On the Future of Indigenous Traditions: The Case of Adivasis of Jharkhand, India

Bineet J. Mundu
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UNIVERSITETET I TROMSØ

Acknowledgements

I dedicate this work to Herald Samson Topno, journalist in Ranchi, author of 'Jangal Gatha' died in 1995. He dedicated his work to bring forward the untold stories of the marginalised and the subjugated, a people who's history and their legends forgotten. He died unrecognised for his work but inspired many to tell what Adivasis go through, exceptionally a few, or non to tell their story.

The Masters Program in Indigenous Studies of the Tromsø University, which has given me a clearer perspective of the indigenous peoples and their struggles today. All the Faculties that were involved; the Law, Social Anthropology, History, Literature, and Visual Cultural Studies' for their inputs I want to extend my special thanks. Since I have always wanted to work on the theme that would be the core of the issue but at the same time the basic issue of the indigenous peoples, relevant both to them as a people as well as the world who have either known little or understood them differently.

It would not have been possible for me to come to Norway unless the Ford Foundation's International Fellowship Program that helped me find the program and supported me to take up this study. It is also the Centre for Sami Studies in the University of Tromsø for their extended support that has helped to make more useful inputs to this thesis.

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6th November 2006 Bineet J. Mundu

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Glossary

Adivasi	:	First Settlers
Anusuchit Jana Jati	:	Schedule Tribes
Bhagwat Gita	:	Hindu Scripture
Bhuinhari patti	:	Common Members of Munda and Oraon
Chaloo Kanoon	:	Living Rule
Gram Sabha	:	Village Council
Jati	:	Caste
Khunkatti	:	Land and Forest cleared and settled by the first comers
Khuntkatti Hatu	:	Descendents of original settlers village
Khuntkattidar	:	Descendents of original settlers
Kili Panch	:	Sept Council
Lagan	:	Tax
Mahabharat	:	Hindu Scripture
Mahto	:	Customary Position among Oraon
Manjhi	:	Customary Position among the Santhals
Manki Patti	:	Customary heads side/part
Manki	:	Customary Position
Manya Kanoon	:	Living Law
Munda	:	Customary Position among the Mundas and Hos
Panchsheel	:	Five guiding principles for tribal development by Nehru
Parha Panchyat	:	Customary council
Parha	:	Customary System of the Mundas and Position
Pat Munda	:	Main Members of the Munda community
Phyle	:	Political association- Max Weber
Pir	:	Region covered by Manki
Purana	:	Hindi Scripture
Raja	:	positions in a customary system
Rig Veda	:	Hindu Scripture
Sarna	:	Sacred Grove
Sasan diri	:	Cultural Burial Stone
Syiems	:	Khasi's customary system

Table of Contents

Abstract:

This thesis, on the whole by making it a case study brings a focus on the Adivasis as an indigenous peoples of India. It touches upon a few important historical facts of the groups of Adivasis now located in the central-east part of country. Additionally it goes on into the sources that determine their traditional institutions, which play an important role in their social and cultural administration. These institutions also manifest their social cultural identity that these groups of people are the historical communities who need their due recognition to assert their collective rights within the present nation-state. This focused case touches upon different perspectives on the collective rights vis-à-vis state's individual rights issue. This thesis brings forth the conceptual and practical realities of Adivasis' institution and its relevance today. The customary social-cultural institution of the Adivasi peoples, symbiotically linked to the cycles of nature reflected in their cultural practices, evolves a politics that needs to be studied in the discourse of the modern nation-state.

This thesis gives an introduction to the issue of Adivasis' identity as the research problem within its own limitation and the use of methodologies. To start with, it deals with different sets of sources, which determine that the Adivasi are the indigenous peoples of the country. At the same time it explains how Adivasis distinctiveness is signified and represented through their existing customary practices. However, their customary practices have become less influential due to historical reasons in contemporary period. Within this reality the role of modern nation-state and its impact on the Adivasis is also discussed. It further discusses with the political association of the Adivasis that is derived from their customary practices and the benchmarks in the present national legislative system. This includes the conflict of their communitarian identity with the society at large and the State. The main focus henceforth is on the strengths of customary system in the reality of the legal system of the State. The empirical data supplements the above positions taken with case illustration and analysis. The study concludes with a discussion on broader issues, issues which has affected the basis of the customary practices of the Adivasis and gives an analysis with findings indicating certain area which the thesis identifies it to be considered for further research in the academic discourse.

Map of India and Jharkhand
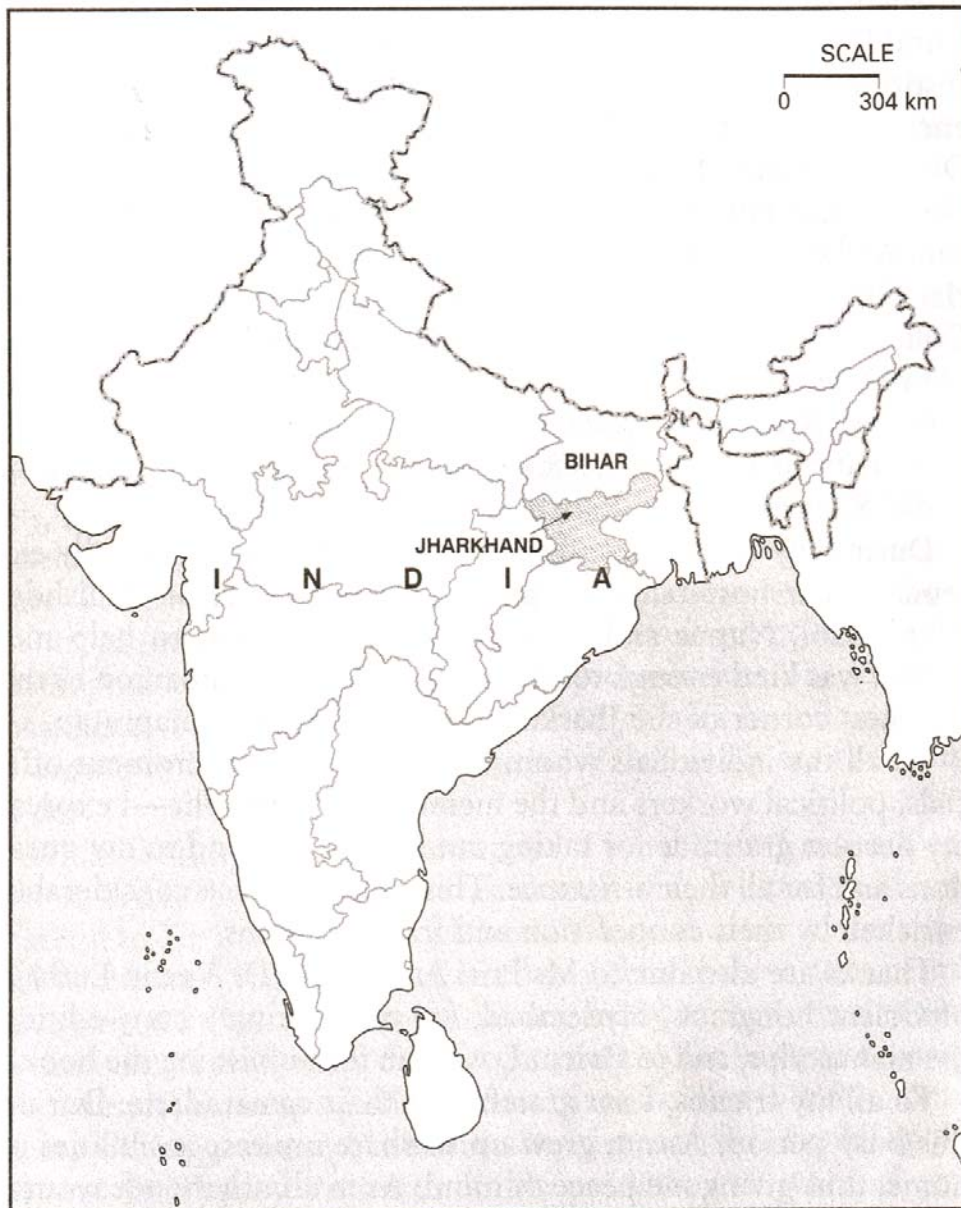
MAP 1: Location of Bihar and Jharkhand in India

Capital: Ranchi
Coordinators: 23.42° N   85.33° E
Population: (Census 2001) 26,909,428
Density: 274/ km²
Area: 79,700 km²
Districts: 18
Established: 15th November 2000
Governor: Syed Sibtey Razi
Chief Minister: Madhu Koda
Legislature: Unicameral (seats 81)

Preface

This thesis, on the whole by making it a case study brings a focus on the Adivasis as the indigenous peoples of India. It touches upon a few important historical facts of the Adivasis groups now located in the central-east part of the country. Additionally it goes on into the sources that determine their traditional institutions which play an important role in their social and cultural administration and are the institutions that manifest their social cultural identity even today. These institutions establish that these groups of people are the historical communities who need their due recognition to assert their collective rights within the present nation-state. This focused case touches upon different perspectives on the collective rights vis-à-vis state's individual rights approach.

