bénéï (London: Hurst, 2001); Thomas Blom Hansen and Finn Stepputat, *States of Imagination: Ethnographic Explorations of the Postcolonial State* (Durham, NC: Duke University Press, 2001); ‘From Subjects to Citizens: Society and the Everyday State in India and Pakistan, 1947–1970’, ed. by Taylor C. Sherman, William Gould, and Sarah Ansari, *Modern Asian Studies*, 45.1 (2011), 1–224.

⁵⁸ Chris J. Fuller and John Harriss, ‘For an Anthropology of the Modern Indian State’, in *The Everyday State and Society in Modern India*, ed. by Chris J. Fuller and Veronique Bénéï (London: Hurst, 2001), pp. 1–30.

⁵⁹ Timothy Mitchell, ‘Society, Economy, and the State Effect’, in *The Anthropology of the State: A Reader*, ed. by Aradhana Sharma and Akhil Gupta (Oxford: Blackwell, 2006), pp. 169–86 (p. 169). Importantly, Saha criticises some of the ‘everyday state’ approaches that have implied the singularity and stability of the state. As he argues, ‘the nature of the state was in the eye of the beholder [...] even in the same place and time, the colonial state connoted different things to different people’. Saha, *Law, Disorder and the Colonial State*, pp. 11–12.

– ‘the objects, the institutions, and the physical embodiments’ – of the late colonial and especially the *decolonising* state.⁶⁰

Previously, scholars tended to emphasise the strength and hegemony of the colonial state. Its ever-expanding penetration into the lives of its subjects was seemingly matched only by its ambitions to further civilise, subordinate, or modernise them. This perspective – articulated by individuals variously affiliated with the Cambridge School, Subaltern Studies and postmodernist approaches – assumed that the colonial project was totalising and infallible.⁶¹ The early postcolonial state, by extension, was ostensibly stable, standing in stark contrast to the volatility of the post-Nehruvian era; this was largely put down to its inheritance of colonial infrastructure.⁶² More recently, this image of the state has been challenged by those who have charted its ‘vulnerabilities, its practices of neglect, its *impossibilities*’, in Taylor Sherman’s words.⁶³ For Mark Condos, the colonial state’s regular displays of brute strength masked ‘a fundamentally anxious and insecure endeavour’.⁶⁴ In terms of its penal power, Mark Brown identifies the ‘gulf that commonly formed between intention and what eventually was effected, or between discourse and practice’.⁶⁵ Scholars have shown that the early postcolonial state, too, was characterised by instability and flux in light of limited resources, corruption, and challenges to its integrity.⁶⁶ The state has thus been shown to be a dysfunctional, embedded and amorphous collection of contingently-understood and experienced practices, institutions and ideas.⁶⁷

⁶⁰ Peter Steinberger speaks of the ‘paraphernalia of the state’ as the objects, the institutions, and the physical embodiments of the state which are ‘mutually dependent, sharply distinct and yet utterly inseparable’ from the idea, or ideal, of the state. Peter J. Steinberger, *The Idea of the State* (Cambridge: Cambridge University Press, 2005), p. 26. Here I also draw on Saha’s description of the ‘Revenue collectors, surveyors, police departments, hospitals, and all of the paraphernalia of the state’ which migrated to the Irrawaddy River delta as part of the colonial bureaucracy in Upper Burma. Saha, *Law, Disorder and the Colonial State*, p. 1.

⁶¹ For a more detailed overview of these historiographical positions, see Sherman, *State Violence and Punishment in India*, p. 2.

⁶² Paul Brass, *The Politics of India Since Independence*, second (Cambridge: Cambridge University Press, 1994); Ramachandra Guha, *India After Gandhi: The History of the World’s Largest Democracy* (London: Macmillan, 2007); Sunil Khilnani, *The Idea of India* (London: Penguin Books, 1997).

⁶³ Sherman, *State Violence and Punishment in India*, p. 2.

⁶⁴ Mark Condos, *The Insecurity State: Punjab and the Making of Colonial Power in British India* (Cambridge: Cambridge University Press, 2017), p. 3. On colonial anxieties, also see Kim A. Wagner, “‘Treading upon Fires’: The “Mutiny”-Motif and Colonial Anxieties in British India’, *Past & Present*, 218.1 (2013), 159–97.

⁶⁵ Mark Brown, *Penal Power and Colonial Rule*. (Abingdon, Oxon: Routledge, 2015), p. 14.

⁶⁶ See William Gould, Taylor C. Sherman, and Sarah Ansari, ‘The Flux of the Matter: Loyalty, Corruption and the “Everyday State” in the Post-Partition Government Services of India and Pakistan’, *Past & Present*, 219.1 (2013), 237–79.

⁶⁷ Fuller and Bén  ; Akhil Gupta, ‘Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State’, *American Ethnologist*, 22.2 (1995), 375–402.

Indeed, the assumed dominance of the colonial state in much of the historiography on the Criminal Tribes Act is not borne out in the archive. By focusing upon *how* the Act was implemented – as opposed to *why* – this study reveals the more precarious and contingent nature of the state.⁶⁸ One of its key interventions is that it highlights the locally-rooted, negotiated, and often contradictory nature of the Act’s administration, as well as the fluid notions of criminality which pervaded colonial/postcolonial governance and shifted over time and space. Chapter I, in particular, reveals the legislation to be far from the acme of colonial governmentality often presumed.⁶⁹ In line with Stoler’s insights, it suggests that the state’s taxonomic exercises which marked out the criminal tribe reveal the inconsistent and piecemeal nature of empire, as well as the decolonising state.⁷⁰ Looking beyond 1947, the study shows that the persistence of the criminal tribe as a category of identification relied on the continuation of often ambivalent or contradictory practices of state actors.

Of central importance to work on the ‘everyday state’ – and to this study – is the shifting of one’s perspective to the lower rungs of the bureaucracy and to the quasi-official intermediaries who performed the functions of the state at the local level. Paul Brass and Akhil Gupta were amongst the first to demonstrate the blurred boundaries between local state actors’ roles as both ‘public servants’ and ‘private citizens’; more recently, Jonathan Saha has shown how subordinate officials straddled the divide between the colonial state and colonised society.⁷¹ The state-society encounter was thus shaped by a multiplicity of actors, responses and ideologies.⁷² Building on these insights, this study asks new questions of the local bureaucrats, administrators and intermediaries whose actions ascribed the category of the criminal tribe with materiality both before and after 1947. Much of the existing scholarship has approached the Criminal Tribes Act from the perspective of the elite colonial officials who first enacted it, especially its advocate, Legal Member of the Governor-General’s Council, James Fitzjames Stephen, and ascribe the

⁶⁸ The scholarly focus on the discursive construction of the criminal tribe has meant that the actual administration of the Act has been largely overlooked.

⁶⁹ See Major, ‘State and Criminal Tribes in Colonial Punjab’; Nigam, ‘Disciplining and Policing the “Criminals by Birth”’, Part 2’; Tolen.

⁷⁰ Stoler, *Along the Archival Grain*.

⁷¹ Gupta, ‘Blurred Boundaries’, p. 384; Paul Brass, *Theft of an Idol: Text and Context in the Representation of Collective Violence* (Princeton, NJ: Princeton University Press, 1997); Saha, *Law, Disorder and the Colonial State*, p. 7.

⁷² For more on this, see Joya Chatterji, ‘South Asian Histories of Citizenship, 1946-1970’, *The Historical Journal*, 55.4 (2012), 1049–71; Oliver Godsmark, ‘Citizenship, Community and the State in Western India: The Moulding of a Marathi-Speaking Province, 1930s-1950s’ (unpublished Ph.D., University of Leeds, 2013); Sherman, Gould, and Sarah Ansari, ‘From Subjects to Citizens’.

power and content of colonial knowledge to European authors, rather than the Indian informers and advisers upon whom they relied.⁷³ Conversely, this study emphasises the role played by the state actors who implemented the Act – from the Deputy Commissioner for Criminal Tribes (the head of the Criminal Tribes Department, which oversaw the criminal tribe project in Punjab), to his subordinates and police officers on the ground who, at the local level, embodied the state.

These state actors made up the vast majority of those who constituted what Sherman has referred to as India's 'coercive network'.⁷⁴ By the end of empire, despite the policy of Indianisation since the First World War, the number of serving officers in the Indian Civil Service still only numbered around 1000.⁷⁵ In order to understand the substance of the state, therefore, we must turn our attention to their 'cadre of subordinates, from Deputy Collectors to lowly police constables, nearly all of whom were Indian'.⁷⁶ In Punjab, the Criminal Tribes Department – an institution unique to that province – employed a vast array of individuals, from settlement superintendents to office *peons*, whose actions were vital to reifying the category of the criminal tribe until its dissolution in 1952. The Deputy Commissioner for Criminal Tribes was Indian, as were his staff. As the colonial government increasingly devolved political power, Indians played an ever-greater role in determining the legal nature of the Act, as well as its implementation. This not to divert attention away from the role of the British, nor to try and reposition blame for the cruelties of the Act. But as many of these institutions were retained or reformulated after 1947, this perspective of the everyday administration is necessary to understand why the category of the criminal tribe retained such significance *after* independence.⁷⁷

Importantly, though, this study is not only rooted in the local. Rather, like Oliver Godsmark's work, it considers the ways in which 'local exigencies and concerns'

⁷³ For more on the role played by indigenous informers in the creation of 'colonial' knowledge, see Susan Bayly, 'Caste and "Race" in the Colonial Ethnography of India', in *The Concept of Race in South Asia*, ed. by Peter Robb (New Delhi: Oxford University Press, 1995), pp. 165–218; Christopher Bayly; Peabody.

⁷⁴ The 'interconnected institutions, laws and practices that made up the state's coercive repertoire'. Sherman, *State Violence and Punishment in India*, p. 1.

⁷⁵ David Potter, *India's Political Administrators, 1919-1983* (Oxford: Clarendon Press, 1986), p. 21.

⁷⁶ Sherman, *State Violence and Punishment in India*, p. 4. David Arnold estimates between 200,000 to 300,000 police were working for the state in the 1930s-1940s. David Arnold, 'Police Power and the Demise of British Rule in India, 1930-47', in *Policing and Decolonisation: Nationalism, Politics and the Police, 1917-65*, ed. by David M. Anderson and David Killingray (Manchester: Manchester University Press, 1992), pp. 42–61 (pp. 56–57). For more on the police, see Arnold, *Police Power and Colonial Rule*.

⁷⁷ Much of the work on the bureaucracy in India during the 1950s and 1960s emphasises the continuities of administration with the colonial period. See B. B. Misra, *Government and Bureaucracy in India: 1947-1976* (Delhi: Oxford University Press, 1986).

interacted with those of the all-India, provincial or other regional levels of the state.⁷⁸ The study is thus multi-layered and, like Sherman, reveals the tensions and ‘ideological fissures’ that emerged between the central or provincial governments and officers on the ground.⁷⁹ One of the clearest examples of these tensions is the disjuncture between the professed ideals of the independent government in New Delhi, which pledged to repeal the Criminal Tribes Act as its communal logic contravened the principles of equality that would become a cornerstone of the independent nation, and the exigencies and practicalities of state practice at the local level. It is important to note, however, that this disjuncture did not only exist between competing levels of the state. Contradictions manifested at all levels of the state, within the same organisations, political parties, or even individuals – highlighting the complex, multifaceted and inconsistent nature of the state.

Decolonisation and nation-building

The temporal framing of the existing scholarship implies that the criminal tribe was a *colonial* phenomenon, resulting from the imperatives of Company and Crown rule, and ending with the denouement of empire in the subcontinent itself. Indeed, scholars have often explained the persistence of the criminal tribe in contemporary India by returning to the debates in the Viceroy’s Council in 1870-1871.⁸⁰ The Act is positioned as the ‘logical conclusion’, in Schwarz’s words, to earlier watershed moments of British rule, such as the *thuggee* campaigns of the 1830s, the era of legal codification in the 1860s-1870s, and the rise of the ‘ethnographic state’ from the 1870s.⁸¹ Even though more nuanced analyses have noted the role of indigenous prejudices and collaboration – complicating the idea that the criminal tribe was entirely colonial in its derivation – colonialism is still generally regarded as the sole driving force behind the Act.⁸²

More recently, Piliavsky and Nitin Sinha have situated the Act within wider debates about early colonial expansion and territorial demarcation, as well as indigenous forms of governance and policing.⁸³ Piliavsky, in particular, has markedly improved the debate by highlighting the long existence of indigenous stereotypes of ‘robber castes’ in

⁷⁸ Godsmark, ‘Citizenship, Community and the State in Western India’, p. 22.

⁷⁹ Sherman, *State Violence and Punishment in India*, p. 11.

⁸⁰ See Bokil and Raghavan; Schwarz; Tolen.

⁸¹ Schwarz, p. 64.

⁸² Gordon; Hinchy.

⁸³ Piliavsky, ‘The Moghia Menace’; Piliavsky, ‘The “Criminal Tribe” in India before the British’; N. Sinha, ‘Mobility, Control and Criminality in Early Colonial India, 1760s-1850s’, *Indian Economic & Social History Review*, 45.1 (2008), 1–33.

the subcontinent, as we have seen.⁸⁴ One of the key interventions of this work, and one that this study develops, is that it begins to problematise the temporal boundaries of the earlier scholarship. Yet, in these analyses the Act is still portrayed as an end point, the culmination of processes, whether they occurred in the medieval period or during the eighteenth and early nineteenth centuries. Though clearly useful, such framing obscures the effect of developments in the later colonial period. Notably, the interwar period and the increasing devolution of political power (through the 1919 and 1935 Government of India Acts) has been overlooked. This was a period of dramatic legal and political change which transformed the relationship between state power and society in many arenas of governance, not least the administration of the Criminal Tribes Act.⁸⁵ Yet, very few studies reach beyond the 1911 amendment of the Act and fewer still examine the 1920s towards independence, despite the fact that it was during this period that the Act had its greatest reach.⁸⁶

Indeed, it is this study's focus on the final decades of colonial rule and especially the years *after* independence that is its most obvious contribution to the field. There is a remarkable dearth of scholarship on the Act's postcolonial afterlives, especially the years immediately after 1947. Recently, there have been several notable exceptions. Radhakrishna and Brown have both offered, albeit relatively cursory, examinations of the legislative process of repeal.⁸⁷ As chapter III demonstrates, this study departs from their work in several key respects. Notably, whilst both Radhakrishna and Brown emphasise the many continuities across 1947 – a point this study also foregrounds – they largely overlook the changed circumstances of independence, Partition and nation-building.

⁸⁴ Piliavsky, 'The "Criminal Tribe" in India before the British'.

⁸⁵ On the important changes taking place in this period, see Stephen Legg, *Prostitution and the Ends of Empire: Scale, Governmentalities, and Interwar India* (Durham, NC: Duke University Press, 2014); Stephen Legg, 'Dyarchy: Democracy, Autocracy and the Scalar Sovereignty of Interwar India', *Comparative Studies of South Asia, Africa and the Middle East*, 36.1 (2016), 44–65; Eleanor Newbiggin, *The Hindu Family and the Emergence of Modern India: Law, Citizenship and Community* (New York: Cambridge University Press, 2013).

⁸⁶ It was only after the 1911 amendment of the Act that the entirety of British India came under its jurisdiction. The 1871 Act had been limited to Punjab and the United Provinces and Oudh. In 1876 it was extended to Bengal, and in 1899 to Bombay. Radhakrishna and Major both extend their studies to 1947 but do not address changes in the Act in light of the altered socio-political landscape. Manjiri Kamat offers a rare insight into the later period, through an analysis of industrial agitation at the Sholapur settlement in Bombay during the period of the Congress Ministry in the province. Manjiri Kamat, 'Disciplining Sholapur: The Industrial City and Its Workers in the Period of the Congress Ministry, 1937–1939', *Modern Asian Studies*, 44.1 (2010), 99; Major, 'State and Criminal Tribes in Colonial Punjab'; Radhakrishna, *Dishonoured by History*.

⁸⁷ Mark Brown, 'Postcolonial Penalty: Liberty and Repression in the Shadow of Independence, India C. 1947', *Theoretical Criminology*, 21.2 (2017), 186–208; Meena Radhakrishna, 'Laws of Metamorphosis: From Nomad to Offender', in *Challenging the Rule(s) of Law: Colonialism, Criminology and Human Rights in India*, ed. by Kalpana Kannabiran and Ranbir Singh (New Delhi: Sage Publications, 2008), pp. 3–27.

Situating its analysis firmly within this context, the study fundamentally disagrees with Brown's assertion that there was 'nothing distinctly postcolonial' about the process.⁸⁸ From an anthropological perspective, Piliavsky, Anand Pandian and Varun Sharma have offered insights into the enduring effect of having been notified as criminal tribes for three communities after independence – the Kanjars in the 1950s and the Kallars and Pardis more recently.⁸⁹ Forthcoming research examines the early postcolonial years with regards to civic mobilisation and border demarcation, in western India and Punjab respectively.⁹⁰

This work has thus begun to tentatively break down the dividing line of 1947, as the contemporary legacy of the Criminal Tribes Act is examined not as an inevitable colonial hangover but one rooted more conclusively in the early postcolonial years. The study builds on this work by charting a long history of the criminal tribe *across* independence. It commences in 1917, with the establishment of the Criminal Tribes Department, and concludes in 1982, when activists belonging to the ex-criminal tribes in Punjab ended a legal battle in the High Court over their status as a subject of welfare. The bulk of its analysis, however, is situated in the transitional years of the 1940s and 1950s. This period, it argues, like Sherman et al, was distinctive.⁹¹ The late 1930s saw the devolution of power to the largely Congress-run provinces, the 1940s encompassed the Second World War, the transfer of power, and Partition, and the late 1940s and 1950s witnessed the founding of the postcolonial state. The study therefore contributes to a recent trend in South Asian historiography to cross the temporal rift of 1947 and reclaim the postcolonial as a site for historical enquiry.⁹² Studies on Partition were amongst the

⁸⁸ Mark Brown, 'Postcolonial Penalty', p. 200.

⁸⁹ Anand Pandian, *Crooked Stalks: Cultivating Virtue in South India* (Durham, NC: Duke University Press, 2009); Anastasia Piliavsky, 'Borders without Borderlands: On the Social Reproduction of State Demarcation in Rajasthan', in *Borderland Lives in Northern South Asia*, ed. by David N Gellner (Durham, NC: Duke University Press, 2013), pp. 24–46; Sharma.

⁹⁰ Gould, Gandee, and Bajrange; Gandee, 'Criminalizing the Criminal Tribe'.

⁹¹ Sherman et al argue that the 1930s to 1960s was a 'distinct stage' in South Asian history. Taylor C. Sherman, William Gould, and Sarah Ansari, 'From Subjects to Citizens: Society and the Everyday State in India and Pakistan, 1947–1970', *Modern Asian Studies*, 45.1 (2011), 1–6 (p. 3).

⁹² Sumit Sarkar writes of a '*de facto* division of labor' between political scientists and historians, with 1947 representing both a temporal and methodological dividing line between the two. Sumit Sarkar, 'Indian Democracy: The Historical Inheritance', in *The Success of India's Democracy*, ed. by Atul Kohli (Cambridge: Cambridge University Press, 2001), pp. 23–46 (p. 23).

first to do this.⁹³ More recently, work on state violence, corruption, international and internal borders, and citizenship has similarly done so.⁹⁴

By crossing 1947, the study shows that the category of the criminal tribe was not only a product of the fractured, porous and transforming spaces of empire, but one intrinsically linked to the contingent foundations of the postcolonial state. Both the Indian and Pakistani governments urgently needed to establish and assert their legitimacy after 1947 in the context of prevailing instability, insecurity, and flux.⁹⁵ This was achieved (or at least attempted) by projecting an image of the sovereign and modern nation – through national rituals and developmental projects – as well as in the demarcation of both territorial borders and more conceptual boundaries of citizenship and national belonging.⁹⁶ The reification of the criminal tribe in the years immediately after independence was a process inextricably bound up with these imperatives of (re)defining the nation, as India moved from the colonial to the postcolonial, and its population from subjects to citizens. Throughout these initiatives, however, the everyday experience and functioning of the state was characterised by inconsistency, ambivalence and disillusionment.⁹⁷ Indeed, the study reveals that the repeal of the Act in 1952 was a fraught, uneven, and often incomplete process. The nation's new leaders had to mediate between their desires to reject certain aspects of their colonial past, whilst simultaneously retaining those elements, especially related to law and order, considered vital for the running of the state. At the everyday level, state practices continued to be characterised by the ambivalence or personal imperatives of local actors. The study thus speaks to work

⁹³ See Joya Chatterji, *The Spoils of Partition: Bengal and India, 1947-1967* (Cambridge: Cambridge University Press, 2007); Ravinder Kaur, *Since 1947: Partition Narratives among Punjabi Migrants of Delhi* (New Delhi: Oxford University Press, 2007); Khan; Vazira Fazila-Yacoobali Zamindar, *The Long Partition and the Making of Modern South Asia: Refugees, Boundaries, Histories* (New York, NY: Columbia University Press, 2007).

⁹⁴ On citizenship, see Chatterji, 'South Asian Histories of Citizenship, 1946-1970'; on borders, see Godsmark; B er enice Guyot-R echard, *Shadow States: India, China and the Himalayas, 1910-1962* (New York, NY: Cambridge University Press, 2016); Daniel Haines, *Rivers Divided: Indus Basin Waters in the Making of India and Pakistan* (New York, NY: Oxford University Press, 2016); Elisabeth Leake, *The Defiant Border: The Afghan-Pakistan Borderlands in the Era of Decolonization, 1936-65* (New York, NY: Cambridge University Press, 2017); Willem van Schendel, *The Bengal Borderland: Beyond State and Nation in South Asia* (London: Anthem, 2005); on bureaucracy and the state, see Gould; William Gould, Taylor C. Sherman, and Sarah Ansari, 'The Flux of the Matter: Loyalty, Corruption and the "Everyday State" in the Post-Partition Government Services of India and Pakistan', *Past & Present*, 219.1 (2013), 237–79; Sherman, Gould, and Ansari; on state violence, see Sherman.

⁹⁵ See the articles in Sherman, Gould, and Sarah Ansari, 'From Subjects to Citizens?'

⁹⁶ In addition to the articles cited above, see Chatterji, 'South Asian Histories of Citizenship'; Gyanendra Pandey, 'Can a Muslim Be an Indian?', *Comparative Studies in Society and History*, 41.4 (1999), 608–29; Haimanti Roy, *Partitioned Lives: Migrants, Refugees, Citizens in India and Pakistan, 1947-65* (New Delhi: Oxford University Press, 2012); Zamindar.

⁹⁷ Sarah Ansari, 'Everyday Expectations of the State during Pakistan's Early Years: Letters to the Editor, Dawn (Karachi), 1950–1953', *Modern Asian Studies*, 45.1 (2011), 159–78.

that underscores the ambiguities and uncertainties that surrounded independence and the early postcolonial years.⁹⁸

The study does not only examine the period *after* 1947, but repeatedly traverses it to problematise the notion of a clear-cut colonial/postcolonial divide. The commitment to reform or even repeal the Criminal Tribes Act can be traced back to certain Congress ministries in the late 1930s, whilst certain legal frameworks of the colonial state were reformulated after independence. The colonial and postcolonial are not two separate entities, therefore, nor a unified whole. Following Frederick Cooper, the study avoids choosing between ‘a light-switch view of decolonization’ – a clear rupture whereby, from 1947, the polity became “Indian” – and the ‘continuity approach (i.e., colonialism never really ended)’.⁹⁹ Instead, like Cooper, it asks what processes were underway before 1947, in what ways were these reimagined or reconfigured, what structural constraints, frameworks and ideologies persisted, and what new developments took place. It does not suggest that the continued relevance of the criminal tribe in postcolonial statecraft was merely the government ‘step-by-step [...] rebuilding the machinery of colonial control’, as Brown argues.¹⁰⁰ Yet, it does recognise that ‘decolonized situations are marked by the trace of the imperial pasts they try to disavow’.¹⁰¹ Postcolonial legalities, then, as well as other forms of state practice and governance, need to be interrogated, as Partha Chatterjee suggests, in certain institutional sites to identify ‘those elements of the colonial that remain bound or contained’ within them.¹⁰² Doing so reveals the postcolony to be marked by both breaks and continuities.¹⁰³ Given that the postcolony is constituted by a plurality of spheres and identities, one must acknowledge that continuities may be noted in certain arenas whilst breaks become evident in others.¹⁰⁴

The study is therefore rooted in questions of continuities and discontinuities across 1947. Yet, it suggests that we need to reconceptualise the temporal boundaries that have thus far characterised not just work on the Criminal Tribes Act, but perhaps the

⁹⁸ Gould, Sherman, and Ansari; Khan; Sherman, Gould, and Sarah Ansari, ‘From Subjects to Citizens’; Sherman, *State Violence and Punishment in India*; Zamindar.

⁹⁹ Cooper, p. 20.

¹⁰⁰ Mark Brown, ‘Postcolonial Penalty’, p. 198.

¹⁰¹ Simon Gikandi, *Maps of Englishness: Writing Identity in the Culture of Colonialism* (New York, NY: Columbia University Press, 1996), p. 15.

¹⁰² Partha Chatterjee, ‘Introduction: Postcolonial Legalism’, *Comparative Studies of South Asia, Africa and the Middle East*, 34.2 (2014), 224–27 (p. 224).

¹⁰³ Upendra Baxi, ‘Postcolonial Legality: A Postscript from India’, *Verfassung in Recht Und Ubersee*, 45.2 (2012), 178–94.

¹⁰⁴ Achille Mbembe, ‘Provisional Notes on the Postcolony’, *Africa*, 62.1 (1992), 3–37.

imperial project in India more widely. Historical temporality is, as William Sewell writes, characterised by ‘lumpiness’.¹⁰⁵ Breaks and ruptures are generally ‘reabsorbed into the pre-existing structures’ unless they set off a ‘chain of occurrences that durably transform previous structures and practices’.¹⁰⁶ Subtler and sometimes seemingly insignificant developments are overlooked in favour of more momentous ruptures. 1947, understandably, dominates analyses of the transition from the colonial to postcolonial state. The study does not wish to undermine the importance of 1947 as a critical historical juncture, nor to overlook the traumatic and intrinsic effect that independence and Partition had upon the psyche of the nation-states and their inhabitants. Indeed, the study argues that these had profound effects on the category of the criminal tribe. But, perhaps, we should locate the moments of change in alternate, or at least additional, developments.

The period between the 1910s and 1980s, for instance, can be better understood in terms of multiple and overlapping junctures, *both* subtle and dramatic: the establishment of the Department in 1917 initiated a radically different approach to the criminal tribe project in Punjab; the 1930s marked the beginnings of the repeal of the Criminal Tribes Act; 1947 saw mass migrations and a reimposition of state controls; the enactment of the constitution in 1950 provided new legal frameworks to contest the Act; 1952, rather than 1947, in many ways proved a more decisive break in terms of liberation, although this, as the study highlights, was laden with bureaucratic hangovers long into the 1950s; finally, the 1960s saw the disappearance of the ex-criminal tribe as a separate subject of welfare, leading to the emergence of an activist movement in the 1970s which sought to regain state recognition of the criminal tribe as a category of state identification. The transition from the colonial to postcolonial is therefore far too complex and messy to be understood merely with reference to pre- and post-1947.

Parameters of the Study

Punjab Peculiarities

This study is geographically rooted within the region of Punjab. Punjab was one of the last areas to come under British control in the Indian subcontinent, following the Second Sikh War of 1849, and became one of its most highly prized. Its fertile soil and network

¹⁰⁵ William H. Sewell, Jr., ‘Historical Events as Transformations of Structures: Inventing Revolution at the Bastille’, *Theory and Society*, 25.6 (1996), 841–81 (p. 843).

¹⁰⁶ Sewell, Jr., p. 843.

of irrigation canals made it one of the most productive regions and its supposedly ‘martial’ population bolstered the Indian Army.¹⁰⁷ It was a prestigious posting for Indian Civil Service officers and, as Catherine Coombs has shown, provided the ‘authentic’ image of British-Indian life in colonial fiction.¹⁰⁸ It was also one of the largest provinces of British India, stretching from the border with Afghanistan in the west, Jammu and Kashmir in the north, and the United Provinces in the east. As such, Punjab has received substantial scholarly interest, on its politics, society and culture, and religion.¹⁰⁹

The region’s boundaries have shifted dramatically over time, however, especially during the period being examined in this study. The term Punjab, referring to a territorial unit, first emerged in sixteenth century Mughal documents but the north-western region encompassing the land of the ‘five rivers’ had long been considered somewhat distinct.¹¹⁰ It was the colonial administrative divisions, though, which gave more concrete shape to the region. The province of Punjab encompassed twenty-nine districts, grouped under five administrative divisions: Rawalpindi, Multan, Lahore, Jullundur, and Delhi/Ambala.¹¹¹ Alongside the territory under direct control of the British Crown were multiple princely states of varying sizes and influence.¹¹² The first significant shift in the province’s borders during the twentieth century came after the shift of the imperial capital from Calcutta to Delhi in 1911, which saw its separation from Punjab the following

¹⁰⁷ By the 1920s, Punjab produced one third of British India’s wheat. The province had also become known as the ‘sword arm of the Raj’ due to the high recruitment rates of its population from the 1880s onwards. Ian Talbot, *Punjab and the Raj, 1849-1947* (New Delhi: Manohar, 1988), p. 38.

¹⁰⁸ Catherine Coombs, ‘State Change in the Punjab: Professional and Personal Experiences of British Civil Servants Over India’s Independence and Beyond’ (unpublished Ph.D., University of Leeds, 2011), p. 15.

¹⁰⁹ For general histories of the Punjab, see Indu Banga, *Five Punjabi Centuries: Polity, Economy, Society & Culture, 1500-1990* (New Delhi: Manohar, 1997); Rajmohan Gandhi, *Punjab: A History from Aurangzeb to Mountbatten* (New Delhi: Aleph Book Company, 2013); *Precolonial and Colonial Punjab: Society, Economy, Politics and Culture*, ed. by Reeta Grewal and Sheena Pall (New Delhi: Manohar, 2005); Syed Muhammad Latif, *History of the Punjab: From the Remotest Antiquity to the Present Time*, Reprint of 1891 edition (Lahore: Sang-e-Meel Publications, 2009). For colonial Punjab, see Imran Ali, *The Punjab Under Imperialism, 1885-1947* (Princeton, NJ: Princeton University Press, 2014); David Gilmartin, *Empire and Islam: Punjab and the Making of Pakistan* (Berkeley, CA: University of California Press, 1988); Talbot, *Punjab and the Raj, 1849-1947*; Tai Yong Tan, *The Garrison State: Military, Government and Society in Colonial Punjab, 1849-1947* (New Delhi: Sage Publications, 2005). For Punjabi identity and culture, see Radhika Chopra, *Migrant and Militant: The Politics and Social History of Punjab* (London: Routledge, 2011); *Punjab Reconsidered: History, Culture, and Practice*, ed. by Anshu Malhotra and Farina Mir (New Delhi: Oxford University Press, 2012); Farina Mir, *Social Space of Language: Vernacular Culture in British Colonial Punjab* (Berkeley, CA: University of California Press, 2010).

¹¹⁰ This refers to the rivers Jhelum, Chenab, Ravi, Sutlej, and Beas. All are tributaries of the Indus River. Anshu Malhotra and Farina Mir, ‘Punjab in History and Historiography: An Introduction’, in *Punjab Reconsidered: History, Culture, and Practice*, ed. by Anshu Malhotra and Farina Mir (New Delhi: Oxford University Press, 2012), pp. xv–lviii (pp. xix–xx).

¹¹¹ Rawalpindi was in the region’s northwest, Multan the southwest, Lahore the centre, Jullundur the east, and Delhi or Ambala – known variously, depending on the period – the southeast.

¹¹² Bahawalpur was the largest (15,000 sq. m) and Darkoti the smallest (8 sq. m).

year.¹¹³ Importantly, though, the Deputy Commissioner for Criminal Tribes retained authority over both Punjab and Delhi until 1952; this study therefore includes Delhi within its frame of reference.

1947 marked the most decisive redrawing of territorial boundaries in the region. The division of the province along religious lines saw two-thirds of its area awarded to Pakistan, including the prosperous canal colonies and the provincial capital of Lahore.¹¹⁴ The boundary-making process behind the Radcliffe Award, as well as its demarcation in the years that followed – physically and symbolically – have been studied.¹¹⁵ The physical landscape of (East) Punjab changed dramatically in the ensuing years, as refugee camps turned into permanent townships and the government built a new capital at Chandigarh. Territorial borders shifted once more in 1956 when the erstwhile princely states of the region, which had constituted a singular and separate state since 1948 – the Patiala and East Punjab States Union (hereafter, PEPSU) – were incorporated into Punjab.¹¹⁶ Finally, in 1966, Punjab was again divided. In response to the reorganisation of states along linguistic lines, the eastern districts became the Hindi-speaking state of Haryana (in contrast to the Punjabi-speaking districts of the west which remained Punjab), whilst several areas in the north east were incorporated into Himachal Pradesh.¹¹⁷

Administrative boundaries are important in framing this study as they delineate the (often competing) arenas of authority in the state. The relationship between centre-province-locality was dynamic and interdependent. Policies and laws may have been structured by discussions taking place amongst politicians and bureaucrats in New Delhi, but these proceedings were often shaped by the actions of more locally-rooted officers and administrators. The study foregrounds, therefore, that the lawmakers and leaders of independent India were not, as Joya Chatterji points out, ‘the sole architects of these regimes’.¹¹⁸ The study’s perspective thus shifts between the local, provincial and national level. Chapter III, in particular, broadens its perspective to explore the legislative

¹¹³ Delhi and its environs had only been incorporated within the Punjab province in 1858.

¹¹⁴ Gyanesh Kudaisya, ‘From Displacement to “Development”’: East Punjab Countryside after Partition, 1947-67’, in *Freedom, Trauma, Continuities: Northern India and Independence*, ed. by D. A. Low and Howard Brasted (New Delhi: Sage Publications, 1998), pp. 73–90 (p. 74).

¹¹⁵ Lucy P. Chester, *Borders and Conflict in South Asia: The Radcliffe Boundary Commission and the Partition of Punjab* (Manchester: Manchester University Press, 2009); Gandee, ‘Criminalizing the Criminal Tribe’.

¹¹⁶ For a history of PEPSU, see Gursharan Singh, *History of PEPSU: Patiala and East Punjab States Union (1948-1956)* (Delhi: Konark Publishers Ltd., 1991).

¹¹⁷ These included the districts of Simla, Kangra, Kullu, and Lahaul and Spiti, in addition to several *tehsils* of Ambala, Hoshiarpur and Gurdaspur districts.

¹¹⁸ Chatterji, ‘South Asian Histories of Citizenship’, p. 1050.

landscape of decolonising India. Events, individuals and actions taken in Punjab, however, remain at its centre.

Somewhat surprisingly, Punjab has received relatively scant attention in the historiography on the Criminal Tribes Act. Local developments in the region in the mid- to late-nineteenth century, such as the enactment of Book Circular No. 18 and the establishment of the *khôl* system (explored in more detail in chapter I), which forcibly settled nomadic groups like the Sansis and Pakhiwaras on the land, were imperative to the promulgation of the Act, as numerous scholars attest.¹¹⁹ Indeed, the original 1871 Act was limited in its reach to Punjab and the North West Provinces and Oudh. Yet, only Major has directly examined the application of the Act *within* Punjab, and this is limited to the colonial period.¹²⁰ In addition, William Glover examines the specific environment of criminal tribe settlements in the province.¹²¹ The few works that have examined the postcolonial period have either approached the topic from the perspective of national debates and legislation, or have tended to focus on the more politically active region of western India.¹²² Birinder Pal Singh's anthropological work on the ex-criminal tribes in Punjab is an exception, and does offer a cursory historical overview of the Act.¹²³

In contrast, this study foregrounds the importance of Punjab as a field of study in the history of the criminal tribe for several reasons. First, the Criminal Tribes Department was an institution unique to Punjab, in that it oversaw the entire administration of the Act in the province, leading to a greater degree of centralisation and, theoretically, coherency to its administration – the subject of chapter I. Secondly, the effect of Partition on the criminal tribe project has been entirely overlooked, yet it wrought significant changes upon the Act's administration and the conception of the criminal tribe – the subject of chapter II. Thirdly, a law passed in the province in 1918, the Restriction of Habitual Offenders (Punjab) Act, which in effect extended the provisions of the Criminal Tribes Act to individual offenders, acted as a necessary precursor for the reconfiguration of the criminal tribe within postcolonial legal frameworks *after* 1947 – the subject of chapter III. Finally, the contested position of the

¹¹⁹ For example, Mark Brown, *Penal Power and Colonial Rule*; Major, 'State and Criminal Tribes in Colonial Punjab'; Nigam, 'Disciplining and Policing the "Criminals by Birth"', Part 1'.

¹²⁰ Major, 'State and Criminal Tribes in Colonial Punjab'. Mark Brown also offers analysis from Punjab but situates this within a broader perspective of the British Raj.

¹²¹ Glover.

¹²² The focus upon western India is especially true of scholarship examining the more contemporary period, such as Bokil; Da Costa; Johnston and Bajrange. For a more historical perspective rooted in this region, see Gould, Gandee, and Bajrange.

¹²³ Birinder Pal Singh.

criminal tribe within the evolution of group rights in the subcontinent from the interwar period until after independence led to a distinctive political mobilisation of activists from the erstwhile criminal tribes in Punjab during the 1970s-1980s – the subject of chapter IV.

It is important to acknowledge, however, that there is an obvious gap in this study: the omission of the postcolonial history of the criminal tribe in Pakistani Punjab. Communities were notified under the Act across the breadth of the province. Whilst Hindus made up the majority of the notified population, there were sizeable communities belonging to all religions. With Partition, Muslim communities in West Punjab mostly remained there, whilst those in East Punjab – as chapter II highlights – migrated or were evacuated by the government across the border. The Government of Pakistan repealed the Criminal Tribes Act in 1956. A letter from the Servants of the People Society dated in April 1951, however, urged the Government of India to repeal ‘this obnoxious Act’ because, it claimed, ‘Pakistan repealed this act in the first year of its existence in 1948’.¹²⁴ This may have been a persuasive embellishment, but indicates that the law had potentially become defunct, at least in its official administration. The few studies that have touched on erstwhile criminal tribes in the post-1947 period in Pakistan suggest similar hangovers in terms of everyday penal practices existed for years after independence, as well as the persistence of criminal stigmas into the present.¹²⁵ Further research on this topic is clearly warranted but beyond the bounds of this study.

Reading the state archive

The conclusions of this study have, primarily, been drawn from the state archive. Given the study’s focus on the later colonial and early postcolonial period, the National Archives of India and the state archives of Punjab (Chandigarh), Haryana, and Delhi have proved invaluable. Files from the Punjab Civil Secretariat, in particular, offered new insights onto the working of the Criminal Tribes Act during the crucial years immediately after 1947. Given the wide thematic scope of this study, it relies on evidence drawn from a variety

¹²⁴ ‘The Servants of the People Society, Monthly Letter, April 1951, from Sevak Ram, Joint Secretary’, Rameshwari Nehru Private Papers, Subject Correspondence Files, File no. 1(a), Part II, Nehru Memorial Museum and Library (hereafter NMML).

¹²⁵ Sarah Ansari notes that the Hurs of Sind were not released from settlements until the early 1950s. Fouzia Saeed demonstrates that the Kanjars still face a stigma in present-day Lahore where the women of the community are forced into prostitution in the red light district of Shahi Mohalla. Sarah Ansari, *Sufi Saints and State Power: The Pirs of Sind, 1843-1947* (Cambridge: Cambridge University Press, 1992); Fouzia Saeed, *Taboo!: The Hidden Culture of a Red Light Area* (Karachi: Oxford University Press, 2001).

of government departments, including, amongst others: in New Delhi, the Ministry of Home Affairs, the Ministry of States, and the Ministry of External Affairs; in Punjab and Haryana, the Home Department and the Welfare Department; and in Delhi, the Chief Commissioner's Office. The files of the East Punjab Liaison Agency, held in the Punjab State Archive, were also useful, evidencing the evacuation and transfer of criminal tribes during Partition. Official papers from the India Office, held at the British Library, offered insights into the administration of the Criminal Tribes Act; the annual reports on the workings of the Act through to the late 1930s were of particular interest. It also examines the reports of government committees, including those set up to investigate the reform of the Criminal Tribes Act, as well as those related to constitutional reform in colonial India and the question of the so-called 'backward classes' after 1947. Finally, it draws on parliamentary debates, including the Legislative Council of the Lieutenant-Governor in Punjab, the Punjab Legislative Assembly, the Constituent Assembly of India, and the *Lok Sabha*.

Official records are written with the interests of the government in mind, however. The annual reports of the Criminal Tribes Act, for instance, rarely explicitly acknowledge failures of its administration. Hence, the study also draws on a variety of non-official records which allow us to re-evaluate the official record and reach subjects beyond its purview. These include: the private papers of notable organisations and individuals, such as Rameshwari Nehru and Dr Gopal Singh; colonial and postcolonial ethnographic works; the collected works of influential individuals, such as Jawaharlal Nehru and Dr B. R. Ambedkar; newspaper reports, in particular drawn from the *Tribune*; and legal cases from the Punjab High Court. The study also occasionally draws on interviews conducted in Punjab and Delhi during 2016.¹²⁶ The benefits and limitations of oral histories have been well-theorised.¹²⁷ Given the study's focus on the bureaucratic category of the criminal tribe, rather than on the subjective histories or experiences of the communities themselves, the evidence drawn from these interviews is kept to a minimum.

One statement of special note, however, is the following sentiment expressed by a Bazigar *sarpanch* in Patiala: 'Britishers have actually spoilt our history, we no longer exist

¹²⁶ I conducted around ten interviews in Patiala and Delhi during 2016 with individuals from the Bhedkut, Bazigar, Dhea, Gilhara, and Sansi communities. These were facilitated by Professor Birinder Pal Singh, of Punjabi University, Patiala, and Amar Singh, an activist from the Bhedkut community.

¹²⁷ See *The Oral History Reader*, ed. by Robert Perks and Alistair Thomson, Third edition (London: Routledge, 2016).

in history. No records.¹²⁸ Reciting this statement here may seem somewhat paradoxical, in a section dedicated to this study's reliance on the state archive. Yet, it illuminates some of the problems associated with locating the criminal tribe. Interestingly, almost the exact opposite conclusion could be drawn from the state archive. Whilst individuals rarely receive direct mention in official records, there is a vast bureaucratic edifice pertaining to the Criminal Tribes Act.¹²⁹ However, the entry of marginalised or subaltern groups, like criminal tribes but also *adivasis*, tribal groups or untouchables, into the state archive was predicated upon the imperatives of the colonial/postcolonial state. This consigned such groups to be recorded only in relation to their given designation – as objects of penal control or counter-insurgency, for example – rather than as living individuals with multiple, competing, and contingent affiliations and identities, depending on caste, class, ethnicity, region, religion, gender, and so on.¹³⁰ As Gayatri Chakravorty Spivak writes on the Rani of Sirmur, she only 'emerges in the archives because of the commercial and territorial interests of the East India Company'.¹³¹ Even then, she emerges only 'because she is a king's wife' and remains nameless.¹³² There is no 'real' Rani, then, to be found in the archive, Spivak concludes.

The criminal tribes, similarly, do not exist within the state archive. At least, not if we wish to elucidate the experiences and subjectivities of individuals and communities who fell within the category of the criminal tribe. It would be problematic to infer the practical or symbolic significance of independence and the repeal of the Criminal Tribes Act for the communities themselves, given the limitations of the archive. Even the rare incidences of community petitions are shaped by inherent power dynamics and the languages of rule. Yet, at the same time, the criminal tribe – as a category – is not only evident in the state archive but produced by it. Far from being a mere repository of objective 'fact', the archive both mimics and generates new dynamics of power.¹³³ As Stoler writes, we must reflect on archives 'not as sites of knowledge retrieval but knowledge production, as monuments of states [...] as cultural artefacts of fact

¹²⁸ Interview with the sarpanch of Bazigar Basti, Dharamkot, Sanaur, Patiala, conducted on 14 April 2016.

¹²⁹ A quick search on the National Archive of India's online catalogue throws up over six hundred files on the topic of the criminal tribe. When as-yet uncatalogued files, plus those housed in state archives and in the India Office are considered, there is clearly a vast wealth of official documentation on the topic.

¹³⁰ On this idea in relation to *adivasi* and tribal studies, see Banerjee.

¹³¹ Gayatri Chakravorty Spivak, 'The Rani of Sirmur: An Essay in Reading the Archives', *History and Theory*, 24.3 (1985), 247–72 (p. 263).

¹³² Spivak, 'The Rani of Sirmur: An Essay in Reading the Archives', p. 266.

¹³³ Antoinette Burton, 'Introduction: Archive Fever, Archive Stories', in *Archive Stories*, ed. by Antoinette Burton (Durham, NC: Duke University Press, 2006), pp. 1–24.

production, of taxonomies in the making, and of disparate notions of what made up colonial authority'.¹³⁴ The vast reams of documentation on the criminal tribe were a response to state anxieties – not just the perceived threat posed by supposedly mobile, subversive or criminal groups, but its constant uncertainties over its definition, and of the efficacy of the legislation itself. The very production of this documentation, however – efforts to define and redefine, to scrutinise and control – substantiated the reality of these anxieties, thereby generating yet more 'evidence' of the criminal tribe.¹³⁵

Relying on the state archive comes with obvious limitations, though. Not least, that there are clear gaps in evidence. Whilst we work with what *is* in the archive, we must keep in mind what *is not* – the files misplaced or destroyed, the files never written, and the files written with specific intent in mind. As Achille Mbembe writes, the archive 'is fundamentally a matter of discrimination and of selection, which, in the end, results in the granting of a privileged status to certain written documents, and the refusal of that same status to others, thereby judged "unarchivable". The archive is, therefore, not a piece of data, but a status'.¹³⁶ Indeed, the selection of documents for this study has privileged some over others, which irretrievably determines its arguments.

Structure

This study is thematic and largely chronological, although it repeatedly traverses 1947 to demonstrate the multiple and contradictory ways in which the criminal tribe was both undermined and re-embedded within postcolonial governance. Chapter I is situated in the later decades of the Criminal Tribes Act, from the establishment of the Criminal Tribes Department in 1917 until the denouement of empire in the subcontinent. Chapter II follows chronologically, with its analysis situated in the tumult of independence and Partition, principally the years between 1947 and 1955. The subsequent two chapters each trace longer histories, as they reach back to the colonial period to contextualise the effect of independence on the category of the criminal tribe with regards to penal practices and

¹³⁴ Stoler, 'Colonial Archives and the Arts of Governance', p. 85.

¹³⁵ Stoler here draws on Ian Hacking's work on statistics. Ian Hacking, 'How Should We Do the History of Statistics?', in *The Foucault Effect: Studies in Governmentality*, ed. by Graham Burchell, Colin Gordon, and Peter Miller (Chicago, IL: University of Chicago Press, 1991), pp. 181–96; Stoler, 'Colonial Archives and the Arts of Governance', p. 95.

¹³⁶ Achille Mbembe, 'The Power of the Archive and Its Limits', in *Refiguring the Archive*, ed. by Carolyn Hamilton and others (Dordrecht: Springer, 2002), pp. 19–27 (p. 20).

legal frameworks (chapter III) and welfare policies (chapter IV) in turn. Doing so reveals the longer roots to these processes, as well as the key changes that took place after 1947.

Chapter I explores a fundamental tension in the category of the criminal tribe. First it unravels the increasingly indeterminate application of the Criminal Tribes Act from the 1870s to 1940s. This shows that by the 1920s the legal category had become nebulous and locally-contingent. In this sense, it argues, there was no such ‘thing’ as the category of the criminal tribe. The remainder of the chapter examines the paraphernalia of the Criminal Tribes Department – namely, its various actors, institutions and paper-tracked practices. Using official reports and correspondence that detail this vast bureaucratic edifice, the chapter argues that as the law was materially translated into practice, the criminal tribe attained an intelligibility for the state; even the most quotidian or banal aspects of its administration concretised it as a category of colonial common sense. The punitive nature of the Act, however, meant that the criminal tribe was not merely translated into a bureaucratic entity, but into an embodied and alienating experience as real individuals were marked out as legitimate targets of state violence. By the end of empire, therefore, the criminal tribe had become a tangible category for the state.

Chapter II analyses the impact of Partition upon the category. It first examines the destabilisation of the state apparatus in Punjab. It reveals that the bureaucratic machinery of the Criminal Tribes Department was fragmented by widespread migration and the division of resources, which undermined its systems of knowledge and control. This was exacerbated by the arrival of large numbers of displaced criminal tribes into new localities, which was construed as a threat to the stability of the state. In this context, state actors relied upon the criminal tribe as a marker of legibility within the emergent refugee regime of post-Partition India. By drawing upon a variety of official and non-official sources, the subsequent two sections reveal that in their efforts to regulate and rehabilitate, respectively, the displaced criminal tribes, these state actors infused the category with new coherency and intelligibility after 1947.

Chapter III traces the repeal of the Criminal Tribes Act in the decade after 1947. It reveals that the criminal tribe was surreptitiously re-embedded within postcolonial legal structures, namely a raft of replacement legislation targeting the ‘habitual offender’. To contextualise this process, it first returns to the colonial period and a series of attempts by the Punjab government to enact legislation which utilised the measures of the Criminal

Tribes Act against individual offenders, which culminated in the Restriction of Habitual Offenders (Punjab) Act of 1918. As the political negotiations during the repeal process show – as explored in the second section – this law provided a framework and precedent for the replacement legislation after independence. Despite its contentious nature, the situation of flux and uncertainty, as well as the ongoing spectre of Partition mobility, legitimatised the continued use of enhanced powers of coercion and control. Throughout, the criminal tribe had a ubiquitous, if informal, influence. This had important implications for the communities because, as the final section demonstrates, the criminal tribe remained a pervasive influence on the everyday penal practices of the state.

Chapter IV similarly returns to the colonial period to historicise the contested position of the criminal tribe as a category of welfare within the evolving constitutional safeguards implemented for disadvantaged groups between the 1910s and 1980s. The first section reveals that whilst the criminal tribe had once been a separate category amongst the disadvantaged (or depressed, to use the contemporary terminology), alongside untouchable and tribal groups, its distinctive status was eroded by the 1930s within the political debates over minority representation. After independence, it was similarly omitted from the safeguards inaugurated by the constitution of 1950. Yet, as the second section shows, the criminal tribe retained an intelligibility within the postcolonial state's developmental agenda. In both official policies and practices on the ground, state actors continued to rely on the category as they sought to identify the disadvantaged. Indeed, the now ex-criminal tribe remained a tangible category of welfare *alongside* Scheduled Castes, Scheduled Tribes and the Other Backward Classes, at least for the first couple of decades after 1947. By the late 1960s, however, the criminal tribe had become increasingly indistinct. Drawing on petitions and press sources, the final section explores the activist movement which emerged in Punjab as a result, to show how these activists, like politicians and administrators before them, reified the ex-criminal tribe as a real and tangible category of identification.

I.

Materiality, Ambiguity & the Colonial State

The chief interest of the report [on the working of the Criminal Tribes Act in the Punjab for the year 1916] lies in the fact that it marks the termination of a definite era in the history of the criminal tribes administration. It was only from the commencement of the present year (1917) that the powers of restriction conferred by the Act of 1911 have been applied to the wandering, as distinct from the settled, tribes; and the simultaneous establishment of a large reformatory settlement at Amritsar and an industrial settlement at Dharival inaugurated a systematic policy of reclamation and reformation. Hitherto efforts in this direction had been somewhat spasmodic and lacking in co-ordination. No central supervising agency existed, and the surveillance of the tribes had been part of the ordinary routine of police administration. The system had the inevitable defect that, while breaches of the law were strictly dealt with, scant opportunities of reform were offered to those members of the tribes who were genuinely anxious to lead an honest life.¹³⁷

H. D. Craik, Revenue Secretary to the Government of Punjab, 19 September
1917

Introduction

As noted in the introduction to this study, much of the existing scholarship on the Criminal Tribes Act has focused on the legal innovations which pre-dated the 1871 legislation, such as the campaigns against *thuggee*, or the colonial state's imperatives behind it, in terms of law and order and territorial consolidation. The later decades of the Act, and its changes over time, have been largely overlooked. This is because, in Piliavsky's view, by the 1920s 'the Government of India substantially washed its hands of the dubious enterprise, subcontracting most of it to the Salvation Army'.¹³⁸ This is partially correct, as the Government of India Act (1919) *did* codify criminal tribes as a provincial subject, thereby delegating legislative power to the local governments and rooting administration more decisively in the provinces. And, in certain areas, like the United Provinces and Madras, the Salvation Army *did* play a substantive role in the administration of criminal tribe settlements.¹³⁹ At the same time, though, the 1920s-1930s were a period in which the colonial government sought to reform and reinvigorate the administration

¹³⁷ 'Report on working of the Criminal Tribes Act (III of 1911) in the Punjab for the year 1916', Home/Police A Progs., October 1917, Nos. 256-58, PSA.

¹³⁸ Piliavsky, 'The "Criminal Tribe" in India before the British', p. 342.

¹³⁹ Radhakrishna, 'Surveillance and Settlements'; Radhakrishna, *Disbonoured by History*; Tolen.

of the Act.¹⁴⁰ Indeed, the Government of India convened a conference in Delhi in November 1919 to encourage representatives from the provinces and princely states to take more ‘concerted action’ against the criminal tribes, leading to the final substantive amendment of the Act in 1924.

The wider economic and political changes taking place in the subcontinent were the backdrop to this renewed interest in the Criminal Tribes Act. The interwar period was one of vast legal and administrative transformation in British India, although it built upon developments which had been underway since the late nineteenth century.¹⁴¹ The Government of India Act (1919) introduced the system of dyarchy, which devolved certain functions of government to elected Indian officials (such as health, sanitation, and public works), whilst retaining others (such as land revenue, justice, and policing) in British hands, and divided subjects between the centre and the provinces. It also expanded the number of seats on provincial and central legislatures. Drawing Indian representatives more substantially into the colonial state structure, Eleanor Newbigin writes, ‘fundamentally transformed the relationship between state power and society’.¹⁴² Less than two decades later, political power was transferred further into Indian hands through the next Government of India Act (1935), which introduced provincial autonomy and expanded the franchise.¹⁴³ These changes were not merely the context within which the criminal tribe project itself was transformed, but were a key impetus for it.

In Punjab, the 1920s and 1930s were decades in which the criminal tribe project was, at least in principle, centralised, systematised and subject to substantial investment through the creation of a new government body: The Criminal Tribes Department (hereafter, the Department). Established in 1917, the Department co-ordinated the administration of the Criminal Tribes Act until its repeal in 1952. Under the leadership

¹⁴⁰ This was also particularly evident in Bombay where O. H. B. Starte, Criminal Tribes Settlement Officer, drove state-led administration of the settlements through the 1920s and 1930s. See O. H. B. Starte Papers, Centre of South Asian Studies, Cambridge. The Bombay Criminal Tribes Act Enquiry Committee noted in 1939 that, ‘The Criminal Tribes Act of 1911 marked the real beginning of forward action amongst Criminal Tribes.’ *Report of the Criminal Tribes Act Enquiry Committee 1939* (Bombay: Government Central Press, 1939), p. 27.

¹⁴¹ From the late nineteenth century, elite Indians demanded some form of political power, leading to the Indian Councils Act (1892) and Government of India Act (1909), both of which introduced limited forms of representation. The Government of India Act (1919) should also be understood as a direct response to the demands for political reward given the vast contribution made by Indian soldiers in the First World War.

¹⁴² Newbigin, *The Hindu Family and the Emergence of Modern India*, p. 4.

¹⁴³ It increased the franchise to around one fifth of the population.

of the Deputy Commissioner for Criminal Tribes (hereafter, the DCCT), the numerous actors who constituted the Department – including superintendents in charge of settlements, peons in offices, local police officers in the districts, and village officials – enacted the legislation in an everyday sense. They checked passes, took roll call, enforced punishments, maintained registers, taught literacy or industrial skills, cleaned housing, cooked food, filed paper work, and so on. Whilst different posts commanded a variety of responsibilities, all these actors facilitated the implementation of the Act, whether in its punitive, reformatory or simply mundane respects. Its establishment, as suggested in H. D. Craik’s statement above, marked a clear juncture in the criminal tribe project.¹⁴⁴ The period from 1917 was formative in shaping the encounter between the criminal tribes and the state.

This chapter therefore examines the administration of the Criminal Tribes Act in its final decades, from the interwar period to the end of empire. In part, this is to highlight the important changes wrought on the criminal tribe project by the shifting economic and political structures of the colonial state. The bulk of its analysis, however, is focused on the Department. Specifically, the chapter examines the paraphernalia which brought the Department into being – through various actors, institutions, and procedures – and translated the Criminal Tribes Act into practice. This paraphernalia, it argues, ascribed a materiality not only to the law itself, but to the very category of the criminal tribe. By 1947, it had become an intelligible category for the state, which, as the following chapters demonstrate, had implications after independence. The chapter does not merely provide the context for the changes that occurred after 1947, then, but locates certain aspects of the criminal tribe’s continued relevance in postcolonial India within state structures and ideologies that were developed in this period.

Of course, the idea of heredity or congenital criminals was not novel in the subcontinent. As Piliavsky has shown, the idea of ‘robber castes’ had existed since at least the medieval and early modern period.¹⁴⁵ Attempts by the colonial government to control such groups also had a long precedent. During Company Rule, many of the communities who would later be notified under the Act, such as Minas, had been subjected to a variety of practices which sought to pacify them, most notably through their incorporation into

¹⁴⁴ ‘Report on working of the Criminal Tribes Act (III of 1911) in the Punjab for the year 1916’, Home/Police A Progs., October 1917, Nos. 256-58, PSA.

¹⁴⁵ Piliavsky, ‘The “Criminal Tribe” in India before the British’.

the military.¹⁴⁶ Even the legal codification of this idea had precedence in Book Circular No. 18 (1856) and the Gwalior Code (1861).¹⁴⁷ Both were enacted, in Punjab and Gwalior respectively, to legitimatise certain punitive and surveillance practices being used against groups like the Sansis and Moghias. The key innovation of the Criminal Tribes Act was the bureaucratisation of these practices and ideas on such an extensive scale. This was particularly true for Punjab where, from 1917, the workings of the Act were orchestrated through the Department's vast and centralised state apparatus.¹⁴⁸

At the same time as the criminal tribe project became more centralised, however, the individuals whom the state declared as criminal tribes became increasingly diffuse. The notifications of the late nineteenth century had targeted whole communities whom the colonial state considered to be hereditary criminals, variously conceived, like Sansis and Bawarias.¹⁴⁹ These notifications generally applied to all adult males, and by extension their families, of the community and were enacted on a province-wide basis. By the 1920s, as this chapter shows, these notifications had given way to ones targeting regionally-dependent professional criminals and even mixed-caste gangs. On the one hand, then, this chapter demonstrates the indeterminacy of the criminal tribe. It highlights that the criminal tribe was a diffuse category that could encompass a diverse set of communities, individuals and ideas, and was often dictated more by local and contingent concerns regarding crime in the districts than the (albeit still influential) stereotypical ideas about criminals 'from birth'. On the other, the chapter mainly deconstructs not the criminal tribe itself, but the *state practices* which imbued the category with material substance.

Like the idea or effect of the state itself, we can understand the category of the criminal tribe as resulting from a set of material and mundane practices that were performed by various state actors.¹⁵⁰ The administration of the Criminal Tribes Act relied on such practices, whether more overt, like taking roll-call or inflicting punishment, or more bureaucratic and mundane, like calculating food and salary budgets for a particular settlement. The assemblage of these practices, whilst individually diffracted and uncertain

¹⁴⁶ Mark Brown, 'Crime, Liberalism and Empire'.

¹⁴⁷ Mark Brown, *Penal Power and Colonial Rule*; Major, 'State and Criminal Tribes in Colonial Punjab'; Piliavsky, 'The Moghia Menace'.

¹⁴⁸ The large-scale bureaucracy related to the Criminal Tribes Act in Punjab is arguably partly due to the historic application of the legislation to the province, since the original enactment in 1871, which itself grew out of earlier practices. It is perhaps also explained by the closer conflation of the uplift of the criminal tribes with that of the depressed classes in Punjab than elsewhere – as we see in chapter IV.

¹⁴⁹ Few colonial officers believed that criminality was inherited through genetics, but that it was the caste system which perpetuated such practices.

¹⁵⁰ For the 'state effect', see Mitchell.

themselves, worked to produce a coherent image of the criminal tribe. Despite the indeterminate identity of the criminal tribe in terms of the application of the Act, the category itself attained an intelligibility through state practice, namely the routine and everyday actions of the vast bureaucratic edifice of the Department. As such, even the most seemingly mundane and quotidian aspects of the Act contributed to the development of a collectively imagined norm of the criminal tribe.

This chapter draws on the insights of scholars who have demonstrated the materiality of law, or the different material practices through which law is translated into effect.¹⁵¹ As Nayanika Mathur has stated, ‘there is a material – specifically, a paper-y – tangibility that laws must acquire as they painfully inch their way towards legitimate proclamations of enactment’.¹⁵² In the context of contemporary Uttarakhand, she argues that aspects of the National Rural Employment Guarantee Scheme (NREGA) of 2005 ‘were made more or less officially real through the daily labour expended on it’ as state actors directed their energies towards ‘making it appear *as if* the illegibilities have been overcome, *as if* orders have been followed, *as if* the NREGA has been made real’.¹⁵³ She locates this process principally in the assemblage of the ‘paper state’ – ‘the production, circulation, reading and filing of the correct documents’.¹⁵⁴ Similarly, the daily workings of the Department – the personnel, the institutions, and the paper-tracked procedures – made the Criminal Tribes Act and, by extension, its legal subject (the criminal tribe) appear real. Rather than debate the applicability of the stereotype or question how far the criminal tribe was invented, or not, by colonialism, then, this chapter’s task is instead to understand *how* the criminal tribe came to be imbued with an ‘it-ness’, to use Mathur’s words (‘our task is to understand *how* an it-ness is attributed to ‘the state’, not to assume ‘it’ exists’).¹⁵⁵ It is important to note, though, that the penal nature of the legislation meant that the everyday actions of those who constituted the Department did not merely produce the criminal tribe as a bureaucratic category but marked out real individuals as legitimate targets of state violence. As we will see in the second section of this chapter,

¹⁵¹ See Bruno Latour, *The Making of Law: An Ethnography of the Conseil D’Etat* (Cambridge: Polity Press, 2009); Nayanika Mathur, *Paper Tiger: Law, Bureaucracy and the Developmental State in Himalayan India* (Delhi: Cambridge University Press, 2016). Also see the AHRC-sponsored Legal Materiality Network: <https://legalmateriality.wordpress.com/> [last accessed 6 August 2018].

¹⁵² Mathur, p. 2.

¹⁵³ Italics in original. Ibid, p. 3.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid, p. 5.

these processes translated the category of the criminal tribe into an embodied, physical and often violent experience.

This chapter therefore examines the workings of the Department from its establishment through to independence. This shows that the workings of the Criminal Tribes Act were characterised by an inherent contradiction. On the one hand, the category of the criminal tribe was ambiguous, as more and more groups – increasingly not defined by ethnic association – came within its remit. On the other, through the institutional life of the Department, the category was imbued with a materiality that produced the criminal tribe as an identifiable subject of state control. Accordingly, the chapter first explores the contested meaning behind the category of the criminal tribe in terms of its application, or in other words, whom exactly did the state notify under the Act. Taking a longer perspective on the legislation from its enactment in 1871 through to the 1940s, this section demonstrates the indeterminacy of the criminal tribe as a category and highlights its contingent, contextual and shifting implementation across time and space. The remainder of the chapter, in contrast, traces the ways in which the criminal tribe was given a coherency and tangibility through the actions of the Department, in terms of the institutions, procedures, and personnel who performed the Act in everyday life. This reveals the more complex, contested and fast-transforming nature of the Act's administration, and indeed of the colonial state, than has previously been acknowledged, as well as foregrounding the important bureaucratic changes which determined the process of its repeal after independence.

Indeterminate Identities

The question of who, or what, the criminal tribe encompassed was a vexed one and remained unresolved right up to the Criminal Tribes Act's repeal. In April 1914, S. W. Gracey, the Legal Remembrancer to the Government of Punjab, wrote that, 'the "criminal tribe" of the Act is not the same as the "criminal tribe" as understood in everyday parlance; it is to some extent an artificial body created by the Act'.¹⁵⁶ His statement suggests that the criminal tribe, in some form, existed in numerous spheres – in state administration, in popular imagination and folklore, in ethnographic or scientific discourse, and in routine and everyday life. In 'everyday parlance', the criminal tribe could encompass multiple and conflicting meanings. As a legal subject, too, the criminal tribe

¹⁵⁶ 'Note by S.W. Gracey, Legal Remembrancer to Government, Punjab, 27 April 1914', Home/Police A Progs., November 1914, Nos. 1-9, File no. 25, PSA.

was ambiguous and contextually derived; there was no explicit definition within the legislation. Notification merely relied on the government's ability to 'prove' that 'any tribe, gang or class of persons' was 'addicted to the systematic commission of non-bailable offences'.¹⁵⁷ The ambiguity of the legislation therefore resulted in a wide ranging and divergent set of interpretations, dependent upon time, place and circumstance.

When viewed across the breadth of the province from the Act's promulgation in 1871 to the end of empire, it becomes clear that there was no singular idea about the criminal tribe, nor uniformity in its application. To illustrate this, this section of the chapter first maps the shifting target of the Criminal Tribes Act, to reveal the contingent imperatives and ideologies which sustained its operation, before turning to the increasingly diffuse and locally-determined nature of its administration. It draws primarily on the reams of correspondence sent back and forth between various state actors regarding the notification of criminal tribes – from police officers on the ground, to deputy commissioners and bureaucrats, to the provincial and central governments – as well as the statistical evidence produced each year on the Act's administration. Such a long perspective, whilst fleeting, highlights the increasingly diffuse and locally-rooted conception of the criminal tribe – a significant point often overlooked in the existing scholarship.

Indeed, much of the scholarship on the Criminal Tribes Act tends to implicitly accept that the criminal tribe was a uniform stereotype. Even where the Act is acknowledged as being subject to local administration, the stereotype of the criminal tribe is still portrayed as embodying a singular Orientalist idea of the hereditary criminal.¹⁵⁸ 'Be they the Sansis, the Harnis and the Bawarias of Punjab or the Harburahs of the North Western Provinces,' writes Nigam, 'in virtually every report, the criminality of these groups is by a process of elision traced back to the thugs and the Buddhuks [...] thus attributes of one were assimilated in the other.'¹⁵⁹ Nigam's all-encompassing argument glosses over the numerous fractures within the colonial imagining of the criminal tribe. Even Piliavsky's recent challenge to this line of argument still operates within a framework in which the stereotype of the criminal tribe is relatively uniform; although

¹⁵⁷ Section 2, Act XXVII of 1871; Section 3, Act III of 1911; Section 3 of Act VI of 1924.

¹⁵⁸ See for example Nigam, 'Disciplining and Policing the "Criminals by Birth", Part 1'; Nigam, 'Disciplining and Policing the "Criminals by Birth", Part 2'.

¹⁵⁹ Nigam, 'Disciplining and Policing the "Criminals by Birth", Part 1', p. 137.

indigenously-rooted, she foregrounds a singular conception of the congenital criminal or ‘robber caste’.¹⁶⁰

Yet, there was no singular idea about whom, or what, constituted the criminal tribe. Whilst there are no accurate statistics, the DCCT estimated there was in the region of 150,000 individuals belonging to the criminal tribes in Punjab prior to 1947.¹⁶¹ Across the whole of the subcontinent, estimates suggest there were around two to four million individuals belonging to the criminal tribes by the end of empire.¹⁶² This population was constantly changing, increasing or decreasing in line with notifications which themselves were dictated by shifting state imperatives. In Punjab, around thirty ethnic communities formed the majority of those notified under the Act.¹⁶³ However, smaller segments of other communities were notified as criminal tribes in particular geographic areas, and from the 1920s mixed-caste gangs represented a new formulation of the criminal tribe in terms of the ‘professional criminal’. By the 1930s, police officers were being encouraged to submit proposals for notifications of ‘two or more persons’ about whom ‘indications’ suggested criminal association.¹⁶⁴ Colonial officers were evidently keen to utilise the intentionally wide scope of the Act as an instrument to combat varying forms of crime or undesirable behaviour.

Notions of criminality also shifted between the 1870s and 1940s. Certain practices or behaviours were tolerated at one time but criminalised at another.¹⁶⁵ In 1912, for instance, the question arose amongst the Punjab administration whether the Pernas should be notified as a criminal tribe. Although they were a sub-caste of the Sansi community (a notified criminal tribe), the Inspector General of Police concluded, after consultation with the district officers, that the Act should not be extended to them. His reasoning was that ‘the real Pernas, whose chief means of livelihood is the prostitution of their women, are not a criminal tribe. They are wanderers and sometimes commit petty

¹⁶⁰ Piliavsky, ‘The “Criminal Tribe” in India before the British’.

¹⁶¹ ‘Letter from F. B. Wace, Home Secretary to Government, Punjab, to Inspector General of Police, 19 May 1942’, Punjab States Agency, General Branch, 1942, File no. G-21-7/42, National Archives of India (hereafter NAI), New Delhi.

¹⁶² The 1949-50 Enquiry Committee estimated a total population of 2,268,348. It noted that twenty-five years previously the population was estimated at four million. *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 9.

¹⁶³ The principal communities notified in Punjab were: Bhangali, Berar, Bauria, Nat, Gandhila, Sansi (including 33 sub-castes), Mahtams/Rai Sikhs (Sheikhupura District), Tagus (Karnal District), Dhinwars (Gurgaon District), Minas (Gurgaon District).

¹⁶⁴ ‘Punjab Police Rules 1934, rule 23.26’, Indian Police Collection, MSS EUR F161/158, IOR.

¹⁶⁵ Saha argues that tolerating disorder was vital to the viability of colonial law. Saha, *Law, Disorder and the Colonial State*, p. 5.

thefts'.¹⁶⁶ In this period, prostitution – as well as nomadism and petty theft – entailed a lesser threat, one which the colonial state could tolerate and overlook. By the 1920s and 1930s, as abolitionist campaigns took hold, the colonial state began to suppress prostitution and took a less amenable view of the Pernas' trade, leading to their eventual notification.¹⁶⁷ As the imperatives of the state changed over time, certain behaviours became more concretely criminalised and increasing numbers of communities, and individuals, thus became identified with criminality. By the 1930s, the Act targeted a whole range of disparate *types* of so-called criminal tribes. Who exactly became notified as a criminal tribe is therefore revealing of the colonial state's contingent concerns regarding crime and control at the time. To illustrate this, the following analysis maps the shifting target of the Act from the 1870s to the 1940s.

The first communities to be notified under the Act were the Sansis, Bawarias, Harnis and Pakhiwaras in the 1870s and 1880s. These early notifications were decisively shaped by ethnic association, whereby criminality was rooted in birth, and as such extended across the whole province, and beyond. Found across northern India, these communities were often notified as criminal tribes by multiple government agencies. The Sansis, for instance, were notified in Punjab, the United Provinces, Ajmer, and Delhi, as well as the princely states in Bhopal, Central India, Rajputana and Punjab. These groups were the most numerous and prolific of the criminal tribes, often numbering in the hundreds of thousands, although only a smaller percentage of the overall population was actively under registration or restriction. They also had many similar cultural and socio-economic attributes which contributed towards their notification. For one, many were considered nomads.¹⁶⁸ This was conflated with dissident behaviour, as mobile subjects undermined the porous political borders of the subcontinent, avoided taxation, and subverted regimes of surveillance and policing.¹⁶⁹ Many had also been *shikaris* and

¹⁶⁶ 'Letter from H. T. Denny, Inspector General of Police, Punjab, to Revenue Secretary to Government, Punjab, 18 March 1912', in Home/Police A Progs., March 1912, Nos. 4-5, File no. 7, PSA.

¹⁶⁷ Legg, *Prostitution and the Ends of Empire*.

¹⁶⁸ The boundaries between nomadic and settled were fluid, largely dependent upon seasonal migration, employment opportunities, famine, and personal circumstance. Despite this, colonial officials continually attempted to demarcate between the 'settled' and 'wandering' sections of the communities. Initially, notifications only targeted the 'settled' groups, as the 1871 Act demanded that local governments provide a sufficient means of livelihood to those whose movements it restricted. After the 1911 amendment removed this provision, 'wandering' groups were also notified. On 6 January 1917, the Department co-ordinated raids across the province to register and restrict a whole range of communities. Such a sweeping move brought an additional 33,000 male adults onto the criminal tribe registers. These wandering communities were often subject to harsher conditions of restriction and punishment.

¹⁶⁹ Neeladri Bhattacharya, 'Pastoralists in a Colonial World', in *Nature, Culture and Imperialism: Essays on the Environmental History of South Asia*, ed. by David Arnold and Ramachandra Guha (New Delhi: Oxford

depended on forest produce for subsistence, practices which were increasingly perceived as destructive, unproductive, and antithetical to the modern ‘civilised’ state.¹⁷⁰ They were also largely considered untouchables by village society, although many claimed Rajput ancestry – a theme we return to in chapter IV.¹⁷¹ Even prior to the enactment of the Criminal Tribes Act, then, many of these groups were already somewhat ostracised or marginalised. These are also the communities against whom the label of ‘ex-criminal tribe’ is most often used today.¹⁷²

They were also the communities who had been involved in the raider-protector systems of policing used in pre-colonial polities.¹⁷³ In northern India, since at least the ninth century, communities like Minas, Kolis, Gujars and Bhils had gained employment, and subsequently patronage, from those localities whom they raided and later protected.¹⁷⁴ As these groups became gentrified, Piliavsky argues, new communities drawn from the Bantu ethnic group (Sansis, Kanjars, Moghias, etc.) appropriated their trade.¹⁷⁵ Although it varied across time and region, this indigenous form of policing was an important element of the decentralised and competing nature of political authority prior to, and co-existing with, the arrival of the British. As the British East India Company expanded their territorial and political grip across the subcontinent, they rendered these practices increasingly illegitimate or obsolete. The initial thrust of the Act in the 1870s and 1880s built upon earlier efforts by the Company to subdue the ‘potentially restive

University Press, 1995), pp. 49–85; Tanuja Kothiyal, *Nomadic Narratives: A History of Mobility and Identity in the Great Indian Desert* (Delhi: Cambridge University Press, 2016); Sinha.

¹⁷⁰ See Ezra D. Rashkow, ‘Making Subaltern *Shikaris*: Histories of the Hunted in Colonial Central India’, *South Asian History and Culture*, 5.3 (2014), 292–313.

¹⁷¹ This is a narrative found in colonial ethnographies, such as Denzil Ibbetson, *Panjab Castes. Being a Reprint of the Chapter on ‘The Races, Castes and Tribes of the People’ in the Report on the Census of the Panjab Published in 1883 by the Late Sir Denzil Ibbetson, K.C. S.I.* (Lahore: Government Printing, Punjab, 1916).

¹⁷² See, for example, the reportage of the Bulandshahr rape case. *The Hindu*, 3 August 2016 <http://www.thehindu.com/news/national/other-states/Bulandshahr-gangrape-Who-are-the-Bawariya-tribe/article14550810.ece> [last accessed 13 December 2017]; *India Times*, 3 August 2017 <https://www.indiatimes.com/news/india/bulandshahr-gangrape-everything-about-the-bawariya-gang-and-why-they-are-rarely-caught-259403.html> [last accessed 13 December 2017].

¹⁷³ Arnold, ‘Crime and Crime Control in Madras’; Mark Brown, ‘Crime, Liberalism and Empire’; Sandria B. Freitag; Gordon; Nigam, ‘Disciplining and Policing the “Criminals by Birth”, Part 1’; Anand Pandian, ‘Pastoral Power in the Postcolony: On the Biopolitics of the Criminal Animal in South India’, *Cultural Anthropology*, 23.1 (2008), 85–117; Piliavsky, ‘The Moghia Menace’; Piliavsky, ‘The “Criminal Tribe” in India before the British’.

¹⁷⁴ Similar practices were evident in south India, see Pandian and Arnold. Piliavsky, ‘The “Criminal Tribe” in India before the British’, p. 337.

¹⁷⁵ Piliavsky, ‘The “Criminal Tribe” in India before the British’, p. 338.

elements' amongst 'predatory bands', as well as more immediate concerns of the British Raj to centralise its authority in the wake of the 1857 Uprising.¹⁷⁶

The conflation between criminality and ethnicity which characterised the early notifications of the 1870s and 1880s drew upon more than these political and territorial concerns. Since the early decades of the nineteenth century, reports by colonial officials had begun to mark out certain communities in terms of criminal behaviour. At this time, these were 'highly localised or anecdotal'.¹⁷⁷ By the later decades of the nineteenth century, colonial attempts to study racial difference had taken on an increasingly systematic and 'scientific' angle, epitomised by the first decennial census of 1871-1872.¹⁷⁸ In their efforts to count and classify Indian society, official administrators reified previously diffuse notions of caste, race and religion as separate 'things' that could be slotted into an administrative schema.¹⁷⁹ As Christopher Pinney notes, the 'administrative-academic nexus' – wherein the disciplines of anthropology and ethnology took on new importance not only as academic fields but tools of governance – led to 'an intensification in official thinking on the convergence of ethnic identity and the potential for disorder'.¹⁸⁰ The idea that ethnic groups could be identified by certain characteristics, like criminality, or were somewhat reducible to them, took hold.

This was evident in the legislative debates over the Criminal Tribes Act in 1870-1871, where its proponents relied on discursive renderings of certain communities that were steeped in 'familiar connotations of hereditary criminal fraternities'.¹⁸¹ Such intellectual exercises situated these communities within 'an explanatory frame, a kind of regime of truth, wherein the sources of criminal or antisocial conduct could be located in individual or cultural character'.¹⁸² Consequently, during the process of notification 'mere statistics of convictions', in the words of the Deputy Commissioner of Rawalpindi, were

¹⁷⁶ For more detailed analyses on the origins of the 1871 Act see Mark Brown, *Penal Power and Colonial Rule*; Nigam, 'Disciplining and Policing the "Criminals by Birth"', Part 1; Piliavsky, 'The Moghia Menace'.

¹⁷⁷ Mark Brown, *Penal Power and Colonial Rule*, p. 140. See also Bates.

¹⁷⁸ Cohn, 'The Census, Social Structure and Objectification'.

¹⁷⁹ Bernard S. Cohn, 'Notes on the History of the Study of Indian Society and Culture', in *Structure and Change in Indian Society*, ed. by Bernard S. Cohn and Milton Singer (Chicago, IL: Aldine, 1968), pp. 3–28.

¹⁸⁰ Christopher Pinney, 'Colonial Anthropology in the Laboratory of Mankind', in *The Raj: India and the British, 1600-1947*, ed. by Christopher Bayly (London: National Portrait Gallery, 1990), pp. 252–63 (pp. 254–55).

¹⁸¹ Nigam, 'Disciplining and Policing the "Criminals by Birth"', Part 1, p. 145.

¹⁸² Mark Brown, *Penal Power and Colonial Rule*, p. 89. Importantly, Brown does highlight the contradictory approaches to these communities by varying forms of colonial governance, noting that the military rule in Rajputana located criminal behaviour in the quality of local government.

an unreliable source.¹⁸³ In his view, the more important test was affiliation within the community itself. ‘The fact is,’ he stated, ‘a Sansi is a Sansi wherever he is. It is not to be supposed that the Sansi of Gujrat is any better than the Sansi of Sialkot.’¹⁸⁴

From the late 1880s, however, the target of the Act shifted; it was applied to smaller sections of communities who were notified only in relation to certain localities. Some groups were notified by district, like the Biloches in Karnal and Ambala, for instance. Others were notified by village, such as the Mahtams who were notified in the village of Mahtam in Gujranwala and in a further nine villages near Mamdot in Ferozepore. These notifications proliferated through to the 1920s and were more decisively shaped by contingent local concerns about crime, leading to vast diversity amongst the communities notified under the Act. In comparison to the earlier notifications of the late 1800s, these only targeted a few hundred individuals at a time, and sometimes far less. In 1904, for instance, twenty-seven males of the Bhatti family of Jat Sikhs who resided in the village of Hadiara, Lahore, were notified as a criminal tribe.¹⁸⁵

These groups were generally considered as opportunistic thieves who partook in crime less on account of a cultural heritage than because it was a lucrative profession. Yet, criminality was still primarily rooted in their ethnic affiliation. For example, in 1887 two petitions were sent by the *lambardars* and influential residents of villages which neighboured the village of Mahtam in which nearly 1000 persons belonging to the Mahtam caste resided. In these petitions, it was reported that

the Mahtams have from time immemorial been addicted to theft of growing crops; that more recently they have taken to cattle theft and burglary; that they are especially addicted to offences of criminal trespass and theft by use of skeleton keys; and that they rob openly with violence, undaunted by the presence of witnesses.¹⁸⁶

The ‘facts’ of their criminality were still rooted in a discursive rendering of the community as addicted to criminal behaviour. Although this characterisation was locally rooted, limited at this point only to the Mahtams of one particular village, it was their ethnic association – their identity *as* Mahtams – that marked them out as a criminal tribe.

¹⁸³ ‘Letter from J. A. L. Montgomery, Commissioner and Superintendent, Rawalpindi Division, 19 January 1901’, Home/Police A Progs., May 1901, Nos. 1-10, File no. 6, PSA.

¹⁸⁴ It is important to note that opinions did vary amongst officials. See further correspondence in file, *ibid.*

¹⁸⁵ ‘Letter from A. B. Kettlewell to Secretary to Government of India, 13 September 1904’, Home/Judicial A Progs., Nos. 216-17, October 1904, NAI.

¹⁸⁶ ‘Letter from District Superintendent of Police, Lahore, to Deputy Commissioner, Lahore, 29 June 1887’, Home/Judicial A Progs., Nos. 100-08, August 1888, NAI.

By the 1910s, the focus of the Act had shifted once more. Now it targeted ‘cattle lifters’ – pastoralist and nomadic groups who proved a nuisance to agrarian society – as increasing numbers of reports blamed rising incidences of crime upon their behaviour. These groups, like Ods, Tharanas, Bars, Dher Kharals, and Valana Jats, were considered a particular scourge to Punjab, where colonisation of the western tracts of the province in the late nineteenth century had brought them into conflict with an increasingly sedentarised way of life.¹⁸⁷ The Punjab administration had tried to convert these groups into agriculturalists by granting them pockets of wasteland, in tracts like the Chenáb Colony.¹⁸⁸ But many chose to retain their vast herds of cattle – ‘the remnant of a past existence’, in the words of later DCCT Hari Kishen Kaul – which, many officials argued, provided ‘the immediate cause of nearly all the crime’ in the area and had ‘made their owners the pests of the neighbourhoods’ in which they settled.¹⁸⁹ Although these groups were recognised by colonial officers as belonging to a different ‘class’ of criminal tribe (‘cattle lifters’ as opposed to ‘robbers and burglars’), these notifications were again dictated by ethnic identity – i.e. they targeted particular communities, even if only a part thereof.¹⁹⁰

From the 1920s, though, there was a more conclusive shift away from the criminal tribe defined in terms of ethnic association as the Act’s reach was extended to also include mixed-caste gangs. Machhia Nanga’s gang, for instance, comprised of sixteen individuals who belonged to the Nauga, Kalason, Parhar, Chadhar, Korianana and Bhoji castes. The gang was notified as a criminal tribe in October 1919 and the following January restricted in its movements to certain villages in Jhang. Other gangs comprised the same ethnic community, but one which was not notified more generally under the Criminal Tribes Act. In January 1926, for example, a gang of seventeen Rajputs in the village of Rataur in Ambala were notified and restricted under the Act. At first, this shift in the use of the Act was a relatively gradual one; the number of notifications against gangs initially remained

¹⁸⁷ Colonisation of the arid desert tracts began with earnest in the mid-1880s. Although canals had long existed in the region, they did not reach the higher areas which were occupied by pastoralists. See David Gilmartin, ‘Migration and Modernity: The State, the Punjabi Village, and the Settling of the Canal Colonies’, in *People on the Move: Punjabi Colonies, and Post-Colonial Migration*, ed. by Ian Talbot and Shinder Thandi (Oxford: Oxford University Press, 2004), pp. 3–20. On pastoralists in Punjab, see Bhattacharya, ‘Pastoralists in a Colonial World’.

¹⁸⁸ Ali.

¹⁸⁹ Hari Kishan Kaul and L. L. Tomkins, *Report on Questions Related to the Administration of Criminal and Wandering Tribes in the Punjab* (Lahore: Govt. Printing Press, 1914), p. 55. V/27/161/25, India Office Records (hereafter IOR), British Library.

¹⁹⁰ *Ibid.*, p. 4.

small – only eleven in 1927. They were, however, quick to proliferate – rising to seventy-seven by 1936.¹⁹¹

In the same period, repeated proposals came from colonial officials – mostly Superintendents of Police or Deputy Commissioners – to apply the measures of the Criminal Tribes Act to individual habitual offenders. We return to this subject in chapter III, which traces a longer history of the repeal of the Criminal Tribes Act back to the later colonial period. Of central importance to this process, as we shall see later, was the enactment of the Restriction of Habitual Offenders (Punjab) Act in 1918, which resulted from similar proposals made in the 1910s. As this Act was largely considered a failure in combating crime, renewed efforts were made through the 1920s to use the Criminal Tribes Act itself against individual offenders.¹⁹² These attempts to extend the remit of the Criminal Tribes Act – whether to mixed-caste gangs or to habitual offenders – were contentious. The move to dyarchy had introduced new political arenas in which the target of the legislation could be debated. These proposals were thus denounced by several influential Indian politicians, especially Mian Fazl-i-Hussain – at this point, a representative of the Congress but who would later be a founding figure in the Unionist Party. Debate centred on whether these criminals constituted a ‘gang’ or ‘class’ of persons, in the meaning of ‘any tribe, gang or class’ as stated in the Act. In the end, Fazl-i-Hussain, in his capacity as Revenue Member, had ‘the last word on the subject’ – that individuals could be notified under the Act, but only if they habitually committed crime ‘in association’ with others.¹⁹³

The 1920s-1930s thus marked an important juncture. The scope of who could be considered, or legally notified, as a criminal tribe had been radically widened.¹⁹⁴ This was made clear in a police lecture during the 1930s, in which the category of the criminal tribe was divided into two groups: (1) Persons who are criminals by birth, divided between wandering criminal tribes and permanently or semi-permanently settled criminal tribes; and (2) Those not belonging to criminal tribes by birth, but of criminal habits, which

¹⁹¹ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1936* (Lahore: Government Printing, Punjab, 1938), p. 2, V/24/634, IOR.

¹⁹² In 1925, for example, L. C. B. Glascock, submitted a proposal that active criminals – those with two or more convictions under Chapters XII and XVII of the Indian Penal Code – should be proclaimed under the Criminal Tribes Act individually. ‘Extract from minutes of meeting held on 29th August 1925’, Home/Judicial B Progs., October 1927, File no. 384, PSA.

¹⁹³ ‘Note by B. H. Dobson, 10 August 1927’ and ‘Note by B. H. Dobson, 15 September 1927’, *ibid.*

¹⁹⁴ These changes in the Act’s target were not the result of legal enactments but rather the decentralised nature of administration since the 1911 amendment.

included ‘men of every caste and tribe’, known as ‘mixed gangs’.¹⁹⁵ The bifurcated nature of the category is clear in the DCCT’s annual reports to the Punjab government from the 1920s onwards, which show a clear distinction between ‘heredity criminal tribes’ – the ethnic communities against whom the Act was originally designed – and gangs of ‘professional as distinguished from heredity criminals’.¹⁹⁶ This extension of the Act beyond the so-called ‘traditional’ criminal tribes, exemplified by the Sansis and Bawarias, was portrayed as a resounding success. In 1934, DCCT Hari Singh reported that,

It is admitted on all hands that the application of the Criminal Tribes Act has succeeded effectively in checking the criminal activities of gangs and villages of professional criminals as opposed to hereditary criminals [...] A gang of inter-provincial coiners whose skills in counterfeiting coins was unsurpassed, and who had long baffled detection; and a large number of the gangs of cattle lifters in the Eastern Punjab; and elsewhere Dhatura poisoners and swindlers: have, after evading the provisions of the ordinary law for a long time, been straightened out under the sledge hammer of the Criminal Tribes Act.¹⁹⁷

The ambiguous nature of the category of the criminal tribe did not only result from the shifting target of the legislation, however. The everyday administration of the Act, in terms of the different levels of notification, registration, restriction and exemption, complicated the matter further. In Montgomery, for example, the Chuharas and the Wandars of Gugera, the Dullus (with the exception of those residing in Chak No. 121/9-L), the Parhar Biloches, and the Mahtams of village Dhakkar were all notified and registered under the Act, but not restricted in their movements. Communities could also come in and out of registration. In March 1874, for instance, the Punjab government notified the Sansis of Gujrat (along with those in Karnal, Ludhiana, Jullundur, Hoshiarpur, Sialkot, Lahore, Ferozepore, Gujranwala) as a criminal tribe. In 1885, on the suggestion of the Deputy Commissioner of Gujrat, they were exempted owing to their small number and good conduct. The notification of the Sansis as a criminal tribe remained in place across the province but those in Gujrat were released from surveillance. Over the next decade, though, requests were received from local officers for their renewed registration. In 1900, after new enquiries, the Sansis of Gujrat were again restricted.¹⁹⁸ The criminal tribe as a category, then, was in constant motion, as groups

¹⁹⁵ ‘Extract from Practical Police Work: A Series of Police Lectures (1930)’, Indian Police Collection, MSS EUR F161/158, IOR.

¹⁹⁶ See, for example, *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1936*, p. 2, V/24/634, IOR.

¹⁹⁷ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1934* (Lahore: Government Printing, Punjab, 1935), pp. 1–2, V/24/634, IOR.

¹⁹⁸ See correspondence in ‘Application of the provisions of the Criminal Tribes Act to the Sansis of Gujrat’, Home/Police A Progs., May 1901, Nos. 1-10, File no. 6, PSA.

moved in and out of the process of notification, registration and restriction, and a community notified in one part of the province may have been free in another.

The landscape of notifications became even messier from the 1930s when the Department took control over entire villages where it believed ‘everyone from the *lambardar* downwards is in full sympathy with the thieves’.¹⁹⁹ In these villages, superintendents of the Department replaced police constables or village officials in their supervisory duties and children and young men were strongly encouraged, if not forced, to attend school or training. This brought individuals not necessarily notified as criminal tribes under its control. The village of Subrah near Lahore, for instance, had a population of 4872 persons; it was brought under the control of the Department even though its inhabitants had only ten convictions under the Indian Penal Code, six under the Criminal Procedure Code, and one under the Arms Act to their name in 1936.²⁰⁰ Out of those nearly five thousand persons, 196 were restricted under the Criminal Tribes Act, 155 of which were subsequently exempted. Even though the remaining population was not notified as a criminal tribe, their physical location within a village under the control of the Department situated them within its gaze. The boundaries of the ethnically-derived criminal tribe had thus conclusively blurred as individuals belonging to a wider array of communities became incorporated within the remit of the Department through practical exigencies.

The category of the criminal tribe became even more uncertain during the final years of colonial rule as there was a steady stream of exemptions from the late 1930s – coinciding with the devolution of power to the provinces by way of the Government of India Act (1935). A few communities had been exempted during the earlier decades of the Act, such as the Gurmangs of two villages in Rawalpindi who were exempted in 1900, but these instances were rare. The 1924 amendment of the Act, however, included a provision that allowed individuals to show cause against their inclusion in the criminal tribes register.²⁰¹ This was a remarkable departure from the earlier period, in which the state’s authority in notifying communities was considered absolute.²⁰² By 1946, the Punjab

¹⁹⁹ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1934*, p. 16, V/24/634, IOR.

²⁰⁰ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1936*, p. 15, V/24/634, IOR.

²⁰¹ ‘Note by B. L. Pandey, Home Dept., 19 April 1945’, Home/Police, 1945, File no. 88/1/45, NAI.

²⁰² Under section 5 (1871 Act) ‘No Court of Justice shall question the validity of any such notification [...] every such notification shall be conclusive proof that the provisions of this Act are applicable to the tribe, gang or class specified therein’.

government reported that nearly 24,000 persons had earned exemption from the Act and 1110 had total emancipation.²⁰³ These were not district-wide exemptions of entire communities, however, because officials feared restricted individuals from other districts would simply move across the internal borders. Rather, exemptions worked on an individual or local basis. A community could thus be exempted from the Act in a local context but, when viewed from the perspective of the province as a whole, remained, at least by name, a designated criminal tribe.

Take, for example, the case of the Ahiris of Rohtak. In 1937-1938, leaders amongst the Ahiris co-ordinated identical petitions to be sent to the Deputy Commissioner of Rohtak from several villages located across the district. Each petition stated:

We the Ahedies inhabitants of village [handwritten name of village], [handwritten name of tehsil] Tahsil, District Rohtak beg to state the following for your kind consideration [...] Our community is not a class of vagabonds but of labourers [...] in 1920 we were excused from daily attendance on Government Rolls [...] The Ahedies of District Karnal are no more a class of criminal tribe [...] Nuts and Kanchans of Rohtak district had also been enlisted as a class of criminal tribe but on account of recommendation of 1917 had been removed from the list. Even the Mina community has been excused. But unfortunately, the Ahedi community has not yet been removed from the list of criminal tribe.²⁰⁴

The petition is notable for three key reasons. First, it exemplified the complicated distinction between individual and community in the process of exemption. The demand was clearly articulated *as a community*, not only in terms of a cohesive group identity across the disparate villages of Rohtak but by making a clear claim to ethnic association with the already-exempted Ahiris of Karnal. At the same time, exemption itself relied on enquiries made into the character and antecedents of each individual. Before the Ahiris could be exempted, the Superintendent of Police, through the *ilaqa* magistrates, was required to verify each individual's details, in terms of their criminal convictions, suspicions recorded by the police, their mode of livelihood, and general repute. Whilst the tag of criminality could be imposed collectively, with little regard for individual behaviours, exemption from the same was a far more individualised process.

²⁰³ 'Statement showing the opinion of the Punjab Government on the amendments proposed in the three bills to amend the Criminal Tribes Act, 1924, 16 September 1946', Home/Police, 1945, File no. 88/1/45, NAI.

²⁰⁴ Italics added. 'Petition from various villages in Rohtak district', Home/Judicial B Progs., 1939, File no. 262, PSA.

Secondly, these enquiries reveal the decidedly local nature of the administration by this point. Information was circulated from the level of the *ilaqa* to more senior officers like the DCCT, and in some cases even the provincial government. The conception of the criminal tribe in higher levels of governance was thus shaped by competing articulations of it arising from different jurisdictions of the state. Requests for exemptions originated in the districts, too. Individuals from communities sent petitions to local officers, like local superintendents of police; these officers, in turn, forwarded petitions either on to district magistrates – who, since the 1924 Act, had the authority to exempt individuals – or the DCCT to decide the case. Following the 1911 amendment to the Act, in contrast to 1871 legislation, local governments no longer had to seek approval from the Governor-General to notify a community. With the move to dyarchy, and later provincial autonomy, administration was devolved even further, as decisions over registration and exemption were taken at a remarkably local level. There remained a dialogue, however, between the different levels of the state and the communities themselves, as each sought to define the status of the group in question.

Thirdly, petitioners like the Ahiris could utilise the changed political scenario of the late 1930s and 1940s to their advantage. After the move to provincial autonomy and the subsequent elections in 1937, Indian politicians held considerable authority and influence in local political arenas. Individuals belonging to the criminal tribes often lobbied these figures to support their demands for exemption. Faced with significant delays, the Ahiris wrote to Ram Sharma, Member of the Punjab Legislative Assembly, who repeatedly brought the case before the Assembly. The case caused ‘some embarrassment’ to the Punjab government, leading the Home Secretary to put pressure on the DCCT to accelerate the enquiries.²⁰⁵ Of importance, too, by the late 1940s was the impending promise of independence, as we saw in Kishan Datt’s petition in the introduction to this study.

By the close of empire, then, the category of the criminal tribe was a far cry from that originally espoused in the 1871 legislation. The Act came to encompass mixed-caste gangs whose association rested upon their commission of crime alone. Its measures – although encoded within alternate legislation – had also been applied to habitual offenders, to which we return in chapter III. And whilst ethnicity remained a central feature of most notifications, the target of these shifted from whole communities who

²⁰⁵ ‘Note by V. B. Stainton, 15 March 1939’, Home/Judicial B Progs., 1939, File no. 262, PSA.

were spread across the province and beyond, to smaller sections of ethnic groups whose supposed criminality was rooted in contingent geographic settings and local circumstance. By widening the scope of the Act to include ever more *types* of so-called criminal tribes, the Department ensured its continued relevance to the colonial project, even after the ‘traditional’ criminal tribes had been ‘pacified’. It is important to note that the process of notification was not a unilateral one, even if it was unequal. As independence neared, individuals and communities began to demand – and achieve – exemption from the Act. In contrast to this increasingly nebulous and amorphous legal application of the Act, however, a more precise and definite conception of the criminal tribe emerged. As the next section demonstrates, the bureaucratic practices of the Department worked to produce a material and intelligible category of the criminal tribe.

The Criminal Tribes Department

In April 1925, the Department organised the first of what became an annual sports tournament in Punjab. The sports teams were made up of individuals who were interned in the various criminal tribe settlements located across the province. Held in Amritsar and attended by the gentry of the city, the tournament included ‘a great and imposing rally of members of the criminal tribes both young and old, men and women’.²⁰⁶ As the *Tribune* newspaper reported, ‘Their respectable appearances, their dress and their deportment were a striking demonstration of the change which has taken place in their habits and mode of living by the silent and strenuous work of the Department.’²⁰⁷ This event, emblematic of many organised over the years, sought to demonstrate the work *being done* by the Department. The visible transformation of these individuals from supposed criminals into ‘respectable’ members of society proved, ostensibly at least, the Department’s successes – it made clear the workings of the Criminal Tribes Act. More intrinsically, however, it also confirmed the category of the criminal tribe. The remainder of this chapter examines the paraphernalia of the Department, which, it argues, repeatedly performed, or made real, not just the implementation of the Act but the existence of the criminal tribe. Before turning to the Department’s institutional apparatus and documentary practices, in turn, this section details the history behind its establishment, and its bureaucratic structure.

²⁰⁶ *Tribune*, 11 April 1925, p. 6.

²⁰⁷ *Ibid.*

By the early twentieth century, the original 1871 Act had been through several amendments. Its geographic reach had been extended from the provinces of Punjab and the United Provinces and Oudh to also include Bengal (1876), Bombay and Sind (1899), and eventually the whole of British India (1911). Similar enactments had also been brought into force in many of the princely states.²⁰⁸ The amended Criminal Tribes Act (III of 1911) marked a new phase in the legislation's history. It expanded the Act's geographic reach and significantly enlarged the powers of local governments in the provinces.²⁰⁹ Notably, they could now notify communities without seeking permission from the Governor-General. Owing to these changes, the Lieutenant-Governor of Punjab, Michael O'Dwyer, appointed a committee in 1913 with the purpose of examining the 'various administrative problems that present themselves in connection with criminal and wandering tribes' and to make recommendations in light of the amended legislation.²¹⁰

Headed by Hari Kishan Kaul, an Indian Civil Service officer, and L. L. Tomkins, a senior police officer, the committee embarked on an investigation into the already notified criminal tribes, as well as the 'wandering gangs who reside under portable reed, or cloth, shelters' about whom 'nothing whatever was known'.²¹¹ Drawing on ethnographical works, government reports, and conducting its own census, the committee submitted its report the following year. In their concluding remarks, the authors stated:

We have tried to show that the reclamation of the criminal tribes has suffered in the past for want of a definite policy. If it is now decided to pursue the policy which is recommended in this report, then it will be necessary to appoint a special officer of Government to control generally all the work connected with the criminal tribes, to see that it proceeds on uniform lines in all parts of the province and to enforce the regulations in respect of the members of criminal tribes under various degrees of restraint and in the different institutions.²¹²

Consequently, the Punjab government asked Kaul to devise a comprehensive new scheme for the criminal tribe project. The scheme was vast in scope – in terms of expenditure, land and bureaucracy – and largely centred on the establishment of various state institutions: penal, reformatory, labour, and educational. After the Government of India

²⁰⁸ Similar legislation was enacted in many of the princely states of Rajputana, Punjab and Central India.

²⁰⁹ For more detail on these increased powers, see Radhakrishna, *Disbonoured by History*, pp. 37–39.

²¹⁰ Kishan Kaul and Tomkins, p. 1, V/27/161/25, IOR.

²¹¹ *Ibid*, p. 2.

²¹² *Ibid*, p. 85.

rebuffed an initial, more extensive, scheme, a revised programme provided for twelve agricultural settlements, which would accommodate 6000 persons in all, thirteen industrial settlements, which would accommodate 6500 persons, and a reformatory settlement. To implement this ambitious project, the Punjab government established a central agency, the Department, headed by the newly-created post of DCCT.

Kaul was given responsibility for developing the structure of the Department as the first DCCT (1917-1924). The Department was responsible for the inauguration, inspection, supervision, and management of the settlements, and for liaising with local police officers in the districts on all matters related to the criminal tribes.²¹³ In the districts, the everyday workings of the Act were delegated to more ambiguously-placed local actors who performed the functions of the state whilst remaining outside of the formal bureaucracy. It was village officials, namely *lambardars*, who took roll-call and supervised the movements and activities of criminal tribes in their localities, often far removed from the managerial and supervisory gaze of the Department. The Act therefore heavily relied on the pre-existing structures of policing in the subcontinent. The police force in rural India was remarkably small, owing to the financial constraints faced by local governments.²¹⁴ As such, the colonial government relied on village leaders and watchmen to provide surveillance and monitoring of 'bad characters', to report crime, and apprehend criminals.²¹⁵ These intermediaries were a constant source of critique. In 1925, the DCCT bemoaned that the village roll-calls were a 'farce' because the *lambardars* were 'mostly illiterate, and not above suspicion in the matter of honesty'.²¹⁶

The DCCT had charge over numerous staff directly related to the administration of the Act. This included the staff who supervised and ran the criminal tribe settlements and directly managed villages in which ten to twenty per cent of the notified communities lived. Even within these more directly controlled spaces, however, supervision by the Department, as we will see below, could be remarkably light. From 1926, the DCCT's staff included Divisional Criminal Tribe Officers (DCTOs) who had the responsibility of touring the districts to supervise the activities of both the local police and the village

²¹³ 'Report on working of the Criminal Tribes Act (III of 1911) in the Punjab for the year 1916', Home/Police A Progs., October 1917, Nos. 256-58, PSA.

²¹⁴ Arnold, *Police Power and Colonial Rule*; Rajnarayan Chandavarkar, 'Customs of Governance: Colonialism and Democracy in Twentieth Century India', *Modern Asian Studies*, 41.3 (2007), 441-70; Kumar.

²¹⁵ In Punjab, the system whereby village leaders and watchmen bore responsibility for surveillance, reporting of crime, and apprehending criminals was given legal sanction through the Punjab Laws Act (1872). Mark Brown, *Penal Power and Colonial Rule.*, p. 172.

²¹⁶ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1925* (Lahore: Government Printing, Punjab, 1926), p. 5, V/24/633, IOR.

officials.²¹⁷ The DCTOs were, in the words of DCCT Sheikh Abdul Hameed in 1936, ‘the backbone of the administration of the Criminal Tribes’.²¹⁸ Despite these remarks, even he noted the limited efficacy of their watch. There were only four officers for the entirety of the province, meaning their jurisdictions were ‘too unwieldy to be held efficiently’.²¹⁹ There was a palpable gap, therefore, between those who worked directly for the Department and the individuals enacting the legislation on the ground.

By the mid-1930s, as the DCTOs toured the districts more frequently, DCCT Hari Singh did report that the village officials had come to ‘realise and perform their duties with greater attention than before’.²²⁰ On the one hand, this could indicate that as the Department exercised greater surveillance over its intermediaries, the functioning of the Act became more systematised, and the gap between state functionaries had perhaps diminished. On the other, it reveals the tensions inherent in the state, as the higher echelons – the DCCT and his centralised staff – frequently jarred with these ambiguously placed actors. The Department was charged with the task of maintaining the Act, which it did by submitting papers and files, recording statistics, establishing institutions, formulating policies and procedures, and, chiefly, by giving directives and orders. In more local settings, the state itself was constituted by these ambiguously placed actors. They were the ones who conducted, in Mathur’s words, the ‘more gritty, hands-on work’ of the state.²²¹ For them, the criminal tribe project was often an ambivalent or irrelevant concern.

Although these local actors played the most decisive role in shaping the everyday encounter between criminal tribes and the state, the Department was responsible for enacting, or *making real*, the Act in the eyes of the government. The DCCT co-ordinated the entire operation from his central office in Lahore. Proposals for the notification, registration or exemption of groups often emanated from superintendents of police in the districts before passing through the DCCT’s hands. This was unlike other provinces where district magistrates performed the role.²²² Whilst removed from the everyday workings of the Act, the DCCT’s office functioned as a central hub through which

²¹⁷ At first there were two officers, one posted at Ambala for the eastern districts and one at Lahore for the central districts.

²¹⁸ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1936*, p. 22, V/24/634, IOR.

²¹⁹ Ibid.

²²⁰ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1934*, p. 26, V/24/634, IOR.

²²¹ Mathur, p. 19.

²²² This responsibility was delegated to district magistrates by the latter years of the Act. On other provinces, see *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 46.

requests, orders and information constantly passed, accruing official sanction even if this did not always translate into practice. It was here, through these often mundane bureaucratic processes, that the criminal tribe was infused with a materiality for the state. Yet, this process was dependent upon local actors. The Department relied upon local police officers and village officials for the supply of information, and to enact orders. There was a complex interplay, therefore, between centre and periphery, Lahore and the districts, and the DCCT and his local intermediaries.

The Department occupied a peculiar position within the Punjab bureaucracy. The DCCT reported directly to the government and thus had no administrative superior. Yet, given that the criminal tribe project was deeply imbedded in other spheres of governance – of policing, labour, health, etc. – there was often uncertainty over jurisdiction. In 1920, for instance, after receiving complaints about the conditions at the Dhariwal industrial settlement, the Commissioner of Lahore questioned what responsibility he bore to the scheme. ‘Hitherto’, he stated, ‘I have treated these Criminal Settlements (at Dhariwal and Amritsar) as beyond my province. They are under the DCCT, who is, I believe, directly under Government.’²²³ And in 1939, in response to criticism from F. L. Brayne, Commissioner of Rural Reconstruction, regarding conditions at the Chhanga Manga settlement, the DCCT bitterly complained that:

There are already so many officers who cut across his unmarked jurisdiction that Deputy Commissioner for Criminal Tribes is left with very little freedom to take initiative as he would like to. As such he is in a condition of delicate equipoise, and his daily work is very much like steering between Scylla and Charybdis.²²⁴

The Department was also seemingly viewed in a somewhat disparaging light within the bureaucracy. In 1937, police in Ambala investigated two of the Department’s staff: Abdul Karim, DCTO, and his officer Barkhurdar Khan. The two worked at the Kutchaband Colony in Ambala city where, it became apparent, they had misappropriated funds through forged receipts. After investigation, they were prosecuted.²²⁵ The DCCT, however, was not informed prior to the police investigation. The Commissioner of Ambala remarked that, ‘One can well imagine what an outcry there would have been if the Ambala police had treated one of the stronger departments (say, the Irrigation

²²³ ‘Letter from C. M. King to E. Joseph, Revenue Secretary to Government, Punjab, 2 March 1920’, Home/Police A Progs., 1920, Nos. 58-62, PSA.

²²⁴ For more on F. L. Brayne, see Clive Dewey, *Anglo-Indian Attitudes: The Mind of the Indian Civil Service* (London: Hambledon Press, 1993). ‘Note from DCCT, date unknown’, Home/Judicial B Progs., 1939, File no. 524, PSA.

²²⁵ Under sections 409, 420, 467 and 471 of the Indian Penal Code.

Department or the Army Department) in the way that they have treated the Criminal Tribes Department'.²²⁶

Despite these uncertainties, the establishment of such a vast and centralised state apparatus for the control and reformation of the criminal tribes set Punjab apart from other provinces. Elsewhere, the punitive side of the Act was the preserve of the Police Department, whilst everyday supervision was similarly carried out by locally-situated intermediaries. Reformatory activities were carried out either by philanthropic organisations, specially appointed Reclamation Officers (as in the United Provinces), or as part of the remit of Backward Classes Departments (as in Bombay).²²⁷ The criminal tribe project was thus divided and subject to the varying and potentially competing concerns of various state departments. Conversely, in Punjab, the Department ensured a more cohesive vision of the criminal tribe, encompassing both the restrictive and reformatory aspects of the Act. The paraphernalia of the Department – its institutions, personnel, and bureaucratic practices – was used simultaneously for two markedly different ends: reformation and control. The state was not merely contested and diffracted at the lower levels, then – although local concerns and personal imperatives did shape the nature of this encounter – but was a fundamentally contradictory and multifaceted endeavour. Despite this, one thing remained constant throughout the daily workings of the Department: the reality of the criminal tribe. As the remainder of this chapter demonstrates, the material effects which translated the Criminal Tribes Act into practice – namely the Department's institutional apparatus and paper practices – imbued the category of the criminal tribe with an intelligibility for the state.

Institutional Apparatus

The most striking ideological shift from the period prior to the Department was its pursuit of a new agenda based on reformation. The criminal tribe project was no longer to be merely punitive but would attempt to reform the so-called criminal tribe. To implement this agenda the Department established a vast apparatus of institutions within which members of the criminal tribes were to be punished, worked, trained, and educated. These were primarily settlements (reformatory, industrial or agricultural) in which individuals, and often their families, resided, although it also included semi-autonomous

²²⁶ 'Note from the Commissioner, Ambala Division, 3 September 1937', Home/Judicial B Progs., 1939, File no. 383, PSA.

²²⁷ *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 45.

educational or training centres. St John's Ambulance, for instance, maintained several Criminal Tribe Centres across the province where it enrolled younger members of the communities to train as ambulance workers.²²⁸ By drawing, primarily, on the reports produced by the DCCT to demonstrate the yearly workings of the Act, this section of the chapter illustrates the institutional landscape of the Department. The picture which emerges is one of precariousness, malpractice and ambivalence – exemplified by the case of the failed industrial settlement at Dhariwal. Yet, the very existence of these institutions, despite their manifold complications, translated the legal category of the criminal tribe into an embodied, physical and material one.

This reformative shift was not only evident in Punjab. Across the subcontinent, partly impelled by the imperatives of the Salvation Army and other philanthropic organisations involved in the criminal tribe project, the administration of the Act from the 1910s was shaped, at least in part, by a reformative agenda.²²⁹ Since its 1911 amendment, the Act had made provision for the establishment of settlements. The combined effect of deterrence, punishment and reformation, it was suggested, would 'cure' the criminal tribes from their criminal habits.²³⁰ This reflected broader shifts in criminology and penology in the subcontinent which had come to emphasise the socio-economic basis for crime, and the growing belief that 'every convict is a potential citizen'.²³¹ In the 1910s and 1920s, as political power was rooted more conclusively in the provinces – by way of both dyarchy and the amended Criminal Tribes Act (1911) – provincial governments therefore hastily set up institutions to house, control and reform the criminal tribes.

In the same period, the question arose of the depressed classes – an amorphous term used to refer, variously, to untouchables, tribal groups, socio-economically deprived communities, and the criminal tribes. We return to this subject in chapter IV, where the transformation of the criminal tribe from a punitive to welfare category after

²²⁸ In 1929, 1125 individuals had been trained in these centres, with a further 1000 under training. *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1929* (Lahore: Government Printing, Punjab, 1930), p. 12, V/24/633, IOR.

²²⁹ The inclusion of the provision to establish settlements in the 1911 amendment of the Criminal Tribes Act is attributed to Commissioner Booth-Tucker of the Salvation Army. See Radhakrishna, 'Surveillance and Settlements', p. 179.

²³⁰ Frederick Booth-Tucker suggested the following principles for 'curedom' of the criminal tribes: Punitive, Deterrent, Preventative, Curative. Frederick Booth-Tucker, *Criminocurology, Or, The Indian Crim and What to Do with Him: Being a Review of the Work of the Salvation Army among the Prisoners, Habituals and Criminal Tribes of India*, 4th edn (Simla: Liddell's Printing Works, 1916).

²³¹ *Times of India*, 24 February 1940, p. 8. See Bejoy Shanker Haikerwal and Radha Kamal Mukerjee, *Economic and Social Aspects of Crime in India* (London: George Allen & Unwin Ltd, 1934).

independence is traced back to the debates over the depressed classes from the 1910s. For now, it is important to note that debates over uplift, amelioration and reform were current in political arenas and spheres of governance beyond those directly related to the Criminal Tribes Act. For the Punjab government – as emphasised in chapter IV – ‘the most important and prominent aspect of this problem [of the depressed classes] is that connected with the reformation of the criminal tribes’, as stated by H. D. Craik, Revenue Secretary, in 1916.²³² The reformative agenda of the Department was therefore also shaped by wider discussions over how to elevate – or assimilate – so-called backward peoples into civil society.

The reformatory aspect of the Criminal Tribes Act is one which has drawn some, albeit still limited, historiographical attention.²³³ The disciplinary effects of the settlements (incarceration, labour, religious teachings, supervised family life, and so on) have been analysed for their transformative ideology. As Rachel Tolen argues, ‘One of the central objectives of the system of reform was to transform criminal tribespeople into productive and subjected bodies.’²³⁴ Although undeniably useful, these analyses have often scrutinised ideological intent more than material application. Conversely, this section examines the interplay between the two, by developing Peter Steinberger’s thesis that institutions are ‘embodiments and reflections – systematic, organized distillations – of ontological claims’.²³⁵ It argues that these institutions were the physical incarnation, brick and mortar proof, of the belief that the criminal tribe was an actual, existing category – a certain kind of subject over whom heightened state control was warranted because of their criminal proclivity, but one that was ultimately reformable. Every aspect of the Department’s institutions, therefore – from the hours worked, types of employment or domesticity performed, meals served, and even the location and size of housing quarters – was shaped by the ideology which sustained the criminal tribe. These institutions were thus constituted by the category, whilst, simultaneously, their very existence ascribed a materiality to it.

Prior to the establishment of the Department, the Punjab government had an unsuccessful history of experiments with institutions for the criminal tribes. As early as 1859, Edward Prinsep, Deputy Commissioner of Sialkot, obtained permission to establish

²³² ‘Letter from Mr Craik, Revenue Secretary, Government of Punjab, to Home Department, Government of India, 16 October 1916’, Home/Police A Progs., Nos. 50-59, July 1917, NAI.

²³³ See introduction, footnote 49, p. 11.

²³⁴ Tolen, p. 119.

²³⁵ Steinberger, p. 4.

a number of reformatory enclosures, termed *keôts*, on government waste land. Within these, Sansis and Pakhiwaras were settled in the belief that being given land to cultivate, in addition to physical restraint, would induce them to abandon their supposed ‘thieving habits’.²³⁶ By 1870, there were eight of these *keôts*, despite a judgement in 1867 by the Punjab Chief Court which ruled that Book Circular No. 18, through which surveillance over these communities had been legalised, did not have the force of law.²³⁷ These *keôts* remained in place during the early decades of the Act but in 1914 the report produced by Kaul and Tomkins noted that ‘the whole history of these settlements [...] is a record of trouble and difficulty’.²³⁸ Without adequate land, interned families became either destitute or forced into crime. Recognising the failure of the institutions thus far, the scheme implemented by the Department from 1917 onwards sought to reformulate the use of such sites.

The Department was quick to deliver results. In 1917, it established a Reformatory Settlement in Amritsar and an industrial settlement at Dhariwal. Two years later, a further five settlements (both industrial and agricultural) were in place. By the end of 1919, there were twelve industrial and ten agricultural settlements, with a total population of 8583.²³⁹ Industrial settlements fell out of favour by the 1920s, but the number of agricultural ones continued to rise, reaching a peak population of 12,669 in 1938. Until the 1930s, the settlements were managed either by the Department or by philanthropic organisations, although these remained under the overall command of the DCCT.²⁴⁰ Notably, it was primarily the agricultural – and more lenient – settlements whose supervision was delegated beyond the Department’s direct control. By the mid-1930s, questions arose over the efficacy of these settlements, and the Department took over control.²⁴¹ This centralised management distinguished Punjab from other provinces where settlements were managed through a mix of government departments and

²³⁶ ‘Letter from T. H. Thornton, Secretary to the Government, Punjab, 22 March 1870’, Home/Judicial, Nos. 42-43, 14 May 1870, NAI.

²³⁷ For more on this earlier stage of the Act’s development, see Mark Brown, *Penal Power and Colonial Rule*; Major, ‘State and Criminal Tribes in Colonial Punjab’.

²³⁸ Kishan Kaul and Tomkins, p. 9, V/27/161/25, IOR.

²³⁹ ‘Letter from Mr J. P. Thompson, Chief Secretary to Government, Punjab, to the Secretary to the Government of India, Home Department, 23 July 1920’, Home/Police A Progs., Nos. 118-22, December 1920, NAI.

²⁴⁰ The organisations included the Salvation Army, Anjuman-i-Ahmadyya-Ishaat-i-Islam, Arya Samaj, Sanatan Dharm, Dev Samaj, Qadian Society, Chief Khalsa Diwan, Hindu Sabha, and Anjuman Islamia.

²⁴¹ The Department took direct control over all settlements in 1935 (bar Palampur, which remained under the Canadian Mission until its closure in 1937).

philanthropic organisations.²⁴² The scale of its institutional apparatus also set Punjab apart. A far larger percentage of the criminal tribe population were housed in such institutions here than elsewhere: twenty per cent of the notified population in 1947, compared to 0.25 per cent in the United Provinces.²⁴³

This institutional apparatus was precarious and transitory, however, as it was subject to the changing whims of the state. The Department opened and closed institutions depending on local demands for labour, the input of philanthropic organisations (until the 1930s), and the needs of the Punjab government. Some could open and close within a year. For example, the Department founded an industrial settlement at Montgomery in September 1917 to supply labour to the Public Works Department. The settlement was closed in March 1918 and the 470 inmates transferred to Canal Works at Luddan. Only a couple of months later, in July, the need for new military barracks at Montgomery – owing to the war effort – saw the settlement revived with a new population of 240 inmates.²⁴⁴ This constant state of precariousness had significant effects on the everyday lives of the individuals interned within the settlements. Their access to land, housing and employment was vulnerable to administrative changes and shifting priorities which could uproot them to new surroundings with relatively little notice.

Other settlements remained in place for decades, although their inhabitants changed over time. Most notably, the Amritsar Reformatory – the only reformatory settlement in the province – had a constantly shifting population, with hundreds of inmates passing through its walls each year. Established on the site of an abandoned jail, it was intended to house the most ‘incorrigible’ or dangerous of the criminal tribes – namely, those individuals (at least of settled communities) who had two or more convictions under the Indian Penal Code or Criminal Tribes Act. Inmates, as the term suggests, were not allowed to go out at night and roll-calls were held every morning and evening, with surprise roll-calls made occasionally in the night. Its purpose was to discipline the worst behaved of the criminal tribes and teach them skills of industry before

²⁴² At the time of the Enquiry Committee’s investigations, the Harijan Sewak Sangh managed one settlement in the United Provinces, one in Bihar, and managed the reformatory activities at Andha Mogul in Delhi. In Bombay, all the settlements were managed by the Backward Classes Department. In Madras, three settlements were managed by the Police Department and one by the Salvation Army. *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, pp. 56–57.

²⁴³ Schwarz, pp. 83–84.

²⁴⁴ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1918* (Lahore: Government Printing, Punjab, 1919), Appendix A, V/24/633, IOR.

they were sent to the more lenient industrial or agricultural settlements. In the words of DCCT Hari Singh in 1934,

Generally members of Criminal Tribes on their first admission into the settlements are found to be averse to work and labour. The difficult task of breaking fresh and obdurate gangs into harness, of teaching them trades and inculcating in them habits of industry is done in the Reformatory Settlement, Amritsar.²⁴⁵

The settlement thus had a high turnover of inmates. In 1918, 755 individuals were transferred to new institutions, compared to an end of year population of 625.²⁴⁶ The settlement was, in effect, in a permanent state of transience in terms of its inhabitants. As such, it was financially a perpetual loss-making enterprise. In 1918, DCCT Kaul bemoaned that ‘the necessity to transfer, with their gangs, young men who just begin to learn industries [...] is a difficulty which must always be faced in an institution which is essentially a distributing centre’.²⁴⁷ As individuals were suitably disciplined and taught trades, they were sent on to more lenient settlements. Their physical movement from one institution to another thus reflected their cultural or behavioural transformation.

The ideology that underlined the Department’s institutional apparatus, then, was the notion of a progressive reformation – from criminal to productive member of society. In other words, of the *reformable* criminal. Of central importance in this journey was the communities’ physical rooting on the land as agriculturalists, which was, as argued DCCT Hari Singh in 1928, ‘an essential stage in the process of reclamation. This coupled with the provision of fixed means of livelihood checks their criminal activities and accelerates the process of their assimilation in the general body of the community’.²⁴⁸ Progress was therefore equated with the ideal of the modern, productive, agriculturalist peasant. In 1934, Singh proudly reported that

The tenants of Agricultural Settlements are making steady progress. They are encouraged to adopt improved methods of agriculture and some of them surpass their free neighbours in the use of improved agricultural implements and modern methods of agriculture. The inmates of Agricultural Settlements Chak 53-5L, 47-3R and 39-3R took part in the District Ploughing and Produce Competitions held by the Department of Agriculture at Montgomery in 1934, and won no less than 34 prizes of the value of Rs. 147, thus maintaining the distinction which they have gained in the past years by winning prizes in agricultural operations as well as sports. The competitors

²⁴⁵ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1934*, p. 11, V/24/634, IOR.

²⁴⁶ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1918*, Appendix A, V/24/633, IOR.

²⁴⁷ *Ibid.*

²⁴⁸ ‘Note by Hari Singh, 14 December 1928’, Home/Judicial B Progs., 1929, File no. 103, PSA.

mostly belong to the wandering Criminal Tribes, who had never handled a plough before being brought to the Settlements.²⁴⁹

The DCCCT's comments emphasise the progress made by the inhabitants of the agricultural settlements in the province, who were now termed 'tenants' to highlight their stake in the land. His statement also reveals, as Jessica Hinchy has recently argued, that the reformative agenda behind the criminal tribe project was structured by colonial perceptions of the sturdy hard-working Indian peasant – against whom the unproductive, lawless nomad was construed.²⁵⁰ This was the ideal which the criminal tribes were to progress towards. In order to facilitate this progression, every aspect of the Department's institutions – from the physical design of the settlements to the regulation of certain behaviours – was aimed towards this end.

The very construction of this institutional apparatus was shaped by this idea. The layout of criminal tribe settlements were designed to give their superintendents 'a clear view into the quotidian details of residential life'.²⁵¹ Designs across the province varied. Some were built according to the 'French Canadian Plan', in which a road ran through the centre of the settlement with individual cottages facing onto it. Elsewhere, inmates were housed in long rows of cell-like rooms. The underlying motive across these varied designs, however, was quick and efficient surveillance. The 'fact' of the criminal tribe – of an individual predetermined to commit crime – thus influenced the physical surroundings of the settlement; in turn, their existence was 'proof' of the criminal tribe. As William Glover argues, these designs were not merely tools of discipline but constructed in line with the 'moralizing gaze' of the colonial state.²⁵² In such a setting – organised, disciplined, hygienic, and far from the 'unkempt bazaars and confusing tangle of streets' which were considered 'emblematic of moral degeneracy' – reform was not only possible, but actively induced.²⁵³ The design of the settlements thus hinged on a common assumption amongst colonial officials that material settings – 'a properly ordered material world' – could lead to moral development, thereby altering undesired behaviours.²⁵⁴

²⁴⁹ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1934*, p. 10, V/24/634, IOR.

²⁵⁰ Hinchy notes that this ideal of the Indian peasant itself drew upon Victorian notions of masculinity. Hinchy.

²⁵¹ Glover, p. 548.

²⁵² *Ibid.*, p. 550.

²⁵³ *Ibid.*, p. 546.

²⁵⁴ *Ibid.*, p. 541.

In line with this thinking, the Department scrutinised almost every element of routine life within the settlements. This included penal measures, such as the mandatory roll-call which was (in theory) taken at least once a day by the officer in charge, who was then to report any unauthorised absences to the nearest police station. These officers were required, at least once in every 24 hours, to physically see every inmate resident in the settlement and visit every barracks and connected building. The Department also organised and supervised the daily employment of inmates, whether as contracted labour or agricultural workers. They provided training in ‘appropriate’ industries, such as carpentry, shoe and leather work, tailoring, *munj* pounding, ban twisting, *durree* making and weaving.²⁵⁵ Women, who were generally interned on account of their husbands, were taught knitting, sewing, embroidery and *nimar* making.²⁵⁶ The Department also assessed the health of inmates by monitoring the number of illnesses, diseases, births and deaths in the settlement. Inmates were encouraged to deposit their savings in the bank or postal cash certificates, and the Department created co-operative societies to ‘inculcate the spirit of thrift and economy’ by offering co-operative loans.²⁵⁷ Every banal and quotidian activity – whether work, education or training, cooking, housework, family life, and religious observance – was thus informed by the idea of the reformable criminal.

The effect of these measures on the ground is difficult to ascertain. In 1934, there were sixty-four absconders from settlements in the province, indicating that there was not sufficient land or employment available for all inhabitants. In the same year, two men were convicted for offences against property in Kot Adhian and a theft was alleged at Chak 27-2L, but neither the police nor the settlement superintendent could identify the culprit – suggesting that scrutiny was less rigorous than suggested. Yet, DCCT Singh praised the results thus far achieved:

The healthy influences brought to bear on the settlers such as religious teaching, compulsory education of children, First Aid training of youths and instruction in home nursing and household hygiene given to the girls have not only raised their social status, but have also made them model families among the peasants of the Punjab. Thousands of men and women who had no recognised religion worth the name, who had antique morals and were a prey to numerous superstitions, who broke the heads of each other over petty quarrels, who pawned their women for small loans till their return from

²⁵⁵ *Report of the Criminal Tribes Enquiry Committee, United Provinces 1947* (Allahabad, 1948), pp. 98–99, V/26/161/1, IOR.

²⁵⁶ *Ibid*, p. 100.

²⁵⁷ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1934*, p. 24, V/24/634, IOR.

thieving expeditions, now present a most striking contrast to those who knew their past.²⁵⁸

The DCCT had good reason to emphasise the Department's successes; the successful workings of the Criminal Tribes Act ensured the continued relevance of the entire bureaucratic enterprise. The actual changes brought about by the criminal tribe project were almost immaterial, however. As with the sports tournament in Amritsar, these institutions were a visible means through which the Criminal Tribes Act was materially translated into practice. The DCCT was aware that the settlements did not exist in isolation, nor were their inmates insulated from wider society. Rather, they were a visual example of the work being done and the 'progress' being made. The everyday activities which structured these institutions proved the 'successes' of the Department and, in turn, the existence of the criminal tribe. Thus, these individuals who now presented 'a most striking contrast' to their former criminal selves were evidence not only of their own reformation, but validated the ideology sustaining the criminal tribe project more broadly.

The constant collection, production and dissemination of information, mostly statistics, regarding the settlements also validated the criminal tribe project. As this section has illustrated, the Department relied upon a vast quantity of statistical information regarding its institutional apparatus: the number of settlements established or closed in a year; each settlement's population, differentiated between men, women and children; the number of births, deaths, and illnesses in a year; the number of absconders; and so on.²⁵⁹ The colonial obsession with numbers was an integral part of what Arjun Appadurai describes as 'the illusion of bureaucratic control', as 'countable abstractions, both of people and of resources, at every imaginable level and for every conceivable purpose, created the sense of a controllable indigenous reality'.²⁶⁰ Collecting this information produced a veneer of control not only in the precarious and transitory institutional landscape of the Department, but within an unstable, uncertain and anxious empire.²⁶¹ The generation of this information also sought to overcome the increasingly nebulous and diffuse application of the Act on the ground.

²⁵⁸ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1934*, p. 14, V/24/634, IOR.

²⁵⁹ This material was published by the DCCT in the yearly report on the administration of the Criminal Tribes Act.

²⁶⁰ Arjun Appadurai, 'Number in the Colonial Imagination', in *Orientalism and the Postcolonial Predicament: Perspectives on South Asia*, ed. by Carol Breckenridge and Peter van der Veer (Philadelphia, PA: University of Pennsylvania Press, 1993), pp. 314–39 (p. 317).

²⁶¹ See Stoler, *Along the Archival Grain*.

Importantly, the actions of the interned individuals were also crucial to materialising the criminal tribe. Whilst state actors may have provided the framework through which this reformation could be visually demonstrated (by facilitating employment or delivering classes, for instance), it was the actions of the criminal tribes themselves which ‘proved’ the success of the project. The options available to these individuals were limited, given the punishments for transgression of the rules. Yet, by taking to agriculture, by attending training or school, by adhering to the rules of the settlement – namely, by ‘reforming’ – these individuals also validated the idea of the reformable criminal, and thus the criminal tribe. Individuals who failed to adequately reform – those who absconded or did not exhibit the prescribed behaviours of sedentarised family life within the settlement – further validated the criminal tribe: their transgression ‘proved’ their criminality.

The actual workings of these institutions were ridden with malpractice, inconsistency, and ambivalence, however. In 1920, the Punjab government launched an investigation after receiving a report from Dr E. F. Hottinager, Civil Surgeon for Gurdaspur, on the conditions he encountered at the Dhariwal industrial settlement during a surprise visit. The Department had established the settlement in 1917 to supply labour to the New Egerton Woollen Mills. By 1920, the population exceeded 1800 persons. The site was frequently waterlogged and damp, meaning that the lodgings were unsanitary and unfit for purpose. Mortality and sickness rates were higher than normal for criminal tribe settlements, with frequent outbreaks of infectious diseases amongst the children. Cases of abuse were not uncommon. The case, as outlined below, reveals the thin veneer of efficiency, control and progress through which the Department functioned. If one scratched beneath the surface, an alternative picture emerged. Significantly, this did not necessarily disrupt the category of the criminal tribe; instead, the category could legitimatise malpractice.

In response to Dr Hottinger’s report, C. M. King, Commissioner of Lahore, launched an investigation. During his visit, he noted Dhariwal’s ‘deceptive air of prosperity and well-being’.²⁶² ‘To the casual onlooker’, he stated, ‘who visits the place after giving notice of his visit and who is unable to spend more than a very short time in going through the various wards, the place must seem a model settlement with its well-built

²⁶² ‘Letter from C. M. King to E. Joseph, Revenue Secretary to Government, Punjab, 2 March 1920’, Home/Police A Progs., 1920, Nos. 58-62, PSA.

houses and its well-kept compound.²⁶³ Noting there was only one sweeper employed to clean two sets of barracks, he suggested that it was ‘absolutely impossible with this sanitary staff to keep the place as clean as it was when I saw it’.²⁶⁴ In response to a comment in the settlement visitor book that the children ‘all look fat and happy’, King remarked, unconvinced, that many others ‘were nothing but skin and bone’.²⁶⁵ He noted:

The fat children are kept well in front and have been made to cheer in a way which reminded me instantly of the Squeer’s establishment at Dothe Boys’ Hall, so pitiful was the sound made by order and without an atom of spontaneity. The living skeletons are kept well in the back ground.²⁶⁶

There was a clear superficiality, then, to the site. The clean, well-ordered and maintained buildings with happy and healthy inhabitants were a mere veneer of efficiency, a façade of progress made by the Department in the successful reformation of the criminal tribe.

Yet, this did not undermine the intrinsic ideology underpinning the institution. The commissioner’s response was not to decry the criminal tribe project, but the singular failings of the Dhariwal institution itself. He rooted these failings in personal misconduct. The superintendent had banned the consumption of beef in the settlement even though it was cheaper and easier to procure than mutton at the local market. The inmates were reported to be unaccustomed to cooking with vegetables and making chapatti. The commissioner lamented the ‘half burnt and half raw produce of their culinary efforts’, on which he placed the blame, at least in part, for the high mortality and sickness rates.²⁶⁷ More seriously, at the time of investigation, one of the settlement supervisors, Tulsi Ram, was imprisoned under trial for killing an inmate ‘by knocking him about when he was in a bad state of health’.²⁶⁸ The blame was principally laid on the supervisor’s caste (*Khatri*) which, several officials argued, made close association with the inmates, Sansis and Kuchbands (often considered as untouchables), ‘most repellent’.²⁶⁹ The potential for abuse of power by the young men employed as subordinates within the settlements was widely recognised by higher-ranking state officials. The ‘docile and submissive’ nature of the inmates – somewhat at odds with the characterisation of the criminal tribe – was also considered a contributing factor, as the supervisors were ‘unused to a position of power

²⁶³ ‘Letter from C. M. King to E. Joseph, Revenue Secretary to Government, Punjab, 2 March 1920’, Home/Police A Progs., 1920, Nos. 58-62, PSA.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ ‘Note recorded by C. M. G. Ogilvie, Deputy Commissioner, Gurdaspur, in Minute Book, Industrial Settlement, Criminal Tribes, Dhariwal, 1 January 1920’, Home/Police A Progs., 1920, Nos. 58-62, PSA.

²⁶⁹ Ibid.

over others', especially these 'humble and extremely low caste creatures'.²⁷⁰ Again, blame for malpractice was displaced from the Department and the criminal tribe project onto the intricacies of caste society, and even onto the criminal tribes themselves. In July 1919, the Punjab government ordered that the settlement at Dhariwal be abolished as soon as arrangements could be made to relocate the men.

It was not just Dhariwal which was considered a failure and closed. In 1938, the DCCT remarked that 'colony schemes have failed nearly everywhere', as he noted the bad conditions at Dhangoo (Pathankot) and Shahabad colonies.²⁷¹ Recurrent problems were overcrowding and congestion, as too many inmates were interned in settlements with few amenities, employment or land. This resulted in high levels of disease and death. The provision of employment also proved an issue. The Department established settlements where there was a specific demand for labour, such as at Dhangoo where the inmates were intended to work at the nearby Hydro Electric Power Station. In most settlements, however, the wages were insufficient, especially to support whole families, and the work was often seasonal. At Dhangoo, settlement officials allowed the inmates to go on leave to make their livelihood through begging and snake charming.

There was a clear lack of control exercised by the DCCT or higher-ranking officers over these sites. As in other facets of the colonial bureaucracy, subordinate officers and intermediaries often worked without central oversight.²⁷² Indeed, the entire Dhariwal episode was explained in terms of the malpractice of subordinate officers. The episode did not lead to the reformulation of the use of such institutions, at least not in any substantive manner. Staffing could be restructured, institutions abandoned, and new ones built. Even the particular focus of the Department, whether on employment, domesticity or education, could change over time. What remained constant was the ideology that sustained it: the reformable criminal tribe. Such incidences did not undermine the category, but rather confirmed the necessity for state control. The criminal tribe thus remained a persuasive category of state identification. It should be noted, however, that the direct impact of this institutional landscape on the criminal tribes themselves was limited to around one fifth of the notified population. A more pervasive

²⁷⁰ 'Note recorded by C. M. G. Ogilvie, Deputy Commissioner, Gurdaspur, in Minute Book, Industrial Settlement, Criminal Tribes, Dhariwal, 1 January 1920', Home/Police A Progs., 1920, Nos. 58-62, PSA.

²⁷¹ 'Letter from DCCT to Home Secretary to Government, Punjab, 16 February 1938', Home/Judicial B Progs., 1938, File no. 163, PSA.

²⁷² Sherman, *State Violence and Punishment in India*, pp. 3-4.

manifestation of the criminal tribe occurred through the everyday practices of the Department across the province.

Paper Criminality

The Department, like most colonial ventures in British India, was characterised by a dependence on paper – files, registers, minutes, maps, petitions, reports, manuals, and so on. Several scholars have underscored the centrality of paper to both the colonial and postcolonial state in the subcontinent.²⁷³ Beyond demonstrating its ubiquity, the importance of this scholarship has been to show how such documents take on a social and affective life of their own.²⁷⁴ They are not merely ‘passive instruments’, as in the Weberian conception of the bureaucracy, but rather are ‘constitutive of bureaucratic activities and the social relations formed through them’.²⁷⁵ In other words, they take on an active and generative function in determining everyday practices in both governance and wider society. This section explores the role of documents – of rules and regulations, statistics and reports, and of registers, lists and passports – in the criminal tribe project. It draws on the yearly reports of the Department, the police manuals which contained lengthy rules and responsibilities, and correspondence fielded between officials on the actual implementation of these. It builds upon Mathur’s work on the ‘paper state’ and especially her argument that paper ‘constitutes proof’.²⁷⁶ Yet, in this context, paper did not merely constitute proof of state action – that the Department’s work was ‘being done’. Rather, the following analysis argues that through its repeated articulation in the documentary practices of the state, the criminal tribe itself was materially constituted and brought into being.²⁷⁷ Importantly, this had real-world implications for the communities notified under the Act, for whom the category did not remain a bureaucratic entity but

²⁷³ William Gould, ‘Paper, Public Works and Politics: Tracing Archives of Corruption in 1940s-50s Uttar Pradesh, India’, *Contemporary South Asia*, 25.1 (2017), 38–55; Akhil Gupta, *Red Tape: Bureaucracy, Structural Violence, and Poverty in India* (Durham, NC: Duke University Press, 2012); Matthew S. Hull, *Government of Paper: The Materiality of Bureaucracy in Urban Pakistan* (Berkeley, CA: University of California Press, 2012); Mathur; Martin Moir, ‘Kaghazi Raj: Notes on the Documentary Basis of Company Rule: 1783-1858’, *Indo-British Review*, 21.2 (1993), 185–93; Miles Ogborn, *Indian Ink: Script and Print in the Making of the English East India Company* (Chicago, IL: University of Chicago Press, 2007); Bhawani Raman, *Document Raj: Writing and Scribes in Early Colonial South India* (Chicago, IL: University of Chicago Press, 2012); Emma Tarlo, ‘Paper Truths: The Emergency and Slum Clearance through Forgotten Files’, in *The Everyday State and Society in Modern India*, ed. by Chris Fuller and Veronique Bénéï (London: Hurst, 2001), pp. 68–90.

²⁷⁴ Mathur.

²⁷⁵ Hull, pp. 18–19.

²⁷⁶ Mathur, p. 4.

²⁷⁷ In this sense, it was a form of performativity: ‘a performative is that discursive practice that enacts or produces that which it names’. Judith Butler, *Bodies That Matter: On the Discursive Limits of ‘Sex’* (New York, NY: Routledge, 1993), p. 13.

an embodied and often violent experience – a point often overlooked in work on the ‘paper state’.

Although the Criminal Tribes Act was a piece of central legislation, passed by the Governor-General in New Delhi, section 20 enabled the local governments to devise their own rules ‘to carry out the purposes and objects’ of the Act.²⁷⁸ This led to a substantive degree of heterogeneity across the subcontinent in terms of the Act’s everyday administration as each province formulated rules specific to their conditions and overriding concerns. The Department – at the behest of the Punjab government – devised a new set of rules under the amended Act in 1911. These rules regulated, amongst other things: the ‘form and contents’ of the criminal tribes register maintained by district magistrates; the ‘mode in which persons mentioned in section 10 shall report themselves’; ‘the nature of the restrictions to be observed by persons whose movements have been restricted by notifications under section 12 or section 13’; and the ‘management, control and supervision of industrial, agricultural or reformatory settlements and schools’.²⁷⁹ These rules, extensive in scope, were published in the Criminal Tribes Administration Manual and later the Punjab Reclamation Manual.²⁸⁰ These delineated the responsibilities of the various state actors involved in the criminal tribe project, including officers of the Department, police officers in the districts, and intermediaries such as village headmen, as well as those of the criminal tribes themselves. The rules prescribed certain documentary practices which saw a constant production, circulation, and consumption of knowledge regarding the criminal tribes.

Of central importance to these rules were the ‘special staff’ of police officers who were employed ‘in connection with the administration of the Criminal Tribes’ and consisted, where possible, of ‘an intelligent, experienced and reliable English-knowing Sub-Inspector assisted, where necessary, by a competent Head Constable and one or more Foot Constables according to requirements’.²⁸¹ These officials acted as a liaison

²⁷⁸ Section 20 in the 1911 and 1924 Acts corresponds to section 18 in 1871 Act.