This thesis makes an attempt to bring forth the conceptual and practical realities of Adivasis' institution and its relevance today. This customary social-cultural institution of the Adivasi peoples, symbiotically linked to the cycles of nature reflected in their cultural practices, evolves a politics that needs to be studied in the discourse of the modern nation-state.

Statement of the problem:

The social and cultural customary system of the Adivasi in many respects manifests their community organisation and a system of governance. The new state laws introduced to them accepted their local and village customary practices, but in reality it adversely affected the community system and their political association.

Research Questions:

My **firs**t research question: who are the indigenous peoples of India? If it is the Adivasis, on what basis could it be said that they are the indigenous peoples?

Second, how do the Adivasis identify themselves? Could the practice of customary system/ law of Adivasis prove their distinctiveness as a historic community?

Thirdly, why do people feel there is a need for reviving these pre-colonial Customary Systems as a model in post-colonial times?

Finally the **fourth** question that needs investigation: How has the development of the modern State, directly or indirectly been responsible for preventing the Adivasis for developing their own social-political organizations for their autonomous governance? What has it resulted into? In this situation what kind of challenges it poses for the Adivasis of Jharkhand?

Objective of this research:

- To investigate the background reason of the Adivasis' customary administrative system
- To analyse its practical usages and relevancy in the present context
- To make the critical evaluation of this system in this research available for further action oriented research
- To inform its readers and to invite such case studies of other groups different parts from within the country and different parts of the world

Definitions:

- Adivasi

The term *Adivasi* is a Hindi word that comes from Sanskrit language. It is a combination of two words, *Adi* -which means first or the early, and *vasi* – meaning dwellers or settlers or inhabitants. Together it means the first settlers, or early inhabitants or early dwellers. This term is commonly used for groups otherwise categorized as "scheduled tribes" in the constitution of India. However, the Hindi term is "*Anusuchit-Jana-Jati*". *Anusuchit* meaning scheduled, *Jana* means people and *Jati*, race or races, initially termed as *Ban Jati*, meaning forest races. Interestingly both of these terms used in either English or Hindi earlier and later as well does not have the same meaning as *Adivasi*.

- Customary Law and Customary System

The term **customs**, **customary system** and **customary law** in this thesis is used in reference to those social norms and codes accepted and practices among the Adivasi communities as a part of their tradition. These customary systems and law includes the social norms which extend to regulate the whole community system including the livelihood resources they use for their subsistence.

Elaboration and Importance of the Problem:

The **customary laws** of the Adivasi groups in the Jharkhand region are used for the governance and management of their resources. As of today it is weakening and their community is disintegrating. The state's administrative system with new laws in the course of their history has taken over the role of management of their resources and governance.

Adivasis have some basic distinctiveness within their socio-cultural orientation which gives them a collective approach and a wholistic view of life around them. The

important aspect of these communities to be realised is that their social practices have embodied democratic social practices, egalitarianism and an eco-centric culture. However, when identified with their non-Adivasi neighbours, this distinctiveness is the very reason for their cultural subjugation, social exploitation, and economic marginalisation.

The idea of choosing this particular theme for research is to investigate the field of social governance through the traditional customary system of the Adivasis. This thesis also has the objective to determine, how realistic it is that such a practice can continue to exist within the modern nation-state. This research will help the disciplines within the field of social science to have a case study of the indigenous traditions that seek attention and acknowledgement. At the same time it will enable the Adivasis themselves to look at their customary institutions with a critical view. If these institutions are not revived they will be lost from those few remaining traditions of the indigenous peoples.

This theme is a burning issue for the Adivasi people of Jharkhand in the present political scenario. Therefore, any positive intervention on this theme will contribute to the political discourse.

Research Conditions, the Problems of Data:

In this research the case of Adivasi people's customary system/law coming out from their social and cultural institutions in Jharkhand, India is presented here as an alternative to their government's formal system of governance, which is a constitutional provision. The study of Adivasi customary system/law investigates its (i) legitimacy, (ii) scopes, (iii) limitations and (iv) challenges in the contemporary Jharkhand state of India. On this theme I have based my investigation both the secondary as well as on primary sources. The secondary sources are the references from the writings of scholars on the field and government official records investigated from National Archives, libraries and institutes in Delhi, and in Jharkhand state it was in Ranchi and Chaibasa. The primary sources are from the responsible customary heads themselves along with experts on the selected field of study. However, my field visit was made to find

relevant empirical data which has its limitations, in which only a few expert interviews on the thematic field could be collected due to time constraints and few knowledgeable informants. As for the secondary sources there were rare books that contained useful information on the theme.

It was not easy to get these books from the book shops, and in the library they could be used there only not borrowed, photocopying had its limitations. In this case the only option was to ask for books from the personal collections of individuals and to photocopy useful portions. These were among the basic limitations of this study.

Since the nature of the topic is such that there are no direct and updated literatures available, other than certain events, cases and statements of person aware of the issue reported on the news papers. Therefore it had to be a few focused interviews for the experts and those involved in the field.

With regard to the inputs from the field, I chose the focused interview [1] as I knew that the limited number of people I was interviewing were well aware of the subject and had an in-depth knowledge and experience. Among the main people were: the retired magistrate Mr. P.N.S. Surin; a lawyer and a teacher Mr Rashmi Katyan who provided me with their experienced insight in the subject and recommended me to look at several relevant documents and scholarly works. Also Professor Sen, teaching in Tata College in Chaibasa was well informed on the subject. Activist Stan Lourdswami, who is involved in the field of human rights issues in Jharkhand, provided me with useful data and records, and shared his experience and understanding on the subject. Another exclusive interview with the customary chief Shivcharan Parya, who officially holds the position in the customary system of the Adivasi people, illustrated two cases of the dispute the very day I interviewed him. All the interviews are on record that lasted more than one hour or two each and some up to three hours, while some of the interviewees had to be done in several rounds.

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[1] Robert K. Yin, *Case Study Research Design and Methods* (New Delhi: SAGA Publications, 2003).

Limitations and scope:

The Adivasis and their customary practices are not limited to Jharkhand state alone, nor do all the Adivasis in Jharkhand and other states practice their customary practices. This study mainly focuses on Adivasis of Jharkhand state and limits its study area to two districts which are dominated mainly by five major Adivasis groups. However, focus is not only on one group nor on all the five but on their customary system which is more or less the same for all these groups. Within its field of study one case from outside of Jharkhand has also been taken only as a reference to compare the two different levels of its problems. The research is limited to the issues and problems at the state's structure level where there are conflicts, thus this study looks at the positive as well as negative sides of the customary system itself and the areas where it is in conflict with the state. There has been a limitation of time as the research area is geographically vast, demographically complex and conceptually broad.

The scope of this research is to bridge the gap between the rich polities of the Adivasis Customary System within the discourse of political thought.

Methodology:

The main methodology for this thesis is the constructive approach with objectivity, and as being a part of the research community the study is also done with subjective approach. However, at times it may seem like an essentialist approach at some points. An inter-disciplinary approach is used here which includes social and cultural anthropology, political theories, historical survey along with the primary and secondary sources.

The methods selected for the primary sources are a selective and focused interview, government's documents, and court documents including the documents from customary chiefs' office and case analysis, while the secondary sources are references from books, magazines, articles, published and unpublished research and reports in including documentary films on human rights of indigenous peoples.

An outline of the Thesis:

This thesis is divided in five chapters:

The first chapter of the thesis gives a background of the research problem, its limitations and methodology.

The second chapter deals with different sets of sources, which determine that the Adivasi are the indigenous peoples of the country. The Adivasis distinctiveness is signified through their existing customary practices. However, their customary practices have become less influential due to historical reasons in contemporary period. Within this reality the role of modern nation-state and its impact on the Adivasis is also discussed in this chapter.

The third chapter deals with the political association of the Adivasis that is derived from their customary practices and the benchmarks in the present national legislative system. This includes the conflict of their communitarian identity within the State.

In the fourth chapter the main focus is on the strengths of customary system in the reality of the legal system of the State. The empirical data supplements the above positions taken with case illustration and analysis.

The fifth chapter concludes with a discussion on broader issues which has affected the basis of the customary practices of the Adivasis and gives an analysis before concluding.

CHAPTER ONE: Background of the theme

1.1. The People, the Place and its Presentations

Jharkhand is a new state (province) in the central east part of India that is home to more than thirty different Adivasi groups. They comprise nearly 28 percent of the state's population, which is far less than their population in the 1950's. The demography of this region has changed drastically due to the opening of big industries, steel plants, large scale mining project and big dams and the urbanisation process altogether has attracted more and more non-Adivasis from other parts of India.