²⁷⁹ Section 10 authorised local governments to direct registered members to either ‘(a) report himself at fixed intervals; or (b) notify his place of residence and any change of residence and any absence or intended absence from his residence’. Sections 12 and 13 authorised local governments to restrict the movements of members of criminal tribes to specific areas.

²⁸⁰ A revised edition of the manual was published in 1927. I am unable to find its original publication date. *The Criminal Tribes Administration Manual*, Revised (Lahore: [Government Printing, Punjab(?)], 1927), V/27/161/21, IOR.

²⁸¹ The form of this special staff changed over time, and the responsibilities were later taken over the Divisional Criminal Tribe Officers. ‘Circular No. 3-358-385, dated 26 April 1917, from DCCT to all Superintendents of Police, Punjab,’ in *The Criminal Tribes Administration Manual*, p. 114.

between the DCCT and the village officials who enacted the Act in everyday life. As stipulated in the rules, some of the duties of this special staff were:

- To take charge of all papers relating to the management of the criminal tribes in each District [...]
- To keep in close touch with the members of the criminal tribes and obtain a thorough knowledge of their mode of living, criminal habits, language, etc., so as to be able to check their criminal propensities and help them in settling down to an honest life
- (a) To visit as frequently as possible and at least once a month all the villages inhabited by the criminal tribes, (b) personally investigate their condition, satisfy himself that the restriction imposed by the notifications are duly enforced, that the roll-calls are regularly held and that the members are living by honest means, and (c) report all important information, including any legitimate grievances, to the Superintendent of Police [...]
- To maintain a complete list of all absentees whether from his own District or from other Districts and endeavour to trace them out (This list should be kept up to date by a reference to the *Criminal Intelligence Gazette*).²⁸²

To demonstrate that they had fulfilled their duties, these staff were required to make clear mention of their actions in inspection reports to be lodged at each police station they investigated.²⁸³ In this way, officials could show that they were acting upon the orders of government, that they were attending to the workings of the Act in an efficient and accurate manner, and that the criminal tribe, as an identifiable subject, was being controlled, supervised, and reformed. These practices produced an *appearance* or *effect* of action.

The superficial nature of these practices was often evident, however. In 1944, the Inspector General of Police wrote that the

Criminal Tribes work has been badly neglected in many districts, and supervision by Gazetted Officers has often been perfunctory or altogether lacking. The average district officer seems to think that all that is required of him, so far as Criminal Tribes are concerned, is to see that his registers are properly maintained and that the registered and possibly the exempted members in his district are regularly looked up.²⁸⁴

The maintenance of an appearance of action was therefore often prioritised above the actual workings of the Act. This partly owed to administrative difficulties, wherein the demands of supervision were unworkable in most contexts owing to insufficient manpower and resources. In such cases, filling out registers and producing documents

²⁸² *The Criminal Tribes Administration Manual*, pp. 115–16.

²⁸³ 'Inspector General's Standing Order No. 62, Chapter XXIII of Police Rules: Note on the Criminal Tribes in the Punjab, 1944', Indian Police Collection, MSS EUR F161/158, IOR.

²⁸⁴ *Ibid.*

worked to evidence not only the actions of the officers – even if these were lacklustre, ineffectual or sometimes false – but also evidenced the successful workings of the Department and the criminal tribe project.

This special staff were responsible for overseeing the workings of the Act in the districts. As earlier mentioned, however, the everyday administration was rooted in local settings and performed by the village officials who constituted the Department, and thus the state, for the criminal tribes. These intermediaries acted as a conduit for information, from their villages to the Department – via the special staff – and vice versa. For instance, once individuals were registered under section 4 of the Act, the district magistrate was required to send the list of their names to the headman or watchman of each village in which the registered individuals resided, along with a copy of the sections of the Act which detailed their responsibilities. Under section 26, these officials had to report to the local police-station

- (a) The failure of any [member of a criminal tribe] to appear and give information as directed in section 5; or
- (b) The departure of any registered member of a criminal tribe from such village or from such land.²⁸⁵

In addition, they were to report the arrival ‘of any persons who may reasonably be suspected of belonging to any criminal tribes’ to the area.²⁸⁶ Failure to comply with these regulations was considered an offence under section 176 of the Indian Penal Code.²⁸⁷

These intermediaries were the ones who had the greatest hand in shaping the understanding of the criminal tribe, as an intelligible category, within a local context. Once the Punjab government had announced a newly-notified criminal tribe in the local Gazette, the rules demanded that a notice

shall be sent to the officer in charge of every police station within the limits of which a member or members of the tribes to which it concerns reside [...] A copy of such notice shall be served on the headman or headmen to cause the contents of the aforementioned notice to be proclaimed by *word of mouth* by the village watchman of his or their village or town.²⁸⁸

These ambiguously situated figures were expected to disseminate both the identities of the criminal tribes residing in their localities and the notion of the criminal tribe itself. In the process, the criminal categorisation became fixed upon certain individuals and groups.

²⁸⁵ Section 26(1), 1911.

²⁸⁶ Section 26(2), 1911.

²⁸⁷ Section 27, 1911.

²⁸⁸ Italics added. Rule 5.

Their supposed criminality which had existed on paper was literally translated into practice. Its articulation by locally-influential figures saw the criminal tribe transformed into a more pervasive and locally-situated category in which members of the local society, at least in principle, could identify the marked-out individuals *as* criminal tribes.

The point of these rules and regulations, and the documentary evidence they produced, was the acquisition, circulation and consumption of a local form of knowledge which was considered integral to the accurate identification of criminal tribes. The importance of local knowledge was made clear in a series of lectures delivered by the Inspector General of Police in the 1930s: ‘the Police Officer must utilise the particular experience gained in his investigation [...] his entire local knowledge must in fact be drawn upon’.²⁸⁹ Take, for example, some of the rules outlined under the Punjab Police Rules (1934), which complemented the Criminal Tribes Manual: a list of all proclaimed members of criminal tribes (individuals notified under the Act, but not necessarily registered) had to be hung up in the office of each police station; every new police officer to join a police station was to learn ‘the names, descriptions and likely resorts’ of all those named in the above list; superintendents and inspecting officers were to frequently test their subordinate officers’ knowledge; in addition, police officers were strongly encouraged to study the 1914 report authored by Kaul and Tomkins, as well as the *Punjab Criminal Intelligence Gazette* which published details and photographs of various criminal tribes.²⁹⁰

This knowledge was not only for the consumption of local state actors, though. Given that supervision of the criminal tribes in the districts was delegated from the Department to the local police or village officials, these rules, theoretically, ensured the constant supply of knowledge from the localities to the central government. Each superintendent of police was required to prepare an annual report on the working of the Act in his district for that year. Once completed, the superintendent was to forward his report to the Inspector General of Police’s assistant, who later forwarded the report plus his comments to the DCCT, who eventually prepared a consolidated report for the Punjab government. This report, in turn, was eventually forwarded on to the Government of India in New Delhi. As the Act became more decisively rooted in the provinces from 1920 onwards, though, the centre paid increasingly little attention to its administration.

²⁸⁹ ‘Extract from Practical Police Work: A Series of Police Lectures (1930)’, Indian Police Collection, MSS EUR F161/158, IOR.

²⁹⁰ ‘Inspector General’s Standing Order No. 62’, Indian Police Collection, MSS EUR F161/158, IOR.

In 1945, the Home Department revealed that whilst they had received annual reports from the local governments, ‘as the subject belonged to the provinces’ they did not ‘think it necessary to take any action’ on them.²⁹¹

Despite this lack of central oversight, the annual reports remained a decisive tool in the criminal tribe project on a provincial scale. Up until 1916, these reports had been compiled by the Inspector General of Police and were principally concerned with the criminal activities of the communities.²⁹² As responsibility shifted to the DCCT, a new emphasis was placed upon the reformatory activities of the Department, which acted as a benchmark to their ongoing success. Integral to demonstrating this success was the use of statistics – of convictions, absconders, births, deaths, employment, and so on. Here, the specifically local form of knowledge collected by officers in the districts was transformed into a more uniform and decontextualised category of the criminal tribe. Despite the internal heterogeneity of the category, of those groups and individuals notified under the Act, crime remained a constant, the yardstick by which a community was affirmed as *being* a criminal tribe. These statistics foregrounded criminality as a measurable quality, something to be counted and thus confirmed. Within the report, certain groups were analysed in terms of these statistics. In 1934, the Sansis were noted as having accrued fifty-seven convictions under the Indian Penal Code, three under the Criminal Procedure Code, 103 under the Criminal Tribes Act, and four under other laws.²⁹³ On the basis of these statistics, the DCCT stated that ‘considerable improvement’ was visible when compared to the previous year.²⁹⁴ Such figures defined the Sansis in terms of their criminal proclivity but showed them amenable to reclamation, thereby confirming the ideology of the criminal tribe.

In addition to marking out certain communities or gangs as subjects of state control, these statistics also foregrounded the *effect* of the Criminal Tribes Act in controlling and ostensibly reforming them. In 1934, the DCCT reported that the figures for the year were extremely satisfactory, being the lowest recorded in a decade. He contrasted that year’s figures with those of the previous year and with 1916, the final year before the Department’s establishment. Although the overall number of registered

²⁹¹ ‘Note by B. L. Pandey, Home Department, 27 March 1945’, Home/Police, 1945, File no. 88/1/45, NAI.

²⁹² ‘From H. D. Craik, Revenue Secretary to Government, Punjab, to Inspector General of Police, 19 September 1917’, Home/Police A Progs., October 1917, Nos. 256-58, PSA.

²⁹³ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1934*, p. 5, V/24/634, IOR.

²⁹⁴ *Ibid.*, p. 6.

individuals had increased (from 12,508 in 1916, 18,534 in 1933, and 18,401 in 1934) the percentage of convictions had dropped (10.8 per cent in 1916, 3.4 per cent in 1933, and 2.8 per cent in 1934).²⁹⁵ The ‘blaze of crime’ first encountered by the Department had been ‘reduced to a heap of smouldering cinders’.²⁹⁶ Again, statistics produced a veneer not only of control but progress, regardless of realities on the ground.²⁹⁷ They evidenced the successes of the Department, which in turn performed the existence of the criminal tribe. How could one reform what does not exist? These bureaucratic activities, even if inaccurate, thus ascribed a materiality to the category in the imagination of the state.

Importantly, for the individuals notified as criminal tribes, especially those who resided outside of settlements, these documentary practices determined their encounter with the state. Hull argues that documentary practices have the ability to ‘draw people outside the bureaucracy into bureaucratic practices’; they both complicate and delineate the ‘fuzzy border between the state apparatus and its social surround’.²⁹⁸ The documentary regime that underpinned the Criminal Tribes Act similarly brought these individuals within the bureaucratic practices of the colonial state. Yet, these practices simultaneously worked to alienate and marginalise. The lives of the criminal tribes – whether registered, restricted or exempted – became entangled in a complex assemblage of rules and regulations which enforced interaction with the state, but on inherently unequal terms. It was through the everyday enactment of these rules that one’s categorisation *as* a criminal tribe was translated in an embodied and affective manner.

Whilst the rules contained in the Criminal Tribes Manual ran into the hundreds, an illustration of just a few of those which governed the actions of individuals registered under the Act is given below:

- Every registered member of a criminal tribe [...] shall report himself every day at such time and place and in such manner as the village supervisor or headman [...] may direct
- No registered member of a criminal tribe [...] shall leave, or be absent from, the limits of the area to which his movements have been restricted without having obtained a pass
- Any Police Officer not below the rank of Sub-Inspector may at any time hold a special roll-call of all registered members of a criminal tribe residing

²⁹⁵ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1934*, p. 3, V/24/634, IOR.

²⁹⁶ *Ibid*, p. 4.

²⁹⁷ Appadurai.

²⁹⁸ Hull, pp. 18, 22.

within his jurisdiction [...] and it shall be the duty of all such members to attend and answer to their names when a roll-call is held.²⁹⁹

These rules irrevocably altered these individuals' experience of the everyday as previously routine actions, such as moving beyond the boundaries of one's village to buy goods or visit kin, became subject to a complex array of regulations. In 1920, for example, several individuals belonging to the Bawaria community in the village of Khara in Lahore sent a petition to the Punjab government.³⁰⁰ The regulations imposed upon them, they claimed, had damaged their agricultural livelihood. Unless they obtained written permission from the *lambardar* they could not leave their homes during the night, whilst during the day they were often called away to attend roll-call. Consequently, they could not irrigate their fields or scare away birds from newly-scattered seeds. Their harvests had thus been damaged, leading to their impoverishment.

The enactment of these rules was determined by the decisions or personal whims of certain individuals. For instance, a *lambardar* had the authority to issue day passes enabling individuals to go to beyond the limits of their restriction, often to purchase goods or sell their wares. These leave passes were 'to be issued sparingly' and only in deserving cases.³⁰¹ In the case of the Bawarias, two individuals, Kahna and Baggu, requested permission from the *lambardar* to absent themselves during the night, as it was their turn to irrigate the crops using canal water. The *lambardar* refused and the crops withered. Individuals thus became entangled in this web of rules to which, to avoid punishment, they had to adhere. In so doing, their physical actions also contributed to the repeated performance of the criminal tribe.

Central to this performance was the proliferation of a vast web of paper effects: permits, passes, and passports. Once notified as a criminal tribe, individuals became liable to produce these at certain times for a raft of state actors. If a registered individual needed to go beyond the limits of his restricted area, for instance, he had to obtain a pass authorising his leave from either the headman or officer attached to the village or settlement in which he resided. After having obtained the pass, the individual had to travel to his destination and return to his residence by the route specified on the pass. Once at his destination, he had to get the time and date of his arrival endorsed by the headman, before reporting to the local police station and presenting the pass. Whilst on leave, he

²⁹⁹ *The Criminal Tribes Administration Manual*, pp. 15–28.

³⁰⁰ 'Petition from Sundar and Jawara on behalf of the Bawaria community of village Khara, Tahsil Kasur, District Lahore', Home/Police, No. 10, February 1920, NAI.

³⁰¹ *The Criminal Tribes Administration Manual*, pp. 76–84.

was required to report himself every evening to the headman, and at least every fifteen days to the police. On his return, the pass – endorsed again by the headmen on his departure – was to be delivered to the officer in charge of the police station, village or settlement who issued it. These rules thus ascribed a materiality to the category of the criminal tribe, not only a physical, ‘paper-y’ (to borrow Mathur’s term) materiality – though this was important – but also an embodied and physical experience.

These rules also generated a more tangible form of criminality, as failure to comply amounted to a criminal offence. When compiling statistics for his annual report, the DCCT would list offences committed by registered criminal tribe members under the Indian Penal Code, the Criminal Procedure Code, the Criminal Tribes Act, and other laws. Invariably, the number of offences under the Criminal Tribes Act far surpassed the others, often amounting to somewhere in the region of seventy to eighty per cent of all convictions.³⁰² It is important to reiterate here that the Criminal Tribes Act was often applied collectively, to entire ethnic communities, villages, or families. As such, individuals became criminal tribes merely by the fact of their birth or location. By virtue of these rules, individuals who bore no criminal convictions could quickly become criminals in a more straightforward sense – a vicious cycle that legitimatised the Act and lent credibility to the category of the criminal tribe. These documentary practices had far reaching consequences, then. They did not merely conjure the image that the Act had been implemented in the eyes of the state and society, but had direct, physical and often violent implications for the communities involved.

Even after obtaining exemption from the Act, individuals remained entangled within this documentary regime. Exemptees were given free movement permits which they were required to carry with them at all times. Loss of such a permit, or failure to produce it when required, could lead to re-registration. Despite their ostensible liberation from the Act, everyday actions remained subject to scrutiny. Identification as a criminal tribe therefore engendered a pervasive, physical and exclusionary experience of the paper state which endured long past one’s actual legal notification under the Act. These rules were far from water-tight, however, and were often flouted. In 1937, the DCCT reported that several members of criminal tribes were involved in the business of selling on the exemption passes of deceased persons.³⁰³ Individuals who were still restricted could buy

³⁰² 1917: 69%; 1918: 75%.

³⁰³ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1937* (Lahore: Government Printing, Punjab, 1938), p. 5, V/24/634, IOR.

these passes at a premium and achieve exemption under assumed names. The generation of this vast corpus of paper effects, statistics and information thus belied a pervasive uncertainty and insecurity amongst colonial officials, as the administration of the Act was frequently undermined by realities on the ground.

Indeed, it was an abiding feature of debates on the Criminal Tribes Act from the 1870s to the 1940s that the knowledge gathered about those it targeted was wholly inadequate. In 1907, for example, thirty-six years after the Act's promulgation in Punjab, H. A. Stuart, Director of the Central Criminal Investigation Department, remarked on

how little accurate information regarding even the best known of the criminal tribes is on record, and it is equally remarkable how little knowledge of the inner structure of these tribes is possessed even by those police officers who have the best acquaintance with them [...] We do not even know the number of people with whom we have to deal, for the census statistics are certainly not accurate or complete, many tribes having escaped enumeration, while others were enumerated under names and castes other than their own.³⁰⁴

This uncertainty had been a driving factor behind the establishment of the Department, under whose management the entire operation was supposed to become more centralised, efficient and systematic. Yet, throughout its existence, the Department lamented the inadequacy of its knowledge. In 1934, DCCT Singh recommended an overhaul of the lists of absconders as he believed that a vast number of those on the list had either died or abandoned their criminal habits.³⁰⁵ Such an overhaul, he argued, would enable the officers of the Department to more fruitfully trace those who were 'still an active danger to the community'.³⁰⁶ The following year, in celebration of the Silver Jubilee, the Department overhauled the lists as desired; it removed some six to seven thousand persons in a sweeping move.³⁰⁷ In 1936, however, the following DCCT, Sheikh Abdul Hameed, reported an increase in crime, criticising the haste with which the overhaul was taken. This led to calls for more stringent procedures, the collection of more in-depth knowledge, and widespread re-registrations – a perpetual cycle of uncertainty and knowledge production.

As late as 1944, the Inspector General of Police wrote that, 'One of the reasons for this neglect [of administration in the districts] has been the fact that many officers do

³⁰⁴ 'Note from H. A. Stuart, 4 April 1907', Home/Police A Progs., Nos. 136-52, December 1909, NAI.

³⁰⁵ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1934*, p. 2, V/24/634, IOR.

³⁰⁶ *Ibid.*

³⁰⁷ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1936*, p. 3, V/24/634, IOR.

not understand the law and rules governing the administration and control of Criminal Tribes.³⁰⁸ Higher state officials often recognised the failings of these documentary practices, yet they remained wedded to the underlying intention of them – the production, circulation and consumption of knowledge regarding the criminal tribes. In this case, the Inspector General of Police laid the blame on the subordinate officers themselves, whom he claimed were ‘unacquainted’ with the notifications issued by the Punjab government detailing the communities and gangs declared under the Act.³⁰⁹ In consequence, he argued, groups had evaded registration and were able to ‘continue their criminal careers’ without hindrance from the Department or the police.³¹⁰ The only method of truly controlling the criminal tribes, he went on, was ‘by enlarging the knowledge of Police Officers in their characteristics [*siz*] and methods of working and this is possible only if the experiences of individual officers are reported and published for the information of all’.³¹¹

As a solution, the Inspector General of Police compiled a pamphlet in 1944 for circulation amongst the superintendents of police and their district forces, which contained details on ‘control and procedure’ and the ‘particulars of various Criminal Tribes, including their habits and methods of committing crime’.³¹² He advocated that when any notified individual or group was arrested, ‘the details of the lay out of their encampment, method of dress, modus operandi, etc., should be carefully noted, and individuals should also be photographed at the earliest possible moment’.³¹³ Such information, he argued, ‘will be invaluable for the instruction of students at the Police Training School, Phillaur’.³¹⁴ Despite their heterogeneity, then, such practices aimed to inform local officers about the identifiable characteristics of the criminal tribes. These characteristics, similar to the generation of statistics, foregrounded the communities’ supposed criminality – now through the presentation of physical or cultural markers, in terms of their particular features, marks and branding, or ways of dress. At the same time as the Act had become increasingly diffuse in its application, the collation of this information produced a more concrete, coherent and decontextualised category of the criminal tribe.

³⁰⁸ ‘Inspector General’s Standing Order No. 62’, Indian Police Collection, MSS EUR F161/158, IOR.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Ibid.

³¹³ Ibid.

³¹⁴ Ibid.

This more local compilation of knowledge was influenced by, and in turn influenced, the publication of police handbooks which contained information on the various criminal tribes. This was not a new practice; since the late 1800s police officers had compiled manuals detailing various ethnographic features of supposedly criminal communities.³¹⁵ Around the time of the Department's establishment there was a more concerted effort to systematise this knowledge and incorporate it within state practice. In 1912, for instance, V. P. T. Vivian published *A Handbook of the Criminal Tribes of the Punjab* with the stated intention that it would 'form an elementary hand-book for the use of district officers'.³¹⁶ Whilst it made 'no claim to be an exhaustive or comprehensive account of our criminal tribes', it detailed the ethnographic features of several of the most notable communities notified under the Act.³¹⁷ But, as stated by Vivian, there was a 'lack of existing detailed information' available.³¹⁸ The volume itself drew upon 'certain papers on record in the Punjab Secretariat, the Central Police Office, and the Criminal Investigation Department Office; from Gazetteers and Census Reports; from the Police Gazettes of our own and other provinces, from published work on Ethnology and from accounts compiled by certain Superintendents of Police of the Punjab'.³¹⁹ This material, however, was often inadequate, with Vivian admitting that he was forced 'to take for granted unauthenticated information'.³²⁰

Yet, these handbooks helped to produce a more coherent understanding of the criminal tribe – at both the local level, where these handbooks were used by district officers, and in higher rungs of the state. Notably, these handbooks still worked within an ethnographically-derived framework centred on the heredity criminal. The volume primarily detailed the 'Genuine Criminal Tribes, i.e. those whose traditions and early history [has] drawn them inevitably to the practice of crime "as the sparks fly upwards," and who are inherently and hereditarily criminal', although it did also include some information regarding the 'Artificially constructed Criminal Tribes, i.e. those tribes which have been found to be criminal and have been declared to be so under the Act'.³²¹ The

³¹⁵ For example, M. Kennedy, *Notes on the Criminal Classes in the Bombay Presidency* (Liverpool: Gypsy Lore Society, 1910); G. W. Gayer, *Central Provinces Police: Lectures on Some Criminal Tribes of India and Religious Mendicants*, second (Nagpur: Central Provinces Police, 1910); E. J. Gunthorpe, *Notes on Criminal Tribes Residing in or Frequenting the Bombay Presidency, Berar and the Central Provinces* (Bombay: Times of India, 1882).

³¹⁶ V. P. T. Vivian, *A Handbook of the Criminal Tribes of the Punjab* (Lahore: Punjab Government Press, 1912).

³¹⁷ Vivian, p. 1.

³¹⁸ Ibid.

³¹⁹ Ibid.

³²⁰ Ibid.

³²¹ Ibid, p. 2.

descriptions, often drawn from earlier colonial ethnographies, had much in common with the debates over the passing of the Act in the 1870s. For instance, in the chapter on the Harnis, Vivian wrote:

[T]hey are not outcasts, not driven by poverty and circumstance to crime as a means of making a bare subsistence, but are genuine professional criminals, who keep their traditions in honour, and hand on their methods from generation to generation with an exactitude of ritual, which shows that is not to them the mere means of eking out a livelihood, but a profession, in which they take pride, and for the successful practice of which they give high honour to the expert members of their tribe.³²²

These are the characterisations which have most often become the subject of scholarly analysis, owing to their more accessible nature as published books. The actual criminal tribe of state practice – the nebulous and indeterminate category outlined earlier – is often obscured by the prioritisation of this criminal tribe in the state’s imagination and in its paper effects.

One effect of this paper criminality, the Inspector General argued in 1944, was that, ‘The purport of the Criminal Tribes Act of 1924 and the various tribes embraced by it are now so well known among the members of the tribes themselves that they are able to circumvent registration and restriction by posing as members of unnotified castes and tribes.’³²³ The ‘most enterprising members’, he claimed, had adapted to the ‘altered circumstances’ imposed by the Act.³²⁴ The local officers, to achieve success, would now have to ‘keep pace’ with these individuals.³²⁵ The category of the criminal tribe, then – however diffuse, contextual, and negotiated in everyday practice – had attained an intelligibility not only in the workings and imagination of the state, but also for the communities themselves who, at least supposedly, could evade arrest by adopting alternate identities.

Conclusion

This chapter has demonstrated that there was a clear contradiction in the criminal tribe project in Punjab, as elsewhere. The application of the Act varied across time and space, with the boundaries of the criminal tribe becoming more diffracted and ambiguous as the notion of the heredity criminal became increasingly dilute from the 1920s onwards. Yet, concurrently, the category of the criminal tribe became ever more pervasive. The

³²² Vivian, p. 51.

³²³ ‘Inspector General’s Standing Order No. 62’, Indian Police Collection, MSS EUR F161/158, IOR.

³²⁴ *Ibid.*

³²⁵ *Ibid.*

Department and all its related paraphernalia was fundamentally constituted by this category. Through the everyday practices and institutions which enacted – or performed – the Act, the state actors who constituted the Department ascribed the category with tangibility for the state. The criminal tribe was no longer an abstract legal category but had purchase to the extent that it was understood by the state, society, and sometimes the communities themselves.

What did independence and, more importantly, the repeal of the Criminal Tribes Act on 31 August 1952 entail for both the Department and the category of the criminal tribe, then? In January 1952, Lal Chand of Ludhiana wrote to the Displaced Harijans Rehabilitation Board, a body set up in the wake of Partition to rehabilitate untouchable refugees, in complaint against the Department:

With the repeal of the Criminal Tribes Act in the Punjab, the Criminal Tribes Department, functioning at present as a separate entity, shall have to come to an end. A few interested persons at the top (Deputy Commissioner for Criminal Tribes and his office Superintendent) are trying to maintain their individuality under one or the other pretext and to this purpose they are manoeuvring to maintain a separate existence of the Department in one shape or another [...] Now under the cloak of depressed classes friends they have sent proposals – dishonest and crooked – for the allocation of funds from the central and state revenues to carry on the work for the welfare of the depressed classes under a new name of the Reclamation and Welfare Department and are even prepared to owe allegiance to you and work under you and work under your directions, just to maintain their independent existence in the Punjab State. Besides they are also trying to be entrusted with the operation of the Habitual Offenders Act as possible so as to enlarge their activities and justify their separate existence.³²⁶

Clearly, the Department was not quite ready to relinquish the criminal tribe project. Neither was the Punjab government. Whilst it was not against the repeal of the Act per se, influential bureaucrats in the Punjab administration feared for the future of the Department. The main issue, as reported by Brahm Nath, Deputy Secretary, was ‘the question of absorbing the huge establishment now functioning in connection with the administration of the Criminal Tribes Act’.³²⁷ Alongside the issue of law and order, he argued, the Act’s repeal would threaten their vast investment in the criminal tribe project. One aspect of this was monetary and infrastructural, as the government had spent vast sums on building and maintaining the vast institutional apparatus of schools, settlements

³²⁶ ‘Serial number 81: Complaint received from Lal Chand, Gulchaman Gali, Ludhiana, contained within letter from Sevak Ram, Working Secretary, Displaced Harijans Rehabilitation Board, sent to R.K. Sidhwa, Minister of State for Home Affairs, 18 January 1952’, Ministry of Home Affairs (hereafter MHA)/Police-I, 1950, File no. 19/9/50, NAI.

³²⁷ ‘Serial number 54: note from R.K. Sidhwa, 4 February 1952’, *ibid.*

and training centres. In addition, it had made substantial grants by way of agricultural land or indigent loans to individuals and families for the purpose of reformation. The Act's repeal would mean vast material and financial loss, unless replacement legislation could codify a new relationship between the state and these buildings, tenants, and land.

On 20 October 1952 – after the repeal of the Act – a committee met to discuss the re-organisation of the Department.³²⁸ The staff who constituted the Department were to be divided between the Inspector General of Prisons and the Welfare Officer, who headed the newly-formulated Welfare Department, with the surplus absorbed more widely within the Punjab bureaucracy.³²⁹ The Reformatory School and Settlement at Amritsar were to be transferred to the Inspector General of Prisons, whilst the Reclamation Colony at Pathankot and the agricultural settlement at Bir Bidalwa was to be transferred to the Director of Public Instruction, with accommodation put aside for use by the Welfare Officer.³³⁰ This reformulation of the Department's activities into two distinct branches – punitive and reformative – was the culmination of the dual approach taken by the Department since 1917, whereby the criminal tribe was not merely a subject of punitive state control, but also reform.

Significantly, this dual approach continued to inform the encounter between the criminal tribes and the state after independence. The following three chapters demonstrate the ways in which the category of the criminal tribe was reformulated within postcolonial spheres of state-making after 1947, principally those relating to Partition refugees, law and penal practice, and welfare policies. As suggested by the reorganisation of the Department in 1952, the idea that underpinned the criminal tribe – of an individual or community with predetermined criminal proclivities – was embedded within new bureaucratic structures and state practices. The punitive side of the Act – the restrictive and supervisory powers it conferred – found new articulation in a raft of Habitual Offender legislation passed to replace the Criminal Tribes Act from the late 1940s. At the same time, the reformative side of the Act – grants of land, education, and, most of all, encouragement of a sedentary life – were taken up by the Welfare Department, as part of

³²⁸ By this point, it was the Reclamation and Criminal Tribes Department as it had taken charge of the reclamation of ordinary prisoners, another indication that its jurisdiction reached beyond the 'traditional' criminal tribe.

³²⁹ 'Letter from Superintendent Jails and Judicial, to Home Secretary to Government, Punjab, 31 December 1952', Welfare/General, 1952, File no. 54, Haryana State Archives (hereafter HSA), Chandigarh.

³³⁰ 'Proceedings of the 3rd meeting of the Committee constituted with the reorganisation of the Reclamation and Criminal Tribes Department, on the repeal of the CTA (VI of 1924), held on the 25th October, 1952', *ibid.*

their remit to look after so-called 'backward' citizens. Before this took place, however, the subcontinent and Punjab itself were partitioned at the moment of independence between the two new nation states of India and Pakistan. Tens of thousands of criminal tribes moved across the newly-formed borders, and the Department – like much of the bureaucracy in Punjab – was irrevocably altered as officials migrated, communications faltered, and the state itself had to be reconstituted. As the next chapter highlights, this had a profound impact upon the category of the criminal tribe.

II.

Freedom and Flux: Partition and the criminal tribe refugee

*One Khanu s/o Mangtu Sansi was converted to Islam 3 years back. He was under detention in the Reformatory Settlement Amritsar for a period of one year which period expired on 14.2.48. Khanu now says that he has again become a Hindu. His cousins who are Hindus have also come to East Punjab from the West Punjab. Khanu states that he does not at all want to go back to Pakistan. Deputy Commissioner for [Criminal Tribes], West Punjab, wishes Khanu to be sent to West Punjab. Kindly intimate Inter-Dominion decision if any on the point?*³³¹

Mulkh Raj Mehra, DCCT, East Punjab, 27 July 1948

Introduction

15 August 1947: India met with her long-awaited ‘tryst with destiny’.³³² Thousands gathered outside the Red Fort in Delhi to watch as Jawaharlal Nehru hoisted the independent nation’s flag. Celebrations erupted across the country and crowds lined the streets in the major towns and cities. In Punjab, Bombay and elsewhere, jails doors were flung open and certain prisoners walked free to mark the occasion.³³³ Not everyone was able to participate in the celebrations though. For Khanu Sansi, an imprisoned member of a criminal tribe, the moment of independence did not represent his transformation from colonial subject to sovereign citizen, nor the throwing off of the shackles and bondage of colonial rule. At the stroke of midnight – as India awoke ‘to life and freedom’ – Khanu remained interned within the walls of Amritsar’s Reformatory Settlement.³³⁴ On his release the following year, Khanu was confronted with a changed world: a free and independent India, but alongside a newly-created Pakistan. The landscape of Punjab was irrevocably altered. The deeply contested province had been divided along religious lines between the postcolonial nations and had suffered devastating communal violence. The widespread migration of persons across the border to seek refuge with their co-religionists

³³¹ ‘Note from Mulkh Raj Mehra, DCCT, East Punjab, Jullundur, 27 July 1948’ East Punjab Liaison Agency Records (hereafter EPLAR), Bundle I/6, PSA.

³³² These are some of the words from the speech made by Jawaharlal Nehru at midnight on 14/15 August in the Constituent Assembly.

³³³ In Punjab, all political prisoners (barring those convicted for communal crimes) and certain non-political prisoners, in addition to all female convicts were released. ‘Instructions issued by the West Punjab Government for remission of sentences and release of prisoners on the 15th August 1947’, Home/Jails B Progs., 1947, File no. 3, PSA. Also see Khan, p. 134.

³³⁴ Again, these are words from Nehru’s speech.

had changed cities, towns and villages beyond recognition. Amritsar itself had been at the epicentre of violence; indeed, Khanu's internment may have provided him a degree of safety as a Muslim in a Hindu-Sikh majority city.³³⁵ The border with Pakistan was now only a few miles away and stood between Khanu and his erstwhile home.

As the DCCT's note above highlights, Khanu's release posed several questions. Most critically, to which country did he belong? As early as 7 September 1947, the Indian and Pakistani governments agreed that the transfer of populations – Muslims from East Punjab and non-Muslims from West Punjab – had become 'inevitable'.³³⁶ Khanu was a newly-converted Muslim who had been resident of West Punjab. Now he desired to reconvert to Hinduism and remain in India. His situation was therefore far from simple. Such questions were by no means unique to Khanu; similar debates were taking place concurrently across India and Pakistan. It was through such negotiations – both in high politics and in encounters on the ground – that both territorial borders and conceptual boundaries of citizenship were made.³³⁷ Indeed, as Joya Chatterji has shown, the coterminous departure from the intended *jus soli* concept of citizenship in both India and Pakistan's constitutions resulted from the (often parallel) responses of the respective governments to what they perceived as 'their' populations stranded across the border.³³⁸

Khanu, however, was marked less by his religious affiliation than by his identification as a member of a criminal tribe. This was the categorisation that determined his encounter with the state at this critical juncture.³³⁹ As shown in the previous chapter, the criminal tribe was a deeply fractured, ambiguous, and unstable category in its

³³⁵ It was remarked during deliberations in 1954 over the liability of payment for Muslim detainees in the Amritsar Reformatory that 'it was quite unsafe for the families of the detenus to live outside the Reformatory after 14-8-1947. In case they had been turned out, it is not known what fate they would have met on account of the mob fury in those days'. 'A brief note on each item of the agenda proposed for the meeting of the Home Secretaries of Punjab (I) and Punjab (P) to be held at Simla on the 19th and 21st June 1954', Welfare/General-I B Progs., 1957, File no. 45, PSA. According to the 1941 census, Amritsar city's Muslim population constituted forty-seven per cent while Hindus and Sikhs together constituted fifty-three per cent. On the aftermath of Partition on Amritsar, see Ian Talbot, 'A Tale of Two Cities: The Aftermath of Partition for Lahore and Amritsar 1947-1957', *Modern Asian Studies*, 41.1 (2007), 151–85.

³³⁶ At the third Emergency Committee of representatives of India and Pakistan it was agreed that, 'The situation in the Punjab has developed in such a way that mass movement of Muslims from East Punjab and non-Muslims from West Punjab has become inevitable.' Rather than encourage minorities to remain in their homes, the two nations instituted an official evacuation policy using respective Military Evacuation Organisations to transport refugees safely across the border. Brigadier Rajendra Singh, *The Military Evacuation Organisation, 1947-48* (New Delhi: Historical Section, Ministry of Defence, 1961), p. 12.

³³⁷ Chatterji, 'South Asian Histories of Citizenship'; Haimanti Roy; Zamindar.

³³⁸ *Jus soli* is an interpretation of entitlement to citizenship based on birth. Chatterji, 'South Asian Histories of Citizenship'.

³³⁹ There are clear parallels here with debates over the marked/unmarked citizen. We return to this discussion in the conclusion to this chapter.

application, rooted in the contingencies of local power relations and the imperatives of colonial rule. Yet, by 1947 it had acquired a certain intelligibility as a category of state identification through the physical sites and material practices of the Department. Yet, if we understand Partition to be a ‘critical event’, as Veena Das posits, one which redefined traditional categories of family, nation and community, what was its effect upon the criminal tribe?³⁴⁰ Was this category unsettled and challenged by Partition? Or was it, in fact, re-embedded and reified by the very disruption and dislocation of authority that might have undermined it? This chapter explores these questions.

In doing so, the chapter makes a limited foray into the Partition history of these communities, a topic entirely overlooked in existing scholarship on both Partition and the Criminal Tribes Act. More importantly, though, it foregrounds Partition as a critical moment in the postcolonial transformation of the criminal tribe. It argues that the various actors who constituted the state in East Punjab relied upon the category of the criminal tribe as a marker of legibility within post-Partition India’s refugee regime.³⁴¹ By using a wide variety of official and non-official sources related to the evacuation, regulation and rehabilitation of refugees, it demonstrates that between 1947 and the mid-1950s, as the Criminal Tribes Act was concurrently being legislatively dismantled in New Delhi, state actors infused the category with new legitimacy within the discursive, procedural and institutional sites that constituted this regime. Although the category was, just as before 1947, necessarily fragmented, diffuse, and liable to interpretation and contestation, it took on new coherency and intelligibility but now, significantly, in modes of postcolonial statecraft.

The refugee regime of post-Partition India should be understood as ‘both a discourse of governance [...] and as a set of practices’ which reflected the multiple and often competing agendas of central and provincial governments, the variety of state actors involved in its implementation, the local societies into which refugees entered, and the refugees themselves.³⁴² This regime was far from monolithic or calculated; it was instead

³⁴⁰ Veena Das, *Critical Events: An Anthropological Perspective on Contemporary India*, 4. impr (Delhi: Oxford University Press, 2004).

³⁴¹ When referring to the government of the Indian state of Punjab, I use East Punjab to distinguish it from its Pakistani counterpart. The ‘East’ was dropped in 1950 but for clarity I retain it throughout this chapter. The idea of a marker of legibility builds on Udit Sen’s argument that that the Indian state ‘slotted refugees into their occupational backgrounds, often using caste identity as a marker of authenticity’. Sen, abstract.

³⁴² Udit Sen, p. 10. Cabeiri Debergh Robinson also situates this South Asian refugee regime within a broader perspective that acknowledges the emergence of the international refugee regime in interwar Europe. C. D. Robinson, ‘Too Much Nationality: Kashmiri Refugees, the South Asian Refugee Regime, and a Refugee State, 1947-1974’, *Journal of Refugee Studies*, 25.3 (2012), 344–65.

‘a collection of local innovations, administrative accidents and ad hoc solutions’.³⁴³ Despite this, it structured the legal, material and symbolic practices of refugee administration: immediate welfare provision, re-housing and rehabilitation schemes, allocating property and land, and so on. These practices were carried out by a variety of governmental and non-governmental bodies – including the military, the Ministry of Relief and Rehabilitation, local police, clerical and healthcare workers, faith-based organisations, etc. – which formed part of the machinery of the state. These practices should be understood, however, as a dialogue both between various arenas of the state and between the state and society.³⁴⁴ Although the chapter explores how the category of the criminal tribe was given new pertinence through various *state* practices, it underscores that the process was contested and negotiated through everyday encounters between the displaced criminal tribes and the state.

At the root of many of these practices was an attempt to regulate and categorise refugees. The unprecedented and unforeseen movements of millions across the border had thrown both the state and society into flux by producing ambiguously situated refugees.³⁴⁵ Much of the refugee regime thus aimed to make sense of this displaced population. This was characteristic of refugee regimes more widely, such as that which emerged in interwar Europe.³⁴⁶ The set of legal and administrative practices developed in South Asia included: the permits and passports introduced to regulate movement across internal and external borders; the collection of statistics (the numbers of Muslims entering Delhi or the percentage of urban vs rural refugees, for instance); the passing of legislation (on the one hand to define *bonafide* refugees, and on the other to control and restrict); the building of a vast bureaucratic machinery for purposes of rehabilitation; and the everyday recording, regulating and restricting of refugees through ‘history sheets’, ration cards, and a plethora of documentation aimed towards making the unordered mass of refugees legible to the state.³⁴⁷

³⁴³ Udit Sen, p. 281.

³⁴⁴ Udit Sen makes the point that government relief schemes should be studied as a dialogue between state and society. *Ibid.*, p. 7. This study argues they also need to be understood as a dialogue between the different levels of the state. For instance, between the DCCT who instigated policies and the district magistrates and local police officers who implemented them.

³⁴⁵ The physical liminality of refugees made them illegible to the state. As Anupama Roy writes, ‘the migrant’ embodies ‘an unsettled and floating category’, one who simultaneously does and does not belong, which consigns such individuals to be ‘perpetual citizen-outsiders’. Anupama Roy, *Mapping Citizenship in India* (New Delhi: Oxford University Press, 2010), p. 26.

³⁴⁶ Robinson.

³⁴⁷ See, for example, Sarah Ansari and William Gould, *Boundaries of Belonging: Localities, Citizenship and Rights in India and Pakistan* (Cambridge University Press, forthcoming); Joya Chatterji, ‘Rights or Charity?’

Of central importance to this endeavour was the demarcation between categories of refugee. Several scholars have demonstrated the ways in which pre-existing identities, far from being erased or undermined by Partition, instead fundamentally determined the nature of one's migration and rehabilitation, and thus one's place within the postcolonial nation.³⁴⁸ One of the most striking examples of this was the delayed evacuation of untouchable refugees from West Punjab and their rehabilitation in inferior housing colonies that maintained their physical and symbolic distance from caste Hindus.³⁴⁹ Similarly, although Khanu's religion and nationality were in flux, it was his identification as a member of a criminal tribe which determined his evacuation and subsequent relationship to the state. As refugees who belonged to the criminal tribes arrived in East Punjab, too, many were settled not in the ordinary refugee camps which sprung up across the province, but in the settlements belonging to the Department. State practices therefore marked out the displaced criminal tribes as subjects whose evacuation, rehabilitation and potential incorporation into the citizenry of postcolonial India was understood primarily in terms of the category of the criminal tribe.

The archive does not reveal the conclusion to Khanu's story; it offers a mere fragment of a life caught in the uncertainties of Partition.³⁵⁰ It also cannot reveal the

Government and Refugees: The Debate over Relief and Rehabilitation in West Bengal, 1947-1950', in *Partition of Memory: The Afterlife of the Division of India*, ed. by Suvir Kaul (Delhi: Permanent Black, 2001), pp. 74-110; Zamindar.

³⁴⁸ On the differential treatment of single women, untouchables, and the poor, for instance, see R. Kaur, 'Narrative Absence: An "Untouchable" Account of Partition Migration', *Contributions to Indian Sociology*, 42.2 (2008), 281-306; Ravinder Kaur, *Since 1947*.

³⁴⁹ There is limited work on the untouchable experience of Partition. A good overview of the existing literature is Dwaipayan Sen, 'Caste Politics and Partition in South Asian History', *History Compass*, 10.7 (2012), 512-22. On untouchable migration and rehabilitation in Punjab and Delhi, see R. Kaur; Gyanendra Pandey, "'Nobody's People': The Dalits of Punjab in the Forced Removal of 1947", in *Removing Peoples: Forced Removal in the Modern World*, ed. by Richard Bessel and Claudia Haake (New York, NY: Oxford University Press, 2009), pp. 297-320; Ian Talbot, 'Punjabi Refugees' Rehabilitation and the Indian State: Discourses, Denials and Dissonances', *Modern Asian Studies*, 45.1 (2011), 109-30. On untouchable politics and Partition, see Sekhar Bandyopadhyay, 'Transfer of Power and the Crisis of Dalit Politics in India, 1945-47', *Modern Asian Studies*, 34.4 (2000), 893-942; Jesús Francisco Cháirez-Garza, "'Bound Hand and Foot and Handed over to the Caste Hindus": Ambedkar, Untouchability and the Politics of Partition', *The Indian Economic & Social History Review*, 55.1 (2018), 1-28; Ramnarayan S Rawat, 'Partition Politics and Achhut Identity: A Study of the Scheduled Castes Federation and Dalit Politics in UP', in *The Partitions of Memory: The Afterlife of the Division of India* (New Delhi: Permanent Black, 2001), pp. 111-39.

³⁵⁰ The idea of the 'fragment' is important to Partition historiography. Ritu Menon and Kamla Bhasin state that, 'Different sorts of telling reveal different truths, and the "fragment" is significant precisely because it is marginal rather than mainstream, particular (even individual) rather than general, and because it presents history from below.' Ritu Menon and Kamla Bhasin, *Borders & Boundaries: Women in India's Partition* (New Brunswick, NJ: Rutgers University Press, 1998), p. 8. For more on the 'fragment', see Mushirul Hasan, 'Memories of a Fragmented Nation: Rewriting the Histories of India's Partition', *Economic and Political Weekly*, 33.41 (1998), 2662-68; Gyanendra Pandey, *Remembering Partition: Violence, Nationalism and History in India* (Cambridge: Cambridge University Press, 2001); Gyanendra Pandey, *Routine Violence: Nations, Fragments, Histories* (Stanford, CA: Stanford University Press, 2006).

subjective or lived experience of migration and rehabilitation for those marked out as being criminal tribe refugees – a topic beyond the bounds of this study but one that warrants further research. The criminal tribe refugee enters the archive through two lenses: as a category of control and as a category of rehabilitation. As such, these form the two main sections of this chapter. Before it turns to these, however, the chapter first examines the impact of Partition upon the paraphernalia of the Department. It shows that the flux of 1947-1948, as the apparatus of the state was thrown into disarray, is vital for understanding the subsequent reification of the category of the criminal tribe. The second section is rooted in 1947-1950, as state actors sought to overcome these difficulties through policies which centred on regulating and restricting the criminal tribe refugee. By the early 1950s, however, the state's material substance had largely been re-embedded in bureaucratic procedures and practices – law and order was restored, the constitution founded, and even a venture as far-reaching and administratively challenging as the first general elections of 1951-1952 was undertaken. Consequently, as the final section shows, state actors turned their attention to rehabilitating the criminal tribe refugee, with the hope of transforming the displaced communities into productive members of civil society. Despite the ostensible aims of assimilation, however, these schemes yet further reified the categorisation itself.

Division, Disorder, and Disrupting the State

As discussed in the previous chapter, the Department was made up of a vast apparatus of personnel, institutional sites, and paper-tracked procedures. Even if the everyday administration of the Criminal Tribes Act was diffuse and often beyond the gaze of higher-ranking officials like the DCCT, it still commanded an enormous state machinery. This machinery, like many of the structures of state in Punjab, was disrupted, and ultimately divided, at Partition. This section explores this period of flux. It draws on numerous files of the East Punjab government, including their fortnightly reports sent to New Delhi through 1947-1949, newspaper reports from the *Tribune*, and records of the East Punjab Liaison Agency – the body tasked with evacuating minorities from West Punjab, amongst others.³⁵¹ This reveals the debilitating effect of Partition upon the Department, especially the fracturing of both the structures and physical forms of knowledge which underpinned the administration of the Act. It was within this context,

³⁵¹ As part of the evacuation effort, both the East and West Punjab governments set up Liaison Agencies, each headed by Chief Liaison Officers, based in Lahore and Amritsar, respectively.

this chapter argues, that the criminal tribe, as an identifiable and legible category, took on heightened significance within the emergent refugee regime.

The months surrounding August 1947 were ones of uncertainty, disruption, and widespread violence in Punjab. As the political stalemate between the Congress and Muslim League became ever more intractable, communal tensions erupted on the streets of the major cities – Lahore, Amritsar, and Rawalpindi – before spreading to the countryside.³⁵² From the early months of 1947 people left their homes to seek refuge with co-religionists. This migratory flow continued unabated for months; whilst the wealthy and socially connected were often quick to move to new environs, the poor and marginalised were left stranded for weeks or months.³⁵³ Within Punjab alone approximately twelve million people were displaced and roughly one million died. Since the 1990s, scholars have tended to explore the human dimension of this migration, though with some notable absences.³⁵⁴

One of the clear gaps in this historiography is the migration of the criminal tribes. Although rarely acknowledged within scholarly or popular narratives, vast numbers of communities who were associated with the Criminal Tribes Act, whether directly or tangentially, moved across the Indo-Pakistani border during Partition.³⁵⁵ Muslim communities, such as the Biloches of Karnal and Ambala and Ods from Amritsar and Gurgaon, migrated to West Punjab. Hindu and Sikh groups, such as Bazigars from Montgomery and Peshawar, Lubanas from Gujrat, Sheikhpura and Lyallpur, alongside numerous Sansis, Bhedkuts, Bawarias, and others migrated to East Punjab. Many communities had complex and ambiguous religious identities, especially those considered untouchables. Many Bazigars in Montgomery (West Punjab), for instance, converted to Islam in the immediate months after Partition, often under duress, but later re-converted to Hinduism to lay claim to evacuation by Indian agencies.³⁵⁶ Although much of the

³⁵² For a good introduction to this period, see Khan.

³⁵³ For example, the reports of the District Liaison Officers tasked to evacuate non-Muslims from West Punjab indicate that at least 100,000 untouchables – over a third of the pre-partition population – had not yet crossed the border by January 1948. See files in EPLAR, especially Bundles I/3, VIII/29/15-B, LVIII/20/223, LIX/2, 46-A, and 46-B. Also see Ravinder Kaur, *Since 1947*, pp. 65–83.

³⁵⁴ The pioneering study of the human dimension of Partition is Urvashi Butalia, *The Other Side of Silence: Voices from the Partition of India* (Durham, NC: Duke University Press, 2000). Kaur writes that “The history of Partition migration is marked by such noticeable absences and blanks: untouchables, women, and the very poor seldom make an appearance.” R. Kaur, p. 9.

³⁵⁵ This chapter focuses on movements across the Indo-Pakistan border in divided Punjab, but individuals associated with the Criminal Tribes Act also moved across the border in divided Bengal and between Gujarat and Sindh, as well as across the numerous internal borders of the subcontinent.

³⁵⁶ See correspondence in ‘Evacuation of Bazigars and ‘Report of Montgomery District’, EPLAR, Bundle nos. I/1 and LIX/2, respectively.

historiography on Partition has noted the hardening of religious identities in the period, these instances (like Khanu Sansi at the beginning of this chapter) reveal their instabilities.³⁵⁷ Despite this, the majority of the criminal tribes who resided in the Pakistan districts and professed Hinduism or Sikhism eventually migrated across the border to East Punjab.

These migrations were divergent, both geographically and temporally. As early as June 1947, 3000 Muslim Ods were reported to have crossed the border into the princely state of Bahawalpur, which acceded to Pakistan.³⁵⁸ As mentioned, large numbers of Bazigars remained in West Punjab until their evacuation by India's Military Evacuation Organisation in early 1948. In April 1949, a few Sansis crossed the border at Gharinda whilst under pursuit by the Pakistani military.³⁵⁹ As with Khanu Sansi, those who had been interned within the Department's institutions were dependent upon the actions of state officials for their transfer. Moreover, initial displacements in 1947-1948 were often followed by repeated movements in subsequent years. Some groups were placed in new industrial settlements, such as Rupar and Abdullapar, for the supply of labour.³⁶⁰ Others who had been landowners in West Punjab were allotted evacuee land, first along the Sutlej River in Ludhiana on a temporary basis then more permanently in Ferozepore, Hissar, Karnal and Jullundur.³⁶¹ The early 1950s saw a secondary migration of many communities from East Punjab to Delhi seeking new opportunities in the capital.³⁶² Likewise, communities today still narrate instances of their ongoing contact and movement across the border.³⁶³

The migrations of the criminal tribes were clearly diverse and contingent on local circumstance; most, if not all, were in some way impelled by Partition, whether as a direct response to violence or seeking out new opportunities. Yet, many in the bureaucracy – as we shall see – conflated these migrations with the communities' long-standing (if often inaccurate) association with mobility. As noted in the previous chapter, at least the early

³⁵⁷ See, for example, Shail Mayaram, 'Speech, Silence and the Making of Partition Violence in Mewat', in *Subaltern Studies IX: Writings on South Asian History and Society* (New Delhi: Oxford University Press, 1996), pp. 126–64.

³⁵⁸ 'Fortnightly Report of the Punjab States for the first half of June 1947', Political/'P' Branch, 1947, File no. 5(1)-P(S)/47, NAI.

³⁵⁹ *Tribune*, 10 April 1949, p. 3.

³⁶⁰ *Tribune*, 15 August 1948, p. 3.

³⁶¹ *Ibid.*

³⁶² Members of the Bhedkuts remarked in interviews conducted in April 2016 that they had moved to Delhi looking for greater economic opportunities.

³⁶³ The continued contact across the border was noted by a member of the Bazigar community in Patiala in an interview in April 2016.

notifications under the Criminal Tribes Act targeted communities, like Sansis and Bawarias, who were considered nomads. Throughout the colonial period, state officials lamented the ability of the criminal tribes to move across borders without hindrance. In the context of unregulated movements, uncertain borders, and unravelling state authority in 1947-1948, their pre-existing association with mobility marked out the criminal tribe refugees not merely as displaced persons but as a tangible threat.

Partition was a period of considerable upheaval, uncertainty and flux, therefore – not just for these individuals and communities, but likewise for the state.³⁶⁴ Migration fractured the material substance – or the paraphernalia – of the state. The numerous actors either within or outside the formal bureaucracy who performed the state in daily life had to decide whether to migrate or not; often, decisions were made at haste in response to mounting violence. Their decisions whether to go, as well as to where and when, thus irrevocably shaped the nature of the state in these transitional years, thereby determining how it could enact its functions. The documentary and institutional sites of governance – government offices, prisons, hospitals, schools, and so on – were also divided between the two nations and took on new meanings and functions in response to the movements across the border. As described by the *East Punjab* newspaper in November 1948, Partition was the ‘sundering apart of a complex living organization into two’.³⁶⁵

This was evident in the fragmentation of the Department. For one, many of the individuals who performed its functions – such as police officers and village watchmen and headmen – migrated or were posted to new localities. Large numbers of Muslim officials at all levels of the state administration departed for Pakistan: for example, 74.1 per cent of the police force in the united Punjab had been Muslim and out of a total of 20,262 policemen in the East Punjab districts prior to Partition only 7188 were left after August 1947.³⁶⁶ A year later, a heavy recruitment drive almost filled the vacancies but with men who had little training, experience or local knowledge.³⁶⁷ This dispersal of personnel was especially pertinent for the everyday administration of the Criminal Tribes Act, which relied on local structures of knowledge and control. As we will see in the next section,

³⁶⁴ On the flux of the period, see Gould, Sherman, and Ansari.

³⁶⁵ ‘Progress of Rehabilitation’, *The East Punjab*, 1, pp. 6-7 (Simla: November 1948), cited in Satya M. Rai, *Partition of the Punjab: A Study of Its Effects on the Politics and Administration of the Punjab (I) 1947-56* (London: Asia Publishing House, 1965), p. 90.

³⁶⁶ *Tribune*, 15 August 1948, p. 3. The difficulties of ‘tracing out the criminals’ with the ‘depleted police force’ was also noted by Rai, p. 91.

³⁶⁷ Rai, p. 95.

this posed difficulties for the state actors who attempted to identify the displaced criminal tribes, especially 'true' exemptees. Given the widespread violence and lawlessness in the months around August 1947, police officers were diverted to more pressing tasks, and consequently overlooked the routine tasks that underpinned the functioning of the Act.

In line with the division of assets between India and Pakistan more widely, the apparatus of the Department was similarly divided.³⁶⁸ After 1947, there was not one but two DCCTs as the Government of Pakistan appointed a counterpart to take responsibility for the criminal tribes in West Punjab. Evidently, despite the endemic disruption to the state, the government deemed the question of criminal tribes of sufficient importance to appoint a new officer to the role.³⁶⁹ There was greater continuity in East Punjab where Mulkh Raj Mehra, who had taken office in December 1946, remained in post. The DCCTs were responsible for the control and rehabilitation of criminal tribes in their respective jurisdictions, as well as those who desired evacuation from over the border. Unlike prisoners, there was no Inter-Dominion Agreement in place for incarcerated individuals belonging to the criminal tribes.³⁷⁰ With no clearly defined policy, the DCCTs devised their own ad hoc measures which were beset with repeated complications, miscommunications, and delays.³⁷¹

For instance, the Reformatory Settlement in Amritsar had fifty-five Muslim detainees in August 1947, with sixty dependants, plus an additional three Muslim boys housed in the adjoining Reformatory School. Between November 1947 and August 1948, repeated attempts to transfer the inmates fell through. Information was not sent, the DCCTs failed to report at the border, and the state governments imposed a ban on the exchange of individuals in response to the other sides' intransigence.³⁷² Eventually, on 6

³⁶⁸ On the division of assets, see Chatterji, *The Spoils of Partition*.

³⁶⁹ This is also interesting in light of the claim by the Servants of the People Society in 1951 that the Criminal Tribes Act had become a dead letter in Pakistan by 1948. See introduction, footnote 124, p. 25. 'The Servants of the People Society, Monthly Letter, April 1951, from Sevak Ram, Joint Secretary', Rameshwari Nehru Private Papers, Subject Correspondence Files, File no. 1(a), Part II, NMML.

³⁷⁰ In December 1947, in line with the agreed upon evacuation of minorities from East and West Punjab, the two governments turned their attention to exchanging less mobile individuals, such as prisoners. During the following years, a series of legislation and Inter-Dominion Agreements were promulgated that outlined the specific terms and protocols by which prisoners were to be transferred between East and West Punjab, and later across most of India and Pakistan.

³⁷¹ As Joya Chatterji has argued, actions taken by such officials were informed by 'common-sense notions about citizenship, belonging, justice, and entitlement'. The demarcation of citizenship between India and Pakistan was thus shaped in accordance with the top-level policy of exchanging minorities but was rooted in local interpretations and negotiations. Chatterji, 'South Asian Histories of Citizenship', p. 1056.

³⁷² See correspondence in 'Inter-provincial adjustment regarding recovery of maintenance charges of Muslim inmates and boys of Reformatory Settlement and School, Amritsar, from Punjab (Pak) Govt.', Welfare/General-I B Progs., 1957, File no. 45, PSA.

August 1948, the Muslim detainees were evacuated to West Punjab. Years later, in 1954, negotiations were ongoing as debate turned to whose responsibility it was for the payment of maintenance charges during the nearly year-long period of their incarceration on the ‘wrong’ side of the border. The root of the issue was that the Department had been hindered by a lack of manpower and inadequate resources. During 1948, Mehra repeatedly wrote to the Chief Liaison Officer of the East Punjab Liaison Agency to request additional resources and manpower, but with limited effect.³⁷³

The division of the Department’s assets also fragmented the regime of paper which underpinned the workings of the Act. Its administration created a vast bureaucratic edifice of paper ‘evidence’ of criminality – through police registers, history sheets, exemption permits, and passports. These paper trails were now also divided. The DCCTs in East and West Punjab were responsible not just for exchanging persons across the border, but also reports and registers. Like the exchange of incarcerated individuals, the process was haphazard and fraught with delays. In September 1948, the Pakistani government recommended the exchange of documentation relating to displaced criminal tribes and other bad characters, noting, ‘It would be in the interests of both the Dominions if the history sheets or criminal tribes’ registers and personal rolls of bad characters, who are known to have migrated from one Dominion to the other, could be exchanged between the Police authorities in India and Pakistan.’³⁷⁴ This followed an earlier agreement between the governments of East and West Punjab to transfer history sheets on a mutual basis. This suggests, as others have shown, the many arenas of cooperation and compromise between the two nations in a period often characterised by hostility and antagonism.³⁷⁵ Yet, the implementation of these agreements relied on the actions of lower-level officials, for whom diplomacy was a lesser concern. In January 1949, in response to a request from New Delhi for information related to the administration of the Criminal Tribes Act, the East Punjab government admitted that most of the records were still lying in Lahore.³⁷⁶ Even as late as 1954, negotiations were

³⁷³ Unable to complete evacuations using only the personnel of the Criminal Tribes Department, District Liaison Officers from the East Punjab Liaison Agency were eventually drafted in to help evacuate individuals from settlements like Kot Gobindke and Kot Jahndu. ‘Letter from Mulkh Raj Mehra, DCCT, 31 July 1948’, EPLAR, Bundle I/6.

³⁷⁴ ‘Letter from Ministry of Interior – Home Division, Government of Pakistan, to the Government of India, 25 September 1948’, Home/Police-I, 1948, File no. 22/1/48, NAI.

³⁷⁵ Haines, *Rivers Divided*; Pallavi Raghavan, ‘The Making of the India–Pakistan Dynamic: Nehru, Liaquat, and the No War Pact Correspondence of 1950’, *Modern Asian Studies*, 50.5 (2016), 1645–78.

³⁷⁶ ‘Reply received from Government of Punjab in response to questionnaire sent by Ministry of Home Affairs, Government of India, 6 October 1949’, MHA/Police-I, 1949, File no. 22/1/49, NAI.

still ongoing over the supply of service books, annual returns, and character rolls of the criminal tribes, despite their denotification two years previously.³⁷⁷

Institutional sites were similarly divided. The physical location of the border determined whether it was East or West Punjab who inherited such institutions. Most of the jails in the united Punjab had been located in those districts which fell to Pakistan, including the two most successful reformatory agricultural farms located at Burewala in Multan, and the Women's Jail.³⁷⁸ The East Punjab government blamed this loss of institutions for impeding their ability to adequately instil law and order within the province for years to come. In 1952, they reported that the jails were still suffering from chronic overcrowding owing to a sheer shortage of facilities.³⁷⁹ More directly related to the Department, the Amritsar Reformatory remained in East Punjab and continued to house inmates until September 1952, when the remaining 232 inmates were released after the repeal of the Act.³⁸⁰ The inmates and their families had been shifted into tents after August 1947, however, to accommodate an urgent need for a psychiatric hospital in the region. Whilst remaining an instrument of state control, the shift from criminal tribe settlement to psychiatric hospital reveals the precarious and transitional nature of such institutions. In one sense, this was reminiscent of the continually shifting landscape of criminal tribe settlements in colonial Punjab which, as shown in chapter I, opened and closed depending on the availability of land, labour, resources and the demands of the economy at the time. But it was also indicative of the specific demands of mass displacement. Similar sites, such as schools and army barracks, across Punjab – and indeed across India – were appropriated by the government as emergency accommodation for refugees.³⁸¹ The exigencies of Partition thus transformed the meanings and uses of such sites, thereby simultaneously transforming the nature and experience of the state within them. Yet, the continued physical presence of the criminal tribe inmates on the site, even if excluded to its peripheral edges, betrayed a certain continuity, too.

The transfer of power took place, therefore, in what Vazira Fazila-Yacoobali Zamindar describes as 'a crisis, a state of emergency'.³⁸² Official narratives tend to invoke

³⁷⁷ 'A brief note on each item of the agenda proposed for the meeting of the Home Secretaries of Punjab (I) and Punjab (P) to be held at Simla on the 19th and 21st June 1954', Welfare/General-I B Progs., 1957, File no. 45, PSA.

³⁷⁸ Rai, p. 97.

³⁷⁹ *Report on the Administration of the Jails in the Punjab for the Year 1952* (Chandigarh: Controller of Printing and Stationary, 1954), p. 1.

³⁸⁰ *Tribune*, 4 September 1952, p. 3.

³⁸¹ Khan.

³⁸² Zamindar, p. 6.

the metaphor of the re-birth of the nation, like a phoenix arising from the ashes of colonialism and Partition violence, to emphasise the fragile foundations upon which the nation rebuilt itself.³⁸³ Personal narratives, too, are often either silent on the topic of the state or refer to its disintegration.³⁸⁴ Indeed, state actors – from members of the provincial government to individual officers in the field – had to contend with depleted resources, over-stretched personnel, and the immediate need to restore law and order. And the overwhelming and unforeseen numbers of refugees placed an unprecedented strain on a struggling state apparatus.³⁸⁵ In terms of the Department, Partition had fragmented the bureaucratic edifice – or the paraphernalia – of the criminal tribe: state actors migrated to new localities, the regime of paper was disrupted, and institutions were appropriated for new purposes.

Yet, the fragmentation of its material substance did not necessarily mean that the state was entirely undermined. As Ravinder Kaur demonstrates, the breakdown in law and order – often assumed to indicate the absence of the state – was accompanied by coordinated evacuation, the establishment of refugee camps, and the implementation of resettlement schemes.³⁸⁶ It was through refugee rehabilitation, then, that many individuals were brought more directly within the orbit of the state, and often became reliant upon it.³⁸⁷ The state thus remained an active presence in everyday life through the refugee regime. Indeed, it was often through the actions and decisions of the state actors who attempted to overcome this disruption and division, that the state – as an idea or effect – was given greater tangibility. It was through multiple and negotiated everyday encounters – like crossing the border, being registered on arrival, getting inoculated, receiving ‘doles’, and so on – that refugees were brought ‘face-to-face’ with the state, often in the form of lower-level government employees.³⁸⁸ However fragmentary and contested, then, the

³⁸³ Gopal Das Khosla, *Stern Reckoning: A Survey of the Events Leading up to and Following the Partition of India*, reprint [1950] (Delhi: Oxford University Press, 1989); M.S. Randhawa, *Out of the Ashes: An Account of the Rehabilitation of Refugees from West Pakistan in Rural Areas of East Punjab* (Chandigarh: Public Relations Dept., Punjab, 1954); U. Bhaskar Rao, *The Story of Rehabilitation* (Delhi: Department of Rehabilitation, Government of India, 1967).

³⁸⁴ On the ‘writing out’ of the state, by both British Indian Civil Service officers and Punjabi refugees, see Catherine Coombs, ‘Partition Narratives: Displaced Trauma and Culpability among British Civil Servants in 1940s Punjab’, *Modern Asian Studies*, 45.1 (2011), 201–24; Talbot, ‘Punjabi Refugees’ Rehabilitation and the Indian State’.

³⁸⁵ They were accommodated in relief camps across the province at a cost of ninety-nine million rupees. An additional one hundred million rupees was spent by the East Punjab government on further relief and rehabilitation schemes by January 1950. Talbot, ‘Punjabi Refugees’ Rehabilitation and the Indian State’.

³⁸⁶ Ravinder Kaur, *Since 1947*, p. 85.

³⁸⁷ Sherman, Gould, and Sarah Ansari, ‘From Subjects to Citizens’, p. 5.

³⁸⁸ Udit Sen, p. 7.

state remained persuasive as an idea, to which refugees could appeal for land, housing or rehabilitation, albeit often met with bitter disappointment.³⁸⁹

In the months and years after August 1947, as this section has shown, the Department – and the wider state bureaucracy – faced debilitating disruption and division. Personnel migrated, records were lost or beyond borders, and institutional sites of governance were repurposed. The migration of tens of thousands of individuals who belonged to the criminal tribes, too, destabilised the structures of surveillance which had underpinned the administration of the Criminal Tribes Act. The fragmentation of the material substance of the Department, or indeed the state, did not undermine or erode the category of the criminal tribe, however. Instead, as we shall see, state actors relied on the criminal tribe as a marker of legibility within the refugee regime. By marking out the criminal tribe refugee – one whose relationship to the state and society was intrinsically shaped by an association with criminality – these actors re-embedded the category within state practice after independence.

Regulating the Criminal Tribe

This chapter now turns to those state actors who, as they reacted to the situation of flux, sought to reconstitute their knowledge, control and authority by making the displaced criminal tribes legible within the emerging refugee regime, albeit often with little success. It draws on correspondence, memoranda and reports directly related to the regulation of displaced criminal tribes, as well as files detailing the wider recording, categorising and control of refugees in the late 1940s. It employs several case studies to make its case, often utilising petitions sent by some of the individuals marked out by this regime. First, it situates the regulating of displaced criminal tribes within the broader context of the documentary regimes which emerged in post-Partition South Asia. It then turns to the directives circulated by the DCCT, before examining their effect upon these refugees. Throughout, it demonstrates that through their actions to regulate and control the displaced criminal tribes, state actors – from the DCCT to local police – reified the criminal tribe as a category of identification.

In 1950, a group of Bawarias who had migrated from Kot Khalsa Chak no. 16/9R in Multan, after it was awarded to Pakistan, sent a petition to the Displaced Harijan Rehabilitation Board. They described the ‘dreadful massacre of the non-Muslim Hindu

³⁸⁹ See, for example, Ansari, ‘Everyday Expectations of the State during Pakistan’s Early Years’.

Sikh population' in their village which took 'a toll of 3500 lives'.³⁹⁰ All but seven of the landholders (the petitioners) were murdered and only 150 persons survived in all. After their migration to East Punjab, however, they found themselves subject to a more bureaucratic form of violence:

Having suffered so much we come to understand that the Pakistan authorities have not sent our Jamabandi Records. This staggers us beyond imagination, like the straw on the camel's back. 140 claimants are now wandering in wilderness and darkness about their future prospects. Our lives were finished, we could not bring the 161 Patta deeds enacted with Government for 15 years as hereditary tenants to serve as documentary evidence [...] Over and above all this, the Criminal Tribes Dept. has imposed upon us restrictions of giving attendance every day and leaving station with Police permits which we or our parents and ancestors were absolutely exempted from.³⁹¹

Their reference to 'documentary evidence' is significant. Documentary regimes enact and reinforce the government's authority by allowing it to determine who a person is, whether they belong, and on what terms.³⁹² After August 1947, documentary regimes emerged in both India and Pakistan to regulate the movement of people across the new borders.³⁹³ Through ostensibly neutral and bureaucratic technologies, the state enacted a bureaucratic form of violence as it actively displaced and excluded minorities from the physical and ideological bounds of the nation.³⁹⁴ In the context of widespread movement and disruption – of refugees, bureaucrats and systems of knowledge – documentation took on heightened significance as 'proof' of one's status. 'Refugee documents, border slips, and passports', according to Haimanti Roy, 'became the means through which the Indian State sought to differentiate between refugees, migrants, aliens, and citizens'.³⁹⁵ A form of 'documentary citizenship' thus emerged, whereby documentation provided the avenue

³⁹⁰ 'Letter from Shriyut A.S. Satayarthi, Regional Working Secretary, Displaced Harijans Rehabilitation Board, (Central Government Agency), Civil Secretariat, Jullundur, sent to Rameshwari Nehru, undated', Rameshwari Nehru Private Papers, Subject Correspondence Files, File no. 1(a), Part I, NMML.