In India there are 641 Scheduled Tribe (ST) groups[2] comprising nearly eight per cent of the total country's population, spread out un-proportionately in almost all the 28 states and seven Union Territories of the country. Their population is densest in north-east India, followed by central India and than becomes thinner in the north, west and south of the country. However, it would be important to note that, not all who are called Adivasis or tribals are on the list of Scheduled Tribes, nor are all those listed as ST Adivasis or tribals.

The main emphasis of this thesis is the issue of Adivasis being the indigenous peoples in India. They demand being rightful stakeholders in the management of their resources and the governance of themselves through their own social institutions. In the case of Adivasis in Jharkhand India in particular, it would be their customary system or customary laws as their own institutions of governance. This occurs in the north-eastern states and other states where they have the status of being in the Fifth and Sixth Schedule of the Indian Constitution. This thesis will explore why they have difficulties in adjusting or accommodating themselves to the 'main stream societies' more particularly to the Indian mainstream society on the issue of governance. While the focus will be on the customary system of the Adivasis in Jharkhand as a case

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[2] K.S Singh, *The Scheduled Tribes*, *PEOPLE OF INDIA National Series Volume III* (India: Oxford University Press, 1982), xi

study within the country, against the state's system of their governance, it will demonstrate the reasons that make them assert their Adivasi identity as an indigenous people also within the preview of Martinez Cobo's definition.[3]

1.1.1 Adivasis – the indigenous peoples of India

It is stated in a documentary by DoCip "The Indian Summer in Geneva"[4] that the "indigenous peoples of the world have never been considered by international organisations as nations with rights to land and their own government." In continuation of the statement, it said therefore the rights and "human rights are considered those of individuals, not of peoples." However, the indigenous peoples to be recognised as a people, a nation, or nations in themselves when this was demanded by Chief Deskaha in the League of Nations in 1923 in Geneva, it "provoked a stiff response" by the modern nation-state's members. It was only in 1982 that the Working Group on Indigenous Population had met in United Nations in Geneva, where a draft Declaration on the rights of the indigenous peoples was taken in the UN's agenda under the United Nations Human Rights Commission (UNHRC) to be adopted by all its member states.

It was on the eve of the adoption of the draft Declaration for the Rights of the Indigenous Peoples in the United Nations, Geneva the 29th of June, 2006 the Indian government delegation, made a statement, saying that, "India has consistently favoured the promotion and protection of the rights of the indigenous peoples" and that they are "ready to support the proposal for adoption... and will vote 'yes' in its favour" of the draft Declaration to be adopted.

In the last two decades the long awaited consent of the Indian government along with a few other governments who have until this time been opposed of the adoption of this draft Declaration. However, this statement has created serious, unfavourable conditions, at least for the Adivasis of India. Mr Ajai Malhotra in his statement

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[3] Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy," in *American Journal of International Law* (n.p., 1998), 419.
[4] Volkmar Ziegler and Pierrette Birraux, "*The Indian Summer in Geneva*", 1982-2000, Geneva:DoCip, n.p., CD-ROM.

pointed out at the lack of definition of 'indigenous peoples' in the draft Declaration. In order to emphasize his point, he referred to the International Labour Organisation's Convention 169, even though India has not ratified this Convention. He continued his statement by saying, that "the issue of indigenous rights pertains to the peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country… at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions…" On this basis he further stated, that the "entire population of India at independence, and their successors, to be indigenous…" [5]

The above statement makes the situation of the *Adivasis* [6] -**aboriginals** of India, even more difficult as the indigenous peoples in their political struggle for their basic human, collective and customary rights. The Adivasis, as a people have already been subjugated into the nation-state system by the national development process. These development processes have victimised the Adivasis, rather than benefiting them.

There are several issues when it comes to the question of equating Adivasi peoples with indigenous peoples in the Indian context. There are different categories of social sections besides the schedule tribes e.g. Schedule Castes groups (SC), Other Backward Class (OBC), Minorities groups, and the general category. One of the main reasons is that India has been more a caste-oriented rather than a class-oriented society, and many ethnic groups have migrated into this subcontinent in different periods of its history. Thus, while the term 'indigenous peoples' is a debated issue among different governments internationally and certainly among countries who have a different position on it, India has taken an ambiguous position in paranoia. In this thesis the discussion of 'indigenous peoples' on its definition level is not the main focus, but a case study of the Adivasis in Jharkhand is taken up to demonstrate that

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[5] The full text of this statement by the Indian delegation is documented in the doCip archives, an NGO working as a documentation centre for all the activities in UN that deals with the proceedings of indigenous peoples and the governments.
[6] **Adivasis** – name given to a groups of people in Sanskrit and Hindi language, in English meaning **aboriginals**

they *are* the indigenous peoples including the definition given by Martinaz Cobo, which is the most accepted definition[7] at the United Nations level.

Considering that the Adivasis or the tribal peoples in India *are* the indigenous peoples despite the statement made by the government of India, for the convenience of the discussion the term ***Adivasi*** is used in this thesis. The term *Adivasi* is commonly used and also among the Adivasis themselves or either by their group's name. In the non-Hindi speaking areas they prefer to call themselves tribe or tribal people instead of Adivasis. However, the Adivasis or tribals are categorized and listed as 'Scheduled Tribes' or '*Anusuchit Jan-Jati*' as per the Constitution of India. In addition to the Adivasis being classified as Scheduled Tribes and their areas as Scheduled Areas and Tribal Areas, both these areas have special constitutional provisions for their protection, managing their social affairs through their customary practices.

1.1.2.   The Status of the Adivasi in present day India

Most, if not all, the Adivasi groups and their sub-groups in India are the first inhabitants in the regions they live in today. The 'traditional' social organizations based on their customary systems / laws are mostly patrilineal, with a few exceptions of matrilineal systems.

Adivasis are categorized in the constitution as "Scheduled Tribe" in English and its translation in Hindi, even in spite of strong protest by Jaipal Singh[8] to the President in the Constituent Assembly Debate,[9] to use the term ***Adivasi*** instead of "*Ban Jati*" (– meaning: the race that lives in the forest) then, but later still translated as "*Anusuchit Jana Jati*" in Hindi. This is a category of people who can be identified as such, is done by the President of India in consultation with the Governor of the respective state or union territory (where they reside).[10] It is done through public notification,

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[7] Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy," in *American Journal of International Law* (n. p., 1998), 419.
[8] **Jaipal Singh** was the first Adivasi, highly qualified, educated in the Oxford University, and the founder of Jharkhand Party.
[9] "*Jaipal Singh's speech in the Constituent Assembly Debate*" Official Report, Vol. 9 (5 September 1949), 994-995.
[10] As given in the provision of Article 342 of the Constitution of India

"which specify the tribes of tribal communities or part of or groups within the tribes or tribal communities" so the identified group can become a "scheduled tribe". However, both these constitutional terms, the "scheduled tribe" and the "*anusuchit jana jati*" in English and Hindi respectively are **not** synonymous to meaning and understanding of *Aboriginal* and *Adivasi*.

Interestingly, in the pre-independence records, official gazetteers and texts, we find the Adivasis being referred to as *aboriginals*, i.e. the *Aboriginal population* or the *aboriginal race* as in the Survey and Settlement Operations Report of 1902-1910 (Ranchi) paragraph 26 and in number of other documents. One would speculate why the appropriate term was not used for Adivasis while the constitution was being drafted. It can be affirmed also through this study that it was not in the interest of the country's successors. Therefore, it is not surprising that the Indian delegation in the UN made the statement declaring all of the Indian population after independence to be indigenous rather than admitting the reality.

With regard to distribution of *schedule tribal* population, there are nine states with areas which are marked as "Scheduled Areas" that are governed under certain constitutional provisions defined in its Fifth Schedule. The northeast part of India since it has a higher percentage of their population in those states and has been given a status of "Tribal Area" in the Sixth Schedule (which enjoys a higher level of autonomy than those in the Fifth Schedule Areas) in the constitution.

The Scheduled Tribe populations in both the Scheduled Areas and Tribal Areas are considered to be economically less developed, and therefore need social support. The national level Commission exists for this purpose and looks into their affairs. At the same time the state legislations are also entitled to implement their national schemes as well as the state's own welfare and development programs in these areas. In both these schedules there are certain degrees of autonomy for their governance of the Scheduled Tribes as per the usages of their customs.

The key point of the discussion here, when we are talking about the issue of governance of the Adivasis, in both the Scheduled Areas and the Tribal Areas is the reference made to the *customs and usages* in the constitution. There are the customary

systems of the Adivasis used for their social administration and management of their resources. These traditional customary practices or laws of the Adivasi peoples exist and it is functional and relevant in today's context which we will be exploring in the following chapters.