³⁹¹ Ibid.

³⁹² On the role of identity documentation as a technology of state formation and control, see Jane Caplan and John Torpey, *Documenting Individual Identity: The Development of State Practices in the Modern World* (Princeton, NJ: Princeton University Press, 2001); C.J. Harvey, 'Talking about Refugee Law', *Journal of Refugee Studies*, 12.2 (1999), 101–34; John Torpey, *The Invention of the Passport: Surveillance, Citizenship and the State* (Cambridge: Cambridge University Press, 2000); In the South Asian context, see 'Certifications of Citizenship: The History, Politics and Materiality of Identity Documents in South Asian States and Diasporas', ed. by Vasudha Chhotray and Fiona McConnell, *Contemporary South Asia*, 26.2 (2018), 111–246; Gupta, *Red Tape*; Tarangini Sriraman, *In Pursuit of Proof: A History of Identity Documents in India* (New Delhi: Oxford University Press, 2018).

³⁹³ Chatterji, 'South Asian Histories of Citizenship'; Haimanti Roy; Zamindar.

³⁹⁴ Zamindar.

³⁹⁵ Haimanti Roy, p. 5.

to membership of the political community; a loss or lack thereof, in turn, excluded those on the margins.³⁹⁶

The distinction between those who did and did not belong has generally been understood in religious terms: whilst Hindu and Sikh refugees were, theoretically, considered ‘natural’ citizens, Muslims had a permanent question mark put over their place in the Indian nation.³⁹⁷ Yet, other categories of refugee were also marked out by this documentary regime. Proof of residence distinguished legally-defined refugees from those of questionable status.³⁹⁸ Claimants to evacuee land had to provide evidence of land ownership in their erstwhile homelands.³⁹⁹ In East Bengal, only those persons who could prove their *bonafide* status as increasingly narrowly-defined refugees were eligible for relief, rehabilitation and, ultimately, citizenship.⁴⁰⁰ The status of refugee itself was conferred through documentation too; the refugee card, attained through registration on arrival, did not merely affix identification as a refugee, but was, as Kaur argues, ‘essential proof in gaining a ration card, temporary and permanent housing, admission to educational institutions and employment’.⁴⁰¹ The demand for ‘documentary evidence’ from the Bawarias should therefore be understood as part of a more pervasive documenting and categorising exercise that sought to reconstitute state authority in the wake of Partition.

The displaced criminal tribes were particularly vulnerable to this regime. For one, as with many marginalised and especially lower caste or class refugees, they were less accustomed to navigating the bureaucratic procedures of the state. Upper and middle class refugees often had more influential networks of contacts and advantageous

³⁹⁶ Kamal Sadiq introduces the notion of ‘documentary citizenship’ to describe the importance attributed to identity documents in the conferral of citizenship, even if these documents are sometimes illegally acquired. Kamal Sadiq, *Paper Citizens* (New York, NY: Oxford University Press, 2009).

³⁹⁷ As Gyanendra Pandey asked in his essay: ‘Can a Muslim Be an Indian?’ See also, Haimanti Roy; Zamindar.

³⁹⁸ A ‘refugee’ was legally defined as a person who, since 1 March 1947 had ‘left his place of residence elsewhere on account of civil disturbances in that place or the fear of such disturbances’ Ordinance for the Registration of Refugees in Delhi Province, promulgated in October, 1947, cited in ‘Letter from Ministry of Relief and Rehabilitation, Government of India, to all provincial governments, 7 March 1949’, Home/Public, 1949, File no. 51/134/49, NAI.

³⁹⁹ The East Punjab’s land distribution policy dictated that evacuee land would only be granted to those who could prove ownership in the West Punjab. This negatively impacted upon many tenant farmers and day labourers, particularly untouchable communities, who had often worked on the land for generations but had no documentation to prove it. Tarlok Singh, *Land Resettlement Manual for Displaced Persons in Punjab and PEPSU* (Simla: Government of Punjab Press, 1952); Gyanendra Pandey, “‘Nobody’s People’: The Dalits of Punjab in the Forced Removal of 1947”.

⁴⁰⁰ Chatterji, ‘Rights or Charity?’

⁴⁰¹ Ravinder Kaur, ‘Distinctive Citizenship: Refugees, Subjects and Post-Colonial State in India’s Partition’, *Cultural and Social History*, 6.4 (2009), 429–46 (p. 433).

knowledge of the workings of the bureaucracy.⁴⁰² They also had, to borrow Chatterji's phrase, greater 'mobility capital' – the 'bundles of assets, competences, or dispositions' that determined the nature of one's migration (or lack thereof).⁴⁰³ For many criminal tribe refugees, the lack of such capital was compounded by missing documentary evidence. Those with an absence of documentation, especially at the geographic or social margins, often face severe difficulties in the modern state – in the Partition context and beyond.⁴⁰⁴ Yet, the Bawarias' documentation was evidence of more than their claims to land, or even belonging, in the new nation. It also acted as proof of their status under the Criminal Tribes Act. According to the Department's rules, members of criminal tribes were eligible for a grant of land if they had no convictions to their name during a specified period.⁴⁰⁵ Land rights therefore evidenced their 'reformed' status, and thus freedom, as far as possible, from the punitive provisions of the Act. Faced with the disorder, violence and uncertainties of 1947, many groups did not, or could not, bring their land deeds across the border, nor their exemption notices.⁴⁰⁶ As a consequence, groups like the Bawarias were placed under fresh regulations by the Department.

It quickly became apparent to the Department that members of criminal tribes, like many other refugees, sought out their kin across the border after their displacement from West Punjab.⁴⁰⁷ Numerous families had decided to 'settle with their brethren in the villages of the East Punjab' reported DCCT Mehra in late 1947.⁴⁰⁸ Yet, large numbers – up to 25,000 individuals – were still not located as late as 1951.⁴⁰⁹ Faced with uncertainties over their whereabouts, Mehra sent out a memorandum to all superintendents of police in March 1948:

⁴⁰² Ravinder Kaur, *Since 1947*, pp. 148–53.

⁴⁰³ Chatterji also points to factors that go beyond social class, although these remain important. She identifies portable skills, like craftsmanship, being youthful, able-bodied and healthy, and histories of mobility as factors that encourage migration. Joya Chatterji, 'Dispositions and Destinations: Refugee Agency and "Mobility Capital" in the Bengal Diaspora, 1947-2007', *Comparative Studies in Society and History*, 55.2 (2013), 273–304 (p. 279).

⁴⁰⁴ Chhotray and McConnell; Sriraman; Phillipa Williams, Bhaskar Vira, and Deepta Chopra, 'Marginality, Agency and Power: Experiencing the State in Contemporary India', *Pacific Affairs*, 84.1 (2011), 7–23.

⁴⁰⁵ A member of a settled criminal tribe was eligible for a grant of land if he had not been convicted for a period of ten years, whereas a member of a wandering criminal tribe was eligible after five.

⁴⁰⁶ Numerous individuals recount leaving their items in safe keeping with neighbours anticipating their eventual return. Talbot, 'Punjabi Refugees' Rehabilitation and the Indian State', p. 123.

⁴⁰⁷ Ian Talbot has shown that refugee migrations to Amritsar tended to follow paths of existing kinship or community networks. Talbot, 'A Tale of Two Cities'.

⁴⁰⁸ 'Proposals to afford educational, medical and other facilities to the members of the criminal tribes, belonging to the scheduled castes, out of the Harijan Fund, by Lala Mulkh Raj Mehra, DCCT', Home/Judicial B Progs., 1947, File no. 72, PSA;

⁴⁰⁹ 'Serial no. 39: Letter from President, Criminal Tribes Welfare Board, Rameshwari Nehru, 5 December 1951', MHA/Police-I, 1950, File no. 19/9/50, NAI.

All the refugee criminal tribes in a particular districts [sic] should be interrogated by a reasonable police officer not below the rank of Sub Inspector to ascertain their status under the Criminal Tribes Act [...] Till such time as these members are removed to Settlements they should be placed on the roll call registers and subjected to the usual roll call and leave rules [...] Refugee criminal tribes who alleged to be exemptees but have no exemption passes should be placed on the roll call registers, subjected to the usual roll call and leave rules and treated on [leave] from their area of restriction in the West Punjab till their antecedents are verified from the P.P. [Fingerprint] Bureaus [...] Refugee criminal tribesmen holding passes in form K are to be as restricted under section 11 [...] Their passes in form K should be forwarded to me for cancellation.⁴¹⁰

Eighteen months later, Mehra relayed further instruction. He requested that ‘simultaneous raids’ be arranged throughout East Punjab in order to update the criminal tribe registers held by both the Department and local officials. ‘If this is not done’, he warned, ‘there is every chance of the restricted members of the Criminal Tribes infiltrating to other Provinces and adjoining States.’⁴¹¹ In his first memorandum, Mehra had demanded that only those individuals who claimed to be exemptees but had lost their passes be restricted in their movements. Now, he also demanded that those who *held* exemption passes also be placed under restriction and their exemption passes sent to him for cancellation. Documentary evidence was, on the one hand, decisive in ‘proving’ one’s status to the state – whether as a *bonafide* refugee or as an exempted member of a criminal tribe. On the other hand, bureaucrats like Mehra could dismiss such evidence at will. The effect of documentation worked along unequal power dynamics that could either alienate or embrace, depending on one’s background.

In one sense, these regulations were reminiscent of the Department’s practices during the colonial period, when colonial officers sought to overcome their pervasive lack of knowledge about the movements, behaviours and even identities of the criminal tribes through ever greater scrutiny and control. The memoranda were no mere continuation of colonial policies, however. Whilst they replicated the penal practices used prior to 1947, the policies should be understood as a direct response to the uncertainties produced by Partition. They drew parallels with wider efforts to regulate and document the movements of refugees across the subcontinent. For example, refugees were required to register

⁴¹⁰ Form K was a certificate of exemption from the restrictions imposed by sections 11 and 12 of the Criminal Tribes Act for those who took service under Government or any private person. ‘Letter from Mulkh Raj Mehra, DCCT, to P.C.T.C., Ambala Circle, 25 March 1948’, MHA/Police-I, 1949, File no. 22/1/49, NAI.

⁴¹¹ ‘Letter from Deputy Commissioner of Criminal Tribes, East Punjab, to all the District Magistrates in East Punjab, 15 September 1949’, Chief Commissioner’s Office, Revenue/Judicial, 1950, File no. 8(3), Delhi State Archives (hereafter DSA), New Delhi.

themselves on arrival in new localities, carry certificates – sometimes termed ‘history sheets’ akin to those used against habitual criminals – detailing their physical particulars, socio-economic standing and temporary residences, and could be forced to undergo vaccination and inoculation.⁴¹² As movements of both refugees and the bureaucracy diffracted the local knowledge and material substance of the state, these policies sought to identify, regulate and thereby control refugees.

Given the pervasive breakdown in systems of knowledge and control, the DCCT’s memoranda similarly attempted to make the criminal tribe refugees legible to the state. Whilst other refugees were marked out by way of occupation, residence, religion or caste – amongst other identifiers – the displaced criminal tribes were marked, first and foremost, by the category of the criminal tribe. These policies, in effect, re-situated the displaced criminal tribes within the legal parameters of the Criminal Tribes Act, regardless of their prior status under the legislation. Many individuals, like the Bawaria petitioners, who had long been exempted were again placed upon registers and restricted in their movements. The DCCT invested the authority to ‘interrogate’ the displaced criminal tribes in relatively subordinate officers – those of sub-inspector rank and above.⁴¹³ Whilst the policy to regulate the displaced criminal tribes came from the DCCT himself, the decisions that determined one’s status – and thus extent of restriction and control – were therefore taken at a more local level.

The case of Uttam Singh is illustrative of the everyday impact of these policies, as well as the numerous contestations and informalities that pervaded them.⁴¹⁴ Uttam belonged to the Bhedkut community, a sub-sect of the Sansi caste, and had been a resident of *tehsil*/Vehari in Multan (West Punjab) prior to Partition. He had been sentenced to three months rigorous imprisonment in 1922 for violating the rules of the Criminal Tribes Act – namely, for going beyond the bounds of his village without stated permission. After his release, his movements were more strictly limited but these restrictions were subsequently removed in 1929 owing to his good behaviour. In that year, the local authorities issued him a pass which meant that he could absent himself from his village for up to three months. Later, in 1938, all the restrictions on his

⁴¹² See, for example, the Bombay Refugees Act, 1948. Also see ‘Letter from M.R. Thadani, Under Secretary, Ministry of Rehabilitation, Government of India, to all Provincial Governments and Chief Commissioners, 3 December 1949’, Ministry of States/G(R) Branch, 1948, File no. 2(2)-G(R)/48.III, NAI.

⁴¹³ A sub-inspector often had command of a few police personnel, including police constables.

⁴¹⁴ ‘Letter from Shri Uttam Singh, S/O Dalip Singh, Bhedkut Rajput of village Mohamadpur Rohi Tahsil Fatehabad, District Hissar, 12 January 1952’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

movements were lifted. Uttam had ‘proved’ his good behaviour to the state. He was, as far as possible for someone belonging to a criminal tribe, disentangled from the everyday practices of regulation and control. Though, he remained implicated in the Act’s structures of surveillance as his exemption was dependent upon his repeated ‘proving’ of his good behaviour and the production of his exemption pass when required.

The fragility of his status as an exemptee was exposed by Partition, however. During the disturbances he migrated from Multan across the Indo-Pakistani border to the village of Mohamadpur in Hissar. In 1950, the local police in Rohtak *challaned* him under section 109 of the Criminal Procedure Code, which related to vagrancy and fell under the ‘bad livelihood’ sections that aimed for the prevention, rather than prosecution, of crime. The charge was later dismissed by the local magistrate who argued that:

after [1922] there is no conviction and that goes to his credit for having kept a clean slate for 28 years. At the time of arrest no incriminating instruments were found in his possession. He is a refugee and has been allotted land on temporary basis in Hissar District. He is himself working as a labourer in Delhi. To bind such a man is not only to deprive him of his liberty but also put unnecessary burden on the State finances.⁴¹⁵

The conflicting interpretations of the local police and the local magistrate regarding Uttam’s movement reflect, on the one hand, the competing agendas of the state. Whilst the police officer prioritised countering possible challenges to maintaining law and order, the district magistrate weighed up the potential cost such action would have upon the limited resources at hand. The fact that Uttam had remained in possession of his exemption pass until 1950 also suggests that the DCCT’s memoranda in 1948 and 1949 were not always followed by junior officials. The encounter between the state and the displaced criminal tribes remained dependent upon the interpretation and implementation of official policies by individual officers in the field, whose actions were often characterised by informality, ambivalence, and personal discretion.

Yet, these contingent and locally-rooted actions were simultaneously shaped by, and further entrenched, the more pervasive category of the criminal tribe. If we contextualise Uttam’s mobility – his recent displacement into the province, being resident on temporarily allotted land, and working as, in all likelihood a casual and thus mobile, labourer in Delhi – there is nothing extraordinary; his narrative of post-Partition precariousness and spatial fluidity was shared by the vast number of refugees, the majority

⁴¹⁵ Letter from Shri Uttam Singh, 12 January 1952, MHA/Police-I, 1950, File no. 19/9/50, NAI.

of whom did not fall prey to charges of vagrancy. But something did set Uttam apart: his identification as a member of a criminal tribe. Arguably, this contributed towards his charge for vagrancy, given the close relationship between ideas of criminality, movement, and ‘bad livelihood’.⁴¹⁶ Being marked out as a member of a criminal tribe placed Uttam in a vulnerable position at the hands of the state. Despite the magistrate’s judgement, the DCCT requested Uttam’s exemption pass and refused to re-issue it, and again bound his movements to the limits of the village. Significantly, in a petition he sent to the East Punjab government, Uttam stated that ‘there [was] no information in writing given to me that I have been again declared as a member of the criminal tribes nor any notification issued by the Government to this effect has been received by me’.⁴¹⁷ Although the DCCT was working within the bounds of the law, his actions were characterised by informality as decisions could be taken at haste without recourse to formal bureaucratic procedure.

Individuals like Uttam may have been exempted from the regulations of the Act, but the Bhedkuts as a community were still notified as a criminal tribe. In the context of Partition, the designation took on heightened importance and such individuals were vulnerable to the whims or personal imperatives of local state actors for whom the category, as opposed to individual circumstance, often held greater sway. This is evident in the East Punjab government’s response to Uttam’s petition. After conducting enquiries, they concluded that

in view of the general complaints, against the misdoings of the Bhedkuts as a class, [the DCCT] did not consider it advisable to return the exemption pass granted under rule 24 of the Rules framed under section 20 of the Criminal Tribes Act of Uttam Singh to him, unless and until his antecedents as well as the antecedents of his wife (who had been challaned in a case under the Arms Act in Meerut) were verified from the Finger Printer Bureau.⁴¹⁸

Rather than cite any specific instances of criminal behaviour – arrests, imprisonments, etc. – the DCCT’s actions were legitimised by the ‘general complaints’ heard against the Bhedkuts. This suggests that local societies protested against the migration of a so-called criminal tribe into their localities. Whether the displaced Bhedkuts had taken to committing crime in Hissar is unclear, and somewhat irrelevant. What counted, as stated by the government, was the perception of the Bhedkuts ‘*as a class*’. It was their identification as a criminal tribe rather than any specific actions themselves that

⁴¹⁶ Radhika Singha, ‘Punished by Surveillance: Policing “Dangerousness” in Colonial India, 1872–1918’, *Modern Asian Studies*, 49.2 (2015), 241–69.

⁴¹⁷ ‘Letter from Shri Uttam Singh, 12 January 1952’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁴¹⁸ ‘Letter no. 5082-CR from the Home Secretary to Government, Punjab, 10 April 1952’, *ibid*.

constituted their perceived threat to society. In contrast, even though the East Punjab government frequently wrote to New Delhi bemoaning that the refugee population more widely had been ‘driven to take to crime’, their fortnightly reports made sure to root this behaviour in the refugees’ economic hardship.⁴¹⁹ Actual instances of crime warranted less penal scrutiny, therefore, than the potential threat posed by the displaced criminal tribes. In January 1952, the East Punjab government finally conceded that there was no evidence to implicate Uttam Singh, or his wife, and they were consequently exempted – again – from the Criminal Tribes Act. As Bhedkuts, however, they remained vulnerable to the Act until its repeal that August.

These policies resituated or re-entangled individuals who belonged to the criminal tribes within the intricacies of the penal practices of the state, and specifically within the administration of the Criminal Tribes Act. Their everyday lives again became regulated by a plethora of interactions with police officers, district magistrates and village officials. Even though the everyday implementation of these procedural aspects of the Act would have, invariably, been incoherent, negotiated, and contested by individuals themselves – as demonstrated by Uttam’s petition – the DCCT’s memoranda and their enactment gave the category of the criminal tribe official sanction in bureaucratic procedure after 1947. It should be noted, though, that the changed circumstances of independence and the founding of the constitution offered Uttam, and others, new avenues to engage the state. His petition invoked the ‘New Constitution of India’ and the incompatibility of its promise of fundamental rights with the treatment of the criminal tribes – a point to which we return in chapter III. Uttam’s case was somewhat exceptional as his petition formed part of the evidence submitted by state governments during deliberations over the repeal of the Criminal Tribes Act, and thus found entry into the archive. Yet, the DCCT’s memoranda would have also affected – perhaps most harshly – those without the means to write such petitions.

The memoranda also had wider effects. The Department’s efforts to document and regulate displaced criminal tribes in the wake of Partition did not solely impact long-exempted individuals like Uttam. The actions of local state actors also incorporated new communities, who had previously only a tangential and indirect relationship to the Criminal Tribes Act, within the category of the criminal tribe. As state actors sought to

⁴¹⁹ See files in ‘Fortnightly Reports on the Situation in East Punjab’ for the years 1947-49, Ministry of States/Political Rehabilitation, 1947-49, File nos. 10(16), 8(5), 9(45), NAI.

regulate and identify the displaced criminal tribes in the years immediately after 1947, they inadvertently expanded the boundaries of the category itself, at least in discourse and informal practice if not always in terms of the law. As shown above, Partition had disrupted the structures of knowledge upon which local officers depended to demarcate between the supposedly ‘criminal’ and ‘non-criminal’ element of the criminal tribes. Local officers who would have known, so to speak, which communities were considered criminal had migrated to new localities, and the communities themselves moved across the border. In this context, even tangential association with the category of the criminal tribe took on new importance, at least for the first few years after Partition.

This was a significant departure from the years prior to 1947. As shown in chapter I, the notification of groups under the Act had been dependent upon locally-rooted circumstances and evidence of criminal behaviour, albeit subject to prejudices, misinformation and self-interest. Communities may have been collectively characterised as criminal but, at least by the final years of colonial rule, notifications and restrictions were largely dependent upon individual behaviour. As state actors attempted to reconstitute their authority in light of their lack of knowledge about the criminal tribe refugees after 1947, however, they gave credence to the idea that these communities *collectively* encompassed the boundaries of the criminal tribe. This can be demonstrated with the examples of two communities, each with vastly different movements: first, a group of Bazigars who migrated the long distance from Peshawar (located in the North West Frontier Province which lay to the northwest of Punjab) to Delhi; second, a group of Rai Sikhs who migrated from the district of Montgomery to Ferozepore, representing, on the one hand, a mere move across the Sutlej River and, on the other, a shift across the international border from Pakistan to India.

The Bazigars had traditionally been nomadic and earned their livelihood through acrobatics and wrestling.⁴²⁰ As an ethnic group, they belonged to ‘the fraternity of wandering Sansis’ but, like Banjaras and Nats, were designated by the colonial state as non-criminal.⁴²¹ Bazigars were not notified as a criminal tribe in Punjab, therefore, nor were its members registered, except, perhaps, in a few local instances.⁴²² Yet, falling within

⁴²⁰ P. C. Deb, *Bazigars of Punjab: A Socio-Economic Study* (Delhi: Mittal Publications, 1987).

⁴²¹ ‘Proposals to afford educational, medical and other facilities to the members of the criminal tribes, belonging to the scheduled castes, out of the Harijan Fund, by Lala Mulkh Raj Mehra, DCCT, East Punjab’, Home/Judicial B Progs., 1947, File no. 72, PSA.

⁴²² There is no evidence in the state archive (as far as I am aware) that Bazigars were notified as a criminal tribe by way of the Local Gazette in Punjab. Whether they fell within the remit of the Act on a local level, however, is near impossible to ascertain.

the broader schema of a criminal tribe – the Bazigars as a related, if only tenuously or historically, community to the Sansis – brought them within the scope of the state machinery upholding the Criminal Tribes Act. Indeed, in October 1947, DCCT Mehra wrote that ‘though not professional criminals’ the Bazigars were ‘not completely free from suspicion in committing theft and other crimes’.⁴²³ They were still subject to ethnographic and penal scrutiny, therefore, and entered the state imagination as *potential* criminals, even if they remained outside of the formal or legal boundaries of the criminal tribe.

These boundaries shifted in response to the tumult of Partition. When the province was divided in 1947, several Bazigar communities who had been resident in Peshawar migrated to Delhi and settled in Sat Nagar, Karol Bagh. As Delhi fell within the jurisdiction of the DCCT for East Punjab, his memoranda which called for the registration and re-restriction of the displaced criminal tribes was put into effect in the city. The local police, therefore, pressed for the registration of the displaced Bazigars. As with Uttam Singh, the category of the criminal tribe – however diffuse and contingent in its actual application – took on heightened significance for state actors. Without adequate knowledge of the displaced communities, mere ethnological association with a group like the Sansis – notorious amongst the notified communities – sufficed as justification to mark out the Bazigars and place them under state control.

This owed, in large part, to the particular concerns of the Delhi administration over the influx of refugees. From September 1947, communal tensions had broken out into ‘an orgy of murder, loot and arson’ on the streets of the city.⁴²⁴ Even with the exodus of around 300,000 Muslims, Delhi’s population nearly doubled within a matter of months. Incidences of crime rocketed and the state authorities were quick to blame newly arrived criminal tribes from Punjab.⁴²⁵ The previously small-scale apparatus geared towards the administration of the Criminal Tribes Act in the city was considered insufficient to cope. Even after the establishment of a special staff tasked with locating, registering and supervising criminal tribe refugees, senior figures like the Chief Commissioner continued to lament their presence in the city and made repeated attempts to repatriate them to East

⁴²³ ‘Proposals to afford educational, medical and other facilities to the members of the criminal tribes, belonging to the scheduled castes, out of the Harijan Fund, by Lala Mulkh Raj Mehra, DCCT, East Punjab’, Home/Judicial B Progs., 1947, File no. 72, PSA.

⁴²⁴ ‘Fortnightly Reports on the Political Situation by the Chief Commissioner of Delhi for the year 1947’, Ministry of States/Political Rehabilitation, 1947, File no. 10(7)-PR/47, NAI.

⁴²⁵ See correspondence in ‘Question of resettlement of displaced members of the criminal tribes and other Harijans in the Delhi Province’, Chief Commissioner’s Office, Revenue/Judicial, 1949, File no. 8(4), DSA.

Punjab, or at least exclude them beyond the limits of the city. In such a context, the Bazigars' potential criminality was transformed into an actual, tangible threat.

Aggrieved at their sudden regulation, individuals amongst these displaced Bazigars wrote to Rameshwari Nehru, President of the Criminal Tribes Welfare Board (later the Vimukta Jati Sewak Sangh) and of the Displaced Harijan Rehabilitation Board. In their petition, they claimed that the 'Bajigars were excluded from the scheduled list of Criminal Tribes, and no restrictions were ever imposed on them in Peshawar, their original home'.⁴²⁶ As such, they claimed that 'their registration in India was not justifiable'.⁴²⁷ Consequently, Nehru wrote to DCCT Mehra, Delhi's Chief Commissioner, and the Inspector General of Police to protest their registration. Yet, in keeping with the pervasive assumptions about such communities, she requested that the authorities 'be good enough to verify the fact of their belonging to the Criminal Tribes by examining their thumb impressions at the Criminal Tribes Record Office at Phillaur before steps are taken to get them registered in Delhi'.⁴²⁸ Rather than protesting the registration of criminal tribe refugees per se, it was the possibility of the 'non-criminal' element of such communities being tarnished that was offensive. Such a practice reified the category of the criminal tribe; individuals, by way of their thumb prints – their very physicality – were situated either within or outside the boundaries of the criminal tribe. At an individual level, this determined one's encounter with the state (whether they became subject to the regulatory regime of the Department, for instance). At a bureaucratic level, this concretised the criminal tribe as a tangible and existing category for the state.

The archive does not elucidate the response of the state authorities in Delhi to Nehru's request. Yet, a later study conducted in 1954 by the University of Delhi at the behest of the Planning Commission into the 'ex-criminal tribes of Delhi State' noted that refugee Bazigars in the city submitted a writ petition to the courts which successfully challenged their registration as such.⁴²⁹ This suggests Nehru's request was unsuccessful as the Bazigars had to turn to the courts to extricate themselves from the measures of the Act. But their inclusion, even if only in passing, within the study still implicitly identified the Bazigars as a criminal tribe. They may not have been formally entangled within the

⁴²⁶ 'Letter from Rameshwari Nehru, to Deputy Commissioner for Criminal Tribes, Jullundur (& Chief Commissioner Delhi, Inspector General Police, Delhi, Deputy Commissioner, Delhi), 17 May 1950', Chief Commissioner's Office, Revenue/Judicial, 1950, File no. 8(3), DSA.

⁴²⁷ Ibid.

⁴²⁸ Ibid.

⁴²⁹ Biswas, p. 15.

legal remit of the Criminal Tribes Act but their tangential association with it saw the boundaries of who could be considered a criminal tribe expanded after 1947. Even more so than in the case of Uttam Singh, the example of the Bazigars points to the informal and ambivalent production of the criminal tribe refugee. In response to the flux of the post-Partition years, communities could be incorporated within the remit of the Act, if not strictly in terms of the law then in everyday actions by the state, before subsequently disentangling themselves. Yet, what remained pervasive throughout was the perception that the criminal tribe refugees – broadly conceived – formed an identifiable and distinct group within the refugee regime.

The ways in which the practices of local state actors further concretised the category of the criminal tribe refugee is further exemplified by the example of the Rai Sikhs who were displaced from Montgomery (now Sahiwal, Pakistan) into the borderlands of Ferozepore, East Punjab.⁴³⁰ Prior to independence, a small proportion of the Rai Sikhs, a converted sect of the Mahtam caste, had been notified under the Criminal Tribes Act in relation to certain localities. In the 1880s, a small handful of individuals were notified in the village of Mahtam, Gujranwala, as a result of petitions sent by the local population. In 1926, a further fifty-seven individuals from the village of Dhakkar, Montgomery, were brought under the Act.⁴³¹ By the 1940s, reports of their ‘criminal proclivities’ had increased but these were largely concentrated in Montgomery.⁴³² Yet, only a minority of the community was notified as a criminal tribe. In Ferozepore, for instance, there were roughly 30,000 Rai Sikhs but only 6000 of them had been notified under the Act, and only 120 persons were under active surveillance.⁴³³ Before 1947, therefore, the Rai Sikhs were not *collectively* associated with criminal behaviour and, like the Bazigars, had only tangential association with the Criminal Tribes Act. In response to the exigencies of Partition and border defence in the years that followed, however, local state actors in Ferozepore repeatedly invoked the category of the criminal tribe and situated the Rai Sikhs collectively within it. Importantly, this resulted from the informal

⁴³⁰ I have explored the case study of the Rai Sikhs in more detail and with specific regards to border demarcation and state building in a separate article, Gande, ‘Criminalizing the Criminal Tribe’.

⁴³¹ *Report on the Administration of Criminal Tribes in the Punjab for the Year Ending December 1926* (Lahore: Government Printing, Punjab, 1927), p. 1, V/24/633, IOR.

⁴³² ‘Annual Report for Criminal Tribes in the Punjab’, Punjab States Agency/General Branch, 1942, File no. G-21-7/42, NAI.

⁴³³ ‘Letter from S. Vohra, Deputy Commissioner for Ferozepore, 17 July 1953’, Welfare/General B Progs., 1955, File. 118, PSA.

discursive practices of local officials, rather than an extension of the Act's legal boundaries.

During Partition, around 50,000 persons belonging to the Rai Sikhs migrated to Ferozepore and were settled largely in the riverine tracts which ran for approximately one hundred miles alongside the Indo-Pakistani border.⁴³⁴ Soon, in their correspondence with the East Punjab government, local state officials began to describe these displaced Rai Sikhs in terms of *dacoity*, danger, and disruption of the border. The Inspector General of Police reported how 'almost all' of the Rai Sikhs had been notified prior to 1947, despite the evidence clearly showing otherwise.⁴³⁵ Regular reports in the *Tribune* spoke of Rai Sikh *dacoit* gangs who terrorised the province during the late 1940s and early 1950s.⁴³⁶ And, the Deputy Commissioner noted that their 'criminal activity [had] increased to a considerable extent' and that 'The Rai Sikhs seem to have very little moral inhibitions about indulging in crime'.⁴³⁷ The displaced Rai Sikhs entered the state imagination not as refugees in need of land (although this was noted too) but as a threat to law and order. Their status *as* refugees was predicated upon their supposed criminal behaviour; this was the lens by which the state would categorise, understand, and thus rehabilitate them.

Paradoxically, it was their characterisation as criminal which denoted their utility to the state, as local officials hoped they would bolster the defence of the border by deterring encroachments by Pakistani nationals. As stated by the Inspector General of Police, the government 'could not find any other tribe better qualified than the Rai Sikhs, to protect our border with Pakistan', despite, in a previous sentence, remarking that, 'They have since the partition continued to commit crime especially highway robberies and dacoity'.⁴³⁸ It was precisely the vulnerability of state authority in these borderlands of East Punjab that led to the reification of the criminal tribe as a tangible category of identification. In the years after 1947, local officials in Ferozepore repeatedly reported to the East Punjab government, who in turn reported to New Delhi, incidences of smuggling, trafficking, and illegal cross-border movements.⁴³⁹ The border – at this point

⁴³⁴ After Partition their population within Ferozepore district was estimated to be 82,505.

⁴³⁵ 'Letter from Inspector General of Police, 23 July 1953', Welfare/General B Progs., 1955, File. 118, PSA.

⁴³⁶ See *Tribune*, 5 September 1951, p. 3; 30 October 1952, p. 2; 15 June 1953, p. 8; 28 December 1954, p. 3.

⁴³⁷ 'Letter from S. Vohra, Deputy Commissioner for Ferozepore, 17 July 1953', Welfare/General B Progs., 1955, File. 118, PSA.

⁴³⁸ 'Letter from Inspector General of Police, 23 July 1953', *ibid.*

⁴³⁹ See numerous instances recorded between October 1947 and August 1952 in the fortnightly 'Report on situation in East Punjab' sent to New Delhi, Ministry of States/Political Branch, NAI.

yet to be demarcated on the land – was porous, which undermined the integrity of the state at its peripheral reaches.

It was the local officers responsible for maintaining the border's integrity, then, who articulated the criminal characterisations of the Rai Sikhs and invoked the category of the criminal tribe. These were the individuals who enacted the functions of the state at the local level and constituted its legitimacy and visibility in everyday life. They were often the most vociferous advocates for rigidly defending the territoriality and integrity of the border space, whereas the decisions of the provincial and national governments were characterised more by compromise and pragmatism.⁴⁴⁰ Faced with a permeable border that threatened to undermine the legitimacy of the state itself, it was these local officers in Ferozepore, rather than the East Punjab government, who turned to novel means to defend the border. To this end, the Deputy Commissioner issued the Rai Sikhs with rifles under border defence schemes and inaugurated specific welfare schemes which aimed to 'root [them] more firmly on the border'.⁴⁴¹

Within the reams of bureaucratic communication relating to the Rai Sikhs in the archive, however, there is no reference to their administration under the Criminal Tribes Act after 1947, no statistical 'evidence' of their criminality – of arrests or absconders – nor any indication that individuals were classed as 'habitual offenders' under the replacement legislation in 1952. Indeed, there is nothing to suggest that greater numbers of the community were notified or became subject to the demands for documentary evidence of exemption passes or registration, whether formally in the law or through more informal channels. And yet, in the state's bureaucratic discourse – primarily that articulated by the Deputy Commissioner – the Rai Sikhs were repeatedly framed as a *collectively* criminal community and referred to *as* a criminal tribe. The result of this discursive production of the Rai Sikhs as criminal tribe refugees was that the East Punjab government was eventually convinced of their status as 'tough persons' who could defend the border and therefore supported the Deputy Commissioner's proposed rehabilitative schemes to further entrench the community there.⁴⁴²

⁴⁴⁰ As shown by Daniel Haines with regard to disputes over the canal headworks in Punjab, local state actors used their bureaucratic discourse 'to translate local border spaces into places of national importance'. Haines, *Rivers Divided*, p. 92.

⁴⁴¹ 'Note from [illegible], East Punjab Government, 30 August 1953', Welfare/General B Progs., 1955, File. 118, PSA. See also 'Letter from S. Vohra, Deputy Commissioner for Ferozepore, 17 July 1953', *ibid.*

⁴⁴² 'Note from [illegible], East Punjab Government, 25 July 1953', *ibid.*

The postcolonial marking out of the criminal tribe refugee clearly had an inconsistent and ambivalent relationship to the legal frameworks of the state. This was evident not only in the more explicit case of the Rai Sikhs but also in the informality and contingency that characterised the implementation of the DCCT's memoranda with regards to both Uttam Singh in Punjab and the Bazigars in Delhi. In each instance, the reasons why certain individuals or communities came to be identified as criminal tribe refugees were informed by local causes: Uttam's charge of vagrancy was linked to the concerns of the local police in Hissar; the registration of the Bazigars was justified by the tumult of the refugee crisis in Delhi and spiralling incidences of crime; and the criminalisation of the Rai Sikhs was rooted in the exigencies of border demarcation and defence in Punjab's borderlands. Yet, each was also shaped by the more pervasive context of uncertainty and flux engendered by Partition.

More broadly in this period, the state responded to these uncertainties by claiming, recovering and excluding certain ambiguous figures in an effort to re-assert its control and reinforce the boundaries of the nation – often along gendered and religious lines.⁴⁴³ As this section has shown, various state actors, whether following official policy or acting under their own imperatives, similarly sought to reassert their legitimacy through the categorising and regulating of refugees. It was in response to the fragmentation of the material substance of the state – its personnel, institutions and documentary practices – that the category of the criminal tribe therefore took on heightened salience as a marker of legibility within the refugee regime. Rather than losing its significance in light of the shared experiences of violence and migration, this categorisation – similar to untouchable refugees – came to structure the everyday encounters between the displaced criminal tribes and the state. This became abundantly clear in the early 1950s, as the state's paraphernalia was largely re-embedded in society, and state actors turned their attention to the rehabilitation of the criminal tribe refugee.

Rehabilitating the Refugee, Reforming the Criminal

The colossal displacement of Partition clearly disrupted and overwhelmed both the state and society in Punjab. At the same time, the necessary reconstruction – as seen in other

⁴⁴³ Chatterji, 'South Asian Histories of Citizenship'; Andrew J. Major, "'The Chief Sufferers': Abduction of Women during the Partition of the Punjab", *South Asia: Journal of South Asian Studies*, 18.1 (1995), 57–72; Ritu Menon and Kamla Bhasin, 'Recovery, Rupture, Resistance: Indian State and Abduction of Women During Partition', *Economic and Political Weekly*, 28.17 (1993), WS2-WS11; Menon and Bhasin, *Borders & Boundaries*; Udit Sen; Zamindar.

post-imperial contexts – provided opportunities for the state to assert itself anew.⁴⁴⁴ As Anjali Bhardwaj Datta argues with regards to Delhi, Partition may have represented the state’s loss of control over the city, as refugees destabilised civil society, but refugee rehabilitation functioned as an ‘instrument’ to regain that control.⁴⁴⁵ This final section turns to the rehabilitation of criminal tribe refugees, which, it argues, engendered a more implicit form of control than the overt regulatory practices explored above, largely by prescribing certain behaviours and delegitimizing others. In the process, state actors – whether government officials or individuals belonging to quasi-official agencies – constantly reiterated the criminal tribe as an authentic, if undesirable, marker of identity. This section first contextualises the rehabilitation of criminal tribe refugees within the broader refugee regime and its nationalising agenda. It then explores certain settlements and schemes in more detail – namely, the Birthebari settlement in East Punjab and the rehabilitative activities of the Vimukta Jati Sewak Sangh (Ex-Criminal Tribes Welfare Board), a welfare organisation set up in the early 1950s to rehabilitate criminal tribes in Delhi. The section draws on government files related to cases of misconduct and corruption, which, whilst highlighting its many fractures, provide a vital lens onto the state’s rehabilitative agenda.

Refugee rehabilitation formed part of a more comprehensive project of nation-building after 1947.⁴⁴⁶ Refugee camps, in particular, offered unique opportunities for the state. In Kaur’s words, they enabled the state ‘to influence and correct’ certain behaviours, in other words, to ‘*produce* a class of citizens that befitted the new nation’.⁴⁴⁷ She notes how the direct supervision in the camps facilitated far greater state intervention in everyday aspects of refugees’ lives: ‘Corrective measures could include imparting simple habits like washing hands and the more complicated task of restoring moral fibre.’⁴⁴⁸ More broadly, the refugee regime ‘aimed at inculcating hygiene, literacy, progressive social values, usage of national language, and observance of newly invented national rituals’.⁴⁴⁹

⁴⁴⁴ With regard to the territories of the former Russian Empire after 1917, Nick Baron and Peter Gatrell note the ways in which both nationalising and revolutionary states sought to consolidate state authority through reconstruction projects that centred on categorising identities and transforming society in light of mass displacement. Nick Baron and Peter Gatrell, ‘Population Displacement, State-Building, and Social Identity in the Lands of the Former Russian Empire, 1917-23’, *Kritika: Explorations in Russian and Eurasian History*, 4.1 (2003), 51–100.

⁴⁴⁵ Anjali Bhardwaj Datta, ‘Rebuilding Lives and Redefining Spaces: Women in Postcolonial Delhi, 1945-1980’ (unpublished doctoral thesis, University of Cambridge, 2014), pp. 128–45.

⁴⁴⁶ Udit Sen; Zamindar.

⁴⁴⁷ Ravinder Kaur, *Since 1947*, p. 91.

⁴⁴⁸ *Ibid.*

⁴⁴⁹ *Ibid.*, p. 51.

Successful rehabilitation was not achieved merely by one's restoration through material ends – the provision of housing, employment, security, and so on – but was also dependent upon the adoption and exhibition of certain social values. Refugee rehabilitation therefore produced India's new citizenry through the repeated articulation and embodiment of a particular vision for the nation.⁴⁵⁰

Rehabilitative schemes prioritised the 'normative citizen' – one who possessed and displayed certain civic values reflective of the hegemonic values of society.⁴⁵¹ In an overwhelmingly patriarchal, caste- and class-structured society, the values that determined this project of nation-building more widely, and the refugee regime specifically, were intimately shaped by implicit assumptions about the role of men and women, higher and lower castes, and the definitions of what constituted the 'modern' nation.⁴⁵² In its rehabilitative schemes for untouchable or *harijan* refugees, for instance, the state attempted to impart 'modernising' and 'civilising' values, such as abstinence from alcohol and encouragement of small-scale industries.⁴⁵³ The logic behind such schemes was that the adoption of certain societal practices and norms – in effect, a Sanskritisation – would assimilate untouchables into caste society. At the same time, these refugees were resettled in separate colonies that were built with inferior materials and situated at a distance from both necessary amenities and non-untouchable communities.⁴⁵⁴ Far from overcoming societal distinctions, then, refugee rehabilitation was both shaped by, and in turn entrenched, them.

Similarly, rehabilitative schemes for the displaced criminal tribes marked them out as a distinct category of refugee – one that was at odds with the professed values of the nation. Whether enacted by bureaucratic officials or non-governmental agencies, these schemes were determined by assumptions about the communities' criminality and the reality of the criminal tribe. Although it was couched in terms of modernity, citizenship and loyalty to the nation, refugee rehabilitation for the displaced criminal tribes was remarkably similar in nature to the reformatory efforts of the Department prior to independence. Indeed, with the Criminal Tribes Act increasingly untenable in

⁴⁵⁰ Ravinder Kaur, *Since 1947*, pp. 84–120.

⁴⁵¹ Sen has argued that 'the restorative project of rehabilitation thus also became a creative process, by which the governmental imagination sought to produce normative citizens'. Udit Sen, p. 9.

⁴⁵² This was evident in the formulation of citizenship rights in the constitution of 1950, which, as Eleanor Newbiggin has shown, were far from neutral, abstractions. They were instead tied to 'the power structures of the community governed by Hindu law'. Eleanor Newbiggin, 'Personal Law and Citizenship in India's Transition to Independence', *Modern Asian Studies*, 45.1 (2011), 7–32 (p. 7).

⁴⁵³ *Tribune*, 23 December 1948, p. 4.

⁴⁵⁴ Talbot, 'Punjabi Refugees' Rehabilitation and the Indian State'.

independent India, the refugee regime offered scope to continue the project of transforming the criminal tribes into productive members of civil society long past the Act's repeal. Criminal tribe refugees were thus marked within the refugee regime. Their ability to access rehabilitation on the same grounds as other refugees was predicated upon their identification *as* criminal tribe refugees, which intrinsically determined the nature of their rehabilitation.

Nowhere was the rehabilitative agenda more evident than in the institutional sites in which displaced criminal tribes were settled after Partition. As noted earlier, the various institutions under the control of the Department were divided between East and West Punjab. It is difficult to determine from the archive which criminal tribe settlements were still operating in August 1947 or where new institutions were opened afterwards. In September 1946, less than a year before Partition, the Department had twenty-two agricultural settlements under its control, with 1760 inmates resident within them.⁴⁵⁵ After 1947, just as before, settlements opened and closed depending on supply and demand. Now, though, they were administered by both governmental (the Criminal Tribes Department until 1952, then either the Jails or Welfare Departments) and non-governmental (either the Harijan Sewak Sangh or the Vimukta Jati Sewak Sangh) organisations – a return to the situation before the 1930s.⁴⁵⁶ Tracing this shifting institutional landscape with any clarity across independence becomes almost impossible.

A few points can be discerned from the fragments within the archive, however. The Amritsar Reformatory, as mentioned earlier, continued to house inmates until September 1952. The agricultural settlement at Birthebari in Karnal, which is discussed in more detail below, was used as a 'temporary' site of rehabilitation for years after the Criminal Tribes Act's repeal. New industrial settlements – out of favour with the colonial government since the 1920s – were established at Rupar and Abdullapar where there was an urgent need for labour.⁴⁵⁷ And in Delhi, the pre-existing Andha Moghal colony was extended to accommodate the increased population and new colonies were hastily built.⁴⁵⁸ However, the future of these institutions, and the criminal tribe project more widely, was uncertain after 1947. These sites were consequently even more precarious and transitional

⁴⁵⁵ 'Statement showing the opinion of the Punjab Government on the amendments proposed in the three bills to amend the Criminal Tribes Act, 1924, 16 September 1946', Home/Police, 1945, File no. 88/1/45, NAI.

⁴⁵⁶ The Harijan Sewak Sangh was founded in 1932 by Mohandas Gandhi with the purpose of eradicating untouchability.

⁴⁵⁷ *Tribune*, 15 August 1948, p. 3.

⁴⁵⁸ Biswas.

in nature than they had been prior to independence. Now, this transitional nature related to more than their physical impermanence: their supposedly temporary nature allowed the postcolonial state to reconcile the tension of maintaining certain institutional elements of the Criminal Tribes Act beyond independence.

This can be demonstrated using the example of the agricultural settlement at Birthebari. Birthebari was far from the largest or most important of the settlements controlled by the Department prior to independence. Covering roughly 660 acres, it had been established in April 1924 for the reclamation of the Biloches who were notified in Karnal and Ambala. At most, it could house roughly one hundred families. During Partition, the resident Biloches migrated to Pakistan. The local Superintendent of Police, with the agreement of the DCCT, granted new tenancies to displaced criminal tribes who arrived in the area from West Punjab. This was not an exceptional case; many vacated criminal tribe settlements were used to house displaced criminal tribes.⁴⁵⁹ This decision was in keeping with the wider categorising logic of the refugee regime, whereby urban refugees were resettled in urban centres and rural refugees in villages.⁴⁶⁰ Yet, by settling displaced criminal tribes in an institution bound up with the administration of the Criminal Tribes Act, regardless of their prior status and relationship with the legislation, this practice instantly marked them out in terms of the criminal tribe. This did not merely have symbolic implications but physical and material ones – as we shall see – in terms of their access to land, the types of work available, and their interactions with the state.

For one, with the demise of the Department in August 1952 the East Punjab's Chief Secretary took control over the settlement.⁴⁶¹ It was now to have a dual purpose. The site was intended to be eventually handed over to the Jails Department for the settlement of 'habitual offenders' (by way of the Punjab Habitual Offenders (Control and Reform) Act, 1952) who would be recommended by the Inspector General of Prisons. In the interim, the day-to-day administration of the settlement was delegated to the Welfare Officer – the post that replaced the DCCT – who would facilitate the continued rehabilitation of displaced criminal tribes on the site.⁴⁶² The refugees granted land at the settlement were, at least indirectly, situated within the reach of the more penal arms of

⁴⁵⁹ For example, Bir Badalwa referred to later in this section.

⁴⁶⁰ See the various correspondence contained in 'Closure of refugee camps and dispersal of urban population to various towns in States', Ministry of States/G(R) Branch, 1948, File no. 8(41)-G(R)/48, NAI.

⁴⁶¹ 'Proceedings of the 3rd meeting of the Committee constituted with the reorganisation of the Reclamation and Criminal Tribes Department, on the repeal of the CTA (VI of 1924), held on the 25th October, 1952', Welfare/General, 1952, File no. 54, HSA.

⁴⁶² *Ibid.*

the state, regardless of their prior position under the Criminal Tribes Act, and, after 1952, even after the repeal of the Act. In practice, very few – if any – individuals were ever placed under detention at Birthebari under the habitual offenders legislation.⁴⁶³

The settlement's contested jurisdiction between the Welfare and Jails Departments meant officials refused to provide permanent or long-term leases on the land to the displaced criminal tribes. Allocations of land were instead made on rolling yearly leases, which were subject to an ill-defined agreement for 'good behaviour'.⁴⁶⁴ In 1955, A. N. Mohan, East Punjab's Welfare Officer, outlined the arrangement since 1947: 'The tenancies of the law abiding tenants are renewed every year and the tenancies are cancelled in whose cases their characters are questionable'.⁴⁶⁵ No official definition of 'questionable' was proposed, however. As such, either the Welfare Officer or locally-rooted settlement superintendents had the authority 'to weed out' what they perceived as 'undesirable elements'.⁴⁶⁶ This conditional nature of the tenancies was partly inherited from the colonial model. Grants for land prior to 1947 had been dependent upon the fulfilment of certain conditions, such as not absconding or gaining convictions for a number of years. Yet, the Biloches who had been granted land at Birthebari by the Department were in a less precarious position than the incoming refugees. Once land rights had been granted to the Biloches, although they could be rescinded, they were considered as relatively permanent in nature, as the intention of the grants themselves was to impart a sedentarised lifestyle. The criminal tribe refugees were therefore subject to far greater scrutiny on account of their yearly renewals.

More than merely patrolling 'undesirable' behaviour in terms of illegality or criminality, however, the scrutiny that the temporary leases produced also discredited livelihoods or behaviours that did not conform to the normative citizen. The relatively ambiguous criteria which the leases demanded of the tenants were that each family had to demonstrate they had taken to agriculture as their occupation, that they were 'loyal and hardworking', and that they 'had no other means of subsistence'.⁴⁶⁷ The temporary leases at Birthebari were described as 'a stop gap arrangement' to provide the refugees with the

⁴⁶³ In 1955, no one registered under the Punjab Habitual Offenders (Control of Reform) Act (1952) – around 400-500 persons – had been housed on the site. *Annual Report of the Reclamation Department and Reformatory School Hisar for the year ending 31st December 1954* (Chandigarh: Government of Punjab Press, 1959).

⁴⁶⁴ 'Letter from A.N. Mohan, Welfare Officer, Punjab, 8 August 1955', Welfare/General-I B Progs., 1957, File no. 77, PSA.

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid.

opportunity to learn the lessons of agricultural work and thus find profitable employment with *zamindars* and non-cultivating owners of land.⁴⁶⁸ In order to avail of rehabilitation by the state, the criminal tribe refugees had to mould themselves in line with this vision of the sedentarised, agricultural labourer.

There was a contradiction in the relationship between the postcolonial state and its rural population, however. On the one hand, agriculturalists were viewed as a static burden who needed dragging into ‘modernity’; on the other, they were viewed as an enthusiastic ‘resource’ to be harnessed for the state’s developmental aims.⁴⁶⁹ The category of the criminal tribe refugee was arguably an extreme version of the rural labourer in this period – both a detriment to the state who needed to be remade along appropriate and ‘modern’ lines, as well as representing a significant asset in terms of labour and resources. The tenants at Birthebari were employed on the ‘Grow More Food’ campaigns re-launched by the independent government in 1947 to encourage self-sufficiency in food production.⁴⁷⁰ Run as a popular movement, the involvement of the criminal tribe refugees demonstrated not only their adherence to the ‘normative’ citizen but also their loyalty to the cause of the nation. Outside of Birthebari, too, refugee rehabilitation schemes centred on transforming the displaced criminal tribes through similar means. At Kassabad in Ludhiana, for instance, grants were given to encourage the production of small industries, such as the making of brooms, and spinning wheels were distributed to the women.⁴⁷¹

These schemes were clearly influenced, in part, by colonial practices. As we saw in chapter I, much of the apparatus of the Department was geared towards transforming the men of the criminal tribes into sturdy, hardworking agriculturalists. The use of sewing machines in criminal settlements were also, as David Arnold writes, ‘a means of fixing them in one place: it obliged them to undertake “useful labour” and submit to social and moral reform’.⁴⁷² At the same time, these schemes were shaped by the projects of development and nation-building espoused by the postcolonial government. Refugee rehabilitation was a site in which concerns over economic development, national security,

⁴⁶⁸ Although refugee camps more widely were viewed as a temporary, emergency measure, many transformed into permanent townships such as Kurukshetra. ‘Note for rehabilitating ex-criminal tribes on agricultural land’, Welfare/General-I B Progs., 1957, File no. 77, PSA.

⁴⁶⁹ Taylor C. Sherman, ‘From “Grow More Food” to “Miss a Meal”: Hunger, Development and the Limits of Post-Colonial Nationalism in India, 1947–1957’, *South Asia: Journal of South Asian Studies*, 36.4 (2013), 571–88.

⁴⁷⁰ The first Grow More Food campaign was launched in 1943, after the Bengal Famine, to encourage more extensive cultivation. *Ibid*, p. 7.

⁴⁷¹ *Tribune*, 2 March 1949, p. 7.

⁴⁷² Arnold, *Everyday Technology: Machines and the Making of India’s Modernity*, p. 79.

and territorial integration converged. Congress came to power on promises to develop and modernise India; the refugee regime was an opportunity to deliver on these.⁴⁷³ This merging of interests is clear in M. S. Randhawa's *Out of the Ashes*, an account of refugee rehabilitation commissioned by the East Punjab government. Refugee rehabilitation, according to Randhawa, aimed to mould refugees into 'useful citizens, rather than warts on the face of the countryside'.⁴⁷⁴ From 1950, therefore, all 'doles' were discontinued for refugees still residing in camps (except for unattached women, children, and infirm or aged persons) to avoid them becoming a burden on the state.⁴⁷⁵

This conditional form of rehabilitation was frequently contested, negotiated and undermined, however. Despite its small size, Birthebari is one of the few institutions to enter the state archive in relative detail owing to the court case of Dwarka Das Sansi.⁴⁷⁶ In 1950, Dwarka had been allotted ten acres of land at Birthebari following his displacement from Pakistan. In August 1954, he abducted the wife of another tenant and absented himself from the settlement without permission, leading to an accusation of misconduct. As such, the Settlement Superintendent cancelled his tenancy the following year and blacklisted him from future allotments of land. The file was not forthcoming whether it was the act of abduction or absenting himself without permission that formed the grounds for Dwarka's misconduct, or perhaps both. Regardless, under the terms of his tenancy, Dwarka's misconduct had forfeited his right to land.

A few months after his disappearance, Dwarka was brought back to Birthebari by his parents. On his return, he refused to relinquish possession of his tenancy and displayed 'an adamant attitude threatening anybody [who] would try to dispossess him'.⁴⁷⁷ At a loss of what to do, Sarup Chand, the Settlement Superintendent, referred the case first to the local police, then the Deputy Commissioner of Karnal, the Superintendent of Police of Kaithal, and finally to the East Punjab government. Eventually, after much deliberation, the government filed a case against Dwarka under the Indian Penal Code.⁴⁷⁸ The district magistrate, however, acquitted him on the grounds that there was no proof

⁴⁷³ Udit Sen notes that the establishment of the Rehabilitation and Development Board in September 1947 was intended to harmonise these projects. Udit Sen, pp. 10–11.

⁴⁷⁴ Randhawa, p. 10.

⁴⁷⁵ See Reports of the Ministry of Rehabilitation, 1950-51, p. 2, V/24/3615, IOR.

⁴⁷⁶ See correspondence in 'Suit for ejection of Sh. Dwarka Das Sansi from government land at Birthebari', Welfare/General-I B Progs., 1957, File no. 77, PSA.

⁴⁷⁷ 'Letter from A.N. Mohan, Welfare Officer, Punjab, 8 August 1955', *ibid.*

⁴⁷⁸ Under section 447: for unlawfully remaining on land which one had previously legally entered.

his actions had resulted in ‘any insult, intimidation or annoyance’.⁴⁷⁹ A year later, in 1955, Dwarka filed a suit for damages against the East Punjab government and Sarup Chand. Whether he was successful in his claim is unclear. More interesting is the fact that his claim challenged the transformative nature of the site, and therefore also defied the idea of the state-defined normative citizen.

As Dwarka’s case demonstrates, the rehabilitation schemes instituted by the East Punjab government for displaced criminal tribes were intrinsically shaped by the category of the criminal tribe. Similar to untouchable refugees, these communities and individuals were marked by their identification as criminal tribes which determined both their access to and form of rehabilitation. Schemes did not merely aim to transform the refugees into ‘useful citizens’ but were underlined by efforts to ‘wean’ them from their supposed criminal habits. The schemes were paradoxical in nature, though. The professed aim of rehabilitation was to assimilate the criminal tribe refugees within the wider citizenry of postcolonial India, by way of their transformation into agriculturalists and productive members of civil society. However, these very schemes relied on their identification as criminal tribes as a marker of legibility, to distinguish them as a separate category within the refugee regime. This not only determined their encounter with the state but reified the criminal tribe as an intelligible category for the state.

It was not only governmental schemes that produced, and indeed relied upon, this paradoxical treatment of the criminal tribe refugee. From the early 1950s, the Government of India ordered that welfare work amongst the ex-criminal tribes should be delegated to non-official agencies.⁴⁸⁰ Principal amongst the organisations that performed such work was the Vimukta Jati Sewak Sangh, under the auspices of the Servants of the People Society.⁴⁸¹ Presided over by Gandhian and prominent social worker Rameshwari Nehru, the Sangh attempted to take over the mantle of rehabilitative activities amongst the ex-criminal tribes after the repeal of the Act.⁴⁸² Partition, and the figure of the criminal tribe refugee especially, was integral to their efforts. The refugee

⁴⁷⁹ ‘Letter from A.N. Mohan, Welfare Officer, Punjab, [illegible] April 1957’, Welfare/General-I B Progs., 1957, File no. 77, PSA.

⁴⁸⁰ In 1953, the Government of India allotted a certain amount of funding to each of the state governments for welfare work amongst the ex-criminal tribes but recommended that, as far as possible, this work should be conducted by non-official agencies. ‘Letter from Welfare Officer, Punjab, dated 26 August 1953’, Welfare/General B Progs., 1957, File no. 42, HSA.

⁴⁸¹ The Servants of the People Society is a social services organisation founded in 1921 by Lala Lajpat Rai, a prominent member of the independence movement.

⁴⁸² Rameshwari Nehru is more frequently noted for her work amongst women refugees and especially abducted women.

crisis opened space for non-governmental bodies to perform state-like practices, such as providing housing and food, finding employment, and supervising social relations.⁴⁸³ The flux between August 1947 and the early 1950s thus presented new opportunities for organisations like the Sangh to enter the criminal tribe project in Punjab, previously dominated by the Department alone.

The figure of the criminal tribe refugee was utilised by the Sangh to further their activities and influence. But therein lay a paradox. As with the East Punjab government's rehabilitative schemes described above, the activities of the Sangh promised to transform the criminal tribe refugee into a productive citizen, with the ostensible aim of assimilating the displaced communities into civil society. At the same time, the very existence of the Sangh necessitated the continued demarcation of the criminal tribe as a separate category of identification. There was an instrumentality, then, to these rehabilitative schemes. At an organisational level, the Sangh attempted to demonstrate its relevance to the now *ex*-criminal tribe project and thus extend its influence and standing within the developing welfare regime of the postcolonial state. At a more local level, certain individuals could capitalise upon these rehabilitative schemes to further their own interests. Moreover, by funding organisations like the Sangh, the Government of India could visibly demonstrate its commitment to the postcolonial narrative of development and modernity. The rehabilitation of the criminal tribe refugee thus had purchase at varying levels of the state – from the central government in New Delhi, to the state government in East Punjab, to intermediate organisations like the Sangh (which, although technically outside the formal bureaucracy, performed many functions of the state). We will return to the re-embedding of the criminal tribe in welfare policies more decisively in chapter IV. For now, it is possible to trace how the Sangh's rehabilitative schemes further concretised the category of the criminal tribe.

With the impending repeal of the Criminal Tribes Act, the question arose of the continued necessity of reformative work amongst the soon to be *ex*-criminal tribes. Coterminous to this, the Government of India was drawing up schemes for grants-in-aid to the states as part of its first Five Year Plan for the amelioration of the so-called 'backward classes'. It was within this context that the Sangh began to manoeuvre itself as

⁴⁸³ Ravinder Kaur notes that 'the state was not alone in writing and performing the script of nation-building'. Migrants, and others, formed interest groups, like refugee organisations, social services groups, and cooperative societies. Beyond this, organisations like the Harijan Sewak Sangh were involved in immediate welfare provision. Ravinder Kaur, *Since 1947*, p. 85.

the principal agency involved in the rehabilitative aims of the ex-criminal tribe project. In East Punjab, the Sangh had initially been involved in the immediate efforts to rehabilitate refugees from Pakistan. The DCCT had written to Rameshwari Nehru acknowledging the 'extremely useful work of very great importance' conducted by Sangh social worker Shanti Sarup amongst the displaced criminal tribes.⁴⁸⁴ The organisation remained largely confined to Delhi in its activities, however, principally working in the pre-existing colony at Andha Moghal and the newly-constructed colony of Kasturba Nagar. Grants from the Government of India were theoretically restricted to non-official organisations that worked across India. As such, the Sangh was keen to extend its operations. In order to do so, Nehru utilised the category of the criminal tribe refugee.

In 1953, Nehru wrote to G. S. Bajwa, East Punjab's Development Minister, proposing a model agricultural village for displaced criminal tribes.⁴⁸⁵ The proposed site was an erstwhile agricultural settlement at Bir Badalwa in Karnal. Significantly, this site now housed nearly 1000 refugees belonging to the ex-criminal tribes who had been allotted land there after Partition. In her proposal, Nehru sought to 'develop this village on cooperative lines and make it a model colony'.⁴⁸⁶ In other words, Bir Badalwa would function as an illustrative example of the transformative potential of the criminal tribe refugee. Nehru's letter outlined the proposed scheme in detail. 'Garden homes' would be constructed, partly through the labour of the villagers themselves, following a specific plan: each house would have 'at least two rooms, a verandha [*sic*], a kitchen and a big courtyard, measuring about ¼ acre'.⁴⁸⁷ The Sangh would establish a co-operative society, a provision store for agricultural goods, a school, a gas plant, a spinning centre, a health centre, a milk dairy, and an oil *ghani*, as well as allocating common pasture land and co-ordinating sporting and gaming activities. The scheme was to cost 125,000 rupees. This was almost the entirety of the 150,000 rupees allocated to the East Punjab government by the Government of India for welfare work amongst the ex-criminal tribes residing in the state for that year.⁴⁸⁸ As such, the Welfare Officer, Gurdev Singh, opposed the scheme. Concentrating nearly all that year's funding in a single village, inhabited by only

⁴⁸⁴ 'Letter from Rameshwari Nehru to Criminal Tribes Act Enquiry Committee, 5 December 1951', MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁴⁸⁵ 'Letter from Rameshwari Nehru to G.S. Bajwa, 16 July 1953', Welfare/General B Progs., 1957, File no. 42, HSA.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

⁴⁸⁸ In 1953, the Government of India allotted a certain amount of funding to each of the state governments for welfare work amongst the ex-criminal tribes, but recommended that, as far as possible, this work should be conducted by non-official agencies. 'Letter from Welfare Officer, Punjab, 26 August 1953', *ibid.*

1000 individuals out of a total population of over 100,000 in the state, was ‘not likely to be appreciated by the members of the erstwhile criminal tribes in other parts of the Punjab’.⁴⁸⁹ These individuals, he continued, ‘are now very much to their rights and are fully aware of the facilities afforded for their uplift both by the Government of India and the [East] Punjab Government’.⁴⁹⁰

The scheme was not ultimately implemented and welfare work amongst the ex-criminal tribes in East Punjab, especially refugees, remained incomplete.⁴⁹¹ But Nehru’s proposals both employed, and in the process further entrenched, the category of the criminal tribe. Similar to colonial settlements, the plan of the model agricultural village was predicated upon the belief that material surroundings could alter behaviour. ‘At present there are hardly any houses to shelter them’, Nehru lamented.⁴⁹² Whereas, once constructed, the housing would be allocated on a hire purchase system so that, ‘right from the first day’ the inhabitants would feel ‘that they are owners of their houses’.⁴⁹³ A sense of rootedness, or the adoption of a sedentary lifestyle, was considered key to their successful transformation to productive agriculturalists. Moreover, the gas plant would ‘keep the village neat and clean’ and the introduction of cloth, spinning and weaving would make the village self-sufficient.⁴⁹⁴ In relation to the construction of housing for displaced criminal tribes in Delhi, too, Nehru wrote: ‘No item of programme is more necessary than this. The first and immediate need of bringing any social reform among nomadic and criminally inclined people, like the Vimukta Jatis, is to make them “owners of their houses” wherein they can lead a settled life.’⁴⁹⁵ Nehru thus relied on the tropes of criminality and mobility that had come to characterise the category of the criminal tribe. Although the scheme at Bir Badalwa was not put into place, such tropes came to shape the Sangh’s rehabilitative schemes for years to come.

At a more local level, the category of the criminal tribe refugee had purchase for those working for the Sangh, as exemplified by a case of corruption amongst several officials working in Delhi during the early 1950s. The Sangh had assumed control over

⁴⁸⁹ ‘Letter from Welfare Officer, Punjab, 26 August 1953’, Welfare/General B Progs., 1957, File no. 42, HSA.

⁴⁹⁰ Ibid.

⁴⁹¹ The grant-in-aid of 150,000 rupees to the East Punjab Government lapsed as the Welfare Officer did not spend enough on approved schemes.

⁴⁹² ‘Letter from Rameshwari Nehru to G.S. Bajwa’, Welfare/General B Progs., 1957, File no. 42, HSA.

⁴⁹³ Ibid.

⁴⁹⁴ Ibid.

⁴⁹⁵ ‘Letter from Rameshwari Nehru to Fateh Singh, Deputy Secretary to Government, 26 November 1954’, *ibid.*

the welfare work amongst criminal tribes in the city in 1951. Although the organisation had several high-profile figures associated with it – including Purushottam Das Tandon, Balwantrai Mehta and Algu Rai Shastri – it was Rameshwari Nehru who principally oversaw its activities, with everyday administration in Delhi delegated to its secretary, Sewak Ram, and his office secretary, Bhagwat Singh. The Sangh's efforts principally centred upon the refugees amongst the criminal tribes in the city who made up a sizeable portion of the population.⁴⁹⁶ Between January and March 1954, for instance, it provided accommodation for fifty-six families. The recipients of these quarters were refugees who had been residing in informal and precarious tented accommodation in places like New Delhi Railway Station or the Red Fort refugee camp since 1947.⁴⁹⁷

From 1954, however, inhabitants of the newly-constructed colonies began to send numerous complaints to the Delhi government. Joginder and Bhagwan Singh of Kasturba Nagar wrote to the Chief Commissioner:

The workers of the said [Ex-Criminal Tribes Welfare] Board are always trying by fair means or foul to make us quarrel with each other. This is only to press us to commit crimes and once again fall into the hands of Police and such Boards *which make money at our name*. The workers of the board do not spare us even from insult. On 31.11.1954 a social worker of the Board Mr Trilok Nath searched our houses in our absence. He even unbolted the bolted houses and scattered every thing. And he replied that it was his on sweet will [...] We fear we are again being pushed towards the criminal fate from which we have hardly escaped.⁴⁹⁸

In October 1954, a collective petition from the residents of Kasturba Nagar stated that,

[W]e have not the least confidence in the Vimukat Jati Sewak Sangh. The reason is that it is an organisation of such Leaders and men *who obtain money on our name*, spend it on their men, friends, relatives and yes-men and form parties among us to show their work to the Government. They wish to keep us illiterate, foolish, slaves for ever and more over Criminal tribes, so that they may continue to get money from the Government.⁴⁹⁹

⁴⁹⁶ In 1949 the Delhi police estimated there were 1800 displaced criminal tribes in Delhi. 'Extract from Fortnightly Statistic Review of Crime for the Fortnight Ending 31 August, 1949', Chief Commissioner's Office, Revenue/Judicial, 1949, File no. 8(4), DSA. This compared to an estimated population of 1285 in 1934. 'Scheme proposed by Government Industrial Surveyor Mehtab Singh, sent to the DCCT, 20 November 1934', Chief Commissioner's Office, Home, 1934, File no. 2(59), DSA.

⁴⁹⁷ 'Report of work done by the Vimukti Jati Sewak Sangh, Delhi during the period from April 1954 to January 1955', MHA/Public, 1954, File no. 51/4/54, NAI.

⁴⁹⁸ Italics added. 'Representation from Joginder Singh & Bhagwan Singh, 25 November 1954', Chief Commissioner's Office, Home Department, 1954, File no. 8(8)/54, DSA.

⁴⁹⁹ Italics added. 'Letter from Bhagwan Singh, President, Kasturba Nagar, to K.N. Katju, 8 October 1954', *ibid.*

Finally, Nathu, resident of Andha Moghal, wrote to the Chief Commissioner claiming that one of the Sangh's workers, Lakhi Ram, had submitted false reports against him to the local police station.⁵⁰⁰ Similar complaints abound about other officials of the Sangh.⁵⁰¹

In one sense, the accusations were unexceptional; corruption was endemic to the refugee regime.⁵⁰² The introduction of heightened government controls – the beginnings of the 'licence Raj' – after Partition had led to 'rampant corruption, favouritism and the black market', according to the Amritsar Cloth Merchants Association in 1947.⁵⁰³ The allocation of abandoned property and evacuee land, as well as job posts and rations, was determined as much by contacts and bribes as proof of 'authentic' refugee status. Obtaining recognition as a refugee, however achieved, had material benefits. So, too, did recognition as a quasi-official agency that would do the work of the state in rehabilitating refugees. In 1953, the Government of India earmarked a certain amount of funding to each state government for welfare work amongst the ex-criminal tribes. By that point, the Sangh had taken over the mantle of rehabilitative efforts amongst the displaced criminal tribes in the city. As such, it received significant amounts of funding for the construction of housing and the provision of small-scale industries in colonies like Kasturba Nagar. However, certain individuals, namely Sewak Ram, were accused of embezzling funds from the schemes. Investigations launched by the Government of India in response to the petitions also found that the housing constructed by the Sangh was of inferior quality and had not followed bureaucratic procedures. This had parallels with the construction of colonies for untouchable refugees in Punjab and Delhi after 1947.⁵⁰⁴ Again, pre-existing social distinctions clearly determined one's experience of rehabilitation.

We cannot ascertain the accuracy of these accusations from the archive. Yet, the fact that rehabilitation amongst the ex-criminal tribes in the city was transferred from the Sangh's hands back to the Delhi government in 1958 does indicate some culpability.⁵⁰⁵

⁵⁰⁰ 'Representation from Nathu, Reclamation Colony, 19 July 1954', Chief Commissioner's Office, Home Department, 1954, File no. 8(8)/54, DSA.

⁵⁰¹ 'Letter from vimukati jatis, sent to Govind Pant, Home Minister, 30 May 1955', MHA/Public, 1954, File no. 54/1/54, NAI.

⁵⁰² This was the case in both East and West Punjab. See William Gould, 'From Subjects to Citizens? Rationing, Refugees and the Publicity of Corruption over Independence in UP', *Modern Asian Studies*, 45.1 (2011), 33–56; Talbot, 'Punjabi Refugees' Rehabilitation and the Indian State'.

⁵⁰³ Cited in Talbot, 'Punjabi Refugees' Rehabilitation and the Indian State', p. 127.

⁵⁰⁴ Talbot notes that in 1950, fifty houses that had been provided for untouchable refugees at the Haripura Colony in Amritsar collapsed in the monsoon rains. Talbot, 'Punjabi Refugees' Rehabilitation and the Indian State', p. 113.

⁵⁰⁵ 'Letter from Assistant Commissioner for Scheduled Castes and Scheduled Tribes, 31 July 1958', Delhi State Secretariat, Education Department, 1958, File no. 9(9), DSA.

What is clear is that the petitioners seemingly recognised the purchase that their identification *as* criminal tribe refugees – rather than merely refugees – had for the Sangh. Access to both legitimacy and government funding was dependent upon the ‘name’ of the criminal tribe. However fallible it may have been as a category, the criminal tribe was a persuasive reality in the imagination of the state. In order to retain its official sanction, and indeed purpose, the Sangh’s officials had to constantly reiterate the criminal tribe through the vocabulary, procedures and institutions that constituted the refugee regime. Whether in its construction of housing or the provision of employment, the Sangh’s rehabilitative schemes for the displaced criminal tribes centred on the tropes of criminality and mobility that underpinned the categorisation itself. Indeed, in response to the accusations above, Nehru explained the disquiet amongst the ex-criminal tribes through these tropes: ‘You will also kindly realise that it is easy to create party or any other excitement among ex-criminals, who find it onerous to live a disciplined normal urban life.’⁵⁰⁶ The Sangh therefore utilised the category of the criminal tribe, not only to further its own ambitions but to exonerate lower level officers who exploited the refugee regime for their own benefit.

Conclusion

To conclude, we shall return briefly to the example of Khanu Sansi cited at the beginning of this chapter. Whilst the majority of the criminal tribes resided within villages prior to 1947, a sizeable number of individuals, like Khanu, were incarcerated within penal institutions at the time of Partition. These individuals fell precariously between the legislation and procedures that outlined the exchange of incarcerated individuals. In December 1947, in line with the agreed upon evacuation of minorities from East and West Punjab, the two nations turned their attention to exchanging less mobile individuals, such as prisoners. During the following years, a series of Inter-Dominion Agreements and legislation were promulgated that outlined the specific terms and protocols by which prisoners were to be transferred between East and West Punjab, and later across most of India and Pakistan.⁵⁰⁷ In July 1948, DCCT Mehra wrote to the Chief Liaison Officer of the East Punjab Liaison Agency to clarify the Inter-Dominion position on criminal tribes in response to Khanu’s case. The Chief Liaison Officer reported back that, ‘No special

⁵⁰⁶ ‘Letter from Assistant Commissioner for Scheduled Castes and Scheduled Tribes, 31 July 1958’, Delhi State Secretariat, Education Department, 1958, File no. 9(9), DSA.

⁵⁰⁷ The West Punjab (Exchange of Prisoners) Ordinance, 1947; Pakistan (Exchange of Prisoners) Ordinance, 1948; Exchange of Prisoners Act, 1948

Inter-Dominion decision has been taken regarding non-Muslim members of criminal tribes. They are governed by the ordinary decision relating to the evacuation of other non-Muslims.⁵⁰⁸

Despite their incarceration within penal institutions, the criminal tribes were not considered in the same category as prisoners. Yet, because of this incarceration, the ordinary evacuation procedures could not apply. The responsibility for exchanging these individuals instead fell to the respective DCCTs for East and West Punjab – as we saw earlier. By placing this responsibility on the DCCTs, rather than the respective Liaison Agencies, and failing to include them within the Inter-Dominion Agreements, the East Punjab government differentiated these individuals from both prisoners and ordinary refugees; Khanu Sansi was neither one nor the other. He was, above all else, a criminal tribe refugee; this was the designation which determined his encounter with the state. Whilst Khanu's case was somewhat exceptional, given that only a small minority of the criminal tribes were incarcerated in penal institutions, it exemplifies the way in which the state reinscribed the category of the criminal tribe within the refugee regime of postcolonial India.

As this chapter has shown, the category of the criminal tribe found new articulation within India's refugee regime through state practices that centred on their control – whether through regulation or rehabilitation. In both official policies and their everyday interpretation and implementation, the various actors who constituted the state in East Punjab and Delhi produced the criminal tribe as a distinct category, but one which was multifaceted and at odds with itself. On the one hand, the criminal tribe refugee was conceptualised as resourceful, somewhat similar to the stereotype of the Punjabi migrant.⁵⁰⁹ Individuals were assumed to be capitalising on the disorder of Partition in order to commit crime; they were resourceful, but for destructive and illegal ends. On the other hand, the state simultaneously imagined the criminal tribe refugees as inherently unable to rehabilitate themselves on appropriate terms. The state needed to intervene, to settle them on land and provide alternative forms of occupation. The criminal tribe refugee was thus ambiguously situated – both a figure demanding regulation and control, and an opportunity for rehabilitation and reform; simultaneously resourceful and

⁵⁰⁸ 'Letter from Shri K. L. Punjabi, Officer on Special Duty, Govt. of India, Lahore, 9 August 1948', EPLAR, Bundle I/6.

⁵⁰⁹ Ravinder Kaur, *Since 1947*. I would like to thank Taylor Sherman for raising the question of how the idea of the criminal tribe refugee compared to the other stereotypes of certain refugees, such as the resourceful Punjabi migrant.

incapable; at once attempting to evade the state and yet utterly dependent upon it. The criminal tribe had multiple and alternative articulations at competing levels and arenas of the state; the category itself was therefore as unstable as the diffusion of state power on the ground.

Yet, a certain coherence was acquired in the repeated articulation of these communities as, above all else, *criminal tribe* refugees, irrespective of earlier formal designations. This lent a certain intelligibility to the category, despite its multiple manifestations. The displaced criminal tribes were therefore marked out in the refugee regime, which determined their evacuation, regulation and rehabilitation – in other words, their encounter with the state. There are clear parallels here with debates over the marked/unmarked citizen.⁵¹⁰ These communities were marked out by the state as a distinct category of refugee, one that was different to the norm, but which simultaneously needed assimilation into it (i.e. the unmarked refugee). Their recognition as refugees was indivisible from their identification as criminal tribes. This structured the terms of their inclusion not just within the refugee regime of postcolonial India, but ultimately its citizenry. As we saw, the displaced criminal tribes were often rehoused in vacated criminal tribe settlements and received welfare provision from the Vimukta Jati Sewak Sangh, whilst rehabilitation schemes sought to reform their supposed criminal and nomadic habits through heightened scrutiny of certain prescribed behaviours.

This sheds light not just on the criminal tribe refugee, therefore, but on the citizen-refugee in post-Partition India more widely.⁵¹¹ The incoming refugees from Pakistan were, theoretically, citizens of their new homeland. Not all citizens were regarded in equal terms, however. The state's response to Partition migration was one 'of dividing, categorizing, and regulating people, places, and institutions'.⁵¹² Through this, it demarcated the boundaries of who could be considered a citizen, and on what terms. As Zamindar writes, for instance, there was a widely-held perception that Muslim refugees had only questionable status as citizens.⁵¹³ Whilst the existing research on the citizen-refugee has largely centred on religious identities, this chapter reveals a new perspective to the categorising logic of the refugee regime. It points to a more pervasive, and indeed more punitive, set of categorising practices that determined the encounter between

⁵¹⁰ On the marked/unmarked citizen, see Niraja Gopal Jayal, *Citizenship and Its Discontents: An Indian History* (Cambridge, MA: Harvard University Press, 2013); Newbiggin, 'Personal Law and Citizenship'.

⁵¹¹ Chatterji, 'Rights or Charity?'; Haimanti Roy; Udit Sen; Zamindar.

⁵¹² Zamindar, p. 226.

⁵¹³ *Ibid*, p. 38.

refugees and the state at this critical juncture. On account of their group identification, certain refugees – whether Muslim, untouchable, criminal tribe, etc – were marked out in the refugee regime. To avail of rehabilitation, and therefore citizenship, they had to embrace the narratives which the regime demanded of them: the ‘loyal’ Muslim, the ‘Sanskritised’ untouchable, the ‘reformed’ criminal tribe. The implications of their new status as citizens was also important when, as the following chapter demonstrates, the government in New Delhi turned its attention to the repeal of the Criminal Tribes Act.

III.

Reform and Repeal

H. J. Khandekar (C. P. and Berar): There are also some unfortunate communities in this country whose members would not have the right to move freely in the territory of India granted under this sub-clause to every citizen of India. I believe, Sir, that you are aware that under the Criminal Tribes Act the people following pastoral occupations cannot go to any particular part of India they would like to go. Now they do not have that freedom [...] If the intention is not to give to the criminal tribes, who are also citizens of India, the freedom which they are entitled to, it is something extremely unjust [...]

Desbhandhu Gupta (Delhi): If someone is given a freedom by which the freedom of the other is curtailed, then I would say, that such a demand is not for the right type of freedom [...] I would like to ask, why should not restrictions be imposed on the movement of the criminal-tribe people, when they are a source of danger to other law-abiding citizens? Could anyone be serious in saying that restrictions and conditions imposed on the criminal tribes should not have been imposed at all?

Dr B. R. Ambedkar: I question very much the policy of giving all citizens indiscriminately any such fundamental right. For instance, if Mr. Kamath's proposition was accepted, that every citizen should have the fundamental right to bear arms, it would be open for thousands and thousands of citizens who are today described as criminal tribes to bear arms. It would be open to all sorts of people who are habitual criminals to claim the right to possess arms.⁵¹⁴

Constituent Assembly Debates, 2 December 1948

Introduction

Between December 1946 and November 1949, nearly 300 elected representatives debated the shape and structure – the very substance – of the independent nation within the Constituent Assembly.⁵¹⁵ India's independent constitution, the result of these lengthy and heated debates, was enacted on 26 January 1950. The constitution has recently drawn renewed scholarly attention, both in terms of its ideological underpinnings and the tools of justice it provided.⁵¹⁶ Both had important implications for the criminal tribe.

⁵¹⁴ 'Draft Constitution (Cont.), 2 December 1948', *Constituent Assembly Debates: Official Report, Vol. VII, No. 18* (New Delhi: Government of India Press, nd), pp. 764–66, 776–77, 780–81. The references to criminal tribes in the Constituent Assembly debates explored here have been very briefly examined in a jointly authored article, Gould, Gandee, and Bajrange. The arguments come from this author.

⁵¹⁵ Although the members of the Assembly were elected, they were not representative of society at large. The vast majority were high-caste, male lawyers belonging to the Congress party.

⁵¹⁶ One of the first and most extensive examinations of the Indian constitution remains Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: Clarendon Press, 1966). More recently, see Rochana Bajpai, *Debating Difference: Group Rights and Liberal Democracy in India*, Oxford India Paperbacks (New Delhi:

Significantly, the communal basis of the Criminal Tribes Act – whereby individuals could be registered under the Act merely on account of their communal affiliation – conflicted with the constitution’s professed commitment to equality, endowed in article 14 of the fundamental rights of the citizen. In the Assembly, H. J. Khandekar, a Congress politician from an untouchable community, argued that the criminal tribes were ‘also citizens of India’ and were entitled to this right. Earlier, in January 1947, Khandekar, the most vocal (indeed, the only) advocate for the repeal of the Act within the Assembly, had implored the members ‘to abolish this law’.⁵¹⁷ In his December 1948 address (above), however, he emphasised not only the illiberal nature of the Act, but the imminent change of status for the communities it targeted. The criminal tribes were no longer subjects of a colonial regime but would be citizens of a free nation. The founding of the constitution, more than independence itself, decisively changed the parameters of debate surrounding the Act.

The enactment of the constitution represented a moment of transformation and the founding of a new order, one which marked a clear and conscious departure from the subjugation of colonial rule. It followed the trend of postcolonial constitutions more widely, which, according to Upendra Baxi, act as ‘moral autobiographies of “new” nations, promising a new future, vigorously disinvesting the colonial past’.⁵¹⁸ This was evident in the constitution’s commitment to justice, liberty and equality – enshrined in the preamble to the document itself – and the provision of universal suffrage and fundamental rights. Several individuals belonging to the criminal tribes were quick to seize upon their seemingly transformed status. In his petition to the Punjab government, Uttam Singh – from the previous chapter – wrote that ‘under the New Constitution to consider a person as a Criminal by birth is an anomaly’.⁵¹⁹ The constitution offered more than mere rhetoric, though. In a more practical sense, ‘the adoption of a written constitution with a bill of rights and judicial review’, Rohit De argues, ‘transformed the relationship between the citizen and the state and emerged as a new field of practice’.⁵²⁰ This was clear when,

Oxford University Press, 2016); Rohit De, ‘Rebellion, Dacoity, and Equality: The Emergence of the Constitutional Field in Postcolonial India’, *Comparative Studies of South Asia, Africa and the Middle East*, 34.2 (2014), 260–78; Kalpana Kannabiran, *Tools of Justice: Non-Discrimination and the Indian Constitution* (New Delhi: Routledge, 2015); Mithi Mukherjee, *India in the Shadows of Empire: A Legal and Political History (1774–1950)* (Oxford University Press, 2009); Newbiggin, ‘Personal Law and Citizenship’.

⁵¹⁷ ‘Resolution *re* Aims and Objects – *Cont.*, 21 January 1947’, *Constituent Assembly Debates: Official Report, Vol. II, No. 2* (New Delhi: Government of India Press, nd), pp. 280–82.

⁵¹⁸ Baxi, ‘Postcolonial Legality’, p. 185.

⁵¹⁹ ‘Letter from Uttam Singh of village Mohamadpur, Hissar District, Punjab, 12 January 1952’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁵²⁰ De, p. 262.

in May 1952, Wazira of the Bawaria community in Ferozepore filed a writ petition in the Punjab High Court. The Criminal Tribes Act, he argued, ‘was discriminatory and contravened the clause relating to equal protection under Article 14 of the Constitution’.⁵²¹ The challenge was admitted by the court. Individuals like Wazira now had a set of legal tools with which they could contest their notification.⁵²²

At the same time, though, the constitution had clear historical lineages stretching back long before 1947. In terms of its structure and content, it was indebted to its colonial predecessor. Indeed, it replicated almost identically around two-thirds of the Government of India Act (1935). There was a tension, therefore, between its adoption of ‘new’ concepts of rights and justice, and its textual and institutional inheritances of colonial governance. These very concepts, however, were themselves shaped by imperial discourses (of the primacy of justice) and the prerogatives of the (predominantly high-caste Hindu men) lawmakers who drafted them.⁵²³ As the responses of Deshbandhu Gupta and B. R. Ambedkar to Khandekar reveal, the rights bestowed by the constitution, even that of equality, were not inalienable. They remained subordinate to the exigencies of statehood, like the maintenance of law and order. Laws which contravened the right to freedom, for instance, were permissible if they were ‘in the interests of public order’.⁵²⁴ The emancipatory potential of the constitution has therefore been described as mere ‘spectacle’ as a gap emerges ‘between the vision of emancipation that the law promises and the reality of violence that the law performs’.⁵²⁵ There is a tension as the law is ‘at once elaborated but attenuated, pervasive but precarious’.⁵²⁶

This tension between the aspirations of the new nation’s leaders as they sought to re-fashion society along lines of equality, liberty and modernity, and the practicalities of governance were manifest in debates over the criminal tribe. Within the Constituent Assembly, the category of the criminal tribe – as a ‘source of danger’ (Gupta) and ‘habitual criminal’ (Ambedkar) – persisted. This chapter traces the repeal of the Criminal Tribes Act in the decade after 1947 to demonstrate that the category remained a ubiquitous, if often informal and implicit, influence upon both the national and state governments, and

⁵²¹ *Tribune*, 18 May 1952, p. 3.

⁵²² Admittedly, recourse to the judiciary has been shown to be beyond the reach of much of India’s population. See Upendra Baxi, *The Crisis of the Indian Legal System* (New Delhi: Vikas, 1982).

⁵²³ Mukherjee; Newbigin, ‘Personal Law and Citizenship’.

⁵²⁴ Article 19, sub-clause 3.

⁵²⁵ Oishik Sircar, ‘Spectacles of Emancipation: Reading Rights Differently in India’s Legal Discourse’, *Osgoode Hall Law Journal*, 49.3 (2012), 527–73 (p. 530).

⁵²⁶ Marc Galanter, ‘Making Law Work for the Oppressed’, *The Other Side*, 3.2 (1983), 7–15 (p. 7).

the local officials working for them. It reveals how the criminal tribe was surreptitiously re-embedded within postcolonial legal structures, namely a raft of replacement legislation targeting the ‘habitual offender’ which was enacted to coincide with the Act’s repeal. This, the chapter argues, resulted largely from the situation of flux and uncertainty in the wake of independence as state governance was challenged by shifting borders, inadequate knowledge, and the need to maintain law and order – a concern often articulated by lower level officials who invoked the category of the criminal tribe to justify enhanced powers of coercion and control. The habitual offender legislation was thus an attempt to reconcile the tension between the promised commitment to equality endowed in the constitution and the perceived need to retain the salient features of the Criminal Tribes Act. This process had important implications in terms of everyday penal practices of the state, where the criminal tribe remained a persuasive reality for local officials who relied on the category in the enactment of their duties.

The repeal of the Criminal Tribes Act after independence must be contextualised by developments which occurred in the later colonial period, though. The first section of this chapter therefore traces the emergence of a parallel framework of law aimed towards individual habitual offenders, first formulated in the Restriction of Habitual Offenders (Punjab) Act of 1918 – as briefly noted in chapter I. This law replicated the measures of the Criminal Tribes Act but made them applicable to any individual, regardless of community. Whilst this law was intended as an additional bow to the colonial state’s punitive powers against the so-called criminal classes, by the 1940s it was increasingly being posited as a replacement to the Criminal Tribes Act. By examining this law, the chapter builds upon recent work by Radhika Singha who has examined the development of ‘preventative policing’ provisions – namely, the ‘bad livelihood’ sections of the Code of Criminal Procedure (hereafter CrPC) – from the mid-nineteenth to early twentieth centuries. In her study, Singha points to the emergence of ‘a dual but intersecting pathway for dealing with habituality in crime’.⁵²⁷ On the one hand, she writes, the Criminal Tribes Act dealt with the ‘hereditary criminal castes and tribes’ while, on the other, the CrPC aimed towards individual offenders, culminating in the 1918 legislation. By largely focusing on the period *after* the enactment of this legislation, principally the 1940s and 1950s, which Singha overlooks, this chapter reveals the conclusive merging of these previously distinct legal pathways during the repeal of the Criminal Tribes Act.

⁵²⁷ Singha, ‘Punished by Surveillance’, p. 243.

Although widely overlooked in historiography, the chapter argues that the 1918 law was instrumental to the refashioning of the criminal tribe within postcolonial legal structures after 1947.⁵²⁸ The law was largely considered a failure, but the principle behind it – that the measures of the Criminal Tribes Act could be utilised against individual offenders – was seized by the Bombay and Madras governments, in 1947 and 1948 respectively.⁵²⁹ Importantly, as the second section of the chapter demonstrates, these two pieces of legislation, the Madras one in particular, laid the foundations for a raft of provincial habitual offender legislation enacted across the subcontinent from 1950 onwards, culminating in a model bill circulated by the Government of India in 1957, which replaced the Criminal Tribes Act. The chapter therefore locates the repeal of the Act in a longer historical trajectory that reaches back both to 1918 and efforts to reform and replace it across India from the 1930s. The repeal of the Act in 1952 was not necessarily a stark rupture, therefore, but the result of discussions that had been underway for several years. The extent of this rupture, however, differed across the provinces. In Madras, Bombay and the United Provinces – all, notably, under Congress ministries in the late 1930s – the reform and repeal process had long been underway by independence. In Punjab, conversely, under the Unionist Party, there were still many in the bureaucracy who, even in the final months of colonial rule, advocated consolidating the Act rather than its demise.⁵³⁰ Regardless, the speed at which the Act was repealed and replaced by legislation after 1947 *was* a direct response to the changed political circumstances of independence.

The repeal process is one aspect of the Act's postcolonial afterlives which has received some, albeit limited, scholarly attention. Meena Radhakrishna has examined the enactment of habitual offender legislation in postcolonial India but with reference to the spate of legislation targeting vagrancy which was passed in England between the 1500s and 1800s. She argues there was 'a startling similarity between attitudes of the ruling classes in England in the 1850s' on the one hand, and the Indian lawmakers after 1947 on the other, as both marginalised the livelihoods and practices of nomadic

⁵²⁸ Two exceptions are Mark Brown and Radhika Singha, although neither explore the implications of the Act for the post-1947 history of the Criminal Tribes Act. Mark Brown, *Penal Power and Colonial Rule*; Singha, 'Punished by Surveillance'.

⁵²⁹ Madras Restriction of Habitual Offenders Act, 1948; Bombay Habitual Offenders Restriction Act, 1947.

⁵³⁰ 'Statement showing the opinion of the Punjab Government on the amendments proposed in the three bills to amend the Criminal Tribes Act, 1924, 16 September 1946', MHA/Police-I, 1950, File no. 19/9/50, NAI.

communities.⁵³¹ Whilst this is largely true, she overlooks imperatives and concerns that were specific to the postcolonial state. More recently, Brown has examined the repeal of the Act using the framework of what he terms ‘postcolonial penalty’.⁵³² Taking an approach similar to the one set forth in this study – which builds on earlier research – his work interrogates the ‘continuities and discontinuities of rule across the colonial/postcolonial divide’.⁵³³ Yet, his analysis tends to privilege the *continuities* of colonial governance to the detriment of acknowledging the important changes wrought by Partition, independence, and nation-building. This chapter builds on these studies but departs from them in important respects.

First, it traces the process of repeal in far greater detail. Brown’s analysis is limited to the published reports of a few of the enquiry committees appointed to investigate the reform or repeal of the Act between the late 1930s and early 1950s. Whilst the recommendations of these committees, in particular the one appointed by the Government of India in 1949, were integral to the development of postcolonial legal structures and policies, they reveal little of the wider negotiations over the criminal tribes, both at the level of national and provincial government, and especially at the lower levels of the state. As such, the second departure of this study is that it locates the repeal process – namely, the enactment of replacement legislation – primarily in the actions of provincial state actors and their subordinates. Whilst much of the chapter, like Radhakrishna and Brown’s work, analyses the debates amongst politicians and the findings of high-level committees, it argues that the decisions eventually taken by these elite actors were reactive, rather than proactive, as they were determined by those on the ground. Finally, the chapter, whilst acknowledging the clear continuities across 1947 in terms of certain practices and ideologies, emphasises the changed circumstances of independence. As the previous chapter showed, penal practices were, at least initially, characterised by disruption. State actors had to contend with migrating populations, shifting borders, and pervasive uncertainty over the future of the nation. Concurrently, the aspirations and ideals of independence *did* shape deliberations over the criminal tribe – even if adherence to these concepts were far from substantive. As such, the chapter makes a clear break

⁵³¹ Radhakrishna, ‘Laws of Metamorphosis’, p. 22.

⁵³² Mark Brown, ‘Postcolonial Penalty’.

⁵³³ I investigated similar themes in my masters dissertation, see Sarah Gandee, ‘From Criminal Tribes to Habitual Offenders: Enduring Notions of Collective Criminality over the Transition to Independence in India, c.1940-1960’ (unpublished M.Phil Dissertation, University of Cambridge, 2014). Brown, ‘Postcolonial Penalty’, abstract.

from Brown's contention that there was 'nothing distinctly postcolonial' about the process.⁵³⁴

The perspective of the chapter necessarily broadens to encompass the legislative landscape of the subcontinent as a whole and examines debates over the repeal of the Criminal Tribes Act both within the central government and those at the provincial level in Punjab. It recognises, however, that such discursive or legal conceptions of the criminal tribe were reconfigured on an everyday basis at a local level through the interactions between state actors and the criminal tribes themselves. The final section of the chapter therefore addresses the impact that the repeal of the Act had upon the everyday practices of state actors. It shows that despite their transformed status, the now ex-criminal tribes remained entangled within a web of legislation and penal practice that, often explicitly, targeted them, regardless of its ostensible shift in focus. For many individuals, the everyday, lived experience of being identified as a member of a criminal tribe did not fundamentally change in 1947, nor 1952, although the subjectivity of these individuals is beyond the bounds of this thesis. The transition from the colonial to postcolonial is clearly not a straightforward narrative of either inheritance or rupture. A messy, complex and often contradictory picture instead emerges, as certain ideologies or practices of governance that were developed by the colonial state were refashioned or re-embedded within postcolonial state structures, for a variety of purposes. It is against this backdrop of uncertainty in the years around independence that the chapter explores the ways in which, through shifting and contingent legal structures and penal practices, the criminal tribe remained a tangible reality for the state.

Criminal Tribes and Habitual Offenders

To understand why the category of the criminal tribe remained a persuasive influence upon the penal practices of the state after the repeal of the Criminal Tribes Act, we must first return to the later colonial period and the enactment of the Restriction of Habitual Offenders (Punjab) Act in 1918. This law replicated the provisions of the Criminal Tribes Act but was designed for use against individuals who could be characterised as habitually criminal, whether on account of their reputation or behaviour. This section draws on the political debates which surrounded the enactment of this legislation, as well as the series of proposals and correspondence coming from the Punjab administration which led to it.

⁵³⁴ Mark Brown, 'Postcolonial Penalty', p. 200.

These proposals largely came from higher-ranking officials, like the Inspector General of Police or Deputy Commissioners, although they drew on evidence provided by more local officers. Tracing the development of this legislation provides the necessary context for understanding the conflation of the criminal tribe and habitual offender during the repeal process.

The habitual offender had long been a category within the legal framework of British India, albeit an ill-defined and imprecise one. The Indian Penal Code (1860) was the first all-India law to include higher punishments for recidivism.⁵³⁵ More pertinently, the CrPC, in its various versions from 1861, contained provisions aimed towards habitual offenders, though defined in terms which were open to increasingly wide interpretation.⁵³⁶ For example, from its 1882 amendment, the CrPC outlined the procedure for dealing with those suspected of ‘bad livelihood’ or, in Singha’s words, the ‘more nebulous attribute of “dangerousness,”’ (sections 109-110).⁵³⁷ Under these provisions, an individual could be declared a habitual offender ‘by evidence of general repute or otherwise’ – lending an intentionally wide scope to the definition.⁵³⁸ In 1898, another revision of the CrPC further widened the scope of section 110.⁵³⁹ Whilst the intention behind these revisions was a more uniform legal procedure, the ‘looseness’ of the provisions, Singha argues, paradoxically invested vast powers of discretion in the hands of local officials.⁵⁴⁰

From the late 1880s, the Punjab government repeatedly tried to introduce legislation that specifically targeted habitual offenders. The CrPC, officials claimed, was ineffective and out of date. ‘The method [of demanding security under section 110] is a primitive device’, wrote Alfred Lyall, Lieutenant-Governor of Punjab, in 1893, ‘originating in times when the state of Indian society made it possible to render a man’s

⁵³⁵ D. C. Pandey, *Habitual Offenders and the Law* (New Delhi: Indian Law Institute, 1983), p. 3. At a regional level, the formalisation of colonial ‘preventative policing’ practices that targeted released convicts, vagrants, or those suspected to be offenders can be traced back at least to the 1793 Bengal Regulations (Regulation 22, section 10). See Singha, *A Despotism of Law*; Singha, ‘Punished by Surveillance’.

⁵³⁶ These provisions should be contextualised with reference to contemporaneous concerns in England over recidivism, which led to the English Habitual Criminal Act (1869) and the Prevention of Crime Act (1871). See Leon Radzinowicz and Roger Hood, ‘Incapacitating the Habitual Criminal: The English Experience’, *Michigan Law Review*, 78.8 (1980), 1305–89.

⁵³⁷ This allowed magistrates to demand that a habitual offender produce security (a monetary bond) for their good behaviour. Singha, ‘Punished by Surveillance’, p. 249.

⁵³⁸ Section 117.

⁵³⁹ Alongside the habitual commission of recognisable offences, the law now also targeted those who were ‘so desperate and dangerous as to render his being at large without security hazardous to the community’. Section 110, sub-clause (G).

⁵⁴⁰ Singha, ‘Punished by Surveillance’, p. 268.

neighbours responsible for his acts and character'.⁵⁴¹ Infrastructural changes in the subcontinent, especially the building of the railways and improvements in communications, were blamed for facilitating increased movements of habitual criminals. This increased mobility, particularly amongst 'loose characters', wrote Lyall, meant that the 'deterrent effect of being placed on security has therefore been much impaired'.⁵⁴² 'The offender is not bound thereby to remain in any particular locality', he continued, 'and neither by inclination nor by the difficulty of communications is he precluded from seeking new scenes wherein to indulge his criminal propensities'.⁵⁴³ The impetus behind these efforts, therefore, was the inefficiency of the present system.

There was widespread opposition to the bills introduced by the Punjab government, however. One key issue, as outlined by Lord MacDonnell, Lieutenant-Governor of Bengal, was that the security proceedings of the CrPC were already 'a tremendous engine of oppression in the hands of the police', whose powers the draft bill proposed to increase.⁵⁴⁴ As noted in chapter I, the police force in India was sparse. 'Both in personnel and resources,' writes Rajnarayan Chandavarkar, 'the thin blue line was very thin, indeed.'⁵⁴⁵ Partly owing to financial stringency and partly a desire not to interfere with indigenous custom, the colonial government practiced salutary neglect with the effect of creating 'social arenas which were removed at least partially or intermittently from the systematic rule of law'.⁵⁴⁶ In these, local elites could exercise power arbitrarily, often through the police. The police were therefore characterised, according to David Arnold, by 'their unlicensed petty tyranny, their corruption and brutality'.⁵⁴⁷ Somewhat ironically, although the behaviour of the police was largely beyond the realms of governmental control, it influenced decisions at the highest levels of the state.

Additionally, as the proposals sought to amend the CrPC they were of an all-India nature, but several local governments did not feel that they were necessary. Whilst its provisions were 'suited to meet the state of society amongst the turbulent and predatory classes on the Punjab frontier', Justice Carnduff of the Bengal High Court wrote, they

⁵⁴¹ 'Note by Sir Alfred Lyall on the Habitual Offenders Bill, 27 March 1893', Public and Judicial, Annual Files, 26 April 1893, File no. 972, L/PJ/6/347, IOR.

⁵⁴² 'Lyall, quoted in proceedings of Council of Governor-General, 12 January 1893,' *ibid.*

⁵⁴³ *Ibid.*

⁵⁴⁴ 'Note by G.M. Young, 31 January 1917', Home/Police A Progs., Nos. 75-76, August 1917, NAI.

⁵⁴⁵ Chandavarkar, p. 450.

⁵⁴⁶ *Ibid.*, p. 453.

⁵⁴⁷ Arnold, *Police Power and Colonial Rule*, p. 3.

were ‘not adapted [...] to the state of general society in these provinces’.⁵⁴⁸ Indeed, the supposedly exceptional nature of Punjab and its inhabitants was a driving force behind the proposals in the late 1800s, as it would be again for the 1918 law. The exceptionality of Punjab did not only relate to the ‘turbulent’ nature of its frontier inhabitants, though, but also the rural, as opposed to urban, nature of the province. In 1888, A. F. D. Cunningham, Deputy Commissioner of Hazara district, bemoaned the workings of the amended CrPC (1882) which had changed the definition of habitual offenders in the law: ‘This effect may not be so apparent in cities, or in those parts of India which have been longest under our rule, the tendency of which is to deal with individuals and to loosen tribal or clannish ties which bound together village communities. But these ties are still strong, especially in Western Punjab: so strong that it is difficult to get any but Police evidence against bad characters.’⁵⁴⁹

The proposals were eventually dropped.⁵⁵⁰ In the 1910s, however, the topic resurfaced at the national level as the Punjab government submitted several new proposals. Rather than seeking to amend the CrPC, these suggested using the provisions of the Criminal Tribes Act against habitual offenders. These proposals coincided with the 1911 amendment of the Act, which rooted administration more decisively in the provinces. The motivation was an increase in criminal activity in Punjab, especially cattle-lifting offences.⁵⁵¹ In 1912, the Commissioner of Lahore proposed the use of sections 3 (power to declare any tribe, gang or class a criminal tribe) and 4 (registration of members of criminal tribes) against ‘those habitual offenders who are not necessarily of one homogenous tribe’.⁵⁵² As we saw in chapter I, the Criminal Tribes Act began to be used against mixed-caste gangs from 1919. Although these proposals slightly pre-date this, their motivation should also be located in these wider discussions over broadening the remit of the Act. The proposal was swiftly rejected by the Legal Remembrancer, however, who stated that the Act was not ‘a legitimate weapon for the suppression of this form of

⁵⁴⁸ ‘Letter from H. W. C. Carnduff to Government of India, dated 28 February 1893,’ Public and Judicial, Annual Files, 26 April 1893, File no. 972, L/PJ/6/347, IOR.

⁵⁴⁹ ‘Letter from A. F. D. Cunningham to Commissioner, Peshawar Division, 11 January 1888,’ *ibid*.

⁵⁵⁰ After circulating the Punjab government’s draft bill of 1889 for opinion, the Government of India drafted their own bill. Whilst the Secretary of State disapproved of the bill, it was generally accepted by the authorities and local governments consulted in India. The proposed changes were subsequently incorporated within the Criminal Procedure Code Bill of 1893 but were abandoned by the Select Committee on the grounds it could be used as an instrument of oppression by the police.

⁵⁵¹ The proposed measures had strong support from districts, such as Karnal, where cattle-lifting was rife. See *Tribune*, 12 July 1912, p. 1 and ‘Note from F. H. Burton, Deputy Commissioner of Karnal’, Home/Police, July 1916, Nos. 10-73, PSA.

⁵⁵² ‘Letter from H. T. Dennys, Inspector General of Police, Punjab, to Revenue Secretary, Punjab Government, 26 August 1914’, Home/Police A Progs., November 1914, Nos. 1-9, File no. 25, PSA.

crime' and recommended instead 'a more vigorous application of the security sections of the Criminal Code'.⁵⁵³

Later, in 1914, the Superintendent of Police for Gurdaspur similarly proposed the application of the Criminal Tribes Act to habitual offenders to combat the 'notorious' state of crime in the province.⁵⁵⁴ The measure had widespread support within the Punjab establishment. Indeed, in the same year, the Punjab government responded to a draft bill to amend the CrPC which was circulated by the Government of India with the suggestion that habitual offenders could only be successfully countered 'either by amplifying sections 110, 112 and 118 [of the CrPC], or by applying the principles of the Criminal Tribes Act'.⁵⁵⁵ This proposal had initially emanated from the Commissioners of Jullundur and Multan. Although these initiatives found wide support across the province, then, they emerged from the level of the district, in response to local concerns. Again, however, this proposal was rejected on the grounds of police oppression.

Finally, in 1916 the Punjab government drafted a further bill with the stated aim of restricting 'habitual thieves and house-breakers to their residences in the same way as members of criminal tribes, instead of taking security from them under section 110'.⁵⁵⁶ Like the late 1800s, the existing system of law – namely, the security proceedings of the CrPC – was considered woefully inadequate, or 'bankrupt' in the words of A. J. O'Brien, the Deputy Commissioner of Mianwala.⁵⁵⁷ Some colonial officers, like O'Brien, even opposed the bill because it purported to introduce a more humane system, when they believed that more severity with such offenders was needed. The proposal did not seek to replace the security sections of the CrPC, but rather provided an alternative to magistrates. Similar to the Criminal Tribes Act, the law enabled a magistrate to pass an 'order of restriction' against a habitual offender – an individual against whom the provisions of section 110 of the CrPC could be applied. The order could restrict the said person's movements or require them to report at regular intervals to the magistrate, or both. If found beyond these limits, they could be arrested without warrant by any police

⁵⁵³ 'Note by Legal Remembrancer, S. Wilberforce, 19 September 1913', Home/Police A Progs., June 1914, Nos. 1-16, File no. 11, PSA.

⁵⁵⁴ 'Letter from H. T. Dennys, Inspector General of Police, Punjab, to Revenue Secretary, Punjab Government, 26 August 1914', Home/Police A Progs., November 1914, Nos. 1-9, File no. 25, PSA.

⁵⁵⁵ 'Note by G. M. Young, 31 January 1917', Home/Police A Progs., Nos. 75-76, August 1917, NAI.

⁵⁵⁶ *Ibid.*

⁵⁵⁷ 'Note by A. J. O'Brien, 25 August 1916', Home/Police A Progs., December 1916, Nos. 1-54, PSA.

officer or village official. Unlike the Criminal Tribes Act, the order of restriction was finite – it could not exceed three years.

There was widespread opposition to the proposal, however, on the grounds that it sought to modify the general criminal law and should therefore be made applicable to the whole of British India as opposed to merely Punjab. Its proponents disagreed. ‘The conditions of the Punjab are not the same as the rest of India’, wrote J. H. DeBoulay, Secretary to the Government of India.⁵⁵⁸ ‘[T]he virility of its population has made it by far the most important recruiting ground for the Indian Army. The same virility tends to make it rather more lawless than other parts of India’.⁵⁵⁹ As with earlier attempts, the bill’s supporters invoked the geographic specificity of Punjab, namely its location on the frontier at the remote edges of colonial jurisdiction and sovereignty.⁵⁶⁰ Indeed, it was the existence of ‘special features of crime in the Punjab’ which meant that the Government of India was prepared to eventually approve the bill.⁵⁶¹ In this regard, the bill was similar to numerous other exceptional pieces of legislation which were justified through recourse to notions of emergency.⁵⁶² In the same period, for instance, the Defence of India Act (1915) and later Rowlatt Act (1919) afforded exceptional powers to the colonial state, in response to nationalist and revolutionary activities during World War One.

The ‘emergency’ that warranted the habitual offender legislation, according to its proponents, was the existence of a class of professional criminals which the CrPC could not control. The bill’s main advocate was H. D. Craik, Revenue Secretary to the Government of Punjab. When he introduced the bill into the Punjab Legislative Assembly in 1917, Craik stressed that ‘in the Punjab there should be a special form of control [...] [because] a very large proportion of crime is committed by persons for whom crime is a profession’.⁵⁶³ Craik’s invocation of an organised, dangerous and subversive undercurrent of criminals was reminiscent of the debates over the Criminal Tribes Act in 1870-1871. Where there were gaps in evidence, ‘distinctive rhetorical strategies’ could be

⁵⁵⁸ ‘Note from J. H. DeBoulay, 18 February 1917’, Home/Police A Progs., Nos. 75-76, August 1917, NAI.

⁵⁵⁹ Ibid.

⁵⁶⁰ Frontiers have been shown to be conducive to more draconian legal regimes. See Mark Condos, ‘Licence to Kill: The Murderous Outrages Act and the Rule of Law in Colonial India, 1867–1925’, *Modern Asian Studies*, 50.2 (2016), 479–517.

⁵⁶¹ ‘Letter from James DuBoulay to the Government of Punjab, 4 August 1917’, Home/Police A Progs., Nos. 75-76, August 1917, NAI.

⁵⁶² For more on the idea of emergency and legal exception, see Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor, MI: University of Michigan Press, 2003).

⁵⁶³ ‘The Restriction of Habitual Offenders (Punjab) Bill, 21 December 1917’, *Proceedings of the Legislative Council of the Punjab, 1917* (Lahore: Government Printing, Punjab, 1918), VIII, p. 312.

employed to create the sense of a confederacy of criminals.⁵⁶⁴ When justifying the bill, Craik argued that ‘the amount of crime that is committed by professional criminals [...] amounts to more than half the total reported crime’.⁵⁶⁵ Whilst he later admitted that only ‘ten per cent is definitely traced to professional criminals’, he also claimed it was ‘perfectly fair to assume that most of [the untraceable crime] is the work of professional criminals who are clever enough to leave no trace’.⁵⁶⁶

A further exceptional – or ‘peculiar’ – feature of Punjab was the existence of ‘a local agency in the shape of village headmen available to enforce the provisions of the law without constant recourse to the police’.⁵⁶⁷ An important feature of the bill was that it proposed to delegate supervisory responsibilities to village officials rather than the police. It was not only that many in government felt that the police could not be trusted with such powers of restriction, but also that the small and ill-equipped *thana* staff were already incapable of implementing the existing measures against habitual offenders, i.e. the CrPC. The bill relied upon the pre-existing structures of policing which existed at the local level, whereby village watchmen had the responsibility for surveillance. This was the agency, as we saw in chapter I, upon which the everyday administration of the Criminal Tribes Act rested. Notably, both the Ingress into India Ordinance (1914) and the Defence of India Act (1915) had similarly relied upon village officials to implement restrictions and surveillance over suspects – a point which the bill’s proponents used as evidence of the successful workings of the local structures of policing.⁵⁶⁸

The bill was strongly opposed by several members of the Punjab Council, led by Mian Fazl-i-Hussain. These opponents denounced the bill as ‘nothing less than reversion to the system prevailing before 1861 and 1858’, i.e. prior to the introduction of the purportedly just rule of law on which British rule legitimatised itself.⁵⁶⁹ Outside of the Council, the bill was also criticised in the Lahore press, at public meetings, and through

⁵⁶⁴ Mark Brown, *Penal Power and Colonial Rule.*, p. 127.

⁵⁶⁵ ‘The Restriction of Habitual Offenders (Punjab) Bill, 21 December 1917’, *Proceedings of the Legislative Council of the Punjab, 1917*, VIII, p. 313.

⁵⁶⁶ *Ibid.*

⁵⁶⁷ ‘Note by W. H. Vincent, 13 June 1917’, Home/Police A Progs., Nos. 75-76, August 1917, NAI.

⁵⁶⁸ ‘Note by C. M. King, Deputy Commissioner, Amritsar, 11 August 1916’, Home/Police A Progs., Nos. 1-54, December 1916, PSA; ‘Note by R. H. Craddock, 29 March 1917’, Home/Police A Progs., Nos. 75-76, August 1917, NAI; ‘Extract from an abstract of the proceedings of the Council of the Lieutenant-Governor of the Punjab held at Government House, Lahore, on 21st December 1917’, Legislative Department A Progs., Nos. 18-21, January 1918, NAI.

⁵⁶⁹ *Tribune*, 7 February 1918, p. 1. On the idea of the British rule of law, see Elizabeth Kolsky, ‘Codification and the Rule of Colonial Difference: Criminal Procedure in British India’, *Law and History Review*, 23.3 (2005), 631–83.

petitions to the Viceroy from political organisations.⁵⁷⁰ The main objection was the wide scope given to the meaning of a habitual offender. The first draft of the bill had given reference to persons with two convictions to their name. The scope of the bill as eventually introduced to the Council, however, was extended to include those persons merely *suspected* of being criminals. Significantly, there was no explicit definition of a habitual offender within the legislation. Rather, it drew upon the definition outlined in section 110 of the CrPC – i.e. one who could be identified by repute alone.⁵⁷¹ As Fazl-i-Hussain pointed out, ‘the person against whom the machinery of section 110 is to be enforced is not a criminal’.⁵⁷² Like the Criminal Tribes Act, the bill relied on ill-defined and contingent notions of criminality.

Interestingly, it was this very aspect of the Criminal Tribes Act which supporters of habitual offender legislation invoked in its favour. As early as 1886, in support of the first attempts to modify the CrPC, O. Menzies, Inspector General of Police, asked: ‘If it is necessary to restrict the movements of persons who by the misfortune of their birth are members of a criminal tribe, but who have themselves never been convicted of an offence, how much more important is it to impose some check on the liberty of persons who by their previous convictions have shown themselves to be habitual criminals and to be enemies of society at large.’⁵⁷³ Thirty years later, in August 1916, District and Sessions Judge of Multan, Amir Ali wrote, ‘if members of certain criminal tribes are subject to certain penalties merely because of their heredity criminal tendencies, there is no reason why real and individual offenders should not be subjected to similar penalties and restrictions’.⁵⁷⁴ Even within the bill’s statement of objects and reasons, the Commissioner of Jullundur was cited: ‘I see no very logical reason against requiring a notorious thief or house-breaker not to leave his village without permission for a defined period when that amount of restraint is applied to large numbers of persons because they happen to be members of proclaimed criminal tribes, though individually they may be

⁵⁷⁰ Petitions were received from the Punjab Provincial Muslim League, the Punjab Provincial Congress Committee, the Gurdaspur District Congress Committee, the Sialkot Congress Committee, and the Amritsar District Congress Committee.

⁵⁷¹ Section 3 (a) ‘In any case in which a Magistrate may under the provisions of section 110 of the Code of Criminal Procedure, 1898, as it is at present enacted or as it may from time to time be amended, require a person to show cause why he should not be ordered to execute a bond for his good behaviour, the Magistrate may in lieu of or in addition to so doing require such person to show cause why an order of restriction should not be made against him.’

⁵⁷² ‘Restriction of Habitual Offenders (Punjab) Bill, 6 February 1918’, *Proceedings of the Legislative Council of the Punjab, 1918* (Lahore: Government Printing, Punjab, 1919), IX, p. 46.

⁵⁷³ ‘Letter from Colonel O. Menzies, dated 15 February 1886,’ Public and Judicial, Annual Files, 26 April 1893, File no. 972, L/PJ/6/347, IOR.

⁵⁷⁴ ‘Note by Amir Ali, 14 August 1916’, Home/Police A Progs., December 1916, Nos. 1-54, PSA.

well behaved.⁵⁷⁵ The proponents of the bill thus invoked the illiberal nature of the Criminal Tribes Act to justify legislation that similarly relied upon the subjective notion of *suspicion* of criminality.

The bill was eventually passed, with only six members of the Council voting against it. There were significant doubts within the government over both its efficacy and legitimacy, however. Although he assented to the bill, the Secretary of State, Edwin Montagu, made the following statement:

The Act creates a new procedure for the prevention of crime that involves a distinct, though variable, degree of restriction upon the freedom of movement of persons not convicted of any offence. *It thus accepts a principle which has not, I think, found a place in the permanent, as opposed to emergency, legislation of British India* since the enactment of Bengal Regulation III of 1818 and the similar Madras and Bombay Regulations. Your Excellency's Government have in this instance accepted the principle, in view of the *particular circumstances existing in the Punjab in regard to certain classes of crime, as essential to public security*. While I have for the same reason accepted the Act, I desire that it should not be assumed that the principle of restriction of the movements of suspected persons to particular areas commends itself to me as of general and permanent application, and that *the present Act should not in itself be taken as a precedent for similar enactments in other provinces* apart from the existence of similar special conditions in respect of crime.⁵⁷⁶ (emphasis added)

The law was justified, therefore, on the basis of the supposedly exceptional circumstances existing in Punjab, and that it would not be replicated elsewhere. It did not take long, however, for other local governments to request the law's extension to their provinces. As early as February 1918, the North West Frontier Province obtained the Governor-General's sanction on the basis of 'the volume of crime in the province' and 'the number of persons bound down every year under the Criminal Procedure Code'.⁵⁷⁷ Later that year, Burma also successfully requested the extension of the law by emphasising the rising levels of crime in the province, against which the existing rule of law had proved ineffective.⁵⁷⁸ In Delhi, conversely, the lack of a special agency to enact the supervisory measures led to the request being denied.⁵⁷⁹ As we shall see, however, in the decade after

⁵⁷⁵ 'A Bill for restricting the movements of habitual offenders in the Punjab and for requiring them to report themselves', Home/Police A Progs., Nos. 75-76, August 1917, NAI.

⁵⁷⁶ Italics added. 'Letter from Edwin Montagu to the Governor-General of India, 26 July 1918', Home/Police A Progs., Nos. 111-12, December 1918, NAI.

⁵⁷⁷ 'Letter from Chief Commissioner, North West Frontier Province, 17 August 1921', Legislative/Unofficial, 1921, File no. 592, NAI.

⁵⁷⁸ See correspondence in 'Requesting sanction to the introduction of a Bill in the local Legislative Council for restricting the movements of habitual offenders in Burma', Home/Police A Progs., Nos. 67-70, October 1918, NAI.

⁵⁷⁹ 'Letter from the Secretary to the Government of India to the Chief Commissioner, Delhi, 6 June 1919', Home/Police A Progs., Nos. 73-75, January 1921, NAI.

1947 this legislation provided the framework through which habitual offender legislation was enacted across large swathes of the subcontinent.

This is somewhat surprising, given that the law was largely considered a failure by those involved in its administration. As early as 1919, DCCT Kaul reported that it had, thus far, not been successful. The problem, he stated, was that although the law enabled magistrates to intern habitual offenders in the settlements established for criminal tribes, they could only be held for the duration of their sentence, rather than the indefinite internment of the criminal tribe. ‘The strongest inducement to reform was the prospect of indeterminate detention in the event of no moral improvement’, he argued.⁵⁸⁰ Later, in 1925, another (rejected) proposal to use the Criminal Tribes Act against individual offenders emerged in response to a meeting of police officers in Lahore and Amritsar who claimed that both the 1918 law and the CrPC were ‘ineffective’ when used against ‘the hardened criminal’ or the ‘cattle thief’.⁵⁸¹ Throughout the period, then, there was constant recourse to the Criminal Tribes Act, which was considered the only effective means to counteract the levels of crime in the province.

Eventually, Punjab’s Inspector General of Police wrote in 1950 that the law did ‘not go far enough nor has it ever been possible to apply it to a real harbourer or organiser of criminals on account of the serious difficulties encountered by the prosecution to secure direct evidence’.⁵⁸² By the final years of colonial rule, the legislation was seemingly a dead-letter in Punjab. Yet, its enactment had set an important precedent for employing the measures of the Criminal Tribes Act against individual offenders. As the following section will show, this proved increasingly significant in the late 1930s and 1940s as local governments in other regions, notably Bombay and Madras, began to question the foundations of the Criminal Tribes Act and looked towards the Punjab legislation as a potential replacement. In turn, these developments determined the process of repeal after independence.

Repealing the Criminal Tribes Act

When the Criminal Tribes Act was repealed by the Government of India on 31 August 1952 it marked the culmination of both shorter and longer-term debates over both the

⁵⁸⁰ ‘Proceedings of the Conference held at Delhi on the 9th, 10th and 11th December 1919, to consider the question of the amendment of the Criminal Tribes Act, 1911 (III of 1911) and the policy to be followed in administering it’, Serial no. 4237, File no. 4237, Rajasthan State Archives (hereafter, RSA), Bikaner.

⁵⁸¹ ‘Note by L. C. B. Glascock, 29 August 1925’, Home/Judicial B Progs., October 1927, File no. 384, PSA.

⁵⁸² *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 84.

efficacy and ethics of the legislation. The chapter now traces this process of repeal, from the late 1930s through to the early 1950s. It draws on the reports of the several enquiry committees appointed to investigate the workings of the Act from the 1930s, including one appointed by the Government of India in 1949 whose recommendations influenced the shape of repeal. Their findings are important because, as Stoler writes, ‘commissions organised knowledge, rearranged its categories, and prescribed what state officials were charged to know’.⁵⁸³ This section also examines the deliberations within state and central government – in both legislative debates and official correspondence. These sources reveal the tension faced by the nation’s new leaders, as they had to mediate between their desire – and increasing calls – to abolish an ostensibly ‘colonial’ law which contravened the principles of the constitution, and their perceived need to retain the punitive powers it provided. Anxieties regarding the loss of these powers took on a particular hue in Punjab and Delhi, largely in response to the havoc wrought by Partition. The decision to replace the Criminal Tribes Act with legislation aimed towards habitual offenders therefore worked to overcome this tension. The criminal tribe was not simply removed from the statute book, then, but refashioned within postcolonial legal codes that inextricably bound the criminal tribe and habitual offender together.

The Criminal Tribes Act had many critics during its lifetime, but it was only in the late 1930s – as Congress formed governments in many of the provinces after the 1937 elections – that its reform or repeal was placed on the political agenda. In part, this can be attributed to the professed aims and principles of Congress itself, as the denial of civil liberties under the Act formed part of a wider critique of the colonial government. Indeed, an All India Criminal Tribes Conference was proposed to be held at Tripuri in 1939, as part of the Congress’ annual session.⁵⁸⁴ The question of reform also resulted from wider discussions on the topic of forced labour, however. At the fourteenth session of the International Labour Conference, held in Geneva in 1930, a convention was adopted which required all member countries to abolish forced or compulsory labour. This convention could not be ratified by the Government of India owing, in part, to the labour extracted under the Criminal Tribes Act. As such, the Government of India demanded

⁵⁸³ Stoler, ‘Colonial Archives and the Arts of Governance’, p. 95.

⁵⁸⁴ See files in ‘Serial no. 74 – Papers concerning All India Criminal Tribes Conference, 1939’, M.S. Aney Private Papers, NMMML.

that the provincial governments take steps to modify or abolish enactments on the local legislatures which permitted the use of forced or compulsory labour.⁵⁸⁵

Several committees were therefore instituted to enquire into the Act's workings and to make recommendations for its modification. The first of these, appointed by the Bombay government in 1937, noted that 'the "criminality" of each tribe is the product of social and economic environments which grew in times of social upheaval' rather than being a hereditary attribute.⁵⁸⁶ Although the committee eventually concluded that the 'need for maintaining the Criminal Tribes Act has clearly not disappeared yet', it did recommend that 'the existing rules and practices [...] be liberalised as far as practicable'.⁵⁸⁷ This led to the Criminal Tribes (Bombay Amendment) Act, 1942.⁵⁸⁸ A later committee appointed in the province in 1947 led to the Act's repeal on 13 August 1949 amid state-sponsored celebrations and the symbolic cutting of barbed wire fences surrounding settlements.⁵⁸⁹ The government in the United Provinces also instituted enquiry committees in 1938 and 1946, with one also later appointed in Bihar in 1948. Significantly, the Punjab government did not appoint any committee.

A common feature of these committees was their endorsement of the 1918 law. The committee in Bombay (1937-1939) had noted that 'after "tribes" are denotified it would be necessary and desirable to deal with individual habitual or confirmed criminals'; as such, it recommended that 'legislation on the lines of the Punjab Habitual Offenders Act should be introduced in this province'.⁵⁹⁰ The 1946 committee in the United Provinces recommended that a Habitual Offenders and Vagrants Act be passed, which would target three types of offender: individual habitual criminals, those who committed crime on account of 'family traditions' and 'custom' (i.e. criminal tribes), and vagrants.⁵⁹¹ At this point, then, the committees envisaged legislation that would target *both* criminal tribes and habitual offenders, albeit with the caveat that only those individuals belonging to the criminal tribes who committed crimes would fall within the remit of the law. This was an important shift from the situation in Punjab, where habitual offenders – although often dealt with through the same institutional apparatus, in terms of village officials and

⁵⁸⁵ 'Report of the Commissioner for Scheduled Castes and Scheduled Tribes for the period ending 31st December, 1951. (L.M. Shrikant)', MHA/Public, 1952, File no. 74/14/52, NAI.

⁵⁸⁶ *Report of the Criminal Tribes Act Enquiry Committee 1939*, p. 75.

⁵⁸⁷ *Ibid.*, pp. 75, 77.

⁵⁸⁸ 'Summary note from the Criminal Tribes (Bombay Amendment) Bill, 1941', Secretary of the Governor-General/Public, 1942, File no. 14(31)-G.G.(B), NAI.

⁵⁸⁹ *The Bombay Chronicle*, 12 August 1949; *The Bombay Sentinel*, 29 July 1949.

⁵⁹⁰ *Report of the Criminal Tribes Act Enquiry Committee 1939*, p. 78.

⁵⁹¹ *Report of the Criminal Tribes Enquiry Committee, United Provinces 1947*, pp. 16–17.

settlements – remained distinct from the criminal tribes in terms of the law. This shift was confirmed in the process of repeal.

At the same time as the Congress ministries in Bombay and the United Provinces were instituting committees to investigate the possibility of reforming the Criminal Tribes Act, the government in Madras had started the repeal process. In 1937, the Congress government there proposed that the Criminal Tribes Act should be repealed and in its place two new laws should be passed: one to ‘deal with habitual criminals, power being taken to restrict their movements’; and one to ‘provide for placing restrictions [...] on the movements of the nomadic tribes or on sections of such tribes as have not settled down permanently in any locality’.⁵⁹² There was widespread opposition to the measures from district magistrates and the Police Department, however. The proposals were accordingly abandoned, and the government turned to amending the existing legislation instead. There was already a clear tension between the ideals of politicians and the concerns of local state actors on the ground. These were the local officials who played a vital role in ascribing the criminal tribe with a bureaucratic reality through their everyday practices of surveillance and control. Now they were reluctant to relinquish the powers such practices had made seem necessary.

A few years later, in 1943, the government again broached the topic. Given the hostility of the police and magistracy to the Act’s repeal, now only its reform was suggested. The Governor of Madras thus set forth two bills before the Governor-General.⁵⁹³ The first, the Criminal Tribes (Madras Amendment) Bill, aimed to liberalise the provisions of the Criminal Tribes Act in its application to the province. It sought to change the terminology from ‘criminal tribes’ to ‘notified tribes’ and opportunity would be given to any person to show cause against their registration as a member of a notified tribe. New powers were also to be delegated to district magistrates, who could exempt any registered member of a notified tribe and make periodical review into the cases of those registered. The second, the Madras Restriction of Habitual Offenders Bill, provided for the application of the provisions of the Criminal Tribes Act to individual habitual offenders. For the first time, a habitual offender was defined in the law as any person

⁵⁹² ‘Letter from E. C. Allardice, Assistant Private Secretary to the Governor of Madras, to the Governor-General, 6 March 1943’, Secretary of the Governor-General/Public, 1943, File no. 12(2)-G.G.(B), NAI.

⁵⁹³ Although the Criminal Tribes Act was administered on a provincial basis, its inclusion within the Concurrent List of the Government of India Act (1935) meant that amendments to the legislation from the provinces needed the assent of the centre.

- (a) Who has committed not less than three non-bailable offences; or
- (b) Who has been ordered to give security for good behaviour with reference to section 110 of the Code of Criminal Procedure, 1898; or
- (c) Who by repute as established at a magisterial inquiry, is addicted to the commission of offences against the public peace or against property or is of such a character that it is necessary to impose restrictions on him under this Act.⁵⁹⁴

Both bills were passed, partly because ‘the maintenance of internal order’ was considered ‘an indispensable requisite for the successful prosecution of the War’.⁵⁹⁵ The first bill received substantial criticism from the press and various organisations in Madras, however, many of whom demanded the repeal of the Criminal Tribes Act rather than its modification.⁵⁹⁶ It was followed by another amendment to the Criminal Tribes Act in 1945, which further liberalised its workings by delegating the authority to suspend orders for registered individuals to report themselves at fixed intervals from district magistrates to superintendents of police.⁵⁹⁷ By the final years of colonial rule, then, it was not just the everyday practices of surveillance that were the domain of locally-rooted officials, but also executive decisions relating to registration and exemption.

In 1947, the Madras government proposed the Criminal Tribes (Madras Repeal) Bill. The bill was passed without any substantial opposition in the legislature. In its ‘statement of objects and reasons’ the bill stated that ‘the provisions of the Act are so rigorous that their application to members of tribes is more likely to make them hardened criminals than to reform them [...] their continuance can hardly be justified in the light of modern progressive penology’.⁵⁹⁸ Interestingly, the bill also stated that ‘the substantive and preventative provisions of the existing law, viz., the Indian Penal Code and the Code of Criminal Procedure, 1898, are quite adequate to deal with members of the tribes’.⁵⁹⁹

This view was not borne out by the enactment of the Madras Restriction of Habitual Offenders Act the following year.⁶⁰⁰ The law defined a habitual offender as

⁵⁹⁴ This was the first time a habitual offender was defined in separate legislation. A definition already existed in the Code of Criminal Procedure. ‘A Bill for imposing certain restrictions on habitual offenders in the Province of Madras’, Secretary of the Governor-General/Public, 1943, File no. 12(2)-G.G.(B), NAI.

⁵⁹⁵ ‘Serial No. 1.’, *ibid*.

⁵⁹⁶ These included: The Indian Express, The Praja Patrika, the Andhra Patrika, the Servants of India Society, and the Andhra Rashtra Yerukala Mahasangam.

⁵⁹⁷ The ‘abeyance’ system had been in place in Madras since 1931.

⁵⁹⁸ ‘The Criminal Tribes (Madras Repeal) Bill, 1947’, Secretary of the Governor-General/Public, 1947, File no. 12(72)-G.G.B, NAI.

⁵⁹⁹ *Ibid*.

⁶⁰⁰ Whilst the 1943 Act was passed, it seems that this law replaced it.

a person who, before or after the commencement of this Act, has been sentenced to a substantive term of imprisonment, such sentence not having been set aside in appeal or revision on not less than three occasions, for one or another of the offences under the Indian Penal Code (Central Act XLV of 1860) set forth in the Schedule, each of the subsequent sentences having been passed in respect of an offence committed after the passing of the sentence on the previous occasion.⁶⁰¹

In addition:

The passing of an order requiring a person to give security for good behaviour with reference to section 110 of the Code of Criminal Procedure, 1898 (Central Act V of 1898), shall be deemed to amount to the passing of a sentence of substantive imprisonment within the meaning of this clause.⁶⁰²

The provisions of the 1948 law were clearly inherited from its 1943 precursor, although the more explicit reference to ‘repute’ had been removed. The definition of a habitual offender in these terms, especially the demand for three sentences of imprisonment, seemingly placed the law on surer legal footing. Only those persons actually *convicted* for criminal offences, or those who came within the CrPC’s description of a habitual offender on three occasions, would be defined as such.⁶⁰³

The law also made an explicit link between the criminal tribe and habitual offender, however – a link which ultimately informed the raft of habitual offender legislation which followed the repeal of the Criminal Tribes Act. Under the 1948 law, any person voluntarily residing within reformatory or labour settlements was liable to be subjected to its restrictions and penalties.⁶⁰⁴ Thus, those individuals who remained in the settlements which had become their homes after the repeal of the Criminal Tribes Act automatically fell within the boundaries of the habitual offender. Moreover, every person who stood registered under the Criminal Tribes Act at the commencement of the 1948 law and who, in the five years immediately preceding it, had been either ordered to give security for good behaviour via section 110 of the CrPC, or were convicted of an offence either under section 24 of the Criminal Tribes Act⁶⁰⁵ or another non-bailable offence under any other law would be notified as habitual offenders.⁶⁰⁶ The wide scope for

⁶⁰¹ Section 1(4).

⁶⁰² Section 1(4).

⁶⁰³ Given that section 110 defined a habitual offender in terms of ‘repute’ this still included individuals suspected rather than convicted of criminal offences.

⁶⁰⁴ Section 10.

⁶⁰⁵ Section 24, Criminal Tribes Act, 1924: Whoever, being a registered member of any criminal tribe, is found in any place under such circumstances as to satisfy the Court – (a) that he was about to commit or aid in the commission of theft or robbery, or (b) that he was waiting for an opportunity to commit theft or robbery – shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to one thousand rupees.

⁶⁰⁶ Section 16.

interpretation and discretion in the CrPC and section 24 meant that – like we saw in chapter I – it was relatively easy for registered members of criminal tribes to accrue criminal convictions.

The Madras law did not merely replicate the provisions of the Criminal Tribes Act with an ostensibly new target, therefore, but instead drew a clear link to previously notified individuals. This contrasted with the first post-independence law aimed towards habitual offenders, passed by the Bombay government in December 1947, which existed alongside the Criminal Tribes Act until its repeal in 1949. The Bombay Habitual Offenders Restriction Act was modelled on the Restriction of Habitual Offenders (Punjab) Act (1918) with additional scope for the continued use of settlements that had been established under the Criminal Tribes Act. Like the Punjab law, there was no explicit definition of a habitual offender. Instead, an order of restriction could be made against a person who would otherwise be ordered to execute a bond for good behaviour under section 110 of the CrPC.⁶⁰⁷ Unlike the Madras law, there was no stated link made between the individuals notified under the Criminal Tribes Act and those to be notified as habitual offenders. As independent India's lawmakers faced the prospect of either reforming or repealing the Criminal Tribes Act, however, they drew more heavily from the Madras law, as the remainder of this section demonstrates.

At the same time as Congress ministries in the provinces had begun to investigate the workings of the Criminal Tribes Act in the 1930s, several politicians introduced bills into the central legislative assembly which sought to modify or repeal the Act. Somewhat unsurprisingly, the first of these was moved by a politician from Madras, Professor N. G. Ranga – one of the founding members of the All India Kisan Sabha, though at this stage it still worked under the umbrella of Congress. Introduced in 1938, the bill aimed to liberalise the Act's workings by deleting several of the more punitive sections and introducing more lenient punishments. The bill was widely opposed, including by Ambedkar, and eventually lapsed before being again introduced – and again lapsing – in 1945.⁶⁰⁸ The following year, Ranga introduced two further bills, this time with several others, first to amend and later to repeal the Act. The local governments in Sind, Punjab and Bombay, and the Chief Commissioner in Ajmer-Merwara all opposed the bills. Many

⁶⁰⁷ Section 3.

⁶⁰⁸ Ambedkar opposed the bill but felt that government needed to take action regarding the uplift of the communities. See 'Prof. N. G. Ranga's bill to amend the Criminal Tribes Act, 1924', Cabinet Secretariat/Executive Council Office, 1945, File no. 23-CF, NAI.

of the other provinces were ambivalent, often having few, if any, notified criminal tribes within their jurisdiction. Only Madras was strongly in favour of the Act's repeal, having already suspended it in its operation to the province. As late as September 1946, less than a year before independence, the Punjab government wrote in response to the bills that the 'present is not the opportune time for the repeal of this Act as a whole'.⁶⁰⁹ In Delhi, too, the Superintendent of Police recommended the creation of 'a centrally directed Criminal Tribes Bureau' to implement the Act throughout India, and thus overcome the incursions of criminal tribes from areas 'where there is no proper enforcement'.⁶¹⁰ Although the reform process had begun by the final months of colonial rule, there was little support for the wholesale repeal of the Criminal Tribes Act, nor any widespread dismissal of the category of the criminal tribe, at least within the state bureaucracy.⁶¹¹

The promise and then realisation of freedom in the subcontinent, however, impelled India's new leaders to question the principles on which the Criminal Tribes Act rested, and their place within the independent nation. From 1947, repeated questions were raised in the provisional Parliament of India on whether the government planned to repeal or reform the Criminal Tribes Act. The Ministry of Home Affairs noted in 1949, for instance, that, 'There has been a persistent demand in the Central Legislature in recent years that the Criminal Tribes Act, 1924, should be repealed as its provisions which seek to classify certain classes of people as Criminal Tribes, are inconsistent with the dignity of free India.'⁶¹² The promises of freedom and liberation were clearly undermined by the retention of this draconian 'colonial' law. At the same time, these demands related to the imperatives of building the nation. In 1948, for example, V. C. Kasava Rao (Congress politician representing Madras and later member of the Rajya Sabha) questioned whether the government proposed to reclassify the criminal tribes and what steps were being taken to make them into 'useful citizens'.⁶¹³

In response, the Government of India appointed its own enquiry committee in 1949 to investigate the workings of the Act in the provinces and, thereafter, to make

⁶⁰⁹ 'Statement showing the opinion of the Punjab Government on the amendments proposed in the three bills to amend the Criminal Tribes Act, 1924, 16 September 1946', MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁶¹⁰ 'Letter from W. D. Robinson to the Chief Commissioner, Delhi, 19 June 1946', Chief Commissioner's Office, Home Department, 1946, File no. 4(42), DSA.

⁶¹¹ There was support for the repeal or modification of the Act from several ameliorative organisations and political groups, such as Congress Committees (although these were mainly limited to Madras). Moreover, there were repeated calls from individuals amongst the communities themselves for the repeal of the Act.

⁶¹² Resolution No. 22/1/49-Police-I. *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 1.

⁶¹³ 'Starred question no. 630', MHA/Police, 1948, File no. 8/45/48, NAI.

recommendations for its reform or repeal. This committee was integral to the repeal process as its recommendations formed the core of later debates within the central government. It was chaired by Congress politician Ananthasayanam Ayyangar and comprised five further members plus a secretary.⁶¹⁴ At least half the members had some affiliation with the Harijan Sewak Sangh – Ayyangar as president and A. V. Thakkar as founding secretary – highlighting the overlapping forms of social exclusion. The investigations were extensive in their efforts but somewhat limited in scope. Over the course of a year the committee’s members accrued over 10,000 miles by rail and 1200 by road as they toured Punjab, Uttar Pradesh, Bihar, West Bengal, Orissa, Bombay, and Madras. They visited settlements, colonies and villages, examined witnesses, and met with government officers and welfare workers from a variety of organisations.⁶¹⁵ However, there was an almost total absence of participation in the committee from members of the criminal tribes. Only five of the 127 communities recognised by the committee were interviewed by its investigators and even then, as Brown highlights, few of their names were considered worth recording.⁶¹⁶

According to Brown, the committee’s task was complicated by the fact it had no guiding principles. It made no ‘reference back to overarching ideals, either to the new constitution’s meaning and vision or more generally to the liberal political ideals of freedom and civic participation’.⁶¹⁷ He does note that the committee judged the Criminal Tribes Act as ‘unconstitutional’ but contends there was ‘nothing distinctly postcolonial’ about the process.⁶¹⁸ This chapter disagrees. At least within the committee and the upper echelons of government, the ideals of the constitution *did* shape the deliberations over the Act’s repeal. Within the committee’s report – sent to the Government of India in 1950 – the Act was frequently denounced with reference to the constitution and its professed commitment to equality: ‘Untouchability proved oppressive and its practice is now made illegal under the Constitution, as it involves social injustice and perpetuates discrimination. More so is the stigma of criminality by birth.’⁶¹⁹ The communal logic which underpinned the Act was clearly positioned as being ‘against the spirit of our

⁶¹⁴ These were A. V. Thakkar, K. Chaliha, V. N. Tivary, Gurbachan Singh, J. K. Biswas, and P. C. Dave as Secretary.