In this context, however, the first question that comes to mind is; when there is a modern parliamentary democratic institution, *why* and *how* should a traditional customary institution be brought into the discussion or even thought of it to be as its substitute (at least for their own governance)? While discussing with many of my associates within the university and also in my field work, people commented that by choosing this topic, I am turning backwards by going into the traditional customary practice of governance. My emphasis in this thesis is not to look at the customary system or customary laws from an essentialist point of view, but to search in it for those feature that has given it the polities of **democratic functioning, an egalitarian approach in their communitarian way of life including the inclusiveness** of other communities with them as its main components, and merits and usages today. The general impression however, on the contrary about those factors which have contributed to it's negative viewing of this system (discussed in the later part) in which it is considered to being primitive in the face of modern state, therefore, many Adivasis have refrained to identify themselves with it.

1.1.3. Adivasi and non-Adivasi orientations: different rules

The customary laws of the Adivasi communities are different from those of the non-Adivasi societies. Adivasis may be seen more as a community with a collective approach, both in relation to themselves and their livelihood resources. For the non-Adivasis, individual specialisation or as individuals being a part of specialised occupational groups forms the basis of their society. Thus, the individual inter-relation among the non-Adivasi society could rather be seen in connection to the larger society to whom their services or occupations are aimed.

The common forests and the lands which Adivasis have collectively use form the basis of their customary system. The customary system/ laws are thus those accepted

rules that maintain a balance between the natural environment and the human society that makes use of it. This draws the line between these two sections in their approach to their social relations and their environment.

The strength of the Adivasis in Jharkhand is in their being a community which has its own basis – its common livelihood resources. Once these resources are taken away from the Adivasis, their community would lose its basis and their customary system/laws would have to be changed. That is not an easy assumption, as the whole Adivasis identity has its orientation through their oral tradition; the change has to come from within, as this tradition is losing its grounds. What remains is the customary system/law recorded in different scholars' writings which would serve as a reference, for the Adivasis if they intend to bring about a change from within.

Nevertheless the challenge is that the customary rights in absence of its foundation of oral tradition, is not considered a right any more. Community forests and lands which had customary titles, if they are not spelled out in the Forest Act or in the Land Survey and Settlement Records of the state, would not be considered a right any more. The customary system/law can have its own codes for different kinds of land and its usages, which defines customary ownership, but with pressing demand for land and exploitation of resources due to pressures of outside population coming into the Adivasi areas; it is hard for the Adivasis to reiterate their basic customary rights.

1.2. An overview of Adivasis in Jharkhand

1.2.1. - Location

The word 'Jhar-khand' means the 'land' of 'forests' or the 'forested area'. This area is spread out in four states, Orissa, part of Chattisgarh (earlier which itself was a part of Madhya Pradesh), West Bengal and Bihar. It is only the area which was the part of Bihar has been made into a separate (province) state of Jharkhand. The area covered with forest stretched from the north of Jharkhand and through its centre to the south and southwest, which is the Singhbhum district. The part which is now in Orissa is the

forests of Saranda. Saranda is the largest Sal tree forest in Asia, forming a tropical forest in the south west of Jharkhand.

The land formation of most of Jharkhand is a plateau, and the plains in the Damoder river valley on the central northeast of the region make it the most fertile land. Further north is the river Ganges dividing most of Santhal Parganas of Jharkhand from Bihar. Jharkhand also has the richest mineral deposit of India which includes, coal, ores of iron, copper, uranium, among others are gold, limestone, asbestos and many others.

1.2.2. – Cultural

Jharkhand' culture has been predominately the Adivasi or aboriginal culture, both in its appearance and spirit as well. However, much of its social and cultural orientation has changed and its spirit is dying out due to the outside administrative system and its political discourse. The culture of the Adivasis in Jharkhand has been different from the more recent settlers whose ways of life and culture have made the Adivasi culture more invisible and in some cases stigmatized for the Adivasis. Initially the Adivasi culture was a rich culture, which has been a reflection of both their social and political life. Their music and songs based on five note tones (instead of seven[11]) were said to be as if 'walking is dancing and talking is singing' based on the festivals at different seasons of the year.

1.2.3. - Social

Socially, the Adivasi communities here have been a more homogeneous group, coming from mainly two language groups, later joined by the third language group, the caste Hindu Aryan, and the Muslim groups, too. Thus the mainstream societies and the Adivasi communities in Jharkhand today are divided in different groups and placed in different economic categories and social disparities.

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[11] The seven musical notes in western classic starting from *do, ray, me, fa, so, la, te*; and in Indian classical *sa, re, ga, ma, pa, da, ne;* In the Adivasi music only five notes are sued so that not only specialised singers could sing but all can sing.

1.2.4. - Political

Jharkhand is a political state today with 18 administrative districts, 14 of them come under the 'Scheduled Area' – as per the administrative classification given in the Indian constitution. There is the Legislative Assembly (LA) of the Jharkhand state which was constituted with the formation of the state whose members are elected from constituencies at elections held every five years. As the majority of its districts are covered under the Scheduled Areas, it is supposed to have a special administrative and developed program called the Tribal Sub-plan (TSP). There is a Tribal Advisory Council to which the Governor, who is appointed by the President of the country, reports the administrative activities and functioning to the Centre.

There are political parties whose affiliations are both at national and regional levels. The present government is formed under the Bharatyia Janta Party (BJP) which is a Hindu fundamentalist national party. The Congress Party, a national party that claims to be based on secular ground has had alliances with the Jharkhand regional parties and also the Communist Party. The Chief Minister of the state is an Adivasi himself, but it is obvious that their party's national interests come first. Now Madhu Koda, from the Ho people, has been recently sworn in as the new Chief Minister on 18th September 2006.

CHAPTER TWO: Adivasi Customs: Historical overview and present situation

2.1. Sources of Adivasis to be the indigenous peoples of India – in the evolution of cultural policies for independent India

Where does one find the source of the Adivasis as the first settlers in the Indian peninsula? If they are the *Adivasis,* why are they referred to as 'tribes' and thus 'Scheduled Tribes'?

When we are talking of the Adivasis of India, one must know that they are a very large number of different ethnic as well as language groups. They represent a category of peoples within themselves, identified to be different in respect to their social, cultural and political organisations. This distinction includes a unique history different from those in the majority groups of the country.

To find an answer to this question we may have to group these sources within certain disciplines into two or three broad categories. **One of the sets of sources** could be Adivasis' own traditions based on their own mythology, legends and oral traditions. **Second set of sources** could be the earliest written source, such as the Hindu scriptures written in Sanskrit language. **Lastly**, the disciplines of anthropology, history, linguistic sciences and written literatures provide us a wide range of secondary sources for our investigation.

Putting all these sets of sources together to identify the *Adivasi* we can see that they form a distinct category of group among the larger Indian population. The present Indian population is a composition of broadly six main races who came to the Indian sub-continent in different stages of its history, among them the "earliest was the Negrito and this was followed by the Proto-Australoid, the Mongoloid, the Mediterranean, and later those associated with Aryan culture."[12] It is stated by S.C. Roy, particularly in reference to the Proto-Australoid group with whom the Kolarians

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[12] Romila Thapar, *A History of India, Vol. 1*. (Baltimore: Penguin, 1965), 26.

are associated with. Roy further adds by saying that the "Aboriginal India" was invaded by "successive tides of Aryan conquests (which) appeared to have been followed by confused waves of migration among the aboriginal population,"[13]in the course of time established the Aryan **dominance.**

The historians of India generally dismiss from consideration that these and other aboriginal tribes as "an unclaimed ignoble horde who occupy the background of Indian history as the jungle once covered the land to prepare the soil for better forms of life."[14] However, Roy refers to the Kolarian aboriginals of India stating, "not even a chapter of decent length to these peoples in any standard work [is done] on the history of India. And thus the story of their past have hitherto remained practically untold."[15] He claims that some of these aboriginal groups *still retain ancient traditions that can reveal their past histories*, which, if not reconstructed would be "lost beyond all chance of recovery".[16]

When talking about the Kolerain Mundas, who represent one of the important aboriginals groups of India, **one source** is their own Cosmogonic legend and Munda mythology[17] and folklore in the remaining oral tradition today.

There is **another set of sources** to investigate. These sources also became the backbone while building an 'Indian culture' aimed towards independence from the colonial rules. These sources also have a good number of references of those groups today identified as Adivasi, however, it can be abstracted only with objective interpretation of the same. As said earlier they are the ancient Hindu scriptures and the traditions in conjunction to those. How it started and what it lead into would be important to note before we see how it represented the sections of people we are talking about. This written sources and traditions, as Mckim Marriott[18] points out in the making of Indian nation-state were put together to bring a "single all-Indian centre

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[13] S.C. Roy, *Mundas and Their Country* (Ranchi: Catholic Press, [1912], 1995), 43.
[14] Ibid., 1.
[15] Ibid., 2.
[16] Ibid., 2.
[17] A. Van Exem, *The Religious System of the Munda Tribe* (Ranchi: Catholic Press, 1982), 28.
[18] Clifford Geertz, *Old Societies and New states, The quest for modernity in Asia and Africa* (New York: The Free Pess, 1967), 32

(culture) and all capitals of internally heterogeneous British Indian provinces," with their "regional and local variations in all spheres of cultures tended to be neglected [though having] widest possible communalities. Also neglected were the most sacred but esoteric Vedas, the speculative Upanishads, and the limitless variety of *puranas*. Certain parts of the popular epic literature, and particularly one ethical text from the *Mahabharata* – the ***Bhagavad-Gita*** – were exalted beyond the hundreds of contending holy books. The ***Gita*** gained some thing like the status of a unified Hindu 'Bible' where none had existed before." [19] These holy books are one important set of sources, conditioned to its objective interpretation for investigation.