⁶¹⁵ Provincial Congress Committees, the Salvation Army, Arya Samaj, Harijan Sevak Sangh and Ramakrishna Mission were amongst the organisations represented.

⁶¹⁶ Mark Brown, ‘Postcolonial Penalty’, p. 201.

⁶¹⁷ *Ibid*, p. 200.

⁶¹⁸ *Ibid*, pp. 195, 200.

⁶¹⁹ *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 82.

Constitution'.⁶²⁰ Moreover, the constitution of 1950 had prohibited 'traffic in human beings and *begar* and other similar forms of forced labour'.⁶²¹ The committee noted that the forced labour extracted under the Act contravened both the constitution, as per *begar*, and the convention adopted by the International Labour Conference in 1930, which India was still unable to ratify.⁶²² In their summation of official opinion on the Act, too, the committee noted the 'widespread demand for the replacement of the present Act by an Act more in consonance with modern conceptions of rights and justice'.⁶²³ The committee clearly engaged with the principles underlying the constitution, therefore, even if in practice its recommendations fell far short of adhering to them.

In contrast to Brown, this chapter argues that the committee's ambivalent attitude towards these ideals – namely its retention of 'colonial' forms of knowledge and legal structures – was shaped less by desires to reconstruct 'the machinery of colonial control' than by practical limitations and the exigencies of rule in this period of flux. For example, the following gives an illustration of the legislative landscape with which the committee had to contend. The Criminal Tribes Act remained in active operation in Punjab, Uttar Pradesh, Bihar, Orissa, West Bengal and Assam until at least January, if not August, 1952. Similar laws were in force in the former Indian states of Saurashtra, Mysore, Hyderabad, Madhya Bharat, Rajasthan, Kashmir, Patiala and the Punjab States Union, and Rewa. It was no longer in operation in Madhya Pradesh and was reported to be a dead letter in Coorg and the Andamans. Madras and Bombay had both repealed and replaced it with habitual offender legislation, the former of which was adapted and extended to Bhopal, Delhi and Ajmer. The situation was exacerbated by the fast-transforming physical geography of India itself as the former princely states were incorporated, state borders were redrawn, and new territories annexed. In October 1950, for instance, the government in Madhya Bharat had requested permission to extend the Criminal Tribes Act to the newly-formed state. The reasoning was that the nature of the state, formed through the integration of twenty-five former princely territories, meant that regulations pertaining to the criminal tribes were in force in certain regions, such as Holkar and

⁶²⁰ *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 82.

⁶²¹ Article 23.

⁶²² *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, pp. 82–83.

⁶²³ *Ibid*, p. 90.

Gwalior, but not in others.⁶²⁴ The years following independence were ones of fluidity and change in legislative terms.

The information available to the committee was also limited and out of date. Over thirty pages of the committee's report outline 'the origin of the tribes [...] to ascertain their present social position and the crimes in which the active criminals belonging to these tribes generally indulge'.⁶²⁵ These notes were compiled from a variety of ethnographic works and policing manuals from the late nineteenth to mid-twentieth centuries and largely reiterated the communities' criminal characterisation.⁶²⁶ The Kuchbands, for instance, were reported as being 'notorious for their "zanp" which is a way of committing thefts from shops [...] by keeping the shopkeeper engaged in talk'.⁶²⁷ 'In the past [the Dhenwars] travelled about in the disguise of musicians, singing, begging, pilfering and committing thefts or burglary on a large scale when opportunity offered.'⁶²⁸ Despite the markedly changed circumstances surrounding the committee's investigations, its reliance on modes of 'colonial' knowledge is unsurprising as there was relatively scarce information available regarding these communities outside of this narrow lens. Moreover, the local officers whom the committee interviewed had, as Brown notes, 'spent a lifetime within the cultural habitus of colonial police and social welfare bureaucracies' of the British Raj.⁶²⁹ Brown's contention that the knowledge employed by the committee was 'almost entirely colonial in its derivation', however, overlooks a more complex picture.⁶³⁰

By the final years of colonial rule, anthropology in India had become an established discipline with its own dynamics and imperatives which were largely removed from its origins in colonial governance.⁶³¹ Through the 1940s, new institutes were founded, like the Anthropological Survey of India in 1945 or the Department of Anthropology at the University of Delhi in 1947. Significantly, the committee *did* engage with this nascent field, citing anthropological and sociological studies conducted contemporaneously to independence, such as Dr D. N. Majumdar and B. S. Bhargava's

⁶²⁴ 'Letter from the Madhya Bharat Government Police Department, 28 November 1950', Ministry of States/Political, 1950, File no. 2(83)-P/50, NAI.

⁶²⁵ *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 10.

⁶²⁶ These included, amongst others, William Crooke, *The Tribes and Castes of the North-Western Provinces and Oudh* (Calcutta: Office of the Superintendent of Government Printing, India, 1896); Ibbetson; Kennedy.

⁶²⁷ *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 26.

⁶²⁸ *Ibid.*, p. 18.

⁶²⁹ Mark Brown, 'Postcolonial Penalty', p. 200.

⁶³⁰ *Ibid.*

⁶³¹ Peter Berger and Frank Heidemann, 'Introduction: The Many Indias - The Whole and Its Parts', in *The Modern Anthropology of India: Ethnography, Themes and Theory*, ed. by Peter Berger and Frank Heidemann (Abingdon, Oxon: Routledge, 2013), pp. 1-11 (p. 4).

work for Lucknow University. These analyses, in contrast to the outmoded works above, emphasised that ‘criminality is not hereditary but the result of bad environments and low economic conditions’.⁶³² Although these anthropologists – like bureaucrats and police officers – had developed their practices under colonial rule, they were working within a new context. The knowledge they produced may have been shaped by the long traditions of anthropology and ethnography in the subcontinent, but they also engaged with global discourses and more contemporary theories of criminology and sociology. Importantly, these often undermined the notion of the hereditary criminal. Rather than a clear rupture *or* continuity, then, the committee’s reliance on these divergent forms of knowledge indicate a far more complex and conflicted situation than has previously been acknowledged.

The framing of the notified communities in these conflicting terms had a significant impact upon the committee’s eventual recommendations to government. It recommended the repeal of the Criminal Tribes Act and the immediate relaxation of its provisions, including:

- Registration of members of criminal tribes who are not convicted of any offences or reasonably suspected of any offence during the last three years may be cancelled
- Automatic registration of members to be stopped
- Preliminary enquiry under provisions of Section 16 of the Criminal Tribes Act to be carried out by a judicial officer
- The Act to be liberalized and no new tribe is to be notified.⁶³³

The committee also recommended that ‘suitable ameliorative measures’ be undertaken amongst the communities, and that the central government should contribute fifty per cent of expenses to the state governments for ten years from the date of repeal for this purpose.⁶³⁴ Although these measures were couched in terms of reformation, as opposed to control, they remained centred on the idea of the communities’ criminal proclivity – but one determined by social and economic environment. Significantly, although these welfare measures intended to aid the assimilation of the criminal tribes into wider society,

⁶³² *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 82. See Bhawani Shanker Bhargava, *The Criminal Tribes: A Socio-Economic Study of the Principal Criminal Tribes and Castes in Northern India* (Lucknow: Ethnographic and Folk Culture Society, 1949).

⁶³³ ‘Serial No. 1: Criminal Tribes Act Enquiry Committee, Summary of Recommendations’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁶³⁴ *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 105.

theoretically eroding their distinctive status in the law, they in fact further marked out the communities as targets of state control – the topic of chapter IV.

At the same time, the committee recommended that new legislation should replace the Criminal Tribes Act. It acknowledged the ‘unanimity of feeling in the country’ that the Act should be repealed ‘as it brands members of certain communities as criminals by birth’.⁶³⁵ But the committee also recognised that there was ‘equally a large demand for some kind of control and restriction over the habitual offenders, to whatever community they may belong’.⁶³⁶ Many of those interviewed by the committee were serving and retired state officials – including police officers (of all ranks), district magistrates, and settlement supervisors. Similar to Madras in the 1930s, the opinions of these lower level officials determined the actions of government. Consequently, the committee recommended ‘the replacement of the existing Act by Central legislation applicable to all habitual offenders without any distinction based on caste, creed or birth’.⁶³⁷

Between 1950-1951, the Government of India evaluated the committee’s recommendations. It drew upon its extensive report, as well as evidence submitted by state governments, bureaucrats and welfare organisations.⁶³⁸ After much deliberation it was decided to adopt the committee’s recommendations, notably to repeal but also replace the Criminal Tribes Act with legislation aimed towards individual habitual offenders.⁶³⁹ Importantly, the decision to *replace* the Act rather than appoint a separately constituted committee to investigate the need for habitual offender legislation inextricably bound the two laws together; they became part of a single legislative process. Whilst the replacement legislation ostensibly had a new target, therefore, it was indelibly associated with that of the former, i.e. the criminal tribe. It did not merely bear the marks of the Criminal Tribes Act but was fundamentally entwined with it.

The legislative link between the two laws was made more concrete in the ensuing process of repeal, especially in discussions over whether the Government of India held the executive authority to repeal the Criminal Tribes Act, which by the later decades of colonial rule had become the domain of the provinces. Similar to its colonial predecessor,

⁶³⁵ *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 90.

⁶³⁶ *Ibid.*

⁶³⁷ *Ibid.*

⁶³⁸ For the evidence submitted to the central government, see MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁶³⁹ The implementation of these measures was often half-hearted. In 1951, the Chief Commissioner of Bhopal agreed to give immediate effect to these interim measures ‘except in the case of Kanjars or Bijorias which included hardened criminals’. There was a clear disjuncture between policy and practice and competing arenas of governance. ‘Letter from Chief Commissioner, Bhopal, 27 July 1951’, *ibid.*

the 1950 constitution codified certain subjects as being within the executive authority of either the centre, (the Government of India in Delhi), the states (the local governments in the provinces), or were held in concurrent authority by both. Under the Government of India Act (1935), the subject of ‘criminal tribes’ fell under the Concurrent List.⁶⁴⁰ With the drafting of the new constitution after independence, the subject of criminal tribes was removed. In its place was the reformulated subject of ‘vagrancy; nomadic and migratory tribes’. Its removal, however, posed the legislative question of whether the Government of India had the authority to repeal the Act at all. To determine who held competency, the Ministry of Law was instructed to examine ‘the provisions of the Act itself, their actual operation and effect, and so ascertain the pith and substance of the Act, *its true character*’.⁶⁴¹

After lengthy deliberations, the Ministry concluded in January 1952 that, ‘The Act is concerned, in truth, with certain nomadic tribes [...] who have long been a familiar but disturbing feature of the Indian scene. They had no homes and were constantly roaming over wide regions living in complete isolation from the settled population.’⁶⁴² Clearly, perceptions of the ‘nomad’ as one who lacked appropriate occupation and lodging, choosing instead deviant or criminal means to live, influenced perceptions of these communities as much in the 1950s as it had in the 1870s, even if this was at odds with the long history of their interactions, trade and co-existence with settled society.⁶⁴³ The tropes that characterised the criminal tribe – namely, criminality, mobility and marginality – still clearly held sway. ‘In pith and substance, therefore,’ the Ministry continued, ‘the Act is a law with respect to the matters mentioned in Entry 15 of the Concurrent List, *i.e.*, Vagrancy, Nomadic and Migratory tribes.’⁶⁴⁴

The criminal tribe had long been *informally* associated with nomadism and vagrancy. The perceived lack of physical fixity had contributed to the characterisation of

⁶⁴⁰ Item 23: European vagrancy; criminal tribes.

⁶⁴¹ Italics added. ‘Note by B.G. Murdeshwar, 3 January 1952’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁶⁴² Ibid.

⁶⁴³ Meena Radhakrishna locates the persistence of these attitudes in a prevalent prejudice of the ruling classes towards ‘the poor’, encompassing European gypsies, the urban London underclass, and nomadic communities in India. Radhakrishna, ‘Laws of Metamorphosis’, p. 22. For evidence on the long history of interactions between Indian nomadic groups and sedentary society see Joseph Berland, ‘Servicing the Ordinary Folk: Peripatetic Peoples and Their Niche in South Asia’, in *Nomadism in South Asia*, ed. by Michael Casimir and Aparna Rao (Oxford: Oxford University Press, 2003), pp. 104–24; Bhattacharya, ‘Pastoralists in a Colonial World’; Michael Casimir and Aparna Rao, *Nomadism in South Asia* (Oxford: Oxford University Press, 2003); *Mobile and Marginalised Peoples: Perspectives from the Past*, ed. by Rudolf Heredia and Shereen Ratnagar (New Delhi: Manohar, 2003); *Society and Circulation: Mobile People and Itinerant Cultures in South Asia, 1750-1950*, ed. by Claude Markovits, Jacques Pouchepadass, and Sanjay Subrahmanyam, Anthem South Asian Studies (London: Anthem Press, 2006); David Ludden, ‘History Outside Civilisation and the Mobility of South Asia’, *South Asia*, 17.1 (1994), 1–23.

⁶⁴⁴ ‘Note by B.G. Murdeshwar, 3 January 1952’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

certain communities as criminal. As noted in chapter I, nomadism was often conflated with dissident behaviour. Notwithstanding a couple of exceptions, however, this association had not been formally codified into law.⁶⁴⁵ The Enquiry Committee had recommended that there was ‘no necessity to provide for the restrictions of ordinary wandering gangs’.⁶⁴⁶ And few, if any, of the habitual offender legislation made explicit reference to nomadic communities. Yet, the idea that the criminal tribe was associated with nomadism remained pervasive. During the deliberations over its repeal, this association shifted from an informal influence upon state practices to a more concrete legislative link. The erasure of the entry of ‘criminal tribes’ from the constitution did not indicate its removal as a subject of state concern, then, but rather its reformulation within new categorisation that centred more decisively on the illegitimacy of movement.

Regarding the replacement legislation, the Ministry deemed the Government of India as also competent to enact a law against habitual offenders ‘in exercise of its legislative powers with respect to entries 1, 2 and 15 of the Concurrent List’.⁶⁴⁷ Again, a clear link was made to the amended entry within the constitution. The Ministry took the view that the proposed legislation would be applicable ‘to habitual offenders who are vagrants or nomads’.⁶⁴⁸ Despite the professed target of the legislation being all persons irrespective of caste or community, the Ministry of Law – the body most fundamentally concerned with the legal affairs of the state – delimited its reach to only certain sections of society, namely those who were often identified as criminal tribes. Importantly, then, the Criminal Tribes Act and the proposed habitual offender legislation were not only relatable *to each other* but were defined principally with reference to mobility. At the level of legal subjectivity, the criminal tribe was conclusively aligned with the nomad and vagrant. The ambiguous boundaries between these groups saw their conflation within a more singular category, one which was increasingly defined by what Radhakrishna describes as ‘the ever-expanding legislative category of the “vagrant”’.⁶⁴⁹

Despite the new legislation’s ostensibly different focus – i.e. individual habitual offenders regardless of community or caste – the merging of the criminal tribe with the

⁶⁴⁵ In the princely state of Rewa, the Criminal Tribes Act had not been enacted but rather the Rewa State Wandering Tribes Act of 1925, which provided for the compulsory registration of criminal tribes who crossed the state’s borders. ‘Letter from the Chief Secretary to the Government of Vindhya Pradesh, 7 June 1951’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁶⁴⁶ *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 90.

⁶⁴⁷ Entry 1: Criminal Law; Entry 2: Criminal Procedure. ‘Note by B.G. Murdeshwar, 3 January 1952’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁶⁴⁸ ‘Note by B. G. Murdeshwar, 3 January 1952’, *ibid.*

⁶⁴⁹ Radhakrishna, ‘Laws of Metamorphosis’, p. 14.

nomad (and the vagrant) revealed that, at least implicitly, it intended to target the same communities as its colonial forebear. This was confirmed in the remarks of Shankar Prasad, the Chief Commissioner of Delhi and a vociferous opponent to the Criminal Tribes Act's repeal as he did not believe that the existing legislation in Bombay and Madras would 'fill in the void' created.⁶⁵⁰ In his view, there were 'ethnological and administrative grounds' which indicated that 'every adult member of a criminal tribe is a potential criminal and should, therefore, be liable to varying measures of control'.⁶⁵¹ In his evidence submitted to the Government of India in 1951, Prasad directly conflated the category of the criminal tribe with that of the nomad. He argued that what constituted the 'real danger [was] the nomadic temperament of certain tribes as with such people, the normal provisions of the Criminal Procedure Code usually fail [because] a person proceeded against might jump his bail and disappear for good before an order of restriction could be [made] final or effective'.⁶⁵²

Prasad's views were shaped largely by his concerns regarding crime and migration in post-Partition Delhi. As noted in the previous chapter, Delhi had been destabilised by the sudden influx of refugees into the city. After Partition, he wrote in 1949, 'many displaced persons who are members of criminal tribes began to pour into Delhi [...] For obvious reasons, it is most undesirable to have an appreciable population of criminal tribes within a large urban area, more especially in the Capital of India'.⁶⁵³ The arrival of these criminal tribe refugees was conflated with a concurrent increase in crime. S. R. Chaudhri, the Inspector General of Police, reported that, 'There were no records received from the West [Punjab] to warn us and these members, in keeping with their old traditions, started committing crime on an extensive scale in Delhi and round about'.⁶⁵⁴ They were quickly blamed for a spate of highway robberies, hold-ups and *dacoities*. Although the Commissioner appointed a Special Staff to locate the refugees, their lack of physical fixity remained a constant concern. In this way, not only the criminal tribe and habitual offender, but the refugee also coalesced as a figure in need of state control. Lawmakers thus had to mediate between the aspirations of the constitution and what

⁶⁵⁰ 'Letter from Shankar Prasad to R. N. Philips, Ministry of Home Affairs, 30 April 1951', MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁶⁵¹ Ibid.

⁶⁵² Ibid.

⁶⁵³ 'Letter from Shankar Prasad, Chief Commissioner of Delhi, to U. K. Ghoshal, Deputy Secretary to the Government of India, 6 August 1949', Chief Commissioner's Office, Revenue/Judicial, 1949, File no. 8(4), DSA.

⁶⁵⁴ 'Letter from S. R. Chaudhri, Office of the Inspector General of Police, Delhi & Ajmer-Merwara, to the Chief Commissioner, 5 December 1949', *ibid.*

were perceived as the justifiable concerns of regional state actors as they sought to overcome the uncertainty and confusion of the period. In the end, the Government of India decided in April 1952 that it would leave the enactment of habitual offender legislation to the state governments, ‘since such a measure would have to take into account local conditions and circumstances’.⁶⁵⁵

From then, many of the state governments thus turned to enacting their own legislation before the repeal of the Criminal Tribes Act. In Punjab, similar to the deliberations within central government, the criminal tribe remained a persuasive ideological category. Bhim Sen Sachar, Punjab’s Chief Minister (1949-1956), introduced the Punjab Habitual Offenders (Control) Bill into the Punjab Legislative Assembly on 29 July 1952. The bill was proposed to come into effect on the exact day of the Criminal Tribes Act’s repeal, i.e. 31 August. It drew heavily on the Madras law, defining a habitual offender as a person

(a) who, during any continuous period of five years, whether before or after the commencement of this Act, has been convicted and sentenced to imprisonment more than twice on account of any one or more of the offences mentioned in the Schedule to this Act committed on different occasions and not constituting parts of the same transaction;

(b) who has, as a result of such convictions suffered imprisonments at least for a total period of twelve months.⁶⁵⁶

Similar to the Madras law, the bill also made an explicit link to the criminal tribes:

Notwithstanding the repeal of the Criminal Tribes Act, 1924 (Act VI of 1924), every person who stood registered under that Act at the commencement of this Act and who is a habitual offender, as defined in subsection (3) of section 2 of this Act, shall be deemed to be a registered person under this Act, provided that more than six months have not elapsed since the expiration of the sentence of imprisonment relating to his last conviction at the time of the commencement of this Act.⁶⁵⁷

The bill faced staunch opposition, from across the political spectrum. ‘The present Bill is a replica of the same old Criminal Tribes Act with the exception of a few changes in its drafting’, argued Chanan Singh (Community Party of India).⁶⁵⁸ ‘The Bill [...] is absolutely against the spirits of the constitution’, said Wadhawa Ram (independent).⁶⁵⁹ Others bemoaned the vast expenditure already spent on the administration of the Criminal Tribes

⁶⁵⁵ ‘Note by C. P. S. Menon, 17 April 1952’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁶⁵⁶ Section 3 (a) & (b).

⁶⁵⁷ Section 22 (1).

⁶⁵⁸ *Punjab Legislative Assembly Debates: Official Report, 29th July, 1952, Vol. II, No. 28* (Chandigarh: Controller of Printing and Stationary, nd.), p. 29.

⁶⁵⁹ *Ibid.*

Act.⁶⁶⁰ Significantly, Devi Raj Sethi (Congress) noted that the recommendation of the Resources and Retrenchment Committee to abolish the Criminal Tribes Department and its institutions had been ‘vehemently [*sic*] opposed by the Police Department’, with the exception of a few senior officers such as the Superintendents of Police in Ferozepur and Amritsar.⁶⁶¹ ‘It appears as though the Police Department of this State has not taken kindly to the repeal of the Criminal Tribes Act by the Parliament and wants to retain in its hands the powers enjoyed by it under the old Act’, Sethi continued, ‘and the Government is bringing the same Bill under a different guise to placate it.’⁶⁶² Similar to the earlier efforts to repeal the Act in Madras, the hostility of the local state officials who enacted the legislation on the ground had considerable influence on the actions of politicians and bureaucrats.

The bill’s opponents moved an amendment requesting that it be circulated for public opinion up to 31 December 1952. This meant that four months would elapse without the powers provided by the Criminal Tribes Act. In this scenario, the category of the criminal tribe took on heightened significance in the deliberations. There were many within the Assembly who recognised that the category of the criminal tribe was a constructed and superficial one. ‘Strictly speaking, Sir, the persons governed by that Act were not criminals from generations but were called as such only by the Britishers’, argued Singh.⁶⁶³ Sachar himself estimated that out of the approximately 1000 persons at that time under the provisions of the Criminal Tribes Act, no more than one hundred would come within the purview of the proposed bill.⁶⁶⁴ Yet, at the same time, the bill’s advocates invoked the category of the criminal tribe to justify the legislation, by emphasising the need to maintain law and order in the state.

In his defence of the bill, Sachar questioned ‘whether the repeal of the Criminal Tribes Act in any way indicates that these people have ceased to indulge in nefarious activities’ and made repeated recourse to persons whom committed crime by ‘habit’ – with obvious connotations to the criminal tribe.⁶⁶⁵ Did the opposition intend, he asked, that ‘when an offence is established against a person who can not [*sic*] be brought to book on the basis of caste, creed or birth’, they should be allowed to continue ‘without any let

⁶⁶⁰ *Punjab Legislative Assembly Debates: Official Report, 29th July, 1952, Vol. II, No. 28*, p. 36.

⁶⁶¹ *Ibid.*

⁶⁶² *Ibid.*, p. 37.

⁶⁶³ *Ibid.*, p. 30.

⁶⁶⁴ *Ibid.*, p. 53.

⁶⁶⁵ *Ibid.*, pp. 48–53.

or hindrance?’⁶⁶⁶ ‘What for is the [Indian Penal Code]’, asked Gopal Singh (Shiromani Akali Dal) in response. The inadequacy of the existing legislation, according to the Chief Minister, was that it did not provide the government with powers to restrict the movements of habitual offenders, to prevent them from committing further offences.⁶⁶⁷ References to mobility implicitly linked the habitual offender to the criminal tribe, given the conflation of the two with regard to the constitutional category of ‘vagrancy; nomadic and migratory tribes’. Additionally, however, like in Delhi, the spectre of mobility took on particular pertinence in Punjab, where Partition had wrought violence and widespread migration. Indeed, Partap Singh Kairon, the Minister for Development, justified the bill with claims that it would ‘strengthen the foundation of the new Punjab that we intend to build’ where ‘even a girl could freely move about without any fear of being molested’.⁶⁶⁸ In a letter to the Government of India in January 1952, too, Deputy Secretary Brahm Nath had noted Punjab’s particular concerns regarding the repeal of the Criminal Tribes Act, given its demands of security as a ‘border state’.⁶⁶⁹

The amendment to delay the bill was overwhelmingly opposed, by seventy-five to nineteen, and the Punjab Habitual Offenders (Control and Reform) Act (1952) was passed by the government. Singh’s claim that the law was a ‘replica’ of the Criminal Tribes Act was no exaggeration. Of its twenty-five sections, fourteen were transposed directly from the 1924 amendment, and a further four were amended only slightly.⁶⁷⁰ These sections were primarily those which invested discretionary powers in local authorities to restrict the movements of registered individuals and demand their surveillance – the implications of which are explored in the next section. Like the law in Madras, the settlements established under the Criminal Tribes Act were brought under the jurisdiction of the replacement legislation, as were the inhabitants of those institutions. These procedural inheritances aside, the law, as proposed, came into effect on the exact day of the Criminal Tribes Act’s repeal. There was ‘no reason’, as articulated by U. K. Ghoshal, Deputy Secretary of the Ministry of Home Affairs in response to concerns voiced by the

⁶⁶⁶ *Punjab Legislative Assembly Debates: Official Report, 29th July, 1952, Vol. II, No. 28*, p. 48.

⁶⁶⁷ *Ibid*, p. 65.

⁶⁶⁸ *Ibid*, p. 58.

⁶⁶⁹ ‘Serial no. 54: Letter from Brahm Nath, Deputy Secretary, Punjab Government, to H. V. R. Iengar, 24 January 1952’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁶⁷⁰ Sections 3, 18, 20 & 29 were amended slightly. Sections 4, 6-12, 14-17, 25 & 27 were directly transposed.

Punjab government, ‘why those members of the “criminal tribes” who are habitual offenders should be free from all restrictions *even for a day*’.⁶⁷¹

On 31 August 1952, the Criminal Tribes Laws (Repeal) Act came into force. Henceforth, all the legislation targeting criminal tribes in the former provinces of British India and the princely states stood repealed. The inextricable link between the two pieces of legislation had been made abundantly clear in the preceding months as the state governments, like Punjab, moved to enact legislation targeting habitual offenders. They had relatively little time to do so, however. As a result, the Government of India often sidestepped the issue of breaching the rights endowed by the constitution. The Ministry of States refused to examine the state-wise ordinances to evaluate whether they contravened Part III of the constitution – the fundamental rights of the citizen – in the weeks leading up to 31 August 1952.⁶⁷² Rather, the Government of India proposed that it would do so when it drafted a model Habitual Offenders Bill to be later circulated amongst the state governments in an effort to achieve a degree of uniformity. The ‘urgency’ of the situation in August 1952, with the Criminal Tribes Act’s repeal fast approaching, superseded these concerns. As such, the President of India assented to several bills with the acknowledgement that ‘defects’ would be remedied later by amending legislation.⁶⁷³ The Government of India also delegated responsibility to avoid contravention of the constitution to the state governments. For instance, whilst Part I of the Hyderabad Habitual Offenders (Restriction and Settlement) Act, 1954, was modelled on the Bombay law, Part II contained new provisions, many of which gave wide powers of executive discretion to local state actors. Rather than oppose the bill, the Government of India merely put their ‘trust’ in the Hyderabad government to ‘enforce these provisions with proper care and caution to avoid such challenge’.⁶⁷⁴

Figures within the government recognised that certain elements of the state-wise legislation did contravene, or at least threatened, the principles of the constitution, though. With regard to the draft Rajasthan Habitual Offenders Ordinance of 1952, K. N.

⁶⁷¹ Italics added. ‘Letter from U. K. Ghoshal, Deputy Secretary to the Government of India, to Brahm Nath, Deputy Secretary to the Punjab Government, 13 February 1952’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁶⁷² In this case, the Matsya Registration of Habitual Criminals Ordinance (1949) and the Rajasthan Habitual Offenders Ordinance (1952). ‘Note by K.Y. Bhandarkar, 20 August 1952’, Ministry of States/Judicial & General, 1952, File no. 1(160), NAI.

⁶⁷³ ‘Note by the Ministry of States on the Bhopal Restrictions of Habitual Offenders Bill, 1952’, Ministry of States/Judicial & General, 1952, File no. 1(177)-5/52, NAI.

⁶⁷⁴ ‘Letter from Ministry of States, 21 June 1954’, Ministry of States/Hyderabad, 1954, File no. 3(11)-H/54, NAI.

V. Nambisan of the Ministry of States noted that the proposed legislation interfered with an individual's rights, outlined in articles 19 and 21 of the constitution.⁶⁷⁵ Moreover, as action under the ordinance would be taken on the basis that the person in question had previously committed an offence, it was tantamount to punishing someone more than once for the same offence, 'thus doing violence to the principles underlying article 20'.⁶⁷⁶ It also contravened 'the provisions of article 14 relating to equality before the law'.⁶⁷⁷ When dismissing the claims, C. P. S. Menon, Under Secretary to the Ministry of Home Affairs, made a direct link between the communities notified under the Criminal Tribes Act and the enactment of the replacement legislation. '[T]he provisions of the ordinances under consideration, like those of the Madras/Bombay Act,' he stated, 'constitute an alleviation of the restrictions to which the Criminal Tribes were subject under the Criminal Tribes Act'.⁶⁷⁸ It is notable that Menon describes the enactment of the legislation as only constituting an 'alleviation' – rather than wholesale removal – of the restrictions previously imposed on the criminal tribes. They represented a liberalisation of the state's penal practices regarding the criminal tribes, rather than a fundamental transformation of them.

More importantly, Menon also noted that the habitual offender legislation would 'serve to remedy the position of that [Criminal Tribes] Act in the light of Section 14 of the Constitution, so that no-one is subjected to restrictions merely on account of his birth'.⁶⁷⁹ The decision to replace the Criminal Tribes Act was not rooted in concerns about the incompatibility of the category of the criminal tribe with the principles of independent India, then. Rather, it stemmed from the incompatibility of the legislation with the constitution. This purpose of the new legislation was stated more explicitly in other cases. The stated aim of the proposed Madhya Bharat Vagrants, Habitual Offenders and Criminals (Restrictions and Settlement) Ordinance of 1952, for instance, was 'to provide legal sanction for the continuance of the Criminal Tribes Settlement at Mungaoli' after the repeal of the Criminal Tribes Act.⁶⁸⁰

⁶⁷⁵ Article 19: Protection of certain rights regarding freedom of speech, etc.; Article 21: Protection of life and personal liberty. 'Note by K. N. V. Nambisan, 23 July 1952', Ministry of States/Judicial & General, 1952, File no. 1(160), NAI.

⁶⁷⁶ Ibid.

⁶⁷⁷ Ibid.

⁶⁷⁸ 'Note by C. P. S. Menon, Ministry of Home Affairs', *ibid.*

⁶⁷⁹ Ibid.

⁶⁸⁰ 'Letter from M. L. Mital, Secretary to the Madhya Bharat Government, 16 December 1952', Ministry of States/Judicial & General, 1952, File no. 1(159)-J/52, NAI.

Throughout the 1950s there was a plethora of state-wise legislation that targeted habitual offenders. Whilst these were largely similar, as they had been modelled upon either the Madras or Bombay laws – which themselves derived from the Criminal Tribes Act and the 1918 law in Punjab – they were not overly coherent. As state boundaries were redrawn, amended versions of the existing habitual offender legislation was passed by the various state governments.⁶⁸¹ Eventually, the states of Andhra Pradesh, Gujarat, Haryana,⁶⁸² Karnataka, Kerala, Maharashtra, Punjab, Rajasthan, Tamil Nadu and the Union Territory of Delhi all enacted habitual offender legislation. The states of Goa and Orissa both passed legislation but did not put it into operation. Uttar Pradesh passed legislation but subsequently repealed it. The remainder of the states did not enact legislation. Finally, in 1957, the Government of India circulated a model Habitual Offenders Bill to all the state governments.⁶⁸³ It was based on an earlier bill, circulated in 1954, which was said to be ‘more or less identical’ with the Madras law.⁶⁸⁴ The model bill defined a habitual offender in slightly altered terms, however. Now, it was defined as someone who had been convicted of not less than two, as opposed to three, non-bailable offences, and also for the offence of living on the earnings of prostitution.⁶⁸⁵ Significantly, there was no reference to the criminal tribe.

Despite this, there remained an implicit link between the two. As this section has shown, the habitual offender legislation enacted after 1947 was indelibly shaped by both the ideology and structure of the Criminal Tribes Act. It was not merely influenced by its colonial predecessor, but inextricably tied to it. What had started as two distinct pathways for dealing with habituality in crime during the colonial period conclusively merged into one after independence. The very repeal of the Criminal Tribes Act had been dependent upon the enactment of the habitual offender legislation, whose target and justification remained the same as the former. The criminal tribe was not removed, therefore, but refashioned within postcolonial legal structures. As the following section demonstrates, this had important implications for the now ex-criminal tribes.

⁶⁸¹ In Bombay, Mysore and Andhra Pradesh, the reorganisation of states demanded the drawing up of new legislation.

⁶⁸² Since the division of Punjab into Haryana and Punjab in 1966.

⁶⁸³ Except for Jammu and Kashmir and Pondicherry.

⁶⁸⁴ ‘Letter from M. L. Mohindra, Home Secretary to the Delhi Government, 6 May 1954’, Delhi State Secretariat, Home Department, 1954, File no. 8(4), DSA.

⁶⁸⁵ This had the caveat of living on the earnings of prostitution since having attained the age of eighteen years. *Ibid.*

Everyday Penal Practices

‘The [Criminal Tribes Act] is a stigma on the forehead of a person who simply happened to be a member of the criminal tribe by birth whereas his conduct in life may have been above board. The Habitual Offenders Act is not meant for any particular class; it is meant for every citizen of India, whether he may be a millionaire or the poorest of the poor’, wrote R. K. Sidhwa of the Ministry of Home Affairs in January 1952.⁶⁸⁶ In theory, this was true. Whereas both the Criminal Tribes Act and the 1918 law had been limited in their application – to so-called exceptional communities and spaces – the raft of habitual offender legislation enacted after independence was theoretically applicable to all persons, irrespective of their caste or community, and was enacted across vast swathes of the subcontinent. As we have seen, however, the category of the criminal tribe had been a pervasive influence upon its enactment and the legislation was linked to its colonial predecessor. Consequently, the now ex-criminal tribes were disproportionately targeted in the application of the legislation. In 1950, for instance, seventy-eight per cent of the 5268 persons notified under the Madras Restriction of Habitual Offenders Act (1948) belonged to the erstwhile criminal tribes.⁶⁸⁷ In their everyday practices, local state actors – magistrates, police officers, and village officials – continued to rely on the criminal tribe as a category of identification. This final section of the chapter explores its continued relevance within everyday policing practices. It draws on evidence from two types of sources: first, police handbooks and the rules drawn up to prescribe the administration of the habitual offender legislation in Punjab; and second, newspaper reports – which reveal the more contested or informal facets of this administration. Even if it was no longer explicitly delineated in law, the criminal tribe thus remained a tangible category for the state, but now after independence.

The continued relevance of the criminal tribe owed not only to the inheritance of certain aspects of colonial law by the postcolonial state, but also the inheritance of the actors, artefacts and structures of its implementation.⁶⁸⁸ The bureaucracy saw a dramatic recruitment drive in the decades after 1947, impelled by the withdrawal of British civil

⁶⁸⁶ ‘Letter from R. K. Sidhwa to Shri Sewak Ram, Displaced Harijan Rehabilitation Board, 21 January 1952’, MHA/Police-I, 1950, File no. 19/9/50, NAI.

⁶⁸⁷ Malli Gandhi, p. 20.

⁶⁸⁸ Ayesha Jalal and Sugata Bose have referred to the ‘barely modified structures of British India’s unitary state system’, especially the police, military and bureaucracy. Ayesha Jalal, *Democracy and Authoritarianism in South Asia: A Comparative and Historical Perspective* (Cambridge; New York: Cambridge University Press, 1995), p. 170; Also see David Potter, *India’s Political Administrators, 1919-1983* (Oxford: Clarendon Press, 1986).

servants and migration to Pakistan.⁶⁸⁹ As William Gould notes, by the 1960s the expanded Indian bureaucracy had become ‘one of the largest machineries of state in the world’, although it encompassed a variety of competing political and social interests held by local-level administrators.⁶⁹⁰ Despite its expansion and reorganisation, however, there was little attempt to overhaul the structures and material practices of governance after 1947. The government continued to underinvest in the administration, which meant that the police remained poorly-trained and the courts and magistracy under-resourced.⁶⁹¹ At a local level, power continued to be exercised in a relatively arbitrary manner as the police – just as before 1947 – remained more concerned with upholding the fragile political order and dispensing informal means of justice than protecting person and property.⁶⁹² Local configurations of power, Chandavarkar argues, remained unchanged as the independent state inherited the ‘resilient habits of governance’ which, by 1947, had become entrenched in the penal practices of the state.⁶⁹³ As a result, he argues, the agrarian and urban poor in postcolonial India often live in a ‘lawless context’.⁶⁹⁴ Conversely, the retention of the criminal tribe in postcolonial penal practices did, as we saw earlier, have at least informal or contingent sanction within the rule of law.

At the level of local governance, there had been little support for the repeal of the Criminal Tribes Act. A significant number of those in the police forces and magistracy felt that its measures were still necessary after 1947. During the investigations of the Criminal Tribes Enquiry Committee instituted in the United Provinces in 1947, seventy-eight per cent of district magistrates and eighty-three per cent of police superintendents whom were questioned opposed to its repeal.⁶⁹⁵ There was wider support for its repeal during the 1949-50 committee but, as noted earlier, the consensus was that this had to be accompanied by a replacement law. In Punjab, as earlier mentioned, the Police Department had resisted the dissolution of the Criminal Tribes Department. This, again, points to the influence of lower level state actors upon the repeal process. Both formal legal structures and informal penal practices were thus shaped more by the actions of subordinate actors rather than higher-ranking officers or bureaucrats. More pertinently

⁶⁸⁹ Misra, pp. 95–110.

⁶⁹⁰ William Gould, *Bureaucracy, Community, and Influence in India: Society and the State, 1930s-1960s* (Abingdon, Oxon: Routledge, 2010), p. 18.

⁶⁹¹ Sherman, *State Violence and Punishment in India*, pp. 6, 138.

⁶⁹² Chandavarkar, p. 457.

⁶⁹³ *Ibid*,

⁶⁹⁴ *Ibid*, p. 458.

⁶⁹⁵ *Report of the Criminal Tribes Enquiry Committee, United Provinces 1947*, p. 12.

to everyday practice, the widespread resistance to the wholesale repeal of the Act suggests that for these officers – the ones who would be implementing the habitual offender legislation – the criminal tribe remained a tangible reality.

With the impending repeal of the Criminal Tribes Act, the Department in Punjab – now known as the Reclamation and Criminal Tribes Department – faced becoming defunct. Just prior to the Criminal Tribes Act's repeal, the DCCT, Kanwal Nain, wrote to the government with a proposal for the Department's new activities.⁶⁹⁶ He estimated that 800 habitual offenders would come under the purview of the replacement legislation. The Department, he suggested, should advise on and implement the Punjab Habitual Offenders (Control and Reform) Act. Indeed, for several months the Department was not dissolved and took on the administration of the new law. It took until 20 October 1952 for the Punjab government to decide to reorganise the Department, and only in December of that year was its staff and institutional apparatus absorbed within either the punitive (Police or Jails Departments) or reformatory (Welfare Department) branches of the state. Much of the everyday administration, however, had been performed by locally-rooted police officers, district magistrates, or village officials whose bureaucratic function did not change. In effect, then, the same actors performed essentially the same functions as prior to 1947, and often against the same individuals. Just as before 1947, the actions of these individuals – now structured by legislation deemed compatible with the rights enshrined within the constitution – inscribed the conflated categories of the criminal tribe and the habitual offender with a (shared) materiality in state practice.

Similar to the Criminal Tribes Act, the replacement law granted powers to the state governments to devise rules for its administration. Just as most of its provisions were inherited from the Criminal Tribes Act, the rules, too, were clearly indebted to their colonial predecessor. Registered habitual offenders faced similar restrictions on their movements as the previously notified criminal tribes and could also be placed within settlements – often those which had been established under the Criminal Tribes Act. As we saw in the previous chapter, sites like Birthebari were placed under the jurisdiction of the Police or Jails Department, even if their inhabitants were still predominantly or wholly from the criminal tribes. It took until 1955 for the Punjab government to finalise rules for the new law. In the interim period, the rules framed under the Criminal Tribes Act

⁶⁹⁶ 'A Brief Note on the Re-organisation of the Punjab Reclamation and Criminal Tribes Department, submitted by Kanwal Nain, DCCT', Unspecified department, 1953, File no. 281, PSA.

remained in force – again, highlighting the clear link between the two laws in terms of their actual implementation.⁶⁹⁷ Like its precursor, the new legislation also situated registered individuals within an entanglement of rules that governed their everyday lives.

District magistrates, for example, were required to maintain a register of the habitual offenders who resided within their jurisdiction and, in striking similarity to the Criminal Tribes Act, they could direct a registered individual to

- (a) report himself at fixed intervals, and
- (b) notify his place of residence and any change or intended change or residence, and any absence or intended absence from his residence.⁶⁹⁸

If the state authorities considered it expedient, a registered individual could be either restricted to a specified area or settled in any place of residence for a period not exceeding three years.⁶⁹⁹ These individuals could not leave or be absent from the limits of the area in which their movements had been restricted, without having first obtained a pass from the relevant authorities.⁷⁰⁰ The Punjab government also had the power to establish new industrial, agricultural or reformatory settlements and schools and order registered individuals to reside within them, for a period not exceeding five years.

These rules generated a vast paper trail, one which was possibly more extensive than that produced by the Criminal Tribes Act as examined in chapter I. This paper trail not only marked out individuals as belonging to the category of the habitual offender, but through its constant reiteration infused the categorisation – itself indelibly linked to the criminal tribe – with a materiality in the bureaucratic practices of the state. If the individual concerned intended to change their residence, for instance, they had to present themselves to the local police officer, who was required to fill in a departure report in quadruplicate, and then either sign or thumb mark it in their presence.⁷⁰¹ One copy would be given to them, who was then required to obtain its endorsement from the Station House Officer of the police station in whose jurisdiction they intended to reside. The second copy, along with a copy of the habitual offender register, would be sent to the Station House Officer of the police station concerned, who would, after noting on it the date on which the person to whom it related had presented themselves, return it to the

⁶⁹⁷ Section 25: Punjab Habitual Offenders (Control and Reform) Act, 1952.

⁶⁹⁸ Section 10(1). Similar to the Criminal Tribes Act, the rules assumed the individual concerned was male.

⁶⁹⁹ Section 11.

⁷⁰⁰ See rules 2-28, 'Rules under the Punjab Habitual Offenders (Control and Reform) Act', Home B Progs., 1956, File no. 11, PSA.

⁷⁰¹ Rule 13.

officer who issued the form. The third copy would be sent to the Superintendent of Police of the original district for any necessary action. The fourth copy would be retained by the issuing officer on record. An abundance of paper evidence was thus produced by state actors which circulated amongst the lower rungs of the bureaucracy. Just as we saw in chapter I, these material practices inscribed a paper criminality upon notified individuals, through which the category of the criminal tribe was both sustained in the imagination of the state and given bureaucratic sanction.

Once an individual was notified, then, they became conclusively marked out by the state. A notice of newly notified habitual offenders was, theoretically, published in at least one Hindi and one Gurmukhi newspaper printed in Punjab and in circulation in the relevant district.⁷⁰² Individuals were thus publicly identified as *being* a habitual offender. In addition, a physical record of each registered individual was to be kept, detailing their fingerprints, footprints and photographs. This record was prepared in triplicate, with one copy sent to the local police station, one to the Finger Print Bureau in Phillaur, and the final kept with the district police office along with the history sheet of the individual concerned.⁷⁰³ The history sheet itself was also to be duplicated, with one copy sent to the district police office and the other to the local police station. Each habitual offender was also supplied with an ‘identification roll’ which they were liable to produce for inspection when requested by any police officer or magistrate. As the remit of the Act included those who remained within settlements, individuals who had no criminal convictions could acquire an entire corpus of incriminating paraphernalia which marked them out as targets of state correction and control.⁷⁰⁴

The everyday administration of the Act was again devolved to local and relatively autonomous social arenas. The register of habitual offenders was sent to local intermediaries, such as village headmen and watchmen, together with a list of the registered individuals who resided in their village. It was their responsibility to preserve the list, which could be inspected by government officials, especially the Station House Officer whose responsibility it was to check that the list was up to date. Under section 20, these local intermediaries were required by the government to report to the nearest

⁷⁰² Rule 4.

⁷⁰³ Rule 6.

⁷⁰⁴ Radhika Singha has made a similar argument with regard to sections 109-110 of the Code of Criminal Procedure, whereby, she claims, a person ordered to give security was ‘no longer simply a “suspected person”. He acquired a record and, for purposes of police surveillance or jail discipline, was often categorized with convicted habituals’. Singha, ‘Punished by Surveillance’, p. 250.

police station the arrival or departure of any person registered under the Act, especially those who failed to give notice to their intention to move. They were also provided with an attendance register – the roll call register of the Criminal Tribes Act – in which they were required to mark, every morning and evening, the presence of every restricted habitual offender.⁷⁰⁵ The extent to which these rules were followed is unclear from the archive. It is clear, however, that these intermediaries functioned in a space that allowed for vast personal discretion and the exercise of arbitrary power.

It is important to note that these rules were theoretically applicable to any individual and were limited to those who fell within the legal definition of a habitual offender. This did mark a significant change in the relationship between the law and those it targeted: no longer could families nor communities be notified or registered under the Act on account of others' criminal convictions. Even if the legislation made a direct reference to those who had been notified under the Criminal Tribes Act, their registration under the new law was dependent upon their *individual* actions, or suspicion thereof. Yet, many of the erstwhile criminal tribes became informally entangled with these regulations because they remained within the sites of their previous incarceration, often with the encouragement of the state. In September 1952, for instance, Rameshwari Nehru, in her capacity as Chairman of the Vimukta Jati Sewak Sangh, visited an erstwhile criminal tribe settlement in Ambala. She listened 'to the grievances of over 200 members of the criminal tribes in the colony' before advising them 'to prove themselves to be good citizens'.⁷⁰⁶ Whilst seemingly an advocate for their welfare, Nehru's comments reveal the persistence of certain attitudes. In case they did 'not prove worthy of the concessions shown to them by repealing the Criminal Tribes Act', she warned, 'it was possible that some similar enactments might be enforced to restrict their free movements'.⁷⁰⁷ Their freedom, then, was conditional. It was dependent upon their adherence to certain behaviours deemed appropriate by the state, such as adopting a sedentary, agricultural lifestyle. To adhere to these norms, Nehru suggested that they should not migrate elsewhere. Instead, 'they should remain settled at their respective colonies'.⁷⁰⁸ The effect of remaining in such physical sites, however, was that they became vulnerable to these regulations. A

⁷⁰⁵ Rule 18.

⁷⁰⁶ *Tribune*, 24 September 1952, p. 3.

⁷⁰⁷ *Ibid.*

⁷⁰⁸ *Ibid.*

representative of the communities in Ambala, Ch. Kishan, said that they were ‘still dogged by the police and were harassed as before’.⁷⁰⁹

Similar situations were found across the subcontinent. In Madras, many of the ex-criminal tribes also remained in settlements after their denotification. In theory, this meant that they now resided alongside notified habitual offenders. In practice, the settlements remained disproportionately populated by members of the now ex-criminal tribes, as the figures for 1950 – three years after the repeal of the Criminal Tribes Act in the state – demonstrate: Aziznagar (1256 persons out of 1263); Siddhapuram (525 persons out of 529); Sitangaram (225 persons out of 257); and Stuartpuram (2365 persons out of 2380).⁷¹⁰ As noted earlier, under the Madras Act any person who voluntarily resided within the settlements – whether a registered habitual offender or not – was liable to be subjected to its restrictions and penalties.⁷¹¹ Even where this link was not made as explicit, the continued residence of these individuals within the physical sites intended for habitual offenders placed them within the punitive arms of the state. In Bihar, for example, an Ex-Criminal Tribes Rehabilitation Committee reported in 1955 the allegations made by those still living in the settlements established under the Criminal Tribes Act – appropriately still termed ‘inmates’.⁷¹² Roll call continued to be taken, sometimes three to four times through the night. They required permits for leaving the settlement and their movements put under surveillance. Whenever a *dacoity* or burglary was committed in the locality, they were the first to be suspected by the authorities. Evidently, there were clear continuities in terms of state practice regarding the ex-criminal tribes, which centred on the continued tangibility of the category of the criminal tribe for local officers.

Indeed, the category of the criminal tribe remained an integral element of police training. In 1949, S. K. Lahiri published a manual entitled *Criminal Classes (India and Pakistan)*.⁷¹³ In the preface, he noted the ‘series of requests’ he had received from police officers for more information pertaining to ‘the history, habits, manners and *modus operandii* [*sic*] of notorious criminal tribes’.⁷¹⁴ As such, his ‘handy volume’ gave ‘a short but comprehensive account of the races, castes and sub-castes that have been branded “criminal” by the State’.⁷¹⁵ Similar to the 1949-1950 enquiry committee, Lahiri drew upon

⁷⁰⁹ *Tribune*, 24 September 1952, p. 3.

⁷¹⁰ *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 95.

⁷¹¹ Section 10. Madras Restriction of Habitual Offenders Act, 1948.

⁷¹² *Times of India*, 17 May 1955, p. 9.

⁷¹³ S. K. Lahiri, *Criminal Classes (India and Pakistan)* (Calcutta: Law Book Society, 1949).

⁷¹⁴ *Ibid*, preface.

⁷¹⁵ *Ibid*.

the works of former police officers, like F. C. Daly (Deputy Inspector General of Police, Bengal), B. N. Bannerjee (Indian Police Service), G. W. Gayer (Deputy Inspector General of Police, Central Provinces), and Thuggee and Dacoity administrator W. H. Sleeman. Unsurprisingly, the manual reiterated the same characterisations of the erstwhile criminal tribes as found in the colonial ethnographies of the late nineteenth and early twentieth centuries. As before, these marked out the communities in terms of a criminal distinction. Kalandars, a 'vagrant tribe' of Punjabi Muslims, he wrote, 'are mainly cheats and swindlers though case of theft or burglary by a Kalandar is not altogether unknown'.⁷¹⁶ Their criminality was again located in their very physicality – the product of instinct and character. 'By nature', he noted, '[the Iranis] are clever, unscrupulous and oppressive. Both their men and women have criminal propensities.'⁷¹⁷ Although published before the repeal of the Criminal Tribes Act, the manual would have influenced a new generation of police officers who took post during these transitional years and thus shaped the landscape of the administration going forward. In the foreword, J. N. Roy, a retired Deputy Inspector General of Police, expressed his hope that 'the book will get a ready market amongst police officers and cadets all over India' as he believed it would prove 'highly useful for their examination purposes and also in the discharge of their day-to-day duties'.⁷¹⁸

In the following years and decades these characterisations continued to influence the penal practices of the state. In 1954, the *Times of India* reported on a case in western India in which police stationed across four states were working in collaboration to uncover 'a new criminal tribe which may call for classification and ultimate regulation'.⁷¹⁹ In language that echoed colonial reports of the late nineteenth century, the newspaper marked out the '500 families of the Bavria tribe' (likely Bawarias) as being 'adept at entering houses by breaking upon locks, boring holes through the hall or snapping window bars'.⁷²⁰ The 'miscreants', the report said, 'generally indulge in their nefarious activities during moonless nights'.⁷²¹ Evidently, the idea that certain communities were indelibly associated with – and could therefore also be identified by – certain *modus operandi* persisted within both policing practices and popular perceptions, influenced by manuals such as Lahiri's. Policing practices, such as the maintenance of a criminal tribe register at

⁷¹⁶ Lahiri, p. 39.

⁷¹⁷ Ibid, p. 65.

⁷¹⁸ Ibid, foreword.

⁷¹⁹ *Times of India*, 29 January 1954.

⁷²⁰ Ibid.

⁷²¹ Ibid.

local police stations also persisted long beyond the Act's repeal. In 1988, a group of community leaders from amongst the ex-criminal tribes in Bombay filed a writ petition in the High Court challenging such practices.⁷²² The leaders claimed that in many police training institutes, the new recruits were taught the living and working habits of the communities, which contributed to a feeling of deep mistrust.

Four months after the repeal of the Criminal Tribes Act, in December 1952, K. Muthuswamy Vallatharas of the Kisan Mazdoor Praja Party in Madras broached the subject of police oppression in the first Lok Sabha. Recognising the vulnerability of the ex-criminal tribes, he recommended that the Government of India establish a 'vigilance committee' to report on the conduct of the police and magistracy in their administration of the habitual offender legislation.⁷²³ His recommendation was not adopted, and the erstwhile criminal tribes remained the target of punitive measures of state control. This largely resulted from the continuities in everyday penal practices at the local level, as the same officials conducted, in effect, the same procedures as they had done prior to 1947. In many instances, the reliance on the criminal tribe as a category of state identification resulted from entrenched behaviours and prejudices which influenced the informal practices that shaped governance at the local, and often semi-autonomous, level of the state. Notably, though, these practices were also given formal and explicit sanction by the government: the continued use of criminal tribe settlements or the retention of the Criminal Tribes Act rules, for example. The continued relevance of the criminal tribe in penal practices, therefore, should be simultaneously located in the bureaucratic continuities from prior to independence *and* the concerns and imperatives of the postcolonial state.

Conclusion

In 1955, Khushi Ram, Bhagwana and Chhutu, all of whom belonged to an erstwhile criminal tribe, sent a representation to the Chief Commissioner of Delhi protesting their 'illegal' and 'unjust' registration as habitual offenders under the new legislation.⁷²⁴ Several

⁷²² 'Protest against classification of certain nomadic and denotified tribes in Maharashtra as criminal tribes, 2 May 1988', Rajya Sabha Official Debates, Part II – Other Than Question and Answer, pp. 270-272, <http://rsdebate.nic.in/handle/123456789/292968> [last accessed 26 August 2018].

⁷²³ 'Motion *re*. Report of Commissioner for Scheduled Castes and Scheduled Tribes, 13 December 1952', *Parliamentary Debates: House of the People, Official Report. Part II - Proceedings Other than Questions and Answers, Vol. VI, No. 9* (New Delhi: Parliament Secretariat, nd), col. 2315.

⁷²⁴ 'Petition to Chief Commissioner, Delhi', Chief Commissioner's Office, Home Department, 1954, File no. 8(8), DSA.

more petitions were received from other residents of the same ex-criminal tribe colony, Andha Moghal.⁷²⁵ They were amongst a relatively scant number of individuals who had been notified under the Madras Restriction of Habitual Offenders Act (1948) after its extension to the state in December 1951. As part of the repeal process, police officers and social workers examined the cases of all the individuals belonging to criminal tribes, of which there were 117 persons registered and restricted under the Criminal Tribes Act. Of those, only twenty came within the legal definition of a habitual offender and were so notified. The others were exempted from its operation and the Criminal Tribes Act became defunct in the state until its all-India repeal. In December 1953, however, police officers informed the petitioners that they would be notified under the Madras Act after the adoption of local rules which widened the scope of a habitual offender.⁷²⁶ These new rules, the petitioners claimed, brought within the category ‘many innocent and exempted persons who had been freed from such restrictions and bondages after ages’.⁷²⁷ They requested that the rules undergo ‘proper enquiry’ by the Indian Parliament or Delhi State Assembly, or that ‘the matter may be brought within the jurisdiction of the courts where proper defence can be given’.⁷²⁸ ‘The revival of police rule means annihilation’, they said, ‘and would result in untold miseries which was [*sic*] recently cast off with the independence of the country’.⁷²⁹

The petitioners’ predicament reveals the negotiated process of repealing the Criminal Tribes Act in postcolonial India. Although questions of reform and repeal had been underway in some of the provinces since the 1930s, independence and especially the founding of the constitution in 1950 markedly changed the parameters of debate surrounding the Act. The criminal tribes were no longer subjects of a colonial regime but citizens of a free nation, one which not only stressed the fundamental right to equality but encoded it within its constitution. The contradiction of this promise of equality with the retention of the Criminal Tribes Act was clearly articulated by the nation’s new

⁷²⁵ See petitions in ‘Miscellaneous correspondence relating to ex-Criminal Tribes and Habitual Offenders’, Chief Commissioner’s Office, Home Department, 1954, File no. 8(8), DSA.

⁷²⁶ According to the petitioners, the local rules framed by Delhi police altered section 16(1) of the Madras Restriction of Habitual Offenders Act (1948). The Act deemed that only those registered under the Criminal Tribes Act, 1924, and who, in the five years preceding the commencement of the Act, had either been ordered to give security (section 110, CrPC) or were convicted for an offence under section 24 of the Criminal Tribes Act or another non-bailable offence, would be registered as habitual offenders. In Delhi, the local rules altered the said period of five years from the release of jail, in effect shortening the time period. *Ibid.*

⁷²⁷ ‘Petition to Chief Commissioner, Delhi’, *ibid.*

⁷²⁸ *Ibid.*

⁷²⁹ *Ibid.*

leaders, resulting in the Act's repeal in 1952. The decision to repeal the Act, however, as this chapter has shown, was rooted less in concerns that the criminal tribe itself was incompatible with the professed principles of the independent nation or that it was an outdated or defunct category, than the incompatibility of the legal provisions afforded by the Act with those of the constitution. The enactment of the raft of habitual offender legislation after 1947 therefore sought to reconcile this tension.

Whilst ostensibly applicable to all persons regardless of caste or community, the habitual offender legislation was inextricably linked to its colonial forebear. As traced in this chapter, the category of the criminal tribe had been a ubiquitous, if often implicit or informal, influence upon its enactment, and the Criminal Tribes Act itself provided the legal framework. The target of the new legislation remained the same as the former, i.e. the criminal tribes, as exemplified by the petitioners. In part, this owed to the longer historical trajectory of habitual offender legislation in India reaching back to the 1910s. As we saw, the Restriction of Habitual Offenders (Punjab) Act (1918), whilst aimed at individual offenders, both relied on the structure of the Criminal Tribes Act and was justified in relation to it. Importantly, this law provided the framework and rationale behind the raft of habitual offender legislation enacted from 1947. The inheritance of much of the paraphernalia of the colonial state – its personnel, institutions and customs of governance – after 1947 also invariably shaped the repeal process. At a local level, the criminal tribe remained a persuasive category of state identification in the penal practices of state actors for many years after independence, regardless of the Act's repeal. Indeed, the enactment of legislation with many of the same provisions and rules as the Criminal Tribes Act (for a few years, its actual rules) gave formal and official sanction to these practices from the higher echelons of the state.

Notably, though, 1947 – or at least 1950 – did represent a changed situation. The process of repeal was determined as much, if not more, by postcolonial circumstances and imperatives than colonial continuities or inheritances. The promulgation of the constitution codified a set of ideals and principles which demanded the repeal of the Criminal Tribes Act, as it contravened both the right to equality and the prohibition of forced labour. These principles also framed debates on the enactment of habitual offender legislation, even if its adherence to them was far from substantive. At the same time, the nascent governments in both the centre and the states faced numerous difficulties and uncertainties, including territorial consolidation and maintaining law and order, especially in light of Partition and widespread migration. In this context, familiar

tropes of criminality and mobility were deployed to justify the continued use of heightened powers of restriction and control provided by the Criminal Tribes Act. The contingencies of the years around independence therefore allowed the government to reconcile the tension between their desires to retain the coercive elements of the colonial legislation and the principles of equality upon which the constitution was founded.

This had important implications for the communities themselves. Despite the enactment of the constitution, their rights were limited by their identification as criminal tribes. Prior to August 1952, numerous individuals and communities utilised the new tools of justice available to them to contest their notification under the Act. Even after its repeal, however, the enactment of replacement legislation and their continued scrutiny in the everyday penal practices of the state continued to confer a conditional form of citizenship. Their rights were dependent on the adoption of certain prescribed behaviours – proving themselves to be ‘good citizens’, in the words of Rameshwari Nehru.⁷³⁰ The continued relevance of the criminal tribe as a category of state identification did not merely have consequences for the legal frameworks of the postcolonial state, nor its penal practices. It had tangible, lived consequences for those who were, as Khandekar had voiced in the Constituent Assembly, ‘also citizens of India’.⁷³¹ As we shall see in the next chapter, the constitution had further ramifications for the erstwhile criminal tribes, though now in state’s welfare and developmental agenda.

⁷³⁰ *Tribune*, 24 September 1952, p. 3.

⁷³¹ ‘Draft Constitution (Cont.)’, 2 December 1948’, *Constituent Assembly Debates: Official Report, Vol. VII, No. 18*, pp. 764–66.

IV.

Welfare, Disadvantage and Protest

Chandigarh, Jan 24 – Unique Protest: Between 100 and 150 bazīgars, siklīgars, saḡeras, sansis, banglas and kalanders will celebrate Republic Day on Monday morning in a novel way. A meeting of the All-India Taprivas and Vimukt Jatis Federation, at a meeting held at Attava Village, near here, decided today that members of the various tribes represented in the federation will take out a protest procession from Sector 22 to the official residence of the Chief Commissioner, Mr B. S. Sarao, before sitting in dharna near their camp in Sector 9. Mr Nirmal Singh Nirmal, who presided over the meeting, later said that since the living conditions of members of these former criminal tribes had worsened after Independence and the Government had paid no heed to their worsening lot, men and women of these tribes accompanied by 40 monkeys, 12 snakes, seven bears and four mongooses will join the January 26 procession and submit a memorandum to Mr Sarao.⁷³²

Tribune, 25 January 1981

Introduction

The mid-1970s to the mid-1980s witnessed a flurry of mobilisation amongst a politicised elite of the erstwhile criminal tribes in Punjab.⁷³³ The above described Republic Day protest in Chandigarh was just one instance in which the leaders – often self-proclaimed – of a cross-communal ‘denotified’ or *vimukta jati* (trans. liberated community) activist movement set forth their demands of the government. Whilst there was a long history of individuals who belonged to the criminal tribes lobbying state officials stretching back to at least the 1880s, the mobilisations of the 1970-1980s marked a new juncture. They were notable for articulating a distinct political identity defined by the communities’ shared status as ex-criminal tribes. No longer were demands made on behalf of locally rooted communities but rather for the *vimukta jatis* as an identifiable group. Their demands principally related to the ex-criminal tribes’ lack of a discrete status within the framework of what Marc Galanter terms ‘compensatory discrimination’ – the constitutional safeguards inaugurated by the postcolonial government to redress the inequalities faced

⁷³² *Taprivas* means one who resides in temporary housing, often denoting nomadic groups, and *vimukta/vimukti/vimukat* means liberated community, referring to the ex-criminal tribes. *Tribune*, 25 January 1981, p. 3.

⁷³³ It is important to note at the outset that this mobilisation was not uniform across the heterogeneous communities previously notified in Punjab, nor was identification with the *vimukta jati* movement. The sources drawn from individuals belonging to the ex-criminal tribes, mostly petitions, are limited both in their authorship (being the most elite, politicised leaders of more dominant ethnic groups) and audience (officials within the postcolonial government).

by certain categories of disadvantaged citizen.⁷³⁴ The activists thus embraced a politics of identity through which they sought to re-mark the ex-criminal tribe within structures of postcolonial state governance.⁷³⁵

This final chapter historicises the contested and shifting status of the criminal tribe within these evolving safeguards from the 1910s to the 1980s. It primarily examines the late 1940s and 1950s, although it traces these processes back to the early twentieth century and efforts to uplift the so-called depressed classes. As the first section shows, the criminal tribe had once been a separate category *alongside* untouchable and tribal groups. This distinctive status was eroded by the 1930s, however, and the criminal tribe was omitted as a category within the framework of compensatory discrimination instituted after independence. Similar to the last chapter, the processes taking place after 1947 are therefore rooted, at least in part, in developments which occurred in the later colonial period. Yet, despite its omission from the constitutional safeguards, the ex-criminal tribe remained an identifiable category for the state within welfare and developmental schemes for the first couple of decades after 1947. As the second section demonstrates, in both official policies and practices on the ground, state actors continued to rely on the category as they sought to identify the disadvantaged. By the late 1960s, though, the ex-criminal tribe had lost its intelligibility for the state, at least as a category

⁷³⁴ Constitutional safeguards were inaugurated by the postcolonial government to alleviate the inequalities suffered by historically marginalised or ‘backward’ communities through reservation of seats in legislatures (the *Lok Sabha* and *Vidhan Sabhas*, Arts. 330 and 332) and posts in public employment and education. The constitution permits preferences for three categories of groups: Scheduled Castes (Arts. 15, 16, 46, 341, Cf. Arts. 330 & 332); Scheduled Tribes (Arts. 15, 16, 335, 342, Art. 244, Vth & VIth Schs, Cf. Arts. 330 & 332); Other (socially and educationally) Backward Classes (Arts. 15, 16, 46). Article 46, one of the Directive Principles of State Policy, mandated that the state ‘promote with special care the educational and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation’. This provision merely empowered the state to make special provisions for disadvantaged groups, rather than explicitly outlining what these should be. In practice, reservations for the Other Backward Classes were made in government services and state education. See Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Delhi: Oxford University Press, 1991).

⁷³⁵ I use the term ‘politics of identity’ in line with J. D. Hill and T. M. Wilson’s formulation that distinguishes it from ‘identity politics’. Whilst the latter is ‘discourse and action within public arenas of political and civil society, wherein culture is used to subvert, support, protect, and attack’, the former ‘refers more to issues of personal and group power, found within and across all social and political institutions and collectivities, where people sometimes choose, and sometimes are forced, to interact with each other in part on the basis of their shared, or divergent, notions of their identities’. Jonathan D. Hill and Thomas M. Wilson, ‘Identity Politics and the Politics of Identities’, *Identities: Global Studies in Culture and Power*, 10 (2003), 1–8 (p. 2). It is important to note that the development of a political group identity amongst some of the ex-criminal tribes did not displace other forms of belonging determined by local or kin affiliations. As Shalini Randeria argues regarding politicised caste solidarities in postcolonial India, ‘Different kinds of ties based on different logics of connectedness are deployed by caste members in different contexts.’ Shalini Randeria, ‘Entangled Histories: Civil Society, Caste Solidarities and Legal Pluralism in Post-Colonial India’, in *Civil Society: Berlin Perspectives*, ed. by John H. Keane (New York, NY: Berghahn Books, 2006), pp. 213–42 (p. 228).

of welfare. The final section explores the activist movement which emerged as a result, to show how these activists, like politicians and administrators before them, reified the ex-criminal tribe as a real and tangible category of identification.

The above noted protest in Chandigarh was notable for the involvement of animal companions – monkeys, snakes, bears and mongooses. Their inclusion was no accident. The protesters used them to perform or visually demarcate a recognisable identity of the ex-criminal tribe by demonstrating some of the ‘traditional’ livelihoods of the communities concerned, like snake charmers, bear dancers and monkey performers.⁷³⁶ In reality, most of the communities had abandoned these increasingly unprofitable or outlawed professions.⁷³⁷ Yet, they remained an identifiable marker of ‘backwardness’ for the state.⁷³⁸ Indeed, one of the descriptors of backwardness proposed in the 1950s was those ‘nomads who do not enjoy any social respect and who have no appreciation of a fixed habitation and are given to mimicry, begging, jugglery, dancing, etc.’.⁷³⁹ Such performances were key to their demand because backwardness was, and remains, ‘a distinctive motif and often the authoritative basis for claiming [group-differentiated citizenship]’ – and therefore access to constitutional safeguards – in postcolonial India.⁷⁴⁰

Backwardness, however, was an amorphous and at once encompassing and exclusionary designation. Its use stretched back into the colonial period but the years after 1947 were decisive as politicians and administrators debated the meanings and definitions of such official terminology. Indeed, it was within these debates – as the second section of this chapter will show – that the criminal tribe retained an intelligibility as a category of state identification. A defining feature of such debates, then, was the continued relevance of ‘colonial’ categories of difference. In perhaps no other sphere of governance in postcolonial India have categories been so pervasive or contested than in group-differentiated citizenship rights. Ethnographic descriptors of caste and tribe clearly fail to accurately reflect the complexities of social identities, yet they became the hallmark of

⁷³⁶ The traditional occupations of the criminal tribes were wide ranging and divergent across regions but included, amongst others: snake charmers, bear fighters, monkey performers, mendicants, jugglers, magicians, acrobats, genealogists, hunters, and mobile traders. See *Report of the National Commission for Denotified, Nomadic and Semi-Nomadic Tribes - Volume 1*.

⁷³⁷ Many of these livelihoods were criminalised under various legislation, for example the Wildlife (Protection) Act 1972 or the Indian Forest Act (1878; 1927).

⁷³⁸ I use the terms ‘backward’ and ‘backwardness’ throughout this chapter as they were the terminology employed by the state in the period, despite their obviously uncomfortable and derogatory connotations.

⁷³⁹ *Report of the Backward Classes Commission, Volume 1* (Simla: Government of India Press, 1956), p. 46.

⁷⁴⁰ Niraja Gopal Jayal, ‘A False Dichotomy? The Unresolved Tension between Universal and Differentiated Citizenship in India’, *Oxford Development Studies*, 39.2 (2011), 185–204 (p. 197).

state efforts to remedy social disadvantage.⁷⁴¹ State identification in India, pre- and post-1947, historically reduced, framed and standardised complex and contingent identities. At the same time, the categories of caste, tribe, backwardness, and even criminality were amendable, fluid and offered opportunities for disenfranchised groups to engage with the state. Through mechanisms of identification and implementation, the state, and those who engaged it, simultaneously resisted and reproduced these categories of difference – as this chapter will show.