According to S.C. Roy, in these set of sources, whatever may have been the name of ancient India before the Aryan Hindus found their way into the country, he says, that the "Hindus legends concur with the traditions of the Mundas themselves in locating this people and other Kolarian tribes in north-western India, when the worshipers of Brahma stepped on the threshold of the country."[20] The traditions of the Mundas themselves concur with various statements in these ancient Sanskrit works in suggesting that the Mundas and other cognate tribes occupied Northern India before the forefathers of the Hindus entered the country.[21] The woods and valleys by the side of the ancient Drisadwati and Saraswati River appears to have rung with the Bacchanalian songs or *durangs* of the Mundas and other allied tribes long before the venerable Arya Rishis of old chanted their sonorous Vedic hymns on their sacred banks.[22] (See Map 2 on page 113 the Indus Valley Civilization 2600-1700 BC)

As an illustration, if we take the hymns in the *Rig-Veda* – the ancient Hindu Scriptures, the fair skinned Aryan warriors invoking the aid of their bright and beneficent gods against those and other black races who long and strenuously fought

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[19] Clifford Geertz, *Old Societies and New states, The quest for modernity in Asia and Africa* (New York: The Free Pess, 1967), 32.

[20] S.C. Roy, *Mundas and Their Country* (Ranchi: Catholic Press, [1912], 1995), 13.

[21] Ibid., 13.

 (The passage in the *Vishnu Puran* (I 5, 28-32), which describes the *Asuras* as the first born of Brahman, from who's thigh they sprang, and the similar statement in *Mahabharata* (Santi Pava 84) that the *Asurs* were elder brothers of the Gods, - and the further statements in *Tittiriya Upanishads* (VI.2) that the earth formally belonged to *Asuras* while the gods had only as much as a man can see while sitting have been supposed by Muir and other Orientalists as referring to the former occupation of the country by the **black aboriginals**. And the German Orientalist points Weber (Ind. Stud I, 18., II, 243) points out that the 'Devas' and 'Asuras' of ancient Sanskrit literature referred to the broad divisions of Indian population, as "…the fair skinned sacrificing Aryans and the godless black aboriginals…"

[22] Ibid., 13.

– but fought in vain – to steam the tide of Aryan progress into the country. For the aboriginals with their *twacham Krishnam*[23] -black skin, *ghora chekshas*[24]- fierce eyes, *visipra*[25] -deformed nose and *mridhravach*[26] - imperfect speech the proud Aryan knew no better applications than '*Dasas*' and '*Dasyus*' [27] - slaves and robbers[28]

Further again, according to Roy, nor is another Sanskrit literature less sparing of similar contemptuous epithets towards these natives of the soil – the pre-historic population of India. In the great Sanskrit Epics of the Vilmiki and Vedavyasa, the aborigines are denoted as monsters, monkeys and bears.[29] This bias against non-Aryans can be illustrated through one of its story of a youth from the Bhil[30] Adivasis – *Eklavya*. The story is told in the *Mahabharata* written by Valmiki in which this Adivasi youth (called to be a *shudra* –low caste in the translated book) was tricked to give away his thumb to Drona Acharya as his teacher's gift /fee [Drona was a teacher of archery for Arjuna who was later depicted as the hero of the *Mahabharata* – the Great War of Bharatversa]. Eklavya's performance in archery proved to be much better than Arjuna and other pupils of Drona – the teacher. This youth, not being an Aryan, could not become Drona's pupil but became a self-learned archer by having made an idol of Drona and devotedly practicing the art of archery. A non-Aryan's excellent performance could not be tolerated by a teacher for the Aryan pupils, so Eklavya was asked to give his thumb as *guru dakshina* – fee for having Drona 'as his teacher', as a result he no longer would be an archer (not having his thumb to hold the bow or arrow) and thus Arjuna to be – 'the world's best archer' of the Mahabharata.

Among the other set of sources are the different academic disciplines based on scientific methods including history, anthropology and linguistics. The linguistic research with regard to the Adivasis groups, it is discovered that there is a close affinity with Kolarian languages represented in the Mundari group of languages (which includes Mundari, Santhali, Ho, Kharia and other dialects of India) and the

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[23] Rig Veda, (R.V.) I, 130, 8.
[24] R.V., VII, 104, 2.
[25] R.V., V. 45, 6.
[26] R.V., 1. 74, 2; V. 32, 8; VIII, 6,3.
[27] R.V., I 33, 4; I. 3-18…
[28] S.C. Roy, *Mundas and Their Country* (Ranchi: Catholic Press, [1912], 1995), 14.
[29] Ibid.
[30] Bhil Adivasis in central and west India, according to Areeparampil (p.29) were from the Proto-Australoid tribe ones among the Mundari speakers.

Sakei and Semang dialects of the Malay peninsula, and the Mon-Khmer, including the Anamese of Cochin China, the dialects of Malacca and the Philippines, dialects of southern and western Australian.[31]

With several of the above mentioned sets of sources we have all the probability to determine that the Adivasi in the early history were referred to with given names. These names are even illustrated in the Hindu scriptures. This fact along with the traditions of the Adivasis themselves tends to be one of the very basic sources to be looked upon. The untouched / unresolved issue of objective interpretation is a challenge for the Adivasis to be the pre-Aryan group of people, but the other set of sources gives us some clues that Adivasis are a group of people are the aboriginals of the Indian sub-continent. As referred by Roy above, some of these aboriginal groups still retain ancient traditions that can reveal their past histories, which, if not reconstructed would be "lost beyond all chance of recovery."[32] So the customs, which has evolved from their ancient tradition and customary practices, is the theme of this study. This study, in this case is not necessarily to go into revealing their historical past, but by relying on some of the basic sets of sources, though limited, to look at more recent historical developments in the pre and post independent India.

Proving that the pre-Aryan aboriginal historic communities are indigenous, is one issue, but an even more important issue is that the cultural policymakers of the independent India, who then and even today, either try to ignore interpretation of those sources or policies that would treat them otherwise. While modern India was built on the refined grounds of the most specialized "great tradition," the "little traditions"[33] which have been put together to unite the country against the colonial rule, and the Adivasis until were called aboriginals but were then replaced with "Scheduled Tribes".

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[31] S.C. Roy, *Mundas and Their Country* (Ranchi: Catholic Press, [1912], 1995), 7.
[32] Ibid.
[33] Clifford Geertz, *Old Societies and New states, The quest for modernity in Asia and Africa* (New York: The Free Press, 1967), 30.

2.2 The customary system / laws

How and when did the local customary systems come to be referred to as a law or given legitimacy? If it was during the British colonial period, what were those customs or customary systems, and for what purpose were these systems recognized? To answer this question in the context of India, Russel L. Bars gives a clue when he says:

> The succession of British sovereignty was gradual and piecemeal. Most of the Empire's claims on the subcontinent were founded upon treaties with native rules, and treaties often included specific delegations of jurisdiction to the East India Company or to the Sovereignty. The complex mosaic of treaty relationships resulted in a mosaic of regional jurisdictional accommodations and court systems. **Local customary laws were routinely respected**, as were the religious laws of Hindus and Muslims, although British judges referred to this as a matter of "justice, equity, and good conscience" rather than as a duty imposed on Imperial courts by constitutional laws. Similarly, Acts of Parliament were not applied in India except as required by their express terms, but judges explained that general British laws were not suited to India's circumstances, not that constitutional principals applied a burden on Parliament to express its intension to change the local laws of an acquired territory. These fictions preserved the appearance of Imperial supremacy, whilst in practice following Lord Mansfield's instructions. – ***Russel Lawrence Barsh***[34]

India's diverse ethnicities, languages and cultures accumulated many layers of regional varieties of traditions, throughout the centuries. In the presence of these traditions, Adivasis customs and traditions were seen different. In many cases they were seen opposite to that of the Hindu caste hierarchal structure. (Max Weber also describes these difference in which is elaborated in chapter three).

Customs and customary practices or laws, in general will have to be understood especially for the use of the terms in the literary context, before going into special category or groups customary systems here.