Postcolonial policy was therefore riven with ambiguities and paradoxes, especially when concerned with the rights and freedoms of the so-called backward, primitive or discriminated against. There is a clear tension between the liberal democratic ideals of the constitution and the continued relevance of group-rights, whether in terms of compensatory discrimination for disadvantaged groups or exemptions under religious personal law.⁷⁴² This tension was not an aberration, however; it was intimately tied to the processes of decolonisation and state-building. Rather than merely being an institutional legacy of colonial constitutionalism, Rochana Bajpai argues, compensatory discrimination was the result of the distinct form of nationalist vocabulary which dominated discussions over group rights in the Constituent Assembly.⁷⁴³ In these, she argues, national unity was a primary concept around which other concepts – secularism, democracy, social justice, and development – converged. Whilst these concepts had been in circulation in Congress circles since the 1920s, they took on a distinctive hue after 1947. Minority safeguards, on the one hand, were construed as a threat to the integrity and stability of the nation, especially in light of Partition.⁷⁴⁴ Safeguards for the disadvantaged, on the other, were conceded as a necessary (but temporary) measure to enable the social and economic advancement of these groups – an essential step in delivering social justice, national unity, and development. Indeed, facilitating the integration of these groups into the body politic was an important part of the state's wider developmental agenda, which itself was a key component of nation-building in postcolonial India (and Pakistan).⁷⁴⁵ State development

⁷⁴¹ Laura Dudley-Jenkins, *Identity and Identification in India: Defining the Disadvantaged* (London: RoutledgeCurzon, 2003).

⁷⁴² See Bajpai.

⁷⁴³ Ibid.

⁷⁴⁴ Bajpai argues that 'the nationalist criticism of minority safeguards as undermining the nation referred to at least four related sets of claims: that these endangered the political integrity of the nation; that these inhibited the emergence of national loyalties; that minority safeguards were incongruent with the national identity conceived in cultural or political terms; and that these were incompatible with a modern developed nation-state'. Bajpai, p. 84. On Partition, see Bajpai, pp. 76–77.

⁷⁴⁵ On development and nation-building in India, see Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (New Brunswick, NJ: Oxford University Press, 1995); Benjamin Zachariah,

distanced the postcolonial nation in ideological and material terms from colonial rule, whilst simultaneously, in theory at least, providing the means (education, industrialisation, modernisation) through which a cohesive society, removed from ‘pre-modern forms of social life’, would be formed.⁷⁴⁶

The emphasis on integration or assimilation, however, reveals that these measures were underscored by certain socio-cultural norms. Even where the Constituent Assembly debates were ‘substantially liberal democratic in character’, Bajpai writes, they remained ‘inflected by indigenous historical and cultural idioms’.⁷⁴⁷ Indeed, the development of fundamental rights in the constitution, Eleanor Newbigin has shown, was marked by the religious and gender norms that structured the Hindu community.⁷⁴⁸ The development of safeguards for the backward classes, as this chapter will show, was similarly mediated by certain socio-cultural norms. This process articulated a range of differences as abnormal, primitive, backward or *dangerous* – in other words, as other.⁷⁴⁹ As a consequence, the ‘constituted normality’ of Indian society was construed as intrinsically true.⁷⁵⁰ In other words, the categories of disadvantaged citizen – whether Scheduled Caste, Scheduled Tribe, Other Backward Class or, indeed, ex-criminal tribe – were defined, in various ways, in terms of their difference to the norm – i.e. the educated, propertied, caste Hindu male of sedentary society.⁷⁵¹ By marking out certain groups as somehow different (or in danger) to the norm, the postcolonial state reaffirmed both their *difference to*, and the *universality of* that stated norm.

For the ex-criminal tribe, these differences (although now firmly framed in terms of socio-economic disadvantage, as opposed to earlier notions of heredity or morality) were articulated in encompassing terms of nomadism and cultures of illegality, despite the heterogeneity of the communities. There was remarkable continuity in terms of how

Developing India: An Intellectual and Social History (New Delhi: Oxford University Press, 2005). On development and nation-building in Pakistan, see Daniel Haines, ‘Concrete “progress”: Irrigation, Development and Modernity in Mid-Twentieth Century Sind’, *Modern Asian Studies*, 45.1 (2011), 179–200.

⁷⁴⁶ Zachariah, p. 295.

⁷⁴⁷ Bajpai, p. 24.

⁷⁴⁸ Newbigin, ‘Personal Law and Citizenship’.

⁷⁴⁹ As stated by William E. Connolly, ‘Identity requires difference in order to be, and it converts difference into otherness in order to secure its own self-certainty.’ William E. Connolly, *Identity/Difference: Democratic Negotiations of Political Paradox*, Expanded edition (Minneapolis, MN: University of Minnesota Press, 2002), pp. 64–65.

⁷⁵⁰ Connolly, p. 67.

⁷⁵¹ This study does not examine the gender implications of the safeguards for the backward classes (although, clearly, they existed). It should be noted, however, that the one of the criteria for backwardness adopted by the Backward Classes Commission (1953–55) was ‘women’, whereas one for non-backwardness was ‘men’. *Report of the Backward Classes Commission, Volume 1*, pp. xiv–xv.

the state defined them across 1947, then. Through the guise of its developmental regime, the postcolonial state portrayed these – as had its colonial forebear – as defects, or deviances, from the norm. Using the framework of compensatory discrimination, the national and state governments implemented welfare policies to ameliorate the disadvantages faced by the ex-criminal tribes and facilitate their assimilation into civil society – like the rehabilitation of criminal tribe refugees explored in chapter II. By predicating these policies on the assumption of a shared, and defining, disadvantage, however, the state continued to mark out the communities in terms of the category of the now ex-criminal tribe. Welfare measures inaugurated after 1947 thus worked to simultaneously undermine and reaffirm their difference.

Therein lay the paradox of group rights, or what Joan W. Scott calls the ‘conundrum of equality’.⁷⁵² In their efforts to overcome political, social or economic exclusion, claims to equality are often made on behalf of – and thereby reproduce and perpetuate – the very differences which they seek to eradicate. This reifies *both* the group (the criminal tribe, in this instance), who is marked out by difference and collective traits (i.e. backwardness or criminality), *and* the standardised norm (the ‘rest’ of society), who is considered to have no collective traits at all. This conundrum was clear in the political mobilisation amongst the ex-criminal tribes in the mid-1970s. Faced with a diversity of local cultural practices and histories, the activists in Punjab articulated a shared group mythology. This was rooted in histories of mobility and illegality that had, on the one hand, culminated in their notification as criminal tribes and, on the other, forced upon them distinct forms of disadvantage. A shared social behaviour was thus translated into a bounded social position, which could be mobilised as a political identity.⁷⁵³ This myth not only concretised mobility and criminality as fundamental facets of their group identity, but additionally positioned them as markers of difference. There was seemingly no manoeuvrable space for the activists to advocate rights-claims through a narrative which

⁷⁵² Scott makes her argument with particular reference to the feminist movement and affirmative action in the US. Joan W. Scott, ‘The Conundrum of Equality’, *Occasional Papers of the School of Social Sciences, University of Edinburgh*, 2 (1999), 1–13.

⁷⁵³ I used the term ‘shared social behaviour’ tentatively as clearly there were vast differences both in internally-derived identities and the experiences of being notified as criminal tribes, complicating any assumptions of shared experiences. Yet, although the movement did not necessarily encompass all of those notified as criminal tribes, this was the common bond between the communities the activists claimed to speak for. This statement draws on Wendy Brown, who uses Foucault to make this argument in relation to the welfare state and exemplify identity-based politics in the modern liberal (western) state. Wendy Brown, *States of Injury: Power and Freedom in a Late Modernity* (Princeton, NJ: Princeton University Press, 1995), p. 58.

celebrated or accepted mobility or illegality as part of the norm.⁷⁵⁴ Through the strategies they employed to obtain state recognition, these activists, as the final section of the chapter argues, engaged with, negotiated and, in the process, sharpened the state-defined category of the criminal tribe.

Defining the Depressed Classes

The legal antecedents to the framework of compensatory discrimination inaugurated after independence can be found in the last colonial constitution, the Government of India Act, 1935. The constitution marked a considerable devolution of executive power to the provinces and an extension of the franchise, albeit still overwhelmingly restricted.⁷⁵⁵ Importantly, it also represented the culmination of intense political debate on how to represent the interests of disenfranchised or minority groups.⁷⁵⁶ Rooted in assumptions about intrinsic and incompatible group differences, the 1935 constitution extended separate electoral representation and reserved seats for certain minorities.⁷⁵⁷ Group identity now had definite political purchase. For the first time, seats were reserved for candidates belonging to the Scheduled Castes – the reformulated category of the erstwhile depressed classes.⁷⁵⁸ The definition of the depressed classes was a point of contention, however. Like backwardness and disadvantage, it was a nebulous and contingent category whose meanings and boundaries shifted across time and space. This section explores the shifting – and indeed narrowing – definition of the depressed classes from the 1910s to the 1930s. It draws primarily on the political debates surrounding the category, from the first efforts to define the term in the 1910s through the successive committees instituted to investigate constitutional reform during the interwar years. Returning to these final years of colonial rule is necessary, as it reveals the developments which led to the omission of the criminal tribe from the safeguards granted to minorities in the 1935 constitution –

⁷⁵⁴ Even where cultures of illegality have been celebrated they remain part of a narrative which specifies what marks the communities *different* to wider society.

⁷⁵⁵ The constitution increased the franchise to around one fifth of the population.

⁷⁵⁶ See Bajpai, pp. 31–69.

⁷⁵⁷ The constitution extended the principle of separate electorates and reserved seats which had been first introduced (for Muslims) in the Indian Councils Act (1909). The Government of India Act (1919) expanded the principle to Sikhs, Indian Christians, Anglo-Indians and Europeans. It also included a provision for the nomination of members of the depressed classes. The Government of India Act (1935) introduced a system of reserved seats for candidates belonging to the depressed classes (now known as Scheduled Castes) to be elected from the 'joint' or the general electorate.

⁷⁵⁸ The Government of India Act (1935) defined Scheduled Castes as those 'castes, races or tribes or parts of or groups within castes, races or tribes, being castes, races, tribes, parts or groups which appear to His Majesty in Council to correspond to the classes of persons formerly known as " the depressed classes", as His Majesty in Council may specify'.

a move which had clear implications for the trajectory of their group rights after independence.

Welfare work amongst communities who would come to be known as the depressed classes had a long history in the subcontinent.⁷⁵⁹ It was not until the early twentieth century, though, that the phrase was first coined, and later politicised.⁷⁶⁰ In March 1916, Indian nationalist M. B. Dadabhoy introduced a resolution into the Imperial Legislative Council to appoint a committee who would formulate schemes for the ‘amelioration in the moral and material condition of the depressed classes’.⁷⁶¹ Without ‘the elevation of the Depressed Classes’, he argued, ‘the amelioration in the general condition of the country cannot be properly effected’.⁷⁶² Drawing on examples from the West, Dadabhoy made an explicit link between the ‘progressive countries’ of the world and the introduction of ‘special measures [...] for the uplift of their degraded classes’.⁷⁶³ For early reformers, such measures were less about providing means of political representation or influence for disenfranchised groups than proving the ‘enlightened’ nature of the emerging political class. In the context of the nationalist movement, too, ameliorative measures suggested unity between higher and lower castes and classes. As moderate Congress leader Surendra Nath Banerjee stated in response to the resolution, ‘We of the educated community cannot neglect this question; we cannot discard the depressed classes; they are Indian [...] in the onward march which has begun, in the onward national movement, we must take them with us, and if we do not do that, they will drag us down’.⁷⁶⁴

One of the criticisms levelled at the proposal, however, was that it was too vague. ‘In the first place what are the Depressed Classes? This term is often used in the press and on the platform, but I am not aware that it has ever been defined’, questioned H. Wheeler, Secretary to the Government of India.⁷⁶⁵ This was the crux of the issue. In an effort to clarify its meaning, Dadabhoy stated that, whilst the “‘untouchables” among the Hindus’ were most commonly identified with the depressed classes, the ‘aboriginals, the

⁷⁵⁹ On missionaries in India, see Robert Eric Frykenberg, ‘Christian Missions and the Raj’, in *Missions and Empire*, ed. by Norman Etherington (Oxford: Oxford University Press, 2005), pp. 107–31.

⁷⁶⁰ The Depressed Classes Mission Society of India was one of the first organisations to explicitly use the term, established in 1906.

⁷⁶¹ ‘Proposed Resolution by the Hon’ble Mr M. B. Dadabhoy regarding amelioration in the moral and material condition of the Depressed Classes’, Legislative, Progs., Nos. 40-43, April 1916, NAI.

⁷⁶² Ibid.

⁷⁶³ Ibid.

⁷⁶⁴ Ibid.

⁷⁶⁵ ‘Note by H. Wheeler, 23 February 1916’, Legislative, Progs., Nos. 40-43, April 1916, NAI.

criminal and wandering tribes, and the Mahomedan *ajlaf* and *arzu'* should also be included as they made up the 'lowest strata of Indian society'.⁷⁶⁶ Reflecting later on the debates, Wheeler noted that 'the tenor of the discussion' in the Council ultimately divided the depressed classes into three main groups: the '(i) criminal and wandering tribes; (ii) aboriginal tribes, and (iii) "untouchables"'.⁷⁶⁷ Dadabhoy eventually withdrew the resolution but it marked one of the first concerted efforts to define the term. A year later, in 1917, the stated opinion of the Government of India was that 'the depressed classes should be arranged under the heads (a) depressed classes proper (i.e. untouchables), (b) aboriginal and hill tribes, and (c) criminal tribes'.⁷⁶⁸ The depressed classes 'should include those only whose "depression" constitutes a special administrative problem calling for special treatment'.⁷⁶⁹ 'Mere social disabilities' and 'purely economic problems' were dismissed as qualifiers for inclusion.⁷⁷⁰ At this point, then, there was a widespread consensus that the depressed classes encompassed three distinct categories of community. Despite the permeability between these groups in classificatory exercises on the ground, they were categorised in bureaucratic terms according to their distinct form of disadvantage.

The problem for the untouchables, Dadabhoy had argued, was one of historic oppression and degradation. Whereas, the aboriginals resided 'in the hills far away from the centres of habitation' and education was their 'chief need'.⁷⁷¹ For the criminal tribes, the 'main question' was 'one of settlement, education ranking next in importance'.⁷⁷² The 'vagrants and tramps', as he described them, 'must be gathered together in organised settlements before they can be weaned from their nomadic and thieving habits, and before education can be introduced among them'.⁷⁷³ Dadabhoy rooted the criminal tribes' form of disadvantage in their presumed mobility and illegality. He drew on the example of the *kot* system of reclamation that had existed in Punjab since the 1850s as evidence of the forms of amelioration the Government of India should introduce amongst them.

⁷⁶⁶ 'Proposed Resolution by the Hon'ble Mr M. B. Dadabhoy regarding amelioration in the moral and material condition of the Depressed Classes', Legislative, Progs., Nos. 40-43, April 1916, NAI.

⁷⁶⁷ He noted that similar definitions had been adopted by the Sixth Quinquennial Review on the Progress of Education and the Bombay Government. 'Letter from H. Wheeler, Secretary to the Government of India, to all Chief Secretaries of States, 12 May 1916', Home/Public A Progs., Nos. 130-31, July 1916, NAI.

⁷⁶⁸ 'Letter from H. McPherson, Chief Secretary to Government, to the Government of India, 23 March 1917', Home/Public A Progs., Nos. 329-41, August 1920, NAI.

⁷⁶⁹ Ibid.

⁷⁷⁰ Ibid.

⁷⁷¹ 'Proposed Resolution by the Hon'ble Mr M. B. Dadabhoy regarding amelioration in the moral and material condition of the Depressed Classes', Legislative, Progs., Nos. 40-43, April 1916, NAI.

⁷⁷² Ibid.

⁷⁷³ Ibid.

As we saw in chapter I, this system had been used prior to the enactment of the Criminal Tribes Act against certain nomadic communities, principally the Sansis and Pakhiwaras.⁷⁷⁴ Although it laid the foundations for later efforts to reclaim the criminal tribes in the province, it was largely considered a failure. Dadabhoy's invocation of the *kôl* system, however, reflected the pervasive association of the criminal tribe with nomadism and mobility, even if this did not always reflect the practices of the heterogeneous communities identified as such. Significantly, despite the variety of communities who fell within the categorisation of the criminal tribe, these debates marked them out as a distinctive group within the emerging framework of the depressed classes.

These debates acknowledged the inherent limitations of such a reductive framework of the depressed classes, given the vast diversity of the subcontinent. Many reformers recognised, for instance, that the nature, extent and effect of untouchability differed across the subcontinent, with notions of purity and pollution more rigidly adhered to in southern India whilst a more economically-based untouchability pervaded the north.⁷⁷⁵ As had been noted in the Imperial Legislative Council in response to Dadabhoy's resolution in 1916, 'Even within different parts of the same province, the problem is a different one and has to be approached differently.'⁷⁷⁶ The divergence of approaches taken by local governments became more apparent during the evidence submitted to the Indian Franchise (Southborough) Committee of 1918-1919 – the body appointed by the Secretary of State to investigate reform of the franchise. The Bombay government's note stated: 'The Depressed Classes are not defined or homogenous.'⁷⁷⁷ In the Central Provinces and Berar, the term encompassed both the 'impure castes' like Mahars and Chamars and the 'Forest and Hill Tribes' like Gonds.⁷⁷⁸ Whereas, in Bihar and Orissa the depressed classes were distinguished from the 'aborigines' of Chota Nagpur.⁷⁷⁹ Whilst debates at the national level of government may have sought to codify a more precise definition of the depressed classes, locally the term remained understood in terms of fluid, pragmatic and contingent factors. Significantly, the Punjab government

⁷⁷⁴ See chapter I and Major, 'State and Criminal Tribes in Colonial Punjab'.

⁷⁷⁵ Ramnarayan S. Rawat.

⁷⁷⁶ 'Note by C. H. A. Hill, 5 March 1916', Legislative, Progs., Nos. 40-43, April 1916, NAI.

⁷⁷⁷ *Franchise (Southborough) Committee, 1918-19: Report and Appendices* (Calcutta: [n.pub], 1919), p. 135.

⁷⁷⁸ *Ibid*, p. 257.

⁷⁷⁹ *Ibid*, p. 233.

emphasised that 'by far the most important aspect of the problem of the depressed classes is that concerned with the criminal and wandering tribes'.⁷⁸⁰

From the 1920s, in the wider context of dyarchy and debates over further constitutional reform, the indeterminate and encompassing category of the depressed classes became increasingly aligned with the untouchables alone. In large part this owed to the efforts of Dr B. R. Ambedkar to nationalise the question of untouchability and to establish untouchables as a separate political minority.⁷⁸¹ Concurrent to the debates on the depressed classes were successive consultations over constitutional reform in which the idea of the political community took on heightened importance.⁷⁸² The colonial state may have been willing to concede (limited) political representation to Indians, but it did so on the basis of community. As a representative and leader of the lower castes (and belonging to the untouchable Mahar caste himself), Ambedkar used the deliberations over constitutional reform to delineate untouchables as a political minority. To do so, he needed to draw clear and precise boundaries to distinguish untouchables not only from the various other minorities clamouring for political representation, but also from the more nebulous groups associated with the depressed classes.

This became clear in October 1928 during the deliberations of the Indian Statutory (Simon) Commission – the body appointed to examine and recommend further constitutional reform.⁷⁸³ A discrepancy emerged between Ambedkar's estimate of the number of depressed classes in the Bombay Presidency and those provided by the 1921 census, or, according to the Chairman, between two 'contrasting' conceptions of the term.⁷⁸⁴ On the one hand, the Chairman stated, the depressed classes could mean those 'untouchables [...] who are Hindus, but who are denied access to the Hindu temples'.⁷⁸⁵ On the other, it could include not only the untouchables 'but also the criminal tribes, the hill tribes and other people who no doubt are very low in the scale, but who are not, perhaps, in the narrower sense untouchables from the point of view of the Hindus [*sic*]

⁷⁸⁰ 'Letter from H. D. Craik, Revenue Secretary, to the Government of India, 3 July 1917', Home/Public A Progs., Nos. 329-41, August 1920, NAI.

⁷⁸¹ Anupama Rao.

⁷⁸² Southborough Commission (1918-19); Simon Commission (1928-30); Round Table Conferences (1930-32); Lothian Commission (1932).

⁷⁸³ These debates have been briefly examined in a jointly authored article, Gould, Gandee, and Bajrange. The arguments come from this author.

⁷⁸⁴ 'Evidence of Dr Ambedkar before the Indian Statutory Commission on 23rd October 1928', in *Dr Babasaheb Ambedkar Writings and Speeches*, ed. by Hari Narke, second edition (New Delhi: Dr Ambedkar Foundation, 2014), II, p. 460.

⁷⁸⁵ *Ibid.*

hierarchy'.⁷⁸⁶ When clarifying the details of his memorandum, which requested special representation for the depressed classes, Ambedkar limited the scope of his demand to the narrower, religiously-defined conception. Although he acknowledged that in some parts of India 'aborigines' or criminal tribes could be untouchables, he did 'not propose to speak on their behalf'.⁷⁸⁷ He even went as far as to state: 'I do not think it would be possible to allow them the privilege of adult suffrage'.⁷⁸⁸ Indeed, Ambedkar took particular offence to the idea of giving criminal tribes the vote because 'they are not very particular as regards the means whereby they earn their living'.⁷⁸⁹ Tribes (both 'criminal' and 'aboriginal') were thus cast outside of the Ambedkarite scheme of representative democracy as he saw them as primitive, savage and inimical to the modern political subject.⁷⁹⁰

A tension thus emerged between an embodied and everyday experience of disadvantage and discrimination – to the extent that certain communities were considered impure or degraded to varying, and thus difficult to measure, degrees – and the religiously-defined conception of untouchability that could be defined by tests of pollution. In his words, the untouchables whom Ambedkar claimed to represent could be considered 'entirely untouchable', whereas groups like the criminal tribes occupied a more uncertain, 'midway' position.⁷⁹¹ Ambedkar therefore advocated a test of untouchability – denial of access to Hindu temples and taking water – to demarcate between the two. This conception of untouchability had no degrees or kind; it was an inflexible and rigid boundary. This was in part a political tool to mask over the internal hierarchies amongst communities considered untouchable to consolidate them as a cohesive and recognisable political community. It also worked to distinguish the untouchables from the majoritarian (caste Hindu) group, thereby substantiating their claim to minority status. As Hari Singh

⁷⁸⁶ 'Evidence of Dr Ambedkar before the Indian Statutory Commission on 23rd October 1928', Narke, II, p. 460.

⁷⁸⁷ Ibid, p. 463.

⁷⁸⁸ Ibid.

⁷⁸⁹ In contrast, Ambedkar did concede that there was not 'any harm in giving aborigines the right to vote'. Ibid, p. 471.

⁷⁹⁰ As Prathama Banerjee has argued, 'Ambedkar evidently did not quite see the dalit and the adivasi as equivalent political subjects in his imagined federal democracy.' Banerjee, p. 137. It should be noted that Ambedkar did eventually concede there was not 'any harm in giving aborigines the right to vote', although he stood fast on the criminal tribes. 'Evidence of Dr Ambedkar before the Indian Statutory Commission on 23rd October 1928', in Narke, II, p. 471.

⁷⁹¹ Ibid, p. 464.

Gour noted during the deliberations of the commission, the depressed classes and untouchables – as political categories – became practically ‘synonymous’.⁷⁹²

The issue of defining the depressed classes re-emerged during the Indian Franchise (Lothian) Committee in 1932, which set the parameters for the 1935 constitution, and thus helped to shape the framework of compensatory discrimination after independence. As noted in the committee’s report, ‘the term “depressed classes” has been used to cover various classes of people such as criminal and wandering tribes, aboriginal tribes, untouchables and sometimes other backward and economically poor classes’.⁷⁹³ As Ambedkar had realised previously, the Committee noted that to recognise the depressed classes for political purposes demanded ‘more precise classification’.⁷⁹⁴ As such, it eventually concluded that ‘the term “depressed classes” should not include primitive or aboriginal tribes, nor should it include those Hindus who are only economically poor and in other ways backward but are not regarded as untouchables’.⁷⁹⁵ Notably, there was no explicit mention of the criminal tribes. In its attempts to determine exact figures, the Committee decided to adopt Ambedkar’s test of untouchability – defined in terms of ‘pollution by touch or approach’ or ‘denied access to the interior of ordinary Hindu temples’.⁷⁹⁶

The tripartite categorisation of the depressed classes outlined in the 1910s and 1920s, which had recognised tribal communities and criminal tribes *alongside* untouchables, was thus replaced by the more singular category of the Scheduled Castes. The ‘aboriginal tribes’ – reframed as ‘backward tribes’ – found recognition in the 1935 Government of India Act through the Excluded/Partially Excluded Areas and, after independence, as Scheduled Tribes.⁷⁹⁷ The separate recognition of the criminal tribes, however, whom for the Punjab government had posed the most immediate concern within the category of the depressed classes, was eroded. This was partly due to the criminal tribes lacking a vocal and influential leader within the deliberations. Indeed, Ambedkar, the figure most commonly associated with championing the rights of the lower castes – to which many of the criminal tribes, at least in Punjab, supposedly

⁷⁹² ‘Evidence of Dr Ambedkar before the Indian Statutory Commission on 23rd October 1928’, in Narke, II, p. 463.

⁷⁹³ *Indian Statutory Commission Volume 1: Report of the Indian Statutory Commission - Survey* (London: [n.pub], 1930), pp. 108–9.

⁷⁹⁴ *Ibid.*

⁷⁹⁵ *Ibid.*, p. 109.

⁷⁹⁶ *Ibid.*, p. 110.

⁷⁹⁷ On Scheduled Tribes, see Townsend Middleton, *The Demands of Recognition: State Anthropology and Ethnopolitics in Darjeeling* (Stanford, CA: Stanford University Press, 2016).

belonged – actively excluded them from his cause. The process also reflected the contingency and incoherency of the category of the criminal tribe itself. When he later reflected on the fact that he had overlooked the criminal tribes during the debates, Ambedkar noted that political representation needed ‘something more precise, more definite’.⁷⁹⁸

The following year, in 1936, the Government of India announced the communities to be classified as Scheduled Castes under the new constitution.⁷⁹⁹ Nearly all the communities notified as criminal tribes in Punjab were included in the list.⁸⁰⁰ Evidently, there was no clear demarcation between differing forms of disadvantage when put into practice on the ground. In Punjab, as elsewhere, the criminal tribes had a long and contested relationship with notions of both untouchability and tribe.⁸⁰¹ In the 1881 census, superintendent of the operation Denzil Ibbetson had reported that ‘almost every tribe’ belonging to the ‘wandering and criminal tribes’ was ‘probably aboriginal in its ultimate origin’.⁸⁰² ‘They are specially interesting’, he wrote, ‘because they have in a special degree retained their aboriginal customs and beliefs and in fact are at the present moment the Panjáb representatives of the indigenous inhabitants of the Province.’⁸⁰³ Even though ‘tribe’ still had relatively fluid meaning at this point, Ibbetson pointed to the ‘aboriginal’ and ‘indigenous’ characteristics of the communities. He suggested a historical process whereby ‘an aboriginal tribe of vagrant habits, wandering about from jungle to jungle’ eventually settled ‘as menials in a village. Being no longer nomads they would cease to hunt and eat vermin; but they would still eat carrion, they would still plait grass, and being what they were, the filthiest work to be performed, namely that of scavenging [*śūcī*], would fall to their share. They would then be the Chúhra’, i.e. the untouchable.⁸⁰⁴ Ibbetson’s theory of caste and Indian society was just one of many current amongst British administrators at the time.⁸⁰⁵ Yet, it reveals the more fluid interpretation of caste and tribe amongst the Punjab administration at this time. It also points to the difficulties

⁷⁹⁸ ‘Representation of the People (Amendment) Bill’, in *Dr Babasabheb Ambedkar Writings and Speeches*, ed. by Vasant Moon, second edition (New Delhi: Dr Ambedkar Foundation, 2014), XV, p. 484.

⁷⁹⁹ By way of the Government of India (Scheduled Castes) Order, 1936.

⁸⁰⁰ The notified communities included in the Order were: Barar, Bawaria, Od, Sansi, Bangali, Bazigar, Gandhila, Nat, and Perna. By this point, the Criminal Tribes Act was being used against smaller gangs and even individuals. This refers to the larger ethnic groups notified rather than these groups.

⁸⁰¹ In other regions, such as Bombay and Madras, there was a closer correlation between the criminal tribes and communities identified as being ‘tribal’.

⁸⁰² Ibbetson, p. 271.

⁸⁰³ *Ibid.*

⁸⁰⁴ *Ibid.*, p. 267. Chúhras traditionally performed sweeping and the name is often synonymous with untouchable.

⁸⁰⁵ See Cohn, ‘Notes on the History of the Study of Indian Society and Culture’.

that faced those whose task it would be to clearly delineate between similar forms of social exclusion based on occupation and lifestyle.

By 1935, the situation had changed. The Punjab government noted that, ‘There is, in the Punjab, no tribe professing a religion that can be called tribal or animistic, and therefore all persons that are not Sikhs, Muslims, or Christians, are Hinduised.’⁸⁰⁶ Religion had become the key marker of caste and tribal identity. Regarding the criminal tribes, this shift can be partly attributed to the role of religious reformist movements which targeted certain notified communities, amongst other low caste groups.⁸⁰⁷ In 1931, for instance, a group of Sansis in Gurdaspur protested the decision of the Census Superintendent not to include them as Hindus under the encouragement of the local Arya Samaj.⁸⁰⁸ The shift also reflected the colonial state’s pervasive uncertainty regarding the criminal tribes. Despite generating vast quantities of official documentation and ethnographic scrutiny, state officers continually lamented their lack of knowledge about the communities and consequent inability to accurately categorise them along lines of religion, caste or region. There was a clear tension between the legal definitions of disadvantage and social reality on the ground. Despite the Punjab government’s statement above, for example, only four years earlier in the instructions given for the 1931 census it was stated that, ‘In cases of Sansis and others, whose religion is tribal, the tribe should be entered in this [religion] column.’⁸⁰⁹

Despite these uncertainties, nearly all the criminal tribes in Punjab had been classified as Scheduled Caste in 1936. It is hard to determine from the archive whether colonial officials truly believed they suffered from untouchability, or whether it was for administrative expediency. It reveals, however, the manifest complications in attempting to classify fluid, contingent and permeable social relations and affiliations within hard bureaucratic categorisations. The situation in Punjab echoed wider trends in the scheduling of communities which, as Galanter argues, ‘reflected definitions of untouchability with admixture of economic and educational tests and consideration of

⁸⁰⁶ Letter from R. J. S. Dodd, Reforms Office, Lahore, to Rhodes, 24 August 1935’, Public and Judicial (Reforms) Constitutional Series, Miscellaneous Papers on Scheduled Castes, April 1933-July 1939, L/PJ/9/108, IOR.

⁸⁰⁷ J. T. F. Jordens, ‘Reconversion to Hinduism: The Shuddhi of the Arya Samaj’, in *Religion in South Asia: Religious Conversion and Revival in South Asia in Medieval and Modern Times*, ed. by Geoffrey Oddie (Delhi: Manohar, 1977), pp. 145–62.

⁸⁰⁸ *Tribune*, 17 April 1931, p. 12.

⁸⁰⁹ ‘Instructions’ in ‘Entry of the religion of Chuhras and members of other depressed classes in Column 4 of the General Schedule’, Home/Public, 1930, File no. 45/56/30, NAI.

local politics'.⁸¹⁰ What *was* clear, however, was that by the 1930s the scope of the depressed classes had narrowed to become synonymous with untouchability. The separate categorisation of the criminal tribe had therefore been erased from the framework of group/differentiated rights. As we shall see in the following two sections, this had important implications after 1947, both for the category of the criminal tribe and the communities themselves.

(Re-)defining Disadvantage

In its very preamble, India's independent constitution committed itself to 'Equality of status and of opportunity'. Yet, its drafters recognised that Indian society was riven by 'elaborate, valued, and clearly perceived inequalities'.⁸¹¹ The Constituent Assembly therefore promised right from the start that 'adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes' which would endeavour to overcome these inequalities and foreground a more meaningful equality.⁸¹² Although, as Bajpai argues, constitution-making in independent India marked a moment of containment in the history of group rights, safeguards were delivered for certain categories of disadvantaged citizen.⁸¹³ Disadvantage remained ill-defined, however, and subject to considerable interpretation, especially at the lower levels of the state. Notably, it continued to be articulated in terms of community, rather than the individual. As we shall see, in the deliberations over official definitions and policies, as well as in their implementation on the ground, the criminal tribe remained a persuasive category of state identification.

The chapter therefore turns to the years after independence as state actors – politicians and administrators alike – re-embedded the criminal tribe within the developmental regime of the postcolonial state. It first explores the national-level debates over the definition of disadvantage, notably the findings of the first Backward Classes Commission (1953-1955), before turning to the manifold problems faced by state actors in Punjab who attempted to classify communities within the framework of compensatory discrimination. Finally, it explores the welfare measures instituted for the ex-criminal tribes in the first couple of decades after 1947. It draws on a variety of sources, from the

⁸¹⁰ Galanter, *Competing Equalities*, p. 130.

⁸¹¹ *Ibid.*, p. 1.

⁸¹² 'Resolution *re.* Aims and Objects, 13 December 1946', *Constituent Assembly Debates: Official Report, Vol. I, No. 5* (New Delhi: Government of India Press, nd), p. 57.

⁸¹³ Bajpai, pp. 31–170.

reports of national committees to the correspondence of more regional actors in Punjab, like the DCCT (prior to the dissolution of the Criminal Tribes Department) or officers in the newly-created Welfare Department. These sources reveal that despite (or indeed, because of) the complex and contested nature of state identification, across all levels of the state, the criminal tribe remained an intelligible category for those faced with this impossible task.

In its efforts to build a modern, egalitarian and unified society, the Constituent Assembly reworked the forms of group differentiated representation that had become an integral part of colonial constitutionalism.⁸¹⁴ The result was an array of (supposedly temporary) safeguards for the ‘weaker sections’ of society, via a regime of constitutionally guaranteed rights.⁸¹⁵ These worked against the right to equality, as certain groups were identified as requiring a differentiated form of citizenship in order to overcome their historic marginalisation or exclusion. Rather than being exempt from the promise of equality, however, these safeguards were intended as a fundamental guarantee of it; without them, those communities who faced unequal disadvantages were themselves debarred from this equality. As Niraja Gopal Jayal has termed it, compensatory discrimination offered the means for an ‘*effective* equality’.⁸¹⁶ In order to deliver these safeguards, though, the postcolonial state had to identify the disadvantaged. Just as before 1947, there was little certainty or consistency regarding the term’s meanings and boundaries. Within the Assembly, debates centred almost exclusively on untouchables and tribal groups.⁸¹⁷ Similar to the 1930s, there was no prominent advocate for the rights of the criminal tribes within the debates. Indeed, many of those in the Assembly were actively prejudiced against them.⁸¹⁸ This meant, just as in the 1930s, that concerns over disadvantaged groups narrowed to exclude the criminal tribes. As such, the constitution

⁸¹⁴ Jayal, ‘A False Dichotomy?’, p. 192.

⁸¹⁵ These were originally intended to expire after ten years but have been renewed every ten years since.

⁸¹⁶ Jayal, ‘A False Dichotomy?’, p. 193.

⁸¹⁷ For a discussion on the debates over the constitutional safeguards for these groups, see Bajpai, pp. 116–70.

⁸¹⁸ See previous chapter for opinions of B. R. Ambedkar and Deshbandhu Gupta on the criminal tribes. Beyond the Assembly, similar prejudices were common. In Saurashtra, for example, the Backward Class Section – the very body of government intended to effect measures for equality – refused to include six communities of criminal tribes in the list of Scheduled Tribes as the ministers felt the reservation of a seat in the legislatures for a member of a criminal tribe would create ‘an embarrassing and awkward position’. ‘Letter from B. R. Patel, Development and Planning Department (Backward Class Section), State of Saurashtra, to H. V. Iengar, Government of India, 14 August 1952’, MHA/Public, 1952, File no. 74/96/52-I, NAI.

of 1950 marked out only two categories of disadvantaged citizen: Scheduled Castes and Scheduled Tribes, in addition to the ill-defined Other Backward Classes.

Despite establishing a framework of compensatory discrimination, however, India's constitution was not forthcoming with legal definitions. Couched in terms of backwardness and state responsibility to promote the interests of the 'weaker sections', the exact boundaries of Scheduled Caste, Scheduled Tribe or the more nebulous Other Backward Classes were subject to interpretation. A further complication was that the existing lists of communities from the 1930s had been rendered inaccurate by the widespread migration of communities during Partition, as well as by the shifting territorial borders of states through the 1950s. Indeed, in 1951 the Commissioner for Scheduled Castes and Scheduled Tribes noted the difficulties of adjudicating on an individual's eligibility for classification given the ambiguity of the term 'resident' in light of Partition-related displacement.⁸¹⁹ After the Government of India announced the communities to be included within the constitutional categories, largely inheriting the 1936 list unchanged, countless community organisations challenged their classifications.⁸²⁰ Some, like the Koris and Jogis, were aggrieved at their exclusion from the list of Scheduled Castes.⁸²¹ Others, like Ods and Khatiks, protested their inclusion in it.⁸²² The entire process was riven with uncertainty, therefore, whether in terms of defining or identifying the disadvantaged.

The Government of India consequently instituted several committees to scientifically assess the criteria and eligibility of the categories, most notably with the Backward Classes Commission of 1953-1955.⁸²³ The definitions of disadvantage it suggested were underscored by the privileging of certain socio-cultural norms. Just some of the criteria suggested as indicators of backwardness were: women; residents of rural areas; those who are driven to the necessity of working with their own hands; those labouring under the sun and in open air; landless labourers; not having sufficient, or any capital; having poor and uneducated parents, lacking ambition and having no vision;

⁸¹⁹ 'Report of the Commissioner for Scheduled Castes and Scheduled Tribes for the period ending 31st December 1951. (L. M. Shrikant)', MHA/Public, 1952, File no.74/14/52, NAI.

⁸²⁰ By way of the Constitution (Scheduled Castes) Order and the Constitution (Scheduled Tribes) Order. On the inheritance of the lists, see Galanter, *Competing Equalities*, p. 132.

⁸²¹ See 'Representations from various backward classes for inclusion in the list of Scheduled castes maintained by the central government', MHA/Public, 1951, File no. 74/4/51, NAI.

⁸²² See 'Representations received from different communities for their inclusion in and exclusion from the list of Scheduled Castes', Welfare/General B Progs.,1953, File no. 99, PSA.

⁸²³ Later committees included the Lokur Commission (1965), the Second Backward Classes (Mandal) Commission (1979-80), and the High Power Panel on Minorities, Scheduled Castes, Scheduled Tribes and Other Weaker Sections (1980-83).

belonging to, or condemned to live in, inaccessible and backward areas; being illiterate; and belief in magic, superstition and fate.⁸²⁴ In contrast, the following were some of the criteria for non-backwardness: men; residents of urban areas; landed peasantry; those who followed some learned profession; having educated parents or guardians with an atmosphere of self-confidence and culture; enjoying amenities of modern civilization; having a fair amount of education; and belief in science and the understanding of the law of cause and effect.⁸²⁵ Although these were presented as neutral, scientific and unbiased frames of reference, they clearly privileged the educated, elite, urban male. Religion and caste were not explicitly mentioned, yet these criteria would have largely correlated along caste/class lines: the vast majority of those who followed 'learned professions', for example, would have belonged to the upper castes.

The definitions of each of the categories of disadvantaged citizen similarly privileged these ostensibly neutral norms. Drawing on the classificatory logic established by Ambedkar, amongst others, prior to 1947, the Scheduled Castes were defined in terms of their relationship to caste Hindu society. Although Ambedkar had stressed that untouchables represented a separate political community, and indeed encouraged their conversion to Buddhism, his concept of untouchability relied on their exclusion from Hindu practices, i.e. access to temples and the taking of water. Scheduled Castes were thus defined in terms of their relationship to caste Hindu society, or, more accurately, their exclusion – or difference – from it. After 1947, this relationship was cemented by the Backward Classes Commission which stated that, 'Untouchability is the criterion [...] Non-Hindus cannot be included in it.'⁸²⁶ The (broadly conceived) religious boundaries of the category were made abundantly clear in 1956 when Sikh untouchables gained recognition but untouchables belonging to other religious communities such as Muslims and Christians were, and remain, excluded from the designation.⁸²⁷

Conversely, Scheduled Tribes were considered as communities 'in transition'.⁸²⁸ As Prathama Banerjee states, the tribe-caste binary was seen as more of a 'continuum,

⁸²⁴ *Report of the Backward Classes Commission, Volume. 1*, pp. xiv–xv.

⁸²⁵ *Ibid.*

⁸²⁶ *The Report of the Advisory Committee on the Revision of the Lists of Scheduled Castes and Scheduled Tribes* (Government of India: Department of Social Security, 1965), pp. 5–6.

⁸²⁷ By way of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956. In the Constituent Assembly, Sikh representatives gave up their demands of political safeguards on the assurance that their backward classes would be listed amongst the Scheduled Castes. Galanter, *Competing Equalities*, p. 305.

⁸²⁸ *The Report of the Advisory Committee on the Revision of the Lists of Scheduled Castes and Scheduled Tribes*, p. 6.

with tribes gradually evolving or acculturating themselves into castes'.⁸²⁹ In 1949, a Tribal Welfare Committee had delineated a framework on this basis: The most 'authentically' tribal were those 'who confine themselves to original forest habitats and are still distinctive in their pattern of life'; at the other end of the scale were 'totally assimilated tribals' who had migrated to urban areas, taken up 'civilised' occupations, and adopted the culture of the surrounding community.⁸³⁰ Evidently shaped by assumptions about primitivism and modernity, this notion of 'tribe' was also tacitly rooted in what Townsend Middleton terms 'a uniquely Hindu-centric imaginary'.⁸³¹ Drawing on theories propagated by ethnographers and administrators in the colonial period, the distinguishing criteria for tribes remained animism and a lack of caste-like features, such as the hereditary division of labour, hierarchy, and the principle of purity and pollution.⁸³² Tribes were thus defined in negative opposition to caste Hindu society. This was clear in the definition proposed by the Backward Classes Commission that Scheduled Tribes 'lead a separate, excluded existence and are not fully assimilated in the main body of the people'.⁸³³ For both Scheduled Caste and Scheduled Tribe, then, caste Hindu society – or a community's distance from it – was the key marker of their categorisation. By marking out these groups as different to this 'constituted normality', and in need of state recognition to facilitate their eventual assimilation into it, the constitutional safeguards, in turn, implicitly privileged it.

The Other Backward Classes proved more problematic to define. Under the Chairmanship of Kaka Kalelkar, the commission sought to determine which sections of society, in addition to the Scheduled Castes and Tribes, should be recognised as 'socially and educationally backward classes' for the purposes of the constitutional safeguards.⁸³⁴

⁸²⁹ Banerjee, p. 135.

⁸³⁰ The four divisions were: '(i) Tribals who confine themselves to original forest habitats and are still distinctive in their pattern of life. These may be termed as Tribal Communities; (ii) Tribals who have more or less settled down in rural areas taking to agriculture and other allied occupations. This category of people may be recognised as Semi-Tribal Communities; (iii) Tribals who have migrated to urban or semi-urban and rural areas and are engaged in 'civilised' occupations in industries and other vocations and who have discriminately adopted traits and culture of the other population of the country. These may be classed as Acculturated Tribal Communities; (iv) Totally assimilated Tribals.' 'Report of the Tribal Welfare Committee of the Indian Conference of Social Work (Third Annual Session of Indian Conference of Social Work, December 26-31, 1949)', MHA/Public, 1952, File no. 74/14/52, NAI.

⁸³¹ Middleton, p. 84.

⁸³² It should be noted that the officials enumerating communities on the ground continually noted the inadequacy of such criteria in light of complex social realities. Virginius Xaxa, 'Transformation of Tribes in India: Terms of Discourse', *Economic and Political Weekly*, 34.24 (1999), 1519–24 (p. 1519).

⁸³³ *Report of the Backward Classes Commission, Volume. 1*, p. 224. This definition was later confirmed by the Lokur Commission of 1965 which established the contemporary criteria as: primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large, and backwardness.

⁸³⁴ *Ibid*, p. xiii.

It struggled with a constant tension regarding group difference, however. Kalelkar maintained that in ‘a democracy, it is always the individual (not even the family) which is the unit’ and that ‘backwardness should be studied from the point of view of the individual’ as any larger unit would ‘lead to caste or class aggrandisement’.⁸³⁵ In this sense, it aligned with the individualist, liberal principles upon which the constitution was founded. At the same time, Kalelkar noted that the constitution mentioned ‘classes and sections’ of the people, which, he argued, ‘in the present context mean nothing but castes’.⁸³⁶ The commission concluded that caste was the main cause of disadvantage, and that the ‘economic backwardness of a large majority of the people’ was ‘often the result and not the cause of social evils’.⁸³⁷ Despite recognising the ill-effects such a policy could unleash, the commission noted that ‘the evils of caste could be removed by measures which could be considered in terms of caste alone’.⁸³⁸ The constitutional safeguards contained an inherent paradox, then. In its efforts to overcome entrenched inequalities that were effected along lines of group difference, the state had to recognise – thereby concretising and materialising – those very differences themselves.

This was to have important implications for the criminal tribe. The commission’s report, published in 1956, identified eleven ‘special groups’ who demanded particular attention amongst the ‘educationally and socially backward’.⁸³⁹ One of these was the ex-criminal tribes – or the ‘denotified communities’ as the report recommended they be renamed – who were described as those ‘who were regarded as criminals by occupation’.⁸⁴⁰ Each of the groups was marked out by their distinct form of disadvantage. For the ex-criminal tribes, this was their association with criminality and movement. ‘Although the main cause of their criminality is economic’ the report stated, ‘there are other psychological factors behind crime and love of adventure which are no less important’.⁸⁴¹ Like the colonial ethnographies before it, which undoubtedly influenced its conclusions, the commission relied on the tropes of the criminal tribe. ‘Before settlement in colonies, they used to eke out a livelihood by hunting, selling jungle products, exhibiting bear and monkey dances, snake-charming, selling medicinal herbs and other

⁸³⁵ *Report of the Backward Classes Commission, Volume. 1*, p. xiv.

⁸³⁶ *Ibid*, p. xiii.

⁸³⁷ *Ibid*, p. 40.

⁸³⁸ *Ibid*, p. xiii.

⁸³⁹ The list included: Muslims, Christians, Anglo-Indians, Eurasians in Travancore-Cochin, Sikhs, Gurkhas, Bhangis (sweepers and scavengers), women, unfortunate women, delinquent children, and denotified communities.

⁸⁴⁰ *Ibid*, p. 34.

⁸⁴¹ *Ibid*, p. 35.

goods and supplemented these earnings by begging', the report stated.⁸⁴² 'Training in thief-craft was given to their children before they actually started on their career', it went on.⁸⁴³ Unlike the Constituent Assembly and the Lothian Committee before it, the Backward Classes Commission clearly recognised the distinct status of the ex-criminal tribe as a discrete category of disadvantaged citizen.

This was clear in the descriptors which the commission recommended as criteria of backwardness. The list included:

1. Those who suffer from the stigma of untouchability or near untouchability. *Note* – (These are already classified as Scheduled Castes)
2. Those tribes who are not yet sufficiently assimilated in the general social order. *Note* – (These are already classified as Scheduled Tribes)
3. Those who, owing to long neglect, have been driven as a community to crime. *Note* – (These were known as Criminal Tribes and now are known as Ex-criminal Tribes or Denotified Groups)

This group is now resolved into those belonging to Scheduled Castes, those belonging to Scheduled Tribes – the remainder will be considered as belonging to Other Backward Classes

4. Those nomads who do not enjoy any social respect and who have no appreciation of a fixed habitation and are given to mimicry, begging, jugglery, dancing, etc.
5. Communities consisting largely of agricultural or landless labourers
6. Communities consisting largely of tenants without occupancy rights and those with insecure land tenure
7. Communities consisting of a large percentage of small landowners with uneconomic holdings
8. Communities engaged in cattle breeding, sheep breeding or fishing on a small scale
9. Artisan and occupational classes without security of employment and whose traditional occupations have ceased to be remunerative
10. Communities, the majority of whose people, do not have sufficient education and, therefore, have not secured adequate representation in Government service
11. Social groups from among the Muslims, Christians and Sikhs who are still backward socially and educationally
12. Communities occupying low position in social hierarchy.⁸⁴⁴

⁸⁴² *Report of the Backward Classes Commission, Volume. 1*, p 35.

⁸⁴³ *Ibid.*

⁸⁴⁴ *Ibid*, pp. 46–47.

Just as before 1947, disadvantage was rooted in the community as opposed to the individual. Although some of these descriptors prioritised socio-economic causes (such as uneconomic holdings or the lack of occupancy rights), they still worked within the paradigm of the community – ‘Communities consisting of a large percentage of small landowners with uneconomic holdings’, for example. Notably, the first three descriptions followed the same framework as the earlier discussions on the depressed classes. The commission identified the ex-criminal tribe as a distinct category alongside Scheduled Caste and Schedule Tribe. At the same time, however, it supported ‘the policy of dividing them into Scheduled Tribe, Scheduled Caste or Other Backward Class for getting them the benefits available to the categories concerned’.⁸⁴⁵ This reflected a certain ambivalence in terms of state practice. Whilst the ex-criminal tribe remained persuasive in bureaucratic dialogue and policy, it did not merit a separate constitutional categorisation.

In the end, the commission failed to adequately define the Other Backward Classes in usable bureaucratic terms.⁸⁴⁶ Its members were also, ultimately, opposed to the implementation of their recommendations.⁸⁴⁷ Despite this, the exercise had still proved instrumental in reifying the ex-criminal tribe. The criminal tribe itself, as we saw in chapter I, was never clearly defined. It was a diffuse and ambiguous category in its application. Yet, in these debates over disadvantage during the early 1950s – similar to those over the repeal of the Criminal Tribes Act – the category was concretised; it had taken on a common sense meaning for the state. Without a separate classification, however, state actors struggled to locate these communities within the existing schedules. This was evident when the state governments, in response to the failure of the Backward Classes Commission, drew up their own lists of communities. Amid contrasting definitions of disadvantage and little correlation across geographic boundaries, the ex-criminal tribes were incoherently divided between the existing schedules as per each state government, and sometimes did not find inclusion at all.⁸⁴⁸ The place of the ex-criminal tribe within

⁸⁴⁵ *Report of the Backward Classes Commission, Volume. 1*, p. 36.

⁸⁴⁶ The Government of India rejected the recommendations on the ground it had not used objective tests for identifying backwardness. Nomita Yadav, ‘Other Backward Classes: Then and Now’, *Economic and Political Weekly*, 37.44/45, 4495–4500 (p. 4495).

⁸⁴⁷ Kalelkar noted in his report that ‘the remedies we suggested were worse than the evil we were out to combat’. *Report of the Backward Classes Commission, Volume. 1*, p. vi.

⁸⁴⁸ For example, the Banjaras are classified as Scheduled Caste in Rajasthan but Scheduled Tribe in Gujarat, Other Backward Caste in Uttar Pradesh and De-notified and Nomadic Tribe in Maharashtra. Motiraj Rathod, ‘Denotified and Nomadic Tribes in Maharashtra’, <http://sickle.bwh.harvard.edu/india_tribes.html> [Last accessed 15 June 2015].

the framework of compensatory discrimination was therefore unclear at the level of national governance, for decades to come.⁸⁴⁹

These uncertainties over identification were further compounded at a more local level. There was a disjuncture between the bureaucratic categories provided by government and the complex and fluid reality on the ground. At the same time as bureaucrats in New Delhi sought to define disadvantage, administrators in Punjab were attempting to classify communities within the emerging framework of compensatory discrimination. This section explores their efforts between the late 1940s and early 1950s to reveal the multiple, competing and often contradictory definitions of disadvantage which proliferated at the regional and local level. These divergent interpretations first became manifest in January 1949 when the Government of India, ahead of the 1951 census, requested that the state governments provide lists of communities who would be classified as either '(1) Scheduled Castes of Hindus, i.e. Harijans, (2) Scheduled Tribes in the hills and plains and (3) other Backward Classes which though not included in either (1) or (2), are nevertheless educationally and economically just as backward'.⁸⁵⁰ As we shall see, the category of the criminal tribe took on heightened intelligibility for state actors amidst confusion, ambiguity and misinformation.

The Punjab government appointed a Backward Classes Committee to undertake the task, but it faced numerous difficulties. First of all, there was a dearth of accurate information on the communities concerned. Files were reported missing and changes in personnel meant that no one in government was aware of which principles had been used for the previous selection of Scheduled Castes. As we saw in the previous chapters, the migration and disruption of Partition had fractured the paraphernalia of the state – bureaucrats had left for Pakistan or were redeployed to new departments, and incoming ones had to be incorporated into the administration, whilst records themselves were often still in Lahore.⁸⁵¹ The reorganisation of the bureaucracy meant new officers often had little knowledge of the workings of departments. The migration of populations, too, meant that the information which did exist, largely drawn from old census reports, was outdated and inaccurate. In the erstwhile Patiala State, for instance, the government

⁸⁴⁹ This remained the case for decades, as confirmed by the 1965 Lokur Committee, the next national-level review of compensatory discrimination, which noted their 'anomalous classification'. See *The Report of the Advisory Committee on the Revision of the Lists of Scheduled Castes and Scheduled Tribes*, pp. 16–17.

⁸⁵⁰ 'Subject – Backward Classes, preparation of lists and collection of information', Welfare/General B Progs., 1952, File no. 59, PSA.

⁸⁵¹ On the effects of Partition on the (East) Punjab administration, see Rai, pp. 90–120.

admitted that the 1941 census was wholly defective in terms of detailing the intended scheduled communities because of the influence of religious reformist organisations at the time and subsequent Partition-related migration.⁸⁵² The situation was similar across the Punjab region. The pervading atmosphere of flux meant that the committee deemed it unsafe to make recommendations based upon the existing data.

Instead it sought advice from a variety of state officials, namely the deputy secretary of the Development Department, the elections commissioner, the census superintendent, and, significantly, the DCCT. The inclusion of the DCCT suggests that in Punjab there remained a closer alignment between the categories of the criminal tribe and the backward classes, just as there had been prior to 1947. The suggestions received all conflicted with each other, however. The deputy secretary recommended thirty-one groups based on those named in the East Punjab (Removal of Religious and Social Disabilities) Act of 1948, i.e. untouchable communities. Whereas, the elections commissioner recommended seventeen groups, the DCCT twelve and the census superintendent twenty-two, which he later reduced to sixteen. The district commissioners suggested a further forty communities. Evidently, there was no consistency in their interpretations of the backward classes. Eventually the committee submitted a list of sixty-three communities whom it recommended should be classed as backward for the purposes of the constitution. The Punjab government responded that ‘most of these castes are already included in the list of Scheduled Castes and the rest are in the nature of sub-castes under the Scheduled Castes’.⁸⁵³ The decision was taken, therefore, that there were no backward classes outside of the Scheduled Castes or Scheduled Tribes in Punjab. The complexities of community identities and genealogies rendered the operation defunct, as the precise boundaries of bureaucratic categories could not be superimposed on the diffuse situation on the ground.

This was clearly the case with the soon to be ex-criminal tribes. In his recommendation to the Punjab government in July 1949, the DCCT Mulkh Raj Mehra divided the criminal tribes between the three categories.⁸⁵⁴ Of the first, ‘the Scheduled Castes of Hindus, i.e. Harijans’, he recorded ‘Nil’. Even though, as he noted, the Bawarias,

⁸⁵² In 1956, PEPSU became part of the state of Punjab. ‘Letter from Chief Secretary, PEPSU Government, to the Deputy Secretary to Government of India, May 1949’, Ministry of States/‘P’ Branch, 1949, File no. 68-P/49, NAI.

⁸⁵³ ‘A reference for the Asstt. Commissioner for Scheduled Castes and Scheduled Tribes, re. List of Backward Classes recognised in the State’, Welfare/General, 1960, File no. 510, HSA.

⁸⁵⁴ ‘Memorandum from the Deputy Commissioner for Criminal Tribes, East Punjab, to the Home Secretary, East Punjab Government, 1 July 1949’, Welfare/General B Progs., 1952, File no. 59, PSA.

Sansis, Bhangalis, Barars, Gandhilas and Nats were classified as such, he claimed they did not belong in the category. Rather, he included these communities in the category of ‘the Scheduled Tribes in the hills and the plains’. In the final category of the backward classes, he included a further thirty-one communities, although many of these were identified as being sub-castes of the Sansis.⁸⁵⁵ Complicating the matter, Mehra’s proposals framed the forms of disadvantage faced by the ex-criminal tribes in terms that were alike those of the untouchables. He described them as ‘low out-castes’ whose ‘degraded habits, superstitious beliefs, antique and low morals and social customs are an inevitable result of the ostracised conditions in which they were forced to live’.⁸⁵⁶ Moreover, in December 1947 he had written to the Punjab government requesting the extension of funds allotted to Scheduled Castes to the criminal tribes. ‘Almost all the tribes declared under the Criminal Tribes Act are out-castes and treated like Harijans’, he wrote, ‘because they are unclean by habit and eat carrion and are considered “untouchables”, although all of them have not been included in the list of Scheduled Castes.’⁸⁵⁷ Similar to the divergent suggestions offered by the officers above, Mehra’s proposals reveal the enormous difficulties in attempting to neatly delineate complex, lived identities within a reductive bureaucratic framework.

At the same time, Mehra’s proposal demonstrated the ongoing relevance of the category of the criminal tribe. He provided no explicit justification for his classifications, but he did include ethnographic details on each of the communities concerned. The Bawarias had been ‘essentially nomadic in their habits and supported themselves by hunting, fowling and theft’, he wrote, but more recently ‘large numbers of them have taken to agriculture and have mostly forgotten their past traditions’.⁸⁵⁸ ‘In the past [the Bhangalis] were a vagrant tribe’, he continued, ‘They kept dogs and donkeys and exhibited snakes and ate all sorts of vermin. Their women danced, sang and prostituted themselves.’⁸⁵⁹ There was a clear continuity with the colonial period in terms of how these communities were conceived by the state. Given that Mehra had taken office as DCCT

⁸⁵⁵ Sansi sub-castes (Bhedkut, Gedri, Rachhbana, Kikan, Singikat, Aheri, Bheria, Dhe, Kuchband, Bhantu, Bhattu, Chattu, Harrar, Mahla, Biddu, Mahesh, Langah, Kopet, Tetlu, Kalkhar, Chaddi, Arhar, Habura, Birtwan, Rehluwala, Behalia, Heria); Tagus of Karnal; Mahtams of Ferozepore; Dhinwars of Gurgaon; Minas of Gurgaon.

⁸⁵⁶ ‘Memorandum from the Deputy Commissioner for Criminal Tribes, East Punjab, to the Home Secretary, East Punjab Government, 1 July 1949’, Welfare/General B Progs., 1952, File no. 59, PSA.

⁸⁵⁷ ‘Proposal by DCCT Lala Mulkh Raj Mehra’, Home/Judicial B Progs., 1947, File no. 72, PSA.

⁸⁵⁸ ‘Memorandum from the Deputy Commissioner for Criminal Tribes, East Punjab, to the Home Secretary, East Punjab Government, 1 July 1949’, Welfare/General B Progs., 1952, File no. 59, PSA.

⁸⁵⁹ *Ibid.*

in December 1946, the persistence of these characterisations in state practice is to be expected. As we saw in the previous chapter, too, these types of ethnographic details continued to inform penal practices more widely for years after the repeal of the Criminal Tribes Act.

More than this, though, these characterisations legitimatised the communities' inclusion amongst the backward classes. The ethnographic scrutiny once employed to mark out the communities as subjects in need of punitive control was now utilised to provide the basis for their identification as disadvantaged. The practices which had once denoted their criminality now confirmed their backwardness. In the changed circumstances of independence, these same details could be employed for developmental purposes. Although a separate categorisation for the ex-criminal tribe did not exist within the constitutional schedules, it was this designation that determined the communities' incorporation within them. Given the pervasive uncertainty regarding the constitutional schedules themselves, local state actors, like Mehra, thus relied upon the long-standing and intelligible category of the criminal tribe. In so doing, he further reified it as a category of state identification.

Eventually, in the early 1950s, the Punjab Backward Classes Committee summed up the situation as being 'too complicated and the picture so blurred that it appears extremely difficult to make any clear cut recommendations for drawing up a list of backward classes in Punjab'.⁸⁶⁰ In response to the Government of India's request, the committee compiled a list of Scheduled Castes which was largely inherited from the Government of India (Scheduled Castes) Order, 1936.⁸⁶¹ After independence, just as in the 1930s, the majority of the ex-criminal tribes were classified as Scheduled Caste. Again, the fluidities and complexities of community identities, social hierarchies, and affiliations were obscured by a bureaucratic categorisation. The appropriateness – or not – of this designation cannot be explored here; the diversity of individuals who fell within the category of the criminal tribe would make any such endeavour redundant. The inclusion of many of the ex-criminal tribes within the Scheduled Caste classification would later have important implications, however, as we shall see.

⁸⁶⁰ 'A reference for the Asstt. Commissioner for Sch. Castes and Sch. Tribes, re. List of Backward Classes recognised in the State', Welfare/General, 1960, File no. 510, HSA.

⁸⁶¹ There were twenty-seven communities specified in the 1936 Order. The additional seven communities added in 1950 were Batwal, Kabirpanthi, Mazhabi, Pherera, Sanhai, Sanhal, and Sikligar.

The uncertainties of identification were even more manifest at the level of the district. In 1953, a further classificatory exercise was launched in response to a request from the Government of India to identify the 'most backward' communities amongst the backward classes. The Punjab government delegated the task to the district commissioners. When they submitted their reports, however, there was little correlation between their suggestions and the existing schedules. There was also divergence across districts. The Sansis, for instance, who had been classified as Scheduled Caste, were returned as such in Ludhiana, Jullundur, Ambala, Hoshiarpur, Ferozepore and Gurdaspur, but as Scheduled Tribe in Hissar.⁸⁶² Even more complicatedly, in Karnal they were returned as both Scheduled Caste and Scheduled Tribe depending on the *tehsil*. Interestingly, the district commissioners of Ludhiana, Karnal, Gurgaon and Hissar all returned several communities belonging to the criminal tribes as Scheduled Tribes, despite their existing classification as Scheduled Caste. The Punjab government dismissed the accuracy of these reports on the basis that the district commissioners had neither the personnel nor the machinery to undertake a thorough investigation. The diffuse, mediated and locally contingent nature of the state lent itself to divergences of interpretation – both vertically (with superiors, the Punjab government, the Government of India) and horizontally (between officers in different localities, departments, and so on). The categories were therefore inherently incoherent, encompassing a myriad of competing understandings of what constituted disadvantage.

Through the 1950s, there remained a tension between the static nature of the lists promulgated by the government, and the meanings and implications of these categories in terms of everyday governance. Indeed, the very production of schedules obscured the ambiguities which characterised how communities were categorised and the divergences in understandings of what the categories themselves even stood for. There was a clear disparity between national, provincial, and local interpretations, as each arena of governance contended with conflicting imperatives and forms of knowledge. What is clear, though, is that at each of these levels – whether the Backward Classes Commission, the Punjab Backward Classes Committee, or the actions of the DCCT or deputy commissioners – the criminal tribe remained a convincing category of disadvantaged citizen. This was evident in the raft of welfare and developmental policies introduced by both the national and state governments from the early 1950s which specifically targeted

⁸⁶² 'Information furnished to the G.O.I. regarding the names of most Backward Castes amongst the Scheduled Castes and Scheduled Tribes in the Punjab', Welfare/General B Progs., 1955, File no. 90, PSA.

the ex-criminal tribes. Although the category had not merited a separate constitutional classification, it was again given a distinctive status alongside Scheduled Castes, Scheduled Tribes and the Other Backward Classes. As the remainder of this section demonstrates, these policies re-marked the criminal tribe within postcolonial governance, for at least the first couple of decades after 1947.

The Criminal Tribes Act Enquiry Committee (1949-1950), as noted in the previous chapter, had recommended that 'suitable ameliorative measures' be undertaken amongst the soon to be ex-criminal tribes and that the Government of India contribute fifty per cent of expenses for this task to the state governments for ten years from the date of repeal.⁸⁶³ For this end, several conferences were convened in New Delhi to discuss the welfare of the communities.⁸⁶⁴ The first, in 1953, noted that the constitution marked out 'the socially and educationally backward classes' in an effort 'to bring all these classes to a common level'.⁸⁶⁵ For these groups, it stated, 'backwardness is unfortunately their badge and their handicap'.⁸⁶⁶ In addition to noting that the Scheduled Castes suffered from 'the reproach of untouchability' and the Scheduled Tribes 'live mostly in jungles and have to be brought up to our own civilisation', the conference noted that the ex-criminal tribes had 'been subjected to what you can call the slur of criminality by birth'.⁸⁶⁷ Again, the ex-criminal tribe was clearly marked out as a distinct category amongst the disadvantaged. Similar to Scheduled Castes and Tribes, the communities not only faced material disadvantages in terms of social and educational backwardness, the conference concluded, but a defining form of disadvantage, i.e. the label of criminality.

The purpose of these welfare schemes was two-fold. Poor economic conditions were held responsible, at least in part, for the 'criminal propensities' of the communities. Without their improvement, the Enquiry Committee had stated in 1951, even those individuals deemed reformed were vulnerable to relapse on repeal of the Criminal Tribes Act. At the same time, via such ameliorative measures, the communities' 'absorption in the society may be accelerated'.⁸⁶⁸ Welfare policies centred less on the realisation of individual rights, then, than the protection of society at large. This was clearly articulated by L. K. Shrikant, the Commissioner for Scheduled Castes and Tribes, in January 1953

⁸⁶³ *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 105.

⁸⁶⁴ There were at least two conferences held for this purpose, in 1953 and 1954.

⁸⁶⁵ 'Minutes of the Conference held on 21 March 1953 to discuss problems concerning the welfare of ex-criminal tribes', MHA/Public-II, 1953, File no. 51/53, NAI.

⁸⁶⁶ *Ibid.*

⁸⁶⁷ *Ibid.*

⁸⁶⁸ *Report of the Criminal Tribes Act Enquiry Committee (1949-50)*, p. 100.

when he claimed that, without immediate schemes to wean the ex-criminal tribes from their ‘life-long habit of thieving’, they would remain ‘a danger to the society’.⁸⁶⁹ This was also clearly evident in a proposal submitted by DCCT Kanwal Nain just prior to the dissolution of the Department in 1952. The key aim of his proposed welfare measures was ‘to enable them to absorb themselves in the general body of the community’.⁸⁷⁰ These measures centred largely on education, employment and housing. Throughout, Nain emphasised the dual advantage of welfare – benefiting both the communities and the state. ‘Recreational and other activities [...] should help to train the ex-criminal tribes morally’ which would help them ‘to unlearn their bad social habits [...] for the benefit of both themselves and the Society’.⁸⁷¹ Activities centred on health and hygiene would ‘help ex-criminal tribes to become better citizens and thus help their assimilation in the general body of the community’.⁸⁷² Arguably, too, Nain’s proposal stemmed from the desire to integrate the activities of the bureaucratic behemoth of the condemned Department into new ventures that more closely aligned with the professed aims of the modernising postcolonial state.

To facilitate these measures, the Government of India allocated a certain amount of centralised funding for the ex-criminal tribes in its Five Year Plans, the centralised economic programmes executed by the Planning Commission.⁸⁷³ Notably, the first three plans employed the separate categorisation of the ex-criminal tribe amongst the ‘socially and educationally backward classes’.⁸⁷⁴ ‘Although large numbers of persons live on the margin’, the report of the second plan (1956-1961) noted, ‘the description “backward classes” is commonly applied to the following four sections of the population:

1. Scheduled tribes who number about 19 million
2. Scheduled castes who number about 51 million
3. Communities formerly described as “criminal tribes” who number a little over 4 million

⁸⁶⁹ ‘Note by L. M. Shrikant, Commissioner for Scheduled Castes and Scheduled Tribes, 30 January 1953’, MHA/Public-II, 1953, File no. 51/53, NAI.

⁸⁷⁰ ‘A Brief Note on the Re-organisation of the Punjab Reclamation and Criminal Tribes Department, submitted by Kanwal Nain, DCCT’, Unspecified department, 1953, File no. 281, PSA.

⁸⁷¹ Ibid.

⁸⁷² Ibid.

⁸⁷³ In the first Five Year Plan, 35,000,000 rupees out of 390,000,000 rupees was allocated to the ex-criminal tribes. In the second and third Five Year Plans, 40,000,000 rupees were allocated.

⁸⁷⁴ Five Year Plans for 1951-56, 1956-61, and 1961-66.

4. Other socially and educationally backward classes.⁸⁷⁵

Similar to the schemes for the depressed classes prior to the 1930s, the Planning Commission noted that, 'Each group has special problems.'⁸⁷⁶ Indeed, the report of the third plan (1961-1966) remarked that, 'Denotified tribes constitute a special group whose assimilation into the larger community presents peculiar difficulties.'⁸⁷⁷ These difficulties were framed primarily in terms of their mobility and supposed illegality. The first plan (1951-1956) had centred on 'training them in the ways of settled life [...] Stress has been laid on their economic rehabilitation and on weaning away the younger generation from the antisocial practices of the past'.⁸⁷⁸ The schemes largely focused upon education and housing. In addition to building schools, hostel accommodation and cottage industry centres, the schemes provided scholarships to students, vocational training, agricultural subsidies, and rehabilitation grants. The second plan focused more heavily on those members 'still leading a nomadic life' by funding the construction of houses and wells.⁸⁷⁹ The third plan noted the 'very limited impact' of the previous schemes and recommended a 'combined correctional and welfare approach' and the need for 'Long years of patient work' before the communities could be 'integrated with the rest of the population'.⁸⁸⁰

By the time of the fourth plan (1969-1974), however, the ex-criminal tribe had become increasingly indistinct as a category. The report noted that in addition to the Scheduled Castes and Tribes there were 'the nomadic, semi-nomadic and denotified communities'.⁸⁸¹ Now, though, the outline of programmes was divided between the Scheduled Castes, Scheduled Tribes and the Other Backward Classes. The report recommended the continuation of 'a combined correctional-cum-welfare approach' towards the denotified communities but made no explicit sanction of separate schemes for their welfare. Although later plans did continue to acknowledge the denotified communities amid broader discussions on the Other Backward Classes, there were no schemes aimed towards the ex-criminal tribe as a separate category. In the sixth plan

⁸⁷⁵ Chapter 28; Second Five Year Plan <http://planningcommission.nic.in/plans/planrel/fiveyr/welcome.html> [Last accessed on 19 March 2018].