Customs can be defined as "a form repeated rational action, in which past performances provide the reason for present repetition; by showing 'what is done'."[35] Custom is therefore a practice followed by a community or a social group which eventually becomes a system being accepted by the same community or the social group. Scruton, however, differentiates custom from law, for which he says "custom

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[34] Russel Lawrence Barsh, *Indigenous Rights and the Lex Loci in British Imperial Law* (New York University School of Law, 2001), 13.

[35] Roger Scruton, "Custom", *A Dictionary of Political Thought*, London: Pan Book Ltd. with the Macmillan Press 1982, 110.

is distinguished from law, in that it need not to be enforced by the state or by legal penalties; from convention, in that it need not be exact or rule- guided…" [36]

The question then is when does custom become a law, or in other words, are there certain customs behind making of the laws? The answer is, first that, a custom, whether good or bad according to Scruton's interpretation, "to do what is customary is to act intentionally, and for a specific reason, namely, that is what is done." However, with regard to customs being responsible in formation of laws, he further says, "customs from a background from which law may emerge, as crystallization of settled expectation."[37] Thus, we have today the laws and also the customary laws.

In the discussion of customs and customary laws of the historical communities, indigenous peoples, and groups, generally the use of the term customary system or customary law needs more clarification both for its literary use as well as in the legal sense. In a broader sense customary law according to Bekker is, "…an established system of immemorial rule which had evolved from the way of life and natural wants of the people, the general context of which was common knowledge, coupled with precedents applying to special cases, which were retained in the memories of the chief and his consolers, their son's and their son's sons (sic), until forgotten, or until they become a part of the immemorial rules…"[38]

Nevertheless, not all the customary laws of today are ancient, nor are all the customary laws administered by chiefs. However, this definition gives us a basic idea of what is generally understood by customary law.

From these explanations we can conclude that the customary system or law is a certain set of rules and principles agreed with common consciousness which is more voluntary in nature for its practical applicability by the members of that community. In other words, custom can be defined as collectively sanctioned behaviour of the member of the particular community or group which has been transmitted from one

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[36] Roger Scruton, "Custom", *A Dictionary of Political Thought*, London: Pan Book Ltd. with the Macmillan Press 1982, 110.
[37] Ibid.
[38] J.C. Bekker, *Seymour's Customary Law in South Africa* (Cape Town: Jeta & Co. Ltd, 1989), 11.

generation to another. Customs could include moral, religious, legal, and other aspects of practices through which a community life could function. It is the body of social codes, customs, taboos, moral standards, values, and traditions which regulate relationships between the members of that community. Customary practices therefore are vital in regulating a community.

2.3 What is the Adivasi's customary social organization?

In India there are more than 640 different Adivasi or tribal communities, and their customary practices can differ widely from one to another. It may differ within the same community or group of people, even if they speak the same language or if they are located in different geographical areas or contexts. On the contrary there is also a situation where the similar customary practices are followed by more than one Adivasi group, even if they speak different languages by using their own terms for performing these roles. In both cases, the customary practices may be more acceptable than controversial particularly in terms of other non-Adivasi or non-tribal societies who may have very different social orientation and values. That could include being located in certain geographical areas forming territorial boundaries, land ownership and usage stems, the model of roles and responsibilities for village or community organizations, clan systems, succession and inheritance, marriage and divorce, crime and punishment for justice etc.

Customary practices or laws in the case of Adivasis in Jharkhand, particularly five major Adivasi groups out of the 30 here, more or less follow the same customary practices even though they come from two different language families. The Santhal group is the largest among the Adivasis in this state where as the Kharia are the smallest group among the five. All these Adivasi groups either big or small in number speak different languages (Santhali, Mundari, Ho, Kurukh –by Oraons, and Kharia), but follow the same social administrative system with slight variations, though they use different names for this system. The customary practices cover the whole life cycle of the given community or social group. It is focused on those aspects meant for

organizing their social governance system mainly, by not going into the details of the different aspects of the customary system or law of the Adivasis of Jharkhand.

Anthropological scholars have done most objective studies of the Adivasi communities in which we find reference to these customs and practices. Among the most famous are S.C. Roy, W.G. Archer and K.S. Singh.

In the study of the political system of the Adivasis, any reference in the reconstruction of pre-colonial customary social governance system of the Adivasis must be read through the distorting prism of colonial records, which scholars have used. In Jharkhand, villages were organized on the basis of lineages which jointly managed resources as they collectively own the land and forest. This management system of the Adivasis varied across regions and between different communities. How did this management system co-inside with their own social system?

2.3.1. Division of Role and Responsibilities of leaders for Governance among Adivasis according to their customary laws

For example, among the Mundas the headman is called the 'munda' and the priest the 'pahan', while among the Oraons, the headman is called the 'mahto' but the priest is still the 'pahan'. The *pahan* was usually drawn from the head of the lineage which founded the '**khunt-katti**'[39] *hatu* - village, and it was only later, if at all, that the office of the headman was separated from that of the *pahan*. Gradually the secular and religions function became distinct, and the next most prominent man was the *munda* (in the case of Oraons it was the *mahto*) responsible for the secular affairs of the village of the community. Here neither the *munda* nor the *pahan* has any right superior to those of other descendents of the original founders of the village, the

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[39] **Khunt-katti hatu:** Village which has a status of *khunt-katti*. **Khunt** or *khut*: meaning either of the two branches of the village family. **Khuntkatti :** where there is no *zamindari* – land lordship and no individual owners of a village and all the land is legally owned by the village community. (***Encyclopaedia Mundarika**, page 2382. By Fr J. Hoffmen published in 1960 in 16 volumes)*
Normally in *Khuntkati* villages, villages are divided into *Munda Khunt, Manki khunt, Pahan Khunt* and *Raiyats*.

khuntkatti dars – the decedents of the *khuntkatti hatu* – the village of khuntkatti dars.[40]

Roy notes that, in the development of the Mundas' organization into social and political organisations, the "generations multiplied, each *Kili* became enormously enlarged, and unwieldy brotherhoods came to be subdivided into separate **Kilis**…and to this day, this association for common social administrative purposes have been maintained, though not by all the villages of the same kili that left the parent village together and settled side by side. This brotherhood of allied and associated villages constituted a 'parha'." Thus both the Mundas and Oraons have a supra-village organization – the 'parha' or 'patti' which extended over the 'kili' (sept) or clan area.[41]

1. Parha Mangra Munda (of Barla *kili*) installing Sanicharai Munda in the office of Parha Raja belonging to the Dere Sanga *kili*, by presenting a turban. 2. All *Mundas* and *Pahans* of Dere Sanga Parha pledging allegiance to the new chief. The event taking place at Siladon village in Khunti Block of Ranchi District on 7th May, 2006[42]

Among the Hos the *munda* leads the village, and several villages together form a 'pir', headed by a 'manki' and a 'dakwa' or the constable to assist him. There may be one or more than one *kili* members in a Ho village. Among them *kili* is also a primarily social unit while *hatu* (village - as also with the Mundas) is a political unit. The *hatu* is presided over by the *munda* while the *kili* has its responsibility vested in the elders.

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[40] Mathew Areeparampil, *Struggle for Swaraj*, A history of Adivasi Movement in Jharkhand (from the earliest time to the present day) (Jharkhand:TRTC, 2002), 40.

[41] S.C. Roy, *Mundas and Their Country* (Ranchi: Catholic Press, [1912], 1995), 259.

[42] As reported by Dominic Bara, (director of Vikas Maitri NGO in Ranchi) in an open letter with the photograph on 12th May 2006.

The *munda* is responsible to the *manki* who is the divisional incharge and also to the administration of which he is functionary. The *kili* 'punch' is responsible to the *kili* itself. After the enforcement of Wilkinson Rule the *munda* and *manki* (which is a customary positions among the Hos) is recognized and nominated by the government from among the *Khuntkattidar* families, but the *kili punch* is elected by the people. Originally the *munda* was the custodian of the village land, but now he collects rents with the assistance of *dakwa*, and is responsible for keeping a check on crime in the village, settles all disputes with the help of clan (kili) elders [43] and also does some of the activities that a *pahan* among the Mundas does.

The Kharias call their village head 'Pradhan'. In some Kharia villages, the village panchayat is preceded by 'Dihuri', the village religious head. Besides the village *panchayat,* they have an inter village federation or *parha panchayat* or 'Kutumb Sabha'. If the parties in dispute are not satisfied with the decision of the village *panchayat* they go to the inter village federation for justice. The post of the village head is hereditary. [44]

The Santhal village community is governed by a five member council headed by a 'manjhi', the custodian of village property. The *manjhis* report to their 'parganait', the head of the 'pargana' or group of villages. Next to the *manjhi,* the 'paranik' works more like his assistant or rent receiver. Then there is 'jogmanjhi' who acts as 'costos morum' to the young people of the village. Anoher important post is the two officials 'naeke' and the 'kundam naeke', the principal village priest and the field priest respectively. [45] Archer also noted that on occasion women could be appointed *manjhis* and that the post was usually hereditary. The highest body among the Santhals was the annual hunt where all adult males assembled. Underlying all these structures was the notion that the community as a whole took decisions in every field- religious, political, social and economic, and that the headmen could be replaced if they abused their position.[46]

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[43] P.R.N.Roy, *Hand Book of Chota Nagpur Tenancy Laws along with Customary Laws in Chota Nagpur* (Allahabad:Rajpal and Company, 2005), 330.
[44] Ibid., 334.
[45] W.G. Archer, *Tribal Law and Justice: A report on the Santhal* (New Delhi: Concept Publishing Company, 1984), 4-10.
[46] Nandini Sundar, "Custom' and 'Democracy' in Jharkhand", *Economic and Political Weekly* 8 (October,2005), 4430-4434.

The social organization for their administration, as we can see among the Hos, Mundas, Oraons, Kharias and Santhals, includes the main heads which are: the *Munda* and *Manki,* the *Pat Munda* and *Parha,* the *Parha Raja* and *Mahto*, the *Pradhan* and the *Manjhi* and *Parganait* respectively in the village and intra-village and *Pargana* level / zonal administrative officers. The *Kili punch,* the *Pahan* both among the Mundas and Oraons, the *Dihuri* and *Naeke* respectively are the religious functionaries among them. These positions are the same among the other three groups as well. With this we can conclude that the customary administrative systems of these five major Adivasi groups in Jharkhand are more or less the same in their organization. Another important aspect that follows this system is the resource management system of these Adivasi groups, particularly their land, forests and other common property resources.

2.3.2. Customary System in relation to land as a resource management

The land holding system among the Mundas, is not very different from other communities. The Munda have two kinds of land holding systems that have an important relevance in the representation of their customary system. The first is the *khuntkati* system which is special because it has a collective ownership of the descendants of its founders, and thus a special management system. The second important is the 'Bhuinhari'[47] system which has a different patter of ownership than the former. Both these systems have some what different stakes in the *parha patti* system of the Mundas. The executive authority of the *parha* and its judicial authority are vested in a selected body known as the 'panchayat.' The *Panchayat* of the *Parha* in the *khuntkatti* area is neither a fixed body nor has any permanent officers except the president called 'Pat Munda' who is the social head of the *parha* and whose office is hereditary. However, the second kind of *panchayat* in a *bhuinhari parha* is a fixed body with a permanent president, the Raja and a permanent staff of officers -such as,

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[47] *Bhuinhari* or *bhuinhar* is the founding father of a village and his descendents. The term used by the Oraons.

the Kuar, the Lal, the Thakur, the Karta, the Dewan, the Ohdar, the panre, the Kotwar, and the Sipahis – titles imitate the Hindu Rajas and Jagirdars.[48]

The land ownership, use, and management system, both within the *Manki Pattis* and other *khuntkatti* as well as the *Bhuinhari Patti* is directly linked to the customary system's structure. This is the administrative system which all the Adivasis follow, if they have not fully alienated themselves from their ancestral lands. The categories of land and its usages can range from four to seven or more within this system. However, the two broad categories, one that belongs to the *Munda* and *Manki Pattis* / side and the other belong to the *Bhuinhari Patti* / side are worth mentioning.

The *khuntkatti* land is the land of the descendents of the original founders of that village and the lands their kith and kin have inherited[49]. The *Bhuinhari* land is the land of the other common members / citizens (both Adivasis and their service communities who have settled with them, i.e. potters, black smith, musicians, weavers and other such – part of the Hindu caste descendents who have become a part of the Adivasi village community and a part of their social system).

Among the Santals, Archer says, "If we seek an analogy to the Santal village community, we shall find it, surprisingly in the English modern state. Each presents a blend of ultimate democracy with influential leaders, of private ownership with moderate socialism, of citizens with claims and a community with rights. The first aspect of Santhal socialism is the public ownership of land…" [50]

2.3.3. Powers of the customary law

The different *kilis* among the Mundas form a collective *parha patti* (among Oraos it is slightly different, but among Santhals, Hos and Kharias is – as I understand is same as Mundas) which includes the *parha* head, the *pahan*, the *manki* and the *pat munda*.

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[48] S. C. Roy, Op.Cit. 262.
[49] Fidelis De Sa, *Crisis in Chota Nagpur* (Bangalore: A Redemptorist Publication, 1975), 6.
[50] W.G. Archer, *Tribal Law and Justice: A report on the Santhal* (New Delhi: Concept Publishing Company, 1984), 25.

Among the Mundas these posts have become hereditary within the family members of their *khunt*. This too is not always from father to son but the responsibility could be given to other members of the family if the post has been misused by the individual made responsible for it.

2.4 Customary Law in Oral Tradition and the ethnographical texts

Moreover, the Adivasi customs and practices are based on oral tradition, the knowledge of which is passed from one generation to the next, only known to those whose previous generation practiced it and passed on this knowledge. This knowledge is also cradled in the language and their idioms. However the language also dies with the passing of generation, so does the special knowledge of these groups. Thus the customs and practices of the communities with oral traditions would be lost if their living contact with the generation that follows becomes minimal. Therefore, we can see that the communities or group's knowledge systems are based on their oral traditions can disappear even within one generation if not transmitted from one generation to the other, through their own language and practices of their customs. Thus it can be observed, that in the five decades after the independence of the country most of the Adivasis who have moved away from their home villages have not continued with their native languages, and their knowledge, customs and culture too has changed to that of non-Adivasis.

Here we have Adivasis communities based on oral traditions, who have been administering themselves through this own customary system, which was their primary strength in the past to keep their community and cultural identity against many odds. There are records in the history of those events that have made strong impacts in the colonial period, discussed in the following chapter.

As it is, the study of any community's customs and their practices cannot be done in a short period, especially if they have been based on oral traditions. Due to the limitations of time and limited sources, the study on such a theme will thus have to be based on secondary sources to set up the context for an academic discussion.

The study I have chosen is based on the oral tradition which technically would be drawn out from the primary sources that is the ethnographic literature, scholars writings and other documents. Practice of this oral tradition, including their customary practices today, is in its distorted form because of social, cultural and political changes from different factors. Therefore, using limited primary sources and experts views on the topic mostly secondary sources will be giving us the basis of discussion here.

2.5 Background of Customary law / systems: what is unique about it

In the interview from the field work, one of the *Manki* said that, "our *Manki Munda* system is not only a historical fact, but practice of the present as well…."[51] This system called by different names among the Adivasis of Jharkhand is as old as the Adivasis known to be living in this region. However, according to the records and writings from the scholars it can be noticed that there have been some changes in its functionality according to the usages and the need of time The structure of this system however remains more or less the same. The basic principal of this system, as one of the observers, says, "They (Adivasis) were **thinking people, administering themselves democratically**… having an **egalitarian social structure**… [living] more close to nature." [52] With democracy and egalitarianism the important element was of '*abua disum, abua raj*' – our country/ land, our rule, or 'we govern ourselves' which, however, is a newer phrase but not a new phenomenon for the Adivasi peoples in Jharkhand. Yet in another interview the view is presented on the same line of thought, when it is stated that in the colonial period, the "customs and uses (of the Adivasis) have been recognized as an enforce of the law. It was called the '*chalu kanoon*', '*manya kanoon*' or **the living rule (or law)**… this has been recognized in various sections of Chota Nagpur Tenancy Act [1908]." [53] The provisions mentioned in these sections of the act in a technical sense are still applicable in the post colonial time even after the 26 amendments by the year 1995.

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[51] Interview with Shiv Charan Parya, *Mank,* Charahi Pir, Chaibasa, 12th June 2005.
[52] Interview with Rashmin Katyan, Lawyer, Ranchi, 10th July 2005.
[53] Interview with P.N.S. Surin, Retired Megistrate, Ranchi, 8th July 2005.

The sense of independence among the Adivasis and the managing of their community affairs through their customary practices is reflected in a number of scholarly writings (in Jharkhand and other parts of India, more particularly in the north-eastern states), looking as far back in the Adivasis history as possible. The events of migration, subjugation into the dominance of the non Adivasi societies and their rulers, are reflected in their folk songs and also recorded by scholars such as S.C. Roy, J.C. Jha, K.S. Singh, Mathew Areeparampil and some other important scholars' works which I may not have come across.

As said earlier, the five major Adivasi groups together with other indigenous groups are categorised as 'scheduled tribes' in the Jharkhand state. Much of earlier work that has taken place on these different groups are in the scholarly account of S.C. Roy and J.C. Jha. Other accounts also exist such as the Encyclopedia Mundarika in sixteen volumes on the Munda Adivasis social-cultural life written by Father Hoffman. W.C. Archer, on the other hand wrote Tribal Law and Justice -about the Santhal Adivais. We also have detail accounts of the Kharias and the Oraons also customary social system. According to an the interview with professor Sen[54] of Tata Collage in Chaibasa, the heartland of the Ho people, not much work on the customary and social life of the Ho Adivasis has been done compared to work done on the Mundas, Santals, Oraons and Kharias.