⁸⁷⁶ Ibid.

⁸⁷⁷ Chapter 34, Third Five Year Plan <http://planningcommission.nic.in/plans/planrel/fiveyr/welcome.html> [Last accessed on 19 March 2018].

⁸⁷⁸ Chapter 28 Second Year Plan <http://planningcommission.nic.in/plans/planrel/fiveyr/welcome.html> [Last accessed on 19 March 2018].

⁸⁷⁹ Ibid.

⁸⁸⁰ Chapter 34, Third Five Year Plan <http://planningcommission.nic.in/plans/planrel/fiveyr/welcome.html> [Last accessed on 19 March 2018].

⁸⁸¹ Chapter 21, Fourth Five Year Plan <http://planningcommission.nic.in/plans/planrel/fiveyr/welcome.html> [Last accessed on 19 March 2018].

(1980-1985), for instance, programmes included ‘sub-plans for tribal areas’, ‘special component plan for scheduled castes’ and ‘other programmes for backward classes’.⁸⁸² In part, this gradual dissolution of the separate status of the ex-criminal tribe can be attributed to the federated structure of governance, whereby both the classification of the Other Backward Classes and schemes for their amelioration rested with the state governments. In some states there was separate provision for the ex-criminal tribes.⁸⁸³ Without explicit sanction from the central government, however, these remained locally-dependent, haphazard, and often unrealised.⁸⁸⁴

As this section has shown, the ex-criminal tribe remained a pervasive influence upon those crafting the postcolonial developmental state in India during the late 1940s and 1950s. The debates over the definition of disadvantage, and local interpretations of these, may have been inconsistent, contradictory, and largely academic. Yet, the ex-criminal tribe was repeatedly invoked by the state actors involved in the exercise as an intelligible and legitimate category of state identification. By the late 1960s, these targeted welfare schemes were withdrawn; the category had seemingly lost some of its relevance for the state, at least within the higher levels of governance. This had implications for the communities themselves. Almost entirely classified as Scheduled Castes, at least in Punjab, they were theoretically the recipients of constitutional safeguards, such as reserved posts in employment and education and political representation. In reality, they struggled to access these on account of the numerically stronger and more affluent and influential communities amongst the Scheduled Castes.⁸⁸⁵ As a result, certain leaders amongst the ex-criminal tribes began to mobilise in order to demand greater safeguards from the state. Through their encounters with the state, however, these activists further reinforced the category of the criminal tribe – as we shall see below.

⁸⁸² Chapter 26, Sixth Five Year Plan
<http://planningcommission.nic.in/plans/planrel/fiveyr/welcome.html> [Last accessed on 19 March 2018]

⁸⁸³ In Bombay and Tamil Nadu, for instance, ex-criminal tribes (referred to as *vimukta jatis*) had separate categorisation within welfare provision, at least in the 1980s, although still *within* the broader classification of the backward classes. See correspondence in ‘List of backward classes and criteria’, MHA/High Power Panel on Minorities, Scheduled Castes, Scheduled Tribes and other Weaker Sections (hereafter HPP), 1980, File no. 67/7/80-HPP, Serial no. 55, Volume no. V, NAI.

⁸⁸⁴ On the problems of classification for ex-criminal tribes, see Bokil.

⁸⁸⁵ On the ‘creamy layer’ effect, see Pradipta Chaudhury, ‘The “Creamy Layer”: Political Economy of Reservations’, *Economic and Political Weekly*, 39.20 (2004), 1989–91.

Performing the Criminal Tribe

In the 1970s and 1980s, a group of community activists in Punjab relentlessly campaigned for state recognition of the ex-criminal tribe as a distinct category of disadvantaged citizen. They staged protests in the streets, petitioned the state and central governments, and launched a legal challenge in the courts. They also instigated several hunger-strikes over the years, notably in 1979, 1984 and 1987.⁸⁸⁶ In 1981, a deputation even met with Prime Minister Indira Gandhi. Their aim, as articulated to Gandhi, was the state's recognition of the ex-criminal tribe as 'a separate political group'.⁸⁸⁷ Largely, this had an instrumentalist purpose.⁸⁸⁸ Denied access to state resources within the Scheduled Castes, the activists sought a separate classification. As such, they articulated a distinct identity of the criminal tribe, namely by constructing a shared mythological past. According to this narrative, the ex-criminal tribes were victims of an official misrecognition, wherein their true status as *Kshatriya* Rajputs had been obscured through histories of mobility and illegality, leading to their mistaken classification as untouchables. Through their politics of identity, as the remainder of the chapter will show, the activists themselves infused the category of the criminal tribe with new-found legitimacy. This section largely draws on the petitions sent by these activists to government officials, newspaper reports from the *Tribune*, and a writ petition submitted to the Punjab and Haryana High Court. Whilst it primarily examines the actions of these activists rather than state actors, it does not suggest that these represented a more intrinsic or cultural identification with the category; rather, it foregrounds that these formed an encounter with the state. By repeatedly performing the criminal tribe through their diverse interactions, the activists further reinforced it as a category of state identification within the postcolonial state's developmental regime.⁸⁸⁹

This political mobilisation was spearheaded by a narrow group of educated, elite males. They were not representative of the communities more widely. Their very ability to write petitions to the government set them apart from the majority who were lacking in both education and avenues to engage the state. The archive is not forthcoming with further contextual information regarding the activists. At most, the names of the leaders

⁸⁸⁶ In 1979, Gurchan Singh died during the protest. *Tribune*, 2 October 1979, p. 3.

⁸⁸⁷ *Tribune*, 2 June 1981, p. 10.

⁸⁸⁸ For some leaders, it may also have had more cultural ends, but this is impossible to tell from the archive. Interviews on this topic also suggested that desires to change their constitutional classification were for more economic reasons than cultural.

⁸⁸⁹ On performativity, see Butler.

of organisations are included in petitions to the government or in press reports. Significantly, though, as individuals with the means to engage in dialogue with the state, they were the ones who had the greatest hand in concretising the ex-criminal tribe as a category of identification. Given that these activists articulated this identity using *vimukta jati*, this is the term that the remainder of this section will employ.⁸⁹⁰ It is important to note, however, that this identification likely had little purchase on an everyday basis for most of the communities whom the activists claimed to represent.⁸⁹¹

The activism in the 1970s-1980s built on earlier forms of representation and mobilisation in Punjab. Since at least the early 1950s, some communities had come together to discuss their grievances.⁸⁹² At first, the organisations they set up were decidedly local. In 1950, for instance, a Criminal Tribes Association existed in the village of Kheri Taowali in Karnal which made representations to the Punjab government on behalf of the local Bhedkut and Kuchband communities.⁸⁹³ By the 1960s, several inter- and intra-state organisations had been established, like the Uttari Bharat Khanabadosh Vimukta Jati Sangh and the Punjab and Himachal Pradesh Vimukta Jatian Sudhar Sabha.⁸⁹⁴ Despite the seeming links across state boundaries, however, the mobilisations in Punjab tended to focus upon the plight of the *vimukta jatis* in that state alone. How far these groups communicated across regions is unclear, as are the different articulations of a *vimukta jati* identity across competing organisations. The activists in Punjab did look to other regions to validate their claims, though. Notably, they drew on examples of communities in other states, such as the Banjaras in Maharashtra and Gujarat, who had

⁸⁹⁰ *Vimukta jati* was embraced by both the communities and the government, with official instructions sent from the Government of India to all state government in 1953 to adopt its usage. In 1958, further instruction advised using denotified tribe. This has since been expanded to the current term Denotified and Nomadic Tribes, which has been adopted by contemporary political activists using the acronym DNT. See 'Letter from Joint Secretary to Government of India, Ministry of Home Affairs, 12 October 1953', Welfare/General B Progs., 1956, File no. 52, PSA; 'Letter from V.P. Mithal, Under Secretary to Government of India, Ministry of Home Affairs, to All State Governments and Union Territories, 25 November 1958', Welfare/General B Progs., File no. 51, PSA.

⁸⁹¹ The limited wider engagement with this mobilisation is suggested in the findings of an ethnographic study into the ex-criminal tribes of Punjab in 2007. Sixty per cent of respondents were not even aware of the schemes available to them as Scheduled Castes. Birinder Pal Singh, p. xlvii.

⁸⁹² In other regions, cross-communal associations emerged within settlements in response to the specific conditions the members experienced there. See Gould, Gandee, and Bajrange.

⁸⁹³ 'From the President, so-called Criminal Tribes Association village Kheri Raowali, P.O. Rawehra, tehsil Kaithal, district Karnal. No. 109, 17 December 1950. Representation on for non-inclusion of the Bhedkut and Kuchband criminal tribes communities in the list of SC', Welfare/General B Progs., 1953, File no. 99, PSA.

⁸⁹⁴ North Indian Denotified and Nomadic Tribe Association, established 1957. Punjab and Himachal Pradesh Denotified Tribes Welfare Association.

successfully altered their constitutional classification.⁸⁹⁵ Mobilisations were only sporadically reported upon in the local press prior to the 1970s, suggesting the activists had little public acknowledgement or effective engagement with the state at this time. The proliferation of organisations claiming to represent the *vimukta jatis* of the region within a short time frame also suggests the lack of a central or coordinated agenda amongst the activists themselves – an issue which has characterised mobilisations through the decades.⁸⁹⁶

By the mid-1970s, political mobilisation amongst the politicised elite of the *vimukta jatis* in Punjab had taken on unprecedented regularity and intensity. The historical milieu surrounding the political agitation were the renewed discussions on the efficacy of compensatory discrimination and again the definition of disadvantage. By then, there was widespread awareness of the utility of the constitutional safeguards for securing increasingly competitive posts in sought-after public employment and education.⁸⁹⁷ Concurrently, the decline of Congress dominance from the 1960s saw the growth in ‘quota politics’ as politicians mobilised the lower castes in socialist and *kisan* movements.⁸⁹⁸ Amid the political turmoil of the 1970s, the Janata Party swept to victory in 1977 following the Emergency. One of their electoral promises was to return the question of the backward classes to the national agenda. The result was a second Backward Classes Commission (1978-1980), popularly known after its chairman B. P. Mandal. Whilst the commission recognised a variety of indicators of backwardness, both social and economic, it again deferred to recognition by way of caste. The aftermath of this – though beyond the bounds of this thesis – was, in Bajpai’s words, ‘a moment of crisis’ which led to the renewed expansion of group-differentiated rights.⁸⁹⁹

An often overlooked yet contemporaneous investigation into the impact of compensatory discrimination was the High Power Panel on Minorities, Scheduled Castes,

⁸⁹⁵ See, for example, ‘Meeting with the President, All India Taprivias and Vimukt Jaties Federation, 13 March 1981’, MHA/HPP, 1980, File no. 73/20/80-HPP, NAI; *Tribune*, 29 January 1983, p. 12.

⁸⁹⁶ Even at meetings of ostensibly ‘national’ *vimukta jati* (now known more frequently under acronym DNT) organisations, the Punjab representatives still tend to demand Scheduled Tribe status even if this conflicts with the organisation’s professed demand. At a national rally held in Delhi in 2016, for example, the Punjab and Haryana representatives demanded Scheduled Tribe status, despite the rally’s demand for a split in the OBC category to include a nine per cent reservation for ex-criminal tribes.

⁸⁹⁷ Middleton notes that these posts have become even more competitive since the liberalisation of India’s economy in the 1990s. Middleton, pp. 8–11.

⁸⁹⁸ Christophe Jaffrelot, *India’s Silent Revolution: The Rise of the Lower Castes in North India* (London: Hurst & Co, 2003).

⁸⁹⁹ In 1989 the Janata Dal government announced its intentions to implement the committee’s recommendations, leading to widespread protests. Bajpai, p. 3. See also Jayal, ‘A False Dichotomy?’

Scheduled Tribes and Other Weaker Sections. In an effort to differentiate her own policies on these groups from that of the Janata Government, Indira Gandhi appointed the panel in 1980 after the Congress had returned to power.⁹⁰⁰ Under the Chairmanship of Dr Gopal Singh, the panel toured the country to assess how far the constitutional safeguards implemented by both the central and state governments had reached those most in need. During its investigations, the panel received countless petitions from community organisations and met delegations of activists.⁹⁰¹ Notably, in 1981 Dr Singh visited Punjab and met a delegation headed by Nirmal Singh Nirmal, then President of the All India Tapriwas and Vimukt Jati Federation, who impressed upon him the plight of the ex-criminal tribes. The 1970s and 1980s were thus a vital juncture in which questions of disadvantage, state recognition, and the responsibilities of government to protect its disadvantaged citizens again came to the fore.

The activists thus seized the opportunity to engage the state and negotiate their status within the constitutional safeguards. They did not necessarily campaign for a new category within compensatory discrimination, however. They instead demanded their reclassification from Scheduled Caste to Scheduled Tribe.⁹⁰² This should be contextualised by noting that after the amalgamation of Lahaul and Spiti with Himachal Pradesh in 1966, Punjab had no declared Scheduled Tribe population.⁹⁰³ Their demand was more a matter of political expediency, therefore – a method of manoeuvring the framework of compensatory discrimination – in order to obtain a separate political space rather than a desire to occupy a specifically tribal one. Unlike the many other claims to Scheduled Tribe status which proliferated across the country in this period, the activists did not situate their demand within the rhetoric of tribal belonging.⁹⁰⁴ Instead, they articulated the distinct identity of the *vimukta jatis*, by constructing a shared mythological past that explained both their misrecognition as Scheduled Castes and their notification

⁹⁰⁰ Steve Wilkinson, 'The UPA and Muslims', in *New Dimensions of Politics in India: The United Progressive Alliance in Power*, ed. by Lawrence Sáez and Gurharpal Singh (Abingdon, Oxon: Routledge, 2012), pp. 68–78 (p. 72).

⁹⁰¹ Both community-specific and cross-communal organisations representing the ex-criminal tribes in Punjab were particularly active in this regard. The All India Rai Sikh Sabha noted in a representation to Gopal Singh dated 29 January 1981 that it had sent petitions evidencing the non-implementation of safeguards for the denotified communities in Punjab to the state government on 10-11-78, 6-1-79, 8-2-79, 28-2-79, 16-4-79, 21-6-79, 26-6-79, 6-12-79, 11-1-80, 26-2-80, 17-3-80, 19-7-80, 6-8-80, 15-9-80, and 24-9-80, as well as to the central government. 'Representation from the All India Rai Sikh Sabha, Gurdip Singh Warwal, Joint Secretary, 29 January 1981', Dr Gopal Singh Private Papers, Subject Files, Serial no. 3, NMML.

⁹⁰² Activist movements in other states have called for a separate constitutional quota for DNTs.

⁹⁰³ The Tibetans of the Scheduled Areas of Lahaul and Spiti were the only Scheduled Tribe in Punjab.

⁹⁰⁴ For an exploration of the ethnographic logics of tribal belonging see Middleton.

as criminal tribes. In doing so, they reinforced the ex-criminal tribe as an authentic and legitimate category of state identification.

Faced with a diversity of local cultures, ethnic identities and forms of socio-economic deprivation amongst the communities they claimed to represent, the activists articulated a shared mythological heritage. This both demonstrated the (imagined) common bonds between communities and legitimatised their claims to separate status. In order to convert their contemporary marginalisation into a politics of recrimination, the activists had to locate a site of blame, a past of injury.⁹⁰⁵ Interestingly, the activists located this injury in an historic expulsion which, they argued, explained their contemporary cultures of mobility and illegality. The communities' notification as criminal tribes was thus portrayed more as the *result* of their collective injury, rather than the *cause* of it. Importantly, through this myth the activists clearly differentiated between the *vimukta jatis* and the untouchables; their classification as Scheduled Caste was portrayed as an official misrecognition of their true status.

The utilisation of historical myth was, in many respects, similar to other instances of caste assertion and mobilisation in colonial and postcolonial India.⁹⁰⁶ The Ad-Dharm movement in Punjab from the 1920s, for example, claimed that India's untouchables belonged to 'an ancient race which ruled India about 5000 years ago, prior to the invasion of India by the Aryans' who had forced them to work in servitude.⁹⁰⁷ As Mark Juergensmeyer states, this was 'a myth of power addressed to a people without power'.⁹⁰⁸ The similar and contemporaneous Adi-Hindu movement in the United Provinces, Nandini Gooptu argues, was a way for the lower castes to redefine their subjectivities as both political actors and human agents.⁹⁰⁹ Notably, many of these movements opposed the caste hierarchy. Conversely, the *vimukta jati* activists, as we shall see, remained firmly wedded to it. In this way, they had more in common with the multitude of low caste and untouchable organisations that, especially from the early 1900s, appealed to the

⁹⁰⁵ On the politics of injury, see Wendy Brown, p. 74.

⁹⁰⁶ See, for example, Nandini Gooptu, *The Politics of the Urban Poor in Early Twentieth-Century India* (Cambridge: Cambridge University Press, 2001); Mark Juergensmeyer, *Religion as Social Vision: The Movement against Untouchability in 20th Century Punjab* (Berkeley, CA: University of California Press, 1982); Owen M. Lynch, *The Politics of Untouchability: Social Mobility and Social Change in a City of India* (New York, NY: Columbia University Press, 1969); Lucia Michelutti, *The Vernacularisation of Democracy: Politics, Caste, and Religion in India* (New Delhi: Routledge, 2008).

⁹⁰⁷ 'Memorial from the Punjab Ad Dharm (i.e. Aborigine) Mandal, Jullunder City,' Indian Statutory (Simon) Commission/Memoranda and Evidence/Punjab, 1928-29, Q/13/1/13, IOR.

⁹⁰⁸ Juergensmeyer, p. 46.

⁹⁰⁹ Gooptu, p. 143.

government to recognise their higher ritual status.⁹¹⁰ The Punjab Depressed Classes Mission, for instance, demanded in 1928 that untouchables be ‘designated as “Statutory Rajputs” because it is a fact admitted beyond proof that our ancestors were once Rajputs but were owing to certain causes ostracised [*sic*] by the society’.⁹¹¹

The myth articulated by the activists similarly centred on a lost Rajput or *Kshatriya* heritage. They claimed the communities shared descent from Raja Sans Mal, brother of Maharana Pratap of Mewar, one of the erstwhile princely kingdoms in Rajputana. This ancestry had been obscured by a historic displacement which led, in turn, to their misrecognition as untouchables. In a writ petition submitted to the Punjab and Haryana High Court in 1975 in an attempt to legally challenge their constitutional classification, Buta Ram Azad historicised the communities as being

Vimukat Jatis which were earlier known as criminal tribes during the British regime [...] their ancestor were in fact Rajputs and they migrated from Mewar to different parts of the country in the 16th century and acquired nomadic character. These tribes did not cooperate with the British regime and because of the nomadic character became educationally and economically backward.⁹¹²

This myth was not constructed out of thin air. It was created through an assemblage of varied historic events, folklore, memories and mythologies – combining to form what Lucia Michelutti terms an ‘ethno-historical imagination’.⁹¹³ Michelutti emphasises ‘heritage’ to describe this process, with reference to the Yadavs of Uttar Pradesh, because ‘it conveys what Yadav scholars and experts have *chosen* to inherit and pass on to the next generations as well as the plethora of resources they have chosen to use’.⁹¹⁴ What distinguished the *vimukta jati* activists, though, is that they were constructing an ‘ethno-historical imagination’ for a bureaucratically-derived category which encompassed a wide

⁹¹⁰ Caste organisations had lobbied the government for higher ritual status since the late 1800s but their frequency grew significantly from the early 1900s, partly in response to the ranking of castes per the Hindu hierarchy in the decennial census of 1901. Lucy Carroll, ‘Colonial Perceptions of the Indian Society and the Emergence of Caste(s) Associations’, *Journal of Asian Studies*, 37.2 (1978), 233–50.

⁹¹¹ ‘Memorial from the Punjab Depressed Classes Mission (Sundar Singh, Secretary)’, Indian Statutory (Simon) Commission/Memoranda and Evidence/Punjab, 1928-29, Q/13/1/13, IOR.

⁹¹² *Buta Ram Azad and others, petitioners v. Union of India and another, respondents*. Civil writ petition no. 132 of 1975, 5 November 1982. Punjab-Haryana High Court, *The All India Reporter, volume 70, 1983, Punjab and Haryana Section* (Nagpur: All India Reporter Ltd., 1983), pp. 230-232.

⁹¹³ Michelutti, p. 168n.

⁹¹⁴ *Ibid.*

variety of ethnic and caste communities within it. They were also doing so for distinctly political ends.⁹¹⁵

Significantly, the activists deployed key concepts that were common to the cultural heritage of the more dominant communities.⁹¹⁶ This is clear when we compare the myth performed by the *vimukta jati* activists with similar mythologies long articulated by some of the (more dominant) criminal tribes. Colonial ethnographies and census reports from the late 1800s had also reported that certain communities, notably Bawarias and Sansis, claimed their descent from Rajput nobility.⁹¹⁷ In *A Handbook of the Criminal Tribes of Punjab* (1912), for instance, V. P. T. Vivian noted that, 'Every Bawaria claims as his place of origin the Rajput stronghold of Chitaur in Udaipur State, and dates the degradation of his race from some catastrophe to the Rajput power, which may possibly have been the sack of that city by Alá-ud-din Khilji, King of Delhi, in the year 1305, A.D.'⁹¹⁸ Although historical accounts varied across communities, a common narrative was the expulsion from ancestral lands (often in Rajputana) which led to their becoming *khanabadosh*, or the forced carrying of one's 'home on their back'.⁹¹⁹ In this way, their myth was similar to those of many peripatetic communities in South Asia who explain their nomadism by way of a historic exile, often resulting from a societal transgression.⁹²⁰

The myth had been articulated by some of the criminal tribes in the more recent past, too. In 1951, for instance, a Bawaria *panchayat* in Hissar sent a petition to the deputy commissioner decrying their inclusion within the Scheduled Castes. They justified their stance by claiming that,

[W]e are Rajputs belonging to Rajput Gots [...] Originally we belong to Rajputana from where we were pushed out by Musalmans who wanted to convert us to Mohammadanism We saved our religion and female folk by leaving Rajputana and taking shelter near a Bawari. The Mohammandans even followed us there where we saved ourselves by calling ourselves

⁹¹⁵ Certain individuals, now and then, clearly identified with this myth in a more cultural sense. Given the diverse array of communities, themselves internally heterogeneous, the extent to which this took place is unknown.

⁹¹⁶ This myth was shaped by the traditions of the more prominent communities, particularly those associated with the kinship group of Bhandus, which includes, amongst other communities, the Kanjar, Nat, Sansi, Bhedkut and Chhara.

⁹¹⁷ Kishan Kaul and Tomkins; Ibbetson; Vivian.

⁹¹⁸ Vivian, p. 4.

⁹¹⁹ *Tribune*, 22 February 1947, p. 10.

⁹²⁰ Neeladri Bhattacharya notes that many nomadic artisans and entertainers had a powerful notion of *izzat* (pride) in their freedom of movement, but this was accompanied by feelings of shame that mobility was a misfortune. Neeladri Bhattacharya, 'Predicaments of Mobility: Peddlers and Itinerants in Nineteenth-Century Northwestern India', in *Society and Circulation: Mobile People and Itinerant Cultures in South Asia 1750-1950*, ed. by Claude Markovits, Jacques Pouchepadass, and Sanjay Subrahmanyam (London: Anthem Press, 2006), pp. 163–214 (pp. 192–93).

“Bawari-wala” and not Rajputs which came to be pronounced as “Bawariya” and now we have come to be known as “Bawari”. The fact that we are descendants of Rajputs can be proved by Bhats or Jaga who generally keep pedigree table of various families who visit religious places.⁹²¹

Just as Owen M. Lynch has shown for the Jatavs of Agra, the Bawarias needed proof that would legitimatise their claim to Rajput ancestry.⁹²² Similar to the Jatavs, the Bawarias referred to *gotras*, genealogy and blood-ties. By the 1970s-1980s, however, the activists had turned to more ‘scientific’ proof to legitimatise their claims, appropriating the findings of colonial/postcolonial ethnography. In a memorandum sent to the High Power Panel, Nirmal Singh Nirmal referred to ‘the eminent authorities on the subject’.⁹²³ According to the Criminal Tribes Act Enquiry Committee of 1949-1950, he stated, the ex-criminal tribes belonged ‘to Rajput families of Rajasthan who were rendered homeless by the ups and downs of history’.⁹²⁴ Nirmal also quoted Denzil Ibbetson, superintendent of the 1881 census, and General Cunningham’s writings in 1849 to the same effect.⁹²⁵ Turning to postcolonial evidence, he referenced a 1963 paper by Dr Mehta of the Tata Institute of Social Sciences in Bombay, in which the ex-criminal tribes were described as belonging ‘to Rajput family’.⁹²⁶

An important distinction between the myth deployed by the *vimukta jatis* and those of other low caste groups prior to independence, however, was in what Lynch terms their ‘problem of explanation’ – or how they came to be mistaken for their present identity as untouchables.⁹²⁷ The Jatavs, Lynch shows, blamed their historic degradation on oppression by the higher castes, particularly *Brahmans*.⁹²⁸ The Bawarias in the 1950s identified an alternate negative reference group: Muslims. In their petition above, similar to the colonial ethnographies, the expulsion resulted from the expansion of Muslim power, notably the Delhi Sultanate, in the subcontinent. How far the Bawarias’ emphasis upon Muslim oppression in the 1950s was influenced by Partition is difficult to tell, although their invocation of displacement in order to save ‘our religion and female folk’

⁹²¹ ‘Copy of petition from the members of the Panchayat of Dewwali Rajputs (Bawries) on behalf of Dewwali Rajputs of District Hissar and Pepsu to His Excellency the Governor of the Punjab State, Simla, 17 October 1951’, Welfare/General B Progs., 1953, File no. 99, PSA. This narrative of the bawari/baoli can also be found in colonial ethnographies, see *A Glossary of the Tribes and Castes of the Punjab and North-West Frontier Province*, ed. by H.A. Rose (Lahore: Govt. Printing Press, 1911), II, p. 73.

⁹²² Lynch, p. 72.

⁹²³ Petition contained in ‘Seventeenth Meeting of the Panel to be held on 27th July 1982’, MHA/HPP, 1980, File no. 64/23/80-HPP, NAI.

⁹²⁴ Ibid.

⁹²⁵ Ibid.

⁹²⁶ Ibid.

⁹²⁷ Lynch, p. 72.

⁹²⁸ Ibid.

has clear commonalities with narratives of Partition violence and migration.⁹²⁹ The activists in the 1970s-1980s did not make an explicit link to Muslims, although the reference to the sixteenth century could allude to the expansion of the Mughals. The negative reference group in this period, though framed in terms of causing a more contemporary degradation, was now the Scheduled Castes, whom denied the *vimukta jatis* access to the constitutional safeguards – a point to which we return below. For now, the key concept the activists inherited from the earlier narratives was that their contemporary degradation was rooted in a historic expulsion or displacement.

For the *vimukta jatis*, the activists argued, it had been their historic displacement from Mewar and the forced adoption of nomadic behaviour as a consequence which obscured their higher ritual status as Rajputs as it had led to their cultures of mobility and illegality. Rather than portray the rich history of nomadism in the subcontinent, the activists blamed it for their previous ‘criminality’. Nomadism, they claimed, had engendered a material and social disadvantage, framed in terms of educational and economic backwardness. The association between nomadism and backwardness was long established.⁹³⁰ In the first Backward Classes Commission, for example, as noted at the beginning of this chapter, one the communal descriptors of backwardness was: ‘Those nomads who do not enjoy any social respect and who have no appreciation of a fixed habitation and are given to mimicry, begging, jugglery, dancing, etc.’⁹³¹ The activists thus staged protests which visibly demonstrated their traditional livelihoods and long-standing association with nomadism – appealing to the criteria long recognised by the state. During several rallies in Chandigarh in 1981, for instance, the protestors brought with them ‘buffaloes, cows, mares, pigs, sheep, goats, monkeys and bears’.⁹³²

The consequence of the material and social disadvantages engendered by nomadism, the activists claimed, was their forced adoption of criminal behaviour, often begging and petty theft. In a representation to Indira Gandhi in 1982, Buta Ram Azad made a clear association between the communities’ criminal behaviour (‘evils’, ‘crimes’ and ‘corruption’) and their traditional cultures of mobility (‘beggary’ and ‘wandring [*sic*] form [*sic*] place to place’):

I may assure you that I will remove beggary, evils, [bad] habits[,] crimes and every sort of Corruption from the Vimukti Jaties (Denotified Tribes), if the

⁹²⁹ See Menon and Bhasin, *Borders & Boundaries*.

⁹³⁰ Bhattacharya, ‘Predicaments of Mobility’.

⁹³¹ *Report of the Backward Classes Commission, Volume 1*, p. 46.

⁹³² *Tribune*, 23 February 1981, p. 9.

chance is given to me. I assure you by oath that I will abolish their wandering [sic] form [sic] place to place and engage them in small industries to earn their livelihood honestly by working hard.⁹³³

Their enforced criminal behaviour led, in turn, to their eventual notification as criminal tribes. It was within this fall from sedentary grace, as it were, that the activists situated their injurious claim: historic expulsion and consequent degradation had led to their contemporary disadvantage. This claim was clearly complicated by the fact that not all the *vimukta jatis* in Punjab, or elsewhere, were nomadic, traditionally or presently, nor were all nomadic communities notified under the Act. Such complications reveal the somewhat artificial nature of the political identity which the activists were constructing. Yet, the myth offered an explanation to the root of their contemporary disadvantage: mobility, as opposed to religion, ritual or primitivism. Significantly, the activists emphasised that their material and social disadvantages, whilst similar in nature to that of untouchability, were different in origin.

This was the crux of their argument: that historic displacement and consequent criminalisation had obscured their higher ritual status. The *vimukta jatis*, the activists claimed, had suffered from an official misrecognition, or mistaken identity, in their labelling as Scheduled Caste: ‘The petitioners Vimukat Jatis are not the untouchables’ wrote Azad in his writ petition to the High Court.⁹³⁴ The ‘sole grievance’ of the petitioners, he continued, was that they ‘do not have the characteristics of Scheduled Castes and could not be including [sic] in the Constitution (Scheduled Castes) Order, 1950’.⁹³⁵ Indeed, Azad and his fellow petitioners challenged the very validity of the Order given their assumed status as Rajputs. Again, this claim inherited key concepts from earlier, community-based, narratives. The Bawaria petition of 1951 had similarly protested that the community’s inclusion amongst the Scheduled Castes was ‘wrong’ and warned that in the upcoming elections they would ‘not vote with scheduled caste but like other Hindus we will vote’.⁹³⁶

This argument derived, in part, from the complex hierarchies and caste distinctions practiced in everyday settings. As Mark Juergensmeyer notes, with reference

⁹³³ ‘Petition from Vimukat Jati (Denotified) Tribe Cell (part of All India Congress Committee), 24 February 1982’, MHA/HPP, 1980, File no. 64/22/80, NAI.

⁹³⁴ *Buta Ram Azad and others, petitioners v. Union of India and another, respondents*.

⁹³⁵ *Ibid.*

⁹³⁶ ‘Copy of petition from the members of the Panchayat of Dewwali Rajputs (Bawries) on behalf of Dewwali Rajputs of District Hissar and Pepsu to His Excellency the Governor of the Punjab State, Simla, 17 October 1951’, Welfare/General B Progs., 1953, File no. 99, PSA.

to Bhatinda district in Punjab, the ‘Chamars refer to the Chuhra caste as “Harijan,” but exempt themselves from that term [...] The Chuhras, though they accept the word “Harijan” for themselves, reserve the label “Untouchable” for the vagrant castes: gypsies and nomadic tribes, whom they regard as even lower than themselves’.⁹³⁷ The designation ‘untouchable’ thus masks over manifold internal divisions and restrictions. The activists, similarly, used the myth to re-position themselves and validate their claims to higher ritual status. Importantly, though, they were not doing so on behalf of particular ethnic or caste affiliations, but rather for the *vimukta jatis* as a group. This official misrecognition had damaged more than their ritual or social standing, they claimed. In their various interactions with the state in this period, the activists foregrounded the inability of the *vimukta jatis* to access the safeguards supposedly reserved for them through their designation as Scheduled Caste. The more immediate cause of their contemporary disadvantage, then, were the other, ‘true’, Scheduled Castes.

For example, in 1981 Dr Gopal Singh met a delegation headed by Nirmal Singh Nirmal and Raunki Ram Bazigar, the President and Secretary, respectively, of the All India Taprivas and Vimukt Jaties Federation in Chandigarh, as part of the investigations of the High Power Panel. ‘The benefits were derived by the advanced dominant castes amongst the Scheduled Castes like Chamar (Ramdasis) etc.’, the delegation claimed.⁹³⁸ These groups had ‘political patronage and therefore manage to get lion’s share of the various benefits and concessions’ promised by reservation.⁹³⁹ The *vimukta jatis*, conversely, ‘have no political backing and have tended to get lost in democratic process’.⁹⁴⁰ In an earlier deputation led by Nirmal to the Chief Minister of Punjab, Parkash Singh Badal, in 1978, he pointed out ‘that not one out of 30 Scheduled Caste M.L.A.s [Member of the Legislative Assembly] in Punjab belonged to these tribes [...] out of 16 I.A.S. [Indian Administrative Service], 17 I.P.S. [Indian Police Service], 28 P.C.S. [Provincial Civil Service] and 90 other gazetted officers of the Scheduled Castes in Punjab not a single officer belonged to the nomadic tribes’.⁹⁴¹ Obtaining state recognition of their *separate* status amongst the disadvantaged had clear instrumental purposes, then, in terms of

⁹³⁷ Juergensmeyer, p. 16.

⁹³⁸ ‘Meeting with the President, All India Taprivas and Vimukt Jaties Federation, 13 March 1981’, MHA/HPP, 1980, File no. 73/20/80-HPP, NAI.

⁹³⁹ Ibid.

⁹⁴⁰ Ibid.

⁹⁴¹ *Tribune*, 19 January 1978, p. 3.

facilitating their access to the reserved places in education, employment and, importantly, politics.

The purpose of compensatory discrimination had, according to the activists, therefore ‘been badly defeated’.⁹⁴² The promises – of freedom from inequalities, discrimination and socio-economic deprivation – seemingly represented by the developmental regime inaugurated by the early postcolonial government had gone unrealised. This linked to a further aspect of their demands: the *unfreedom* of independence. Somewhat paradoxically, the activists claimed that the *vimukta jatis* were worse off after 1947, and indeed 1952, than under colonial rule. This drew parallels with wider narratives of colonial nostalgia, in which the hoped-for futures promised by anti-colonialism have collapsed under the weight of corruption and authoritarianism.⁹⁴³ Rather than merely drawing attention to the unrealised promises of independence, however, the activists reinterpreted the very meaning of freedom itself. If we understand freedom to be ‘a relational and contextual practice that takes shape in opposition to whatever is locally and ideologically conceived as unfreedom’, rather than an absolute concept in itself, it offers a perspective to understanding their demands.⁹⁴⁴

With the repeal of the Criminal Tribes Act on 31 August 1952, freedom was temporarily achieved as the physical bonds of legal restriction were lifted. In this sense, freedom was conceived in relation to the particular settlements and state practices that local communities experienced.⁹⁴⁵ The repeal of the Act also meant, however, that the communities’ status as a subjects of direct state control was also, ostensibly at least, removed.⁹⁴⁶ This led to the withdrawal of the targeted developmental and rehabilitative agenda, and may indeed have influenced the lack of a separate constitutional designation. Despite the punitive nature of colonial settlements, the attempted reclamation of the criminal tribe had provided (albeit often unstable) access to land, housing and work. Indeed, the Chairman of the Delhi Improvement Trust had noted in 1939 that the families who resided in the supervised colony at Andha Moghal were ‘a recognised

⁹⁴² ‘Meeting with the President, All India Taprivas and Vimukt Jaties Federation, 13 March 1981’, MHA/HPP, 1980, File no. 73/20/80-HPP, NAI.

⁹⁴³ David Scott, *Conscripts of Modernity: The Tragedy of Colonial Enlightenment* (Durham, NC: Duke University Press, 2004).

⁹⁴⁴ Wendy Brown makes this argument by drawing on Jean-Luc Nancy, *The Experience of Freedom*, trans. by Bridget McDonald (Stanford, CA: Stanford University Press, 1993). Wendy Brown, p. 6.

⁹⁴⁵ There was still only limited articulation of a collective criminal tribe freedom in 1952.

⁹⁴⁶ This statement should be qualified with acknowledgement of the enactment of habitual offender legislation and continuation of informal penal practices, as we saw in the previous chapter.

responsibility of Government'.⁹⁴⁷ After independence, and especially from the 1960s, this responsibility disappeared – reflected in the gradual disintegration of targeted welfare policies for the ex-criminal tribes. Their lack of a distinctive status within the framework of compensatory discrimination thus complicates what we might understand as freedom.

By performing the criminal tribe, the activists sought to reclaim this status. In 1978, the Uttari Bharat Khanabadosh Vimukta Jati Sangh led a deputation to the Chief Minister. The Sangh requested the separate recognition of the *vimukta jatis* within the constitutional safeguards and drew attention to their lack of representation in government office. Remarkably, the deputation also sought the re-establishment of the Criminal Tribes Department which, it argued, was abolished in 1952 'without any justification'.⁹⁴⁸ The Department, the deputation claimed, had been established 'in 1871 under the Criminal Tribes Act to uplift these tribes'.⁹⁴⁹ The historical inaccuracy of the date aside, the Sangh made a clear correlation between the Department and the responsibility of the government to rehabilitate the communities. 'With the repeal of [the Criminal Tribes] Act on August 31 1952', the Sangh continued, 'major concessions available under the Act were withdrawn'.⁹⁵⁰

This is a clearly uncomfortable line of argument to acknowledge, considering the highly derogative, racialised and prejudiced theories that were used to legitimatise both the restriction and reclamation of the criminal tribes. It reflects the self-selecting and contingent nature of historic memory, as well as the variable experiences of those notified under the Act.⁹⁵¹ Yet, it also reveals that, at least in these political demands, the moment which is often assumed to represent their freedom – as the category of the criminal tribe was (ostensibly, at least) removed from state governance – in fact signified their *unfreedom*, as the category was their principal means through which they could interact with the state. Given the continued reliance on forms of communal identification in postcolonial India, especially within the developmental regime, the repeal of the Criminal Tribes Act did not

⁹⁴⁷ 'Letter from the Chairman, Delhi Improvement Trust, New Delhi, to the Chief Commissioner, Delhi, 9 August 1939', Education, Health & Lands/Forests & Lands, 1939, File no: 29-61/59-F+L, NAI.

⁹⁴⁸ *Tribune*, 19 January 1978, p. 3.

⁹⁴⁹ *Ibid.*

⁹⁵⁰ *Ibid.*

⁹⁵¹ This thesis does not attempt to grapple with the lived experiences of the communities themselves, yet this contention that notification under the Criminal Tribes Act did provide opportunities which were removed after independence was vocalised in several interviews with older members of the Bhedkut community in Delhi, whom had migrated from Punjab during Partition.

merely represent the dissolution of the criminal tribe as a category of penal control, but of their means of state recognition more broadly.

The activists had some success. In 1982, the High Court reached a decision regarding Azad's writ petition. The judge concluded that the *vimukta jatis* 'were wrongly included in [the Scheduled Castes] order' and recommended that the Punjab government include them in the list of Scheduled Tribes.⁹⁵² 'Since they are not socially, educationally and economically backward, arising out of tradition[al] practice of untouchability' he stated, 'they could not be included in the list of the Scheduled Castes.'⁹⁵³ A couple of years later, in September 1983, the High Power Panel reached a similar conclusion. It recommended that, 'The ex-criminal tribes should be included in the Scheduled Tribes and not in the Scheduled Castes.'⁹⁵⁴ In the end, the report by the High Power Panel was shelved also immediately on its release and there was no implementation of its recommendation, nor that of the court, by the Government of India.⁹⁵⁵ From 1986, the activists in Punjab became less vociferous in their campaigns.⁹⁵⁶ Until today, the *vimukta jatis* in Punjab remain classified as Scheduled Caste. Yet – importantly – these recommendations reveal that at least in certain spheres of governance, especially at a more regional level in Punjab, the ex-criminal tribe remained an intelligible category for the state. Whilst it was not recognised formally within the framework of compensatory discrimination, nor in targeted welfare schemes, it was still a tangible marker of identification; it was the means through which the *vimukta jatis*, even if only informally and partially, were recognised by the state.

This owed, in large part, to the activists, whose actions concretised the ex-criminal tribe as the category through which they should interact with the state. Their demands were multi-layered, contingent on local circumstance, and were often articulated by different organisations with competing agendas. Yet, as this section has shown, their combined actions reinforced the tropes which characterised the category of the ex-criminal tribe: mobility and illegality. As such, they entrenched the very modalities of exclusion and subordination which their politics attempted to overcome.⁹⁵⁷ This, perhaps,

⁹⁵² *Buta Ram Azad and others, petitioners v. Union of India and another, respondents.*

⁹⁵³ *Ibid.*

⁹⁵⁴ 'Directives given in the meeting of the High Power Panel held on 8 September 1983', MHA/HPP, 1980, File no. 64/47/80, NAI.

⁹⁵⁵ The report was only published in 1990 by the National Front Government a few days after Gopal Singh's death.

⁹⁵⁶ This coincided with the emergence of a more concerted inter-state movement that was most active in western India and took the lead in negotiating the constitutional position of the communities.

⁹⁵⁷ Wendy Brown, p. 12.

explains the lack of success to the movement – at least in terms of official reclassification. To obtain state recognition of the *vimukta jatis* as a separate category of disadvantaged citizen, the activists had to embrace the criminalising discourse that had marginalised them. This marker of identity was fundamentally alienating; it confirmed the negative discourses surrounding the communities and distanced them from civil society.⁹⁵⁸ Any attempts they might make to attain the safeguards which promised their assimilation into society demanded their articulation of an identity that simultaneously alienated them from it. The *vimukta jati* activists therefore not only demonstrate the ‘conundrum of equality’, or the paradox of group rights, which Scott outlined, but take it to its fullest implications.

Conclusion

In 1996, after some renewed mobilisations, the Welfare Department in Punjab agreed to include the designation of *vimukta jati* on the caste certificates issued to the ex-criminal tribes. Whilst the communities remained classified as Scheduled Caste, there was limited, albeit somewhat ineffectual, recognition of their separate status.⁹⁵⁹ There remained a clear tension, therefore, between the continued relevance of the ex-criminal tribe for the state – as it was given sanction in certain arenas of governance – and the denial of the category within the framework of compensatory discrimination or targeted welfare schemes. This can be partly attributed to the contentious political landscape regarding reservations in India.⁹⁶⁰ Yet, as demonstrated by this chapter, it also needs locating in a longer historical trajectory. Tracing the shifting and increasingly contested status of the criminal tribe as a category of welfare from the 1910s revealed the complex, evolving and sometimes contradictory processes of state identification across independence.

The criminal tribe, on the one hand, became an increasingly indistinct category of welfare; it seemingly lost its intelligibility for the state. The colonial period saw its gradual dissolution within the definition of the depressed classes. Although the criminal tribe had once been considered a separate category alongside untouchable and tribal groups, the concerns over minority representation – especially those articulated by Ambedkar – within the debates on constitutional reform in the interwar period saw it omitted from

⁹⁵⁸ This argument was set forth in a jointly authored publication. Gould, Gandee, and Bajrange.

⁹⁵⁹ Singh notes this designation was not recognised beyond Punjab, and actually proved an obstacle to gaining employment. Birinder Pal Singh, pp. xli–xlii.

⁹⁶⁰ The suggestion of extending reservations as per the Mandal Report led to widespread protests, for example. There are ongoing political protests both in favour and opposing reservations. See, for example, recent Jat protests in Haryana: <https://www.thehindu.com/specials/jat-quota-protests-what-is-it-all-about/article14091994.ece1> [last accessed 27 August 2018].

the Government of India Act, 1935. Similarly, after independence, it was not included in the safeguards for disadvantaged groups inaugurated by the constitution of 1950. By the 1960s, even targeted welfare schemes failed to recognise the separate category of the now ex-criminal tribes, leading to political mobilisation amongst a politicised elite to reclaim their erstwhile status. As an official marker of identification, therefore, the criminal tribe had become somewhat redundant.

Against this picture of increasing irrelevance, however, there was also renewed articulation of the criminal tribe as a tangible, and indeed separate, category within the postcolonial state's developmental regime, at least in the late 1940s and 1950s. The criminal tribe was a pervasive influence upon the state actors debating the definitions of disadvantage within national-level commissions, as well as upon those attempting to classify communities on the ground. In Punjab, at least, the criminal tribe was likely a more intelligible category for state administrators – like the DCCT – who had long been involved in the implementation of the Criminal Tribes Act, as opposed to the newer categories of Scheduled Caste and Scheduled Tribe. In the 1950s, at least, the Government of India oversaw targeted welfare schemes for the ex-criminal tribes. Far from independence marking the dissolution or undermining of the category of the criminal tribe, the developmental agenda of the postcolonial state re-embedded it within government policies and practices, although now in structures and ideologies consonant with the professed ideals of the nation.

This contradiction can be rooted, partly, in the ambiguities that characterised these processes of state identification. Scholars have noted the 'messy' nature of these bureaucratic categories on the ground, as well as the impossible task for the administrators who had to slot complex and fluid identities neatly within them.⁹⁶¹ This was clear to see in the incoherent classification of communities in the years after independence in Punjab. Yet, the constitutional categories were themselves ill-defined and subject to vastly divergent interpretations, at all levels of the state. The many problems of classification resulted as much from these uncertainties within national government and the official commissions appointed to define criteria, as the diffraction of these definitions on the ground. In this context of uncertainty, the criminal tribe retained an intelligibility as a long-standing and recognisable category, even if only as an informally or contingently-understood one.

⁹⁶¹ Dudley-Jenkins.

The criminal tribe had pertinence beyond official identification, however. Whilst individuals retained their multiple and overlapping local and kinship affiliations, some (and only some) identified – to varying degrees and for divergent purposes – with the category of the criminal tribe. They recognised that the Criminal Tribes Act had placed attendant responsibilities on the government; penal scrutiny was accompanied, in certain cases, with access to land, housing and work. Once this responsibility dissipated after August 1952, activists mobilised to regain their distinct status within the developmental regime. Through their interactions with the state, these activists deployed the same tropes that characterised the criminal tribe: mobility and illegality. In the process, they too reified it as a legitimate and authentic marker of identification. Whilst it may have only had limited purchase beyond this narrow band of activists, these interactions concretised the criminal tribe as an intelligible category for the state.

The contradiction of the criminal tribe reflected some of the wider tensions inherent in the strategies of compensatory discrimination written into the constitution of 1950. The constitutional safeguards for disadvantaged groups were conceded by the Constituent Assembly as a necessary, but theoretically temporary, measure to facilitate the social and economic advancement of certain groups, for whom the fundamental right to equality was rendered redundant by long-standing and entrenched inequalities. At the same time, however, these safeguards reproduced the forms of disadvantage they intended to mitigate. As Jayal writes, “To become a citizen required being marked, but paradoxically the very act of getting marked meant the entrenchment of one’s exclusion from substantive citizenship.”⁹⁶² The criminal tribes were caught awkwardly within this paradox, though. They were certainly far from the unmarked citizen, as they faced multiple forms of discrimination and disadvantage which precluded their equal access to education, employment and opportunities. Yet, they were not formally marked citizens within the framework of compensatory discrimination either. Similar to the findings of the previous chapters, their rights of citizenship and inclusion within the postcolonial nation therefore remain negotiated and incomplete.

⁹⁶² Jayal, *Citizenship and Its Discontents*, p. 19.

CONCLUSION

On 1 August 2016, Kiran Bedi, the Lieutenant-Governor of Puducherry, triggered a social media maelstrom. A few days previously, a brutal gang rape had taken place along a highway near Bulandshahr, Uttar Pradesh. Three individuals of the Bawaria community were quickly implicated and subsequently convicted of the crime, although later developments have questioned their culpability.⁹⁶³ When the news story broke, Bedi took to twitter. ‘Ex-criminal tribes are known to be very cruel’, she wrote, ‘They are hardcore professionals in committing crimes. Rarely caught and/or convicted...’⁹⁶⁴ Bedi was not alone. Newspaper after newspaper published inflammatory articles on the history, character and the all-important *modus operandi* of the Bawarias, as well as other erstwhile criminal tribes.⁹⁶⁵ In response, activists and academics denounced the use of such terminology.⁹⁶⁶ Less than a month later, activists belonging to these communities came together to celebrate *vimukti divas* (liberation day) on 31 August – the sixty-fourth anniversary of the repeal of the Criminal Tribes Act.⁹⁶⁷ Within the short space of a month, the category of the criminal tribe was deployed for markedly different ends. Over seventy years since independence, the criminal tribe remains, as S. W. Gracey wrote in 1914, a category in ‘everyday parlance’.⁹⁶⁸

The category still has relevance for the state, too. The communities remain subject to penal scrutiny in contemporary India. As late as 2014, the district court of Patiala’s website publicly identified the Sansis as a ‘criminal tribe’ whose offences included ‘house

⁹⁶³ Later arrests in Haryana led to ‘confessions’ of involvement in the rape. See *Hindustan Times*, 30 October 2017, <https://www.hindustantimes.com/noida/cbi-to-probe-role-of-haryana-accused-in-bulandshahr-gang-rape-case/story-sBZ0KArBjIgvIP1rjya7cO.html> [last accessed 24 August 2018].

⁹⁶⁴ Twitter, @thekiranbedi, 1 August 2016.

⁹⁶⁵ See <https://www.thehindu.com/news/national/other-states/Bulandshahr-gangrape-Who-are-the-Bawariya-tribe/article14550810.ece>; <https://www.abplive.in/india-news/10-facts-about-scary-and-notorious-bawariya-gang-390243> [last accessed 24 August 2018].

⁹⁶⁶ See <https://scroll.in/article/813139/kiran-bedis-slur-against-cruel-ex-criminal-tribes-proves-that-age-old-prejudice-is-still-alive>; <https://timesofindia.indiatimes.com/city/jaipur/NGOs-protest-Kiran-Bedi-tweet-on-ex-criminal-tribes/articleshow/53634157.cms> [last accessed 24 August 2018]. An online petition to the President of India was started by the National Alliance Group of Denotified and Nomadic Tribes: <https://www.change.org/p/the-president-of-inida-stop-stigmatisation-of-denotified-tribe-ex-criminal-tribe> [last accessed 24 August 2018].

⁹⁶⁷ Meetings were held in Gujarat, Rajasthan, Maharashtra, Bihar and Delhi, at least. <https://www.actionaidindia.org/blog/the-journey-towards-liberation-celebrating-vimuktidiwas/> [last accessed 30 August 2018].

⁹⁶⁸ ‘Note by S.W. Gracey, Legal Remembrancer to Government, Punjab, 27 April 1914’, Home/Police A Progs., November 1914, Nos. 1-9, File no. 25, PSA.

breaking, highway robbery, dacoity, theft of standing crops and corn from stacks'.⁹⁶⁹ It is not hard to find multiple, and harrowing, instances of police brutality and vigilante justice.⁹⁷⁰ After the death of Budhan Sabar in police custody in 1998, Mahasweta Devi, Ganesh Devy and Laxman Gaikwad founded the Denotified and Nomadic Tribes Rights Action Group – an organisation which has campaigned against their continued harassment.⁹⁷¹ Within the developmental regime, too, debates continue over the state's responsibility to the communities. The estimated twenty million individuals belonging to the ex-criminal tribes today are amongst the most socio-economically deprived in contemporary India.⁹⁷² Beyond the persistence of a criminalising stigma, there is endemic poverty resulting from a lack of education and employment.⁹⁷³ Many communities struggle to access healthcare and even recognition as citizens without the requisite identity documentation.⁹⁷⁴ Successive governments have appointed commissions to investigate their conditions, although with little effect.⁹⁷⁵

The criminal tribe thus remains a tangible category of state identification, in both the penal and welfare practices of the state. The question at the heart of this study has been *why* and *how* this is the case, given the repeal of the Criminal Tribes Act in 1952. Whilst its findings offer a fresh perspective on an overlooked period in the history of the Act, namely the post-independence years, the above demonstrates that it has importance beyond academic scholarship. As noted in the introduction to this study, academics and journalists have tended to draw a direct causal connection between the enactment of the legislation in 1871 and the continued relevance of the criminal tribe today.⁹⁷⁶ This obscures the important developments of the late colonial and early postcolonial period, as political power was increasingly devolved, independence and Partition wrought

⁹⁶⁹ This page has since been removed. District Court of Patiala. <http://punjabjudiciary.gov.in/?trs=patiala> [Last accessed 4 June 2014]

⁹⁷⁰ See Radhakrishna, 'Crime of Vigilante Justice'.

⁹⁷¹ Ganesh Devy has written and campaigned extensively for the rights of DNTs. See Ganesh N. Devy, *A Nomad Called Thief: Reflections on Adivasi Silence* (New Delhi: Orient Longman, 2006). On the Denotified and Nomadic Tribes Rights Action Groups, see <http://nagdnt.org> [last accessed 24 August 2018].

⁹⁷² There is no accurate number of their population. There are approximately sixty million denotified and nomadic tribes, but somewhere in the region of twenty million of these are the denotified communities.

⁹⁷³ For the contemporary situation of the ex-criminal tribes, see *Report of the National Commission for Denotified, Nomadic and Semi-Nomadic Tribes - Volume 1*.

⁹⁷⁴ See recent efforts by the Vicharta Samudaay Samarthan Manch in Gujarat to register these communities: <http://vssmindia.org/aboutus.html> [last accessed 24 Aug. 2018]

⁹⁷⁵ The National Commission for Denotified, Nomadic and Semi-Nomadic Tribes was constituted as part of the Ministry of Social Justice and Empowerment in 2005. In 2008, under Chairman Balkrishna Sidram Renke, the commission submitted a report and recommendations. Another investigation was undertaken, and its report submitted in 2018.

⁹⁷⁶ See introduction, footnote 11, p. 3.

enormous changes and challenges upon the subcontinent, and the independent government embarked on projects of nation-building and state consolidation. The empirical, in-depth and more nuanced examination of the repeal of the Criminal Tribes Act and its aftermath offered here thus helps us to better understand the contemporary plight of the many still-marginalised members of the erstwhile criminal tribes.

The main contention of this study is that the continued relevance of the criminal tribe as a category of state identification was not an inevitable colonial legacy, but resulted from actions taken by politicians, bureaucrats and local officers on the ground in the years around 1947. These actions, it argued, re-embedded the criminal tribe within the legislative, discursive and material practices of the state after independence. The study therefore underscored the importance of *postcolonial* events and imperatives, from the widespread disruption and flux of Partition, to the founding of the constitution. Of course, inheritances and continuities of state practices and structures across 1947 need to be acknowledged, especially developments taking place from the interwar period onwards. Yet, by repeatedly crossing 1947 the study has shown that neither a simple narrative of inheritance nor rupture adequately explains the process; rather, a more complex picture emerges.

Whilst the study foregrounded the postcolonial, it located some of the developments which took place after 1947 in certain structures, practices and ideologies that were established between the interwar period and independence. This revealed a more complex picture of the colonial state than has previously been acknowledged in the existing scholarship on the Criminal Tribes Act, which has tended to overlook these final decades of colonial rule. Indeed, a narrative of colonial legacy simplifies and homogenises the transformations which took place during the Act's eighty-year lifespan, as well as regional variations, both in terms of understandings of the criminal tribe and the state practices related to it. Moreover, the changes taking place in this period were the most pertinent for shaping the administrative and political context in which the independent government repealed the Act: the devolution of political power from 1919, leading to new structures of governance; the establishment of the Criminal Tribes Department in Punjab, which embarked on an ambitious programme of reformation and control; and questions over reform and repeal in the 1930s.

Reappraising the colonial period thus shed new light on the Criminal Tribes Act's administration. As we saw in chapter I, its legal application became increasingly nebulous

and contingent upon local circumstance, and from the 1920s its ever-expanding remit came to encompass individual habitual offenders and mixed-caste gangs – a far cry from the so-called criminals ‘by birth’ targeted by the original 1871 legislation. By the 1940s, too, large numbers of individuals were exempted from its measures. In another departure from the existing scholarship, which has emphasised the totalising power of the colonial state, this revealed the Act’s more precarious, contradictory, and locally-contingent nature. At the same time, the bureaucratic machinery of the Department – the personnel, institutions and paper-tracked processes that enacted the legislation in an everyday sense – ascribed a materiality to the criminal tribe, one which contrasted to this indeterminacy and endured long past independence. In a departure from the existing literature on the ‘paper state’ in South Asia, this study showed that these processes did not merely produce the criminal tribe as a bureaucratic category but translated it into an embodied and alienating experience.⁹⁷⁷

As the following chapters showed, this machinery was retained across 1947, albeit subject to disruption during Partition. The structures of surveillance, reformation and control not only shaped the encounter between the communities and the state but reified the criminal tribe as an authentic marker of identification, though now in modes of postcolonial statecraft. The Department was officially disbanded a few months after the Act’s repeal in August 1952, but its officials were incorporated into the Police or newly-created Welfare Departments, whilst its institutions continued to house members of the now ex-criminal tribes, whether as long-standing inhabitants or incoming criminal tribe refugees from Pakistan. The bureaucratic machinery of the state, whether explicitly or implicitly, thus continued to ascribe a materiality to the category of the criminal tribe after 1947.

Beyond the administration of the Criminal Tribes Act, returning to the interwar period also revealed further processes that came to determine the trajectory of the criminal tribe after independence. As we saw in chapter III, the enactment of the Restriction of Habitual Offenders (Punjab) Act in 1918 provided an important precedent for using the measures of the Criminal Tribes Act against individual offenders – a move which paved the way for replacement legislation after independence. Likewise, from the late 1930s, as Congress ministries were formed in many of the provinces, the question of the reform or repeal of the Criminal Tribes Act was placed on the political agenda. The

⁹⁷⁷ On the ‘paper state’ literature, see chapter I, footnote 273, p. 66.

successive consultations on constitutional reform between the 1910s and 1930s also saw the eventual omission of the criminal tribe as a separate category within the framework of constitutional safeguards inaugurated for the disadvantaged – as we saw in chapter IV. The continued relevance of the criminal tribe in postcolonial India can be located, at least in part, in these earlier processes, ideologies and structural frameworks. The vast transformations taking place in this period – the changed structures of governance, the relationship between centre-province, and the rooting of political power more firmly in Indian hands – laid the foundations for the post-1947 trajectory of the criminal tribe.

The bulk of the study, however, took focused upon the years *after* independence. In doing so, it makes a serious contribution to the scholarship on the Criminal Tribes Act, much of which has treated the legislation as a purely colonial phenomenon. It builds on emergent research which has begun to interrogate these early postcolonial years, though it departs from this in important respects.⁹⁷⁸ Notably, it is this study's emphasis on the changed circumstances of independence which sets it apart – as well as the greater detail in which it traces the process. Whilst both Radhakrishna and Brown examine the repeal of the Criminal Tribes Act in the early 1950s, for example, neither fully explore the implications of independence, nor Partition. Conversely, this study was rooted in the 1940s and 1950s, in the contingencies, uncertainties and aspirations of independence. As such, it also contributes to the emergent body of research on the transfer of power and the functioning of the state in the early post-independence years.⁹⁷⁹ This context did not merely provide the backdrop to the repeal process but rather, as the study has shown, indelibly shaped it.

First of all, the postcolonial state had to counteract the many challenges to its authority and control in the years immediately after 1947. As we saw in chapter II, the widespread violence and migrations of Partition destabilised the apparatus of the state. Law and order had to be restored, whilst refugees had to be rehoused, rehabilitated and remade into citizens of the nation. Notably, Partition fragmented the paraphernalia of the Department, thereby undermining its structures of knowledge and control. It was in response to this tumult that the category of the criminal tribe found new articulation

⁹⁷⁸ Mark Brown, 'Postcolonial Penalty'; Gould, Gandee, and Bajrange; Piliavsky, 'Borders without Borderlands'; Radhakrishna, 'Laws of Metamorphosis'.

⁹⁷⁹ Ansari and Gould; Oliver Godsmark, *Citizenship, Community and Democracy in India: From Bombay to Maharashtra, C. 1930-1960* (Abingdon, Oxon: Routledge, 2018); Gould, *Bureaucracy, Community, and Influence in India*; Gould, Sherman, and Ansari; Sherman, *State Violence and Punishment in India*; Sherman, Gould, and Sarah Ansari, 'From Subjects to Citizens'.

within the refugee regime of postcolonial India. In official policies and practices on the ground, state actors reinforced the category as a legitimate marker of identity as they sought to regulate and rehabilitate refugees. The state's response to the refugee crisis has previously been shown to be a process 'of dividing, categorizing, and regulating people, places, and institutions', through which both the physical borders and conceptual boundaries of the nation were drawn.⁹⁸⁰ The example of the displaced criminal tribes revealed a new, and indeed more punitive, angle to this process, which has been primarily examined in religious terms.⁹⁸¹

The challenges of independence went beyond Partition. As shown in chapters III and IV, state actors had to contend with the redrawing of internal borders, out-dated and inadequate information, and the continuing spectre of mobility and crime. It was within this context that the criminal tribe took on heightened salience as a marker of identification that made these liminal and suspect groups legible for the state – in both its penal or welfare practices. This had important implications for the repeal of the Criminal Tribes Act, whereby the criminal tribe was surreptitiously re-embedded within postcolonial legal structures, namely a series of laws targeting the habitual offender which enabled the postcolonial government to retain enhanced powers of coercion and control. Tracing the process of repeal showed that this replacement legislation did not merely bear the marks of the Criminal Tribes Act but was inextricably linked to it. Even after the repeal of the Act, the criminal tribe therefore retained an intelligibility for state actors in their everyday practices, though now in more informal means.

At the same time as the nation's new leaders faced manifold challenges, they also had to deliver on the promises of independence – not just of freedom, but development, equality, and rights of citizenship. The enactment of the constitution in 1950 markedly changed the parameters of debate surrounding the Criminal Tribes Act. The criminal tribes were no longer subjects of a colonial regime but citizens of a free nation, one which encoded the fundamental right to equality within its constitution. Politicians and members of the criminal tribes alike stressed the contradiction between this promise of equality and the retention of the Criminal Tribes Act. Yet, the decision to repeal the Act was ultimately rooted less in concerns that the criminal tribe was incompatible with the ideals of the

⁹⁸⁰ Zamindar, p. 226.

⁹⁸¹ There is limited work which offers a perspective on this process with regards to untouchable refugees. See Ravinder Kaur, *Since 1947*; Talbot, 'Punjabi Refugees' Rehabilitation and the Indian State'. From a religious perspective, see Chatterji, 'South Asian Histories of Citizenship'; Haimanti Roy; Zamindar.

independent nation, than the incompatibility of the legal provisions afforded by the Act with those of the constitution. The enactment of the raft of habitual offender legislation after 1947 therefore sought to reconcile this tension.

The constitution of 1950 had further implications for the criminal tribe. In an attempt to redress entrenched inequalities, its drafters included (supposedly temporary) safeguards for certain disadvantaged citizens. As shown in chapter IV, these safeguards developed out of earlier forms of minority representation built into colonial constitutionalism, especially the Government of India Act (1935), although they also marked a departure in terms of their target and purpose.⁹⁸² Whilst the criminal tribe was omitted as a separate classification within this framework, it found renewed articulated as a category of state welfare and development. The tropes which had characterised the criminal tribe – cultures of illegality and mobility – continued to mark out the communities, at least for the first couple of decades after independence. It was in the pursuit of equality and development, therefore, that the postcolonial state re-embedded the category of the criminal tribe within its policies and practices, although now in structures of governance that sought to be compatible with the ideals of the nation.

A further theme which emerges from the study – and one which invites future research – is the form of citizenship conferred upon (and claimed by) the erstwhile criminal tribes. Innovative new research has explored the ways in which citizenship was crafted in postcolonial India (and Pakistan) in the years after independence.⁹⁸³ This work has rejected the previously-held assumption that India's constitution of 1950 was founded upon truly universalist principles, transgression from which was the fault of postcolonial governance.⁹⁸⁴ It instead reveals the process to have 'prioritised more exclusive forms' of belonging.⁹⁸⁵ Of central importance to this endeavour have been questions over the place of refugees in the new nations.⁹⁸⁶ Through their evacuation and rehabilitation, the

⁹⁸² After 1947, safeguards were framed around the idea of disadvantage (or backwardness) and aimed to foster national unity through development, in contrast to the pre-1947 framework which recognised group identities, largely on a religious basis.

⁹⁸³ Ansari and Gould; Chatterji, 'South Asian Histories of Citizenship'; Godsmark, 'Citizenship, Community and the State in Western India'; Jayal, *Citizenship and Its Discontents*; Newbiggin, *The Hindu Family and the Emergence of Modern India*; Haimanti Roy; Sherman, Gould, and Sarah Ansari, 'From Subjects to Citizens'; Zamindar.

⁹⁸⁴ Atul Kohli, *Democracy and Discontent: India's Growing Crisis of Governability* (Cambridge: Cambridge University Press, 1991); Valerian Rodrigues, 'Citizenship and the Indian Constitution', in *Politics and Ethics of the Indian Constitution*, ed. by Rajeev Bhargava (New Delhi: Oxford University Press, 2009), pp. 164–88.

⁹⁸⁵ Godsmark, *Citizenship, Community and Democracy in India*, p. 8.

⁹⁸⁶ Chatterji, 'South Asian Histories of Citizenship'; Haimanti Roy; Zamindar.

postcolonial state demarcated the (evolving) contours of the Indian citizen, both in terms of legal definitions and its normative behaviours.⁹⁸⁷

Much of this work has therefore examined the role of religious communities in the formulation and exercise of citizenship.⁹⁸⁸ This study, conversely, suggests possible new avenues. In the Constituent Assembly debates, as we saw in chapter III, H. J. Khandekar requested that the right to move freely throughout the territory of India be given to the criminal tribes who, as he noted, were ‘also citizens of India’.⁹⁸⁹ Deshbandhu Gupta responded: ‘If someone is given a freedom by which the freedom of the other is curtailed, then I would say, that such a demand is not for the right type of freedom’.⁹⁹⁰ Algu Rai Shastri further argued that, ‘Good citizenship implies restrictions’.⁹⁹¹ Whilst the constitution endowed fundamental rights of the citizen, therefore, it did not envisage a type of citizenship in which these rights were universally applicable. One had to adhere to certain prescribed behaviours and norms. Of course, the rights and privileges of citizenship are accompanied with certain obligations. Yet, the continued relevance of the criminal tribe during this formative period specifically marked out these communities as ones whose access to these rights was placed under permanent scrutiny.

Indeed, when Rameshwari Nehru visited a criminal tribe settlement in Ambala in September 1952, as we saw in chapter III, she advised the inhabitants ‘to prove themselves to be good citizens’.⁹⁹² If they ‘could not prove worthy of the concessions shown to them by repealing the Criminal Tribes Act’, she warned, ‘some similar enactments might be enforced’.⁹⁹³ The contingencies of the situation allowed the government to impose a *conditional* form of citizenship, one in which the rights of citizenship (of equality of status, of freedom of movement, and so on) were dependent upon certain behaviours. These behaviours, as we saw, were shaped by the normative citizen. Both refugee rehabilitation and welfare schemes for the criminal tribes centred on their assimilation into civil society, namely through the provision of housing,

⁹⁸⁷ Udit Sen makes a subtle distinction between the legal form of citizenship being debated in the Constituent Assembly and later codified in the Citizenship Act (1955), and the inadvertent formulation of the ‘normative citizen’ through policies of refugee rehabilitation. Udit Sen, p. 9.

⁹⁸⁸ Chatterji, ‘South Asian Histories of Citizenship’; Gyanendra Pandey, ‘Can a Muslim Be an Indian?’; Haimanti Roy; Zamindar.

⁹⁸⁹ ‘Draft Constitution (Cont.), 2 December 1948’, *Constituent Assembly Debates: Official Report, Vol. VII, No. 18*, pp. 764–66.

⁹⁹⁰ *Ibid.*, pp. 776–77.

⁹⁹¹ *Ibid.*, p. 767.

⁹⁹² *Tribune*, 24 September 1952, p. 3.

⁹⁹³ *Ibid.*

agricultural land, and the adoption of these prescribed behaviours. If one contravened these – exemplified by the case of Dwarka Das Sansi – rehabilitation could be withdrawn, and thus they could lose their recognition as a citizen.

As Jayal writes, “The history of citizenship in twentieth-century India [...] is a history of colonial, constitutional, and postcolonial modes of thinking about the relationship of individuals to the state; about how these relationships are, should, or should not be mediated by community; about the relationship between the social and the political; about citizenship given by the state and citizenship wrested from it”.⁹⁹⁴ Indeed, the continued relevance of the criminal tribe in postcolonial India offers new insights onto the relationship between individual-community-state. Prior to the repeal of the Criminal Tribes Act in August 1952, concerns regarding mobility, crime and the security of the state allowed the government to continue to restrict the rights of the criminal tribes on a communal basis, even after the enactment of the constitution in January 1950. Likewise, even after the repeal of the Act their rights remained – and remain – contested on account of their group identity.

In response, individuals and communities have frequently challenged their status, whether through the legal tools provided by the constitution or more informal means.⁹⁹⁵ At least some of these negotiations of citizenship have centred on their identification as, now, ex-criminal tribes. Recently, in response to police violence in Chharanagar against the Chhara community, activists have repeatedly invoked the preamble to the constitution as a set of principles with which they could hold the state to account.⁹⁹⁶ Although dependent upon individualised circumstances, these multifarious challenges since 1947 present alternate articulations of citizenship, belonging, and rights. Whilst it is beyond the bounds of this study to delve far into this topic, its findings potentially shed light on new citizenship paradigms being articulated and exercised in the decade after independence.

⁹⁹⁴ Jayal, *Citizenship and Its Discontents*, p. 12.

⁹⁹⁵ Several instances of writ petitions have been cited in this study, as have more informal petition-writing and protest. See pp. 1, 47, 73, 79, 96, 102-3, 106, 117, 122, 129, 173-4, 177, 208-22.

⁹⁹⁶ See posts on Facebook page of NAGDNT <https://www.facebook.com/nag.dnt> [last accessed 30 August 2018].

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