Interestingly, the customary system in my understanding, of all these major Adivasi groups in Jharkhand is more or less the same system with slight functional variation based on the same community principles.

P.R.N.Roy explores the notion of governance and that of the governed, among the Adivasis in Chotanagpur and refers to the fundamental difference between the Adivasi communities and the non-Adivasi society, the Hindus particularly. Roy says:

> "…In the area of Chota Nagpur where the Tenancy system was in primitive form and governed by the **local customs and usages**. Code of 'Manu' as prevalent in Hindu society was not applicable uniformly in all the areas. The principal – Land belong to the King because

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[54] Interview with Professor Asoka Kumar Sen, Chaibasa, 28th June 2005.

he is called the 'Lord' paramount of soil was not accepted in its classical form. In Chota Nagpur the land was distributed in the community as a whole and the **proprietary right was vested in the village community**."[55]

The practice of *this* customary system in the Jharkhand region begins as early as the 6th to 10th century A.D. as investigated by J.C. Jha. He also illustrates several developments in this system by the year 1839 and the changes there after. It reads: "In the early middle ages there was no *raja* ruling over the country which was divided into *parhas* of 15 to 20 or even 25 villages, each under its *manki* and local *mundas*.[56] These local leaders probably received no rent but only assistance in war and *salami* at festival.[57]

There are two main elements to bring forward, which shall give us a basis for discussion in the later chapters. **First,** despite having different language origins and ethnicity the Mundari group and the Kurukh group had agreed to a common customary system with common idioms. Nevertheless, if compared with the non-Adivasi, Aryan Hindu, or the Muslim communities, all Adivasis' customs are more homogenous.

Secondly, the social position of the members in the Adivasi communities was more horizontal than vertical / hierarchical, whereas the non-Adivasi societies and their social and administrative systems can be observed to be the opposite. P.R.N. Roy notes that the proprietary right, is vested in **the village community,** with no 'lord' or 'king' to rule over them. Land, forests and all livelihood resources were community centred. Adding to Roy's statement, my assumption of egalitarianism could be experienced here, both in terms of gender and plurality of different groups within the community.

We may then partly, if not fully, agree to statements that three interviews made:

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[55] Pandey R.N Roy, *Manual of Chotanagpur Tenancy Laws*, Vol. 2., Allahabad: Rajpal and Company, 1996. xi.
[56] Division to Owsley, 29 Aug. 1839, para.3, no 247, Misc. Dispatch Book, G.'s Agent's office, Patna Archives. Para 2. cited by J.C. Jha *The Tribal Revolt of Chotanagpur* (1831-1832). (Patna: KPJRI, 1987),.
[57] Ibid.

- That the practice of Adivasis customary system is a historical fact.
- That Adivasis were administering them-selves democratically and had an egalitarian social structure.
- And that they consider their customary system to be the living law.

Taking the above basis from the historical background I am going to talk of the further development of the customary system among the Adivasis in Jharkhand. If the customary system of Adivasis still exists in contemporary society, how is it presently perceived by the Adivasis themselves and what are the social and political realities that pose a challenge for such customary practices to be of any relevance in the culturally pluralistic society of today? In more practical terms, how important would this system be in the presence of the parliamentary representative democracy? Before answering these questions in my following chapters we would have to talk of the present social reality where the issue of customary system will be under scrutiny.

2.6 Adivasis and non-Adivasis in Contemporary Jharkhand

When talking of indigenous peoples in general by bringing up issues related to them and portraying them to be different from the common population, people often focus on the differences, and division in the human society. The same is true in the understanding of the Adivasis in India, also in the context of Jharkhand.

Only five years have passed since the formal formation of Jharkhand as a political state (carved out of the Bihar state on November 2000). The demand of the Adivasis, who comprise only [58] "28 per cent" of the state's population, is to be able to pursue

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[58] Earlier to this about 2000 year back whole of the Chota Nagpur was governed by Nagbansi kings the area was dominated by 90 to 95 % of Adivasis. Later the Nagbansi kings adopted anti Adivasi drive and invited more and more non-adivasis from nearby areas i.e. Gaya, Vanaras, Bengal and Orissa. During the Muslim period Chottanagpur was repeatedly invaded by them and brought in the Muslim population to this region as well. Later during the East India Company and British rule again many office workers, tax collectors, railway workers, miners, and industrialists were bought to this area with other non-Adivasis occupying all the possible lands from the Adivasis. By the time India became independent about 50 % non-Adivasis already occupied the Adivasi lands. Then came a period of the Five Year Plans which opened up the Adivasi areas for more mining and industries. This area was again flooded by non-Adivasis which left the Adivasis to 28 % in the state. (continued in the next page)

their customary system, and this seems to be more important to them than having the separate state of Jharkhand.

Jharkhand was one of the three new states formed in a series in the month of November 2000, becoming the 28th state after the Parliament of India passed the Bihar Reorganisation Bill in April 2000.[59]

The state's law and order problems today have become more complex, intense and obvious than in the past years. On one hand the most obvious problems are the alienation of Adivasi lands due to industrial 'development' and its expansion, extractive industries, and increasing number of urban estates to accommodate the outside population. Expansion of these developmental industries and estates only have an annex development approach, thus economic marginalizing the already marginalized communities here. This kind of development has caused a 'push factor' for the marginalized Adivasis and local communities to leave their native places in large numbers in search of a livelihood as cheap labourers or contract labourers at the lowest levels – (This is explained in the theoretical analysis of the situation in chapter four)

On the other hand 'pull factors' for outsiders. Building opportunities for formally specialized and skilled jobs, businesses, and further service job for the urban elite have changed the whole demography of the urban areas. If Adivasis are to have a place here, it is only through the provision of reserved seat given to them in jobs, whether government or semi-government jobs, as well as some private sectors.

The Adivasis who have their social and cultural roots in their native "rural" areas suffer from limited and poor developmental and agricultural policy of the state, also indebtness as agriculture being the only traditional occupation which is not a self-

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Eight of the Scheduled Area blocked in Jharkhand are now been declared to have less then 50 % Adivasis and there is a plan to de-schedule these blocks.

[59] Non-Adivasi political forces in Jharkhand are very strong and aggressive. They pressure the government to their terms. PESA 1996 does not allow any non – Adivasis to hold office in the Adivasi Panchayat village, where as Jharkhand PRA 2002 allows the non-Adivasis to hold office which is again an encroachment on the privilege of Adivasis, as the non-Adivasis have already illegally or fraudulently occupied the lands in Adivasi areas and are now seeking power in village *panchayats*.

sufficient occupation any more. Loss of customary and collective rights of the Adivasis over forests, which served as an added income source from the forest produces, are not in their control any more, but instead in the hands of Forest Department or those agencies that have taken contracts from these departments. In the last two to three decades the socio-economic situation of the Adivasis due to above factors has resulted in increasing the disparity between the local Adivasi communities and the new outside population from adjoining states. The gaps caused in the socio economic situation of these groups are due to these issues, not highlighted or partially being addressed through different party politics in the state. While they claim to raise the concerns of the Adivasi and local communities, another trend seems to emerge in these areas. It is an increasing influence of armed leftist groups who seem to have taken control of the remote areas in Jharkhand where the issues of Adivasi people is seen as a big law and order problem, and an 'enemy' by the state.

The Adivasi interest groups try to re-organize their social organization based on their customary system, which is, as said earlier, not a new phenomenon. The practice and revival of the same is also a constitutional provision both in its Fifth and the Sixth Schedules, iterated in **the Provision of Panchayats [Extension to the Scheduled Areas] Act, 1996,** in short called PESA law, which retracts these provisions and gives directive to the states covering areas under fifth Schedule of the constitution. This law empowers the local customary law of the Adivasis people in the Fifth Scheduled Areas of the same to function as an alternative to the Panchayti Raj provision. (Because the Panchayti Raj system does not have this provision, therefore the "Provision of Panchayat's Extension to the Scheduled Areas" - PESA)

Out of the nine states in which areas here are covered under the Fifth Schedule, all eight have accepted the directive of the Centre to implement PESA, except for the Jharkhand state. Instead of implementing PESA, Jharkhand government passed a new act, the Jharkhand Panchayti Raj Act 2002.

Why then is the issue of customary system/law, now, more a politics issue than a legal one in Jharkhand? Earlier it was only a matter of culture now nearly forgotten in the post independent era. What kind of developments in the past thus have become

hindrances for the Adivasis in this regard in Jharkhand today? Would there be answers to these questions?

To find answers to these questions we have to look at the complex issue of Jharkhand from within its historical as well as socio-political background. Can the Adivasis claim of their customary system/laws and its revival as one of its answers? In the following chapter I have touched up its historical development from a socio-political point of view to find out how they have created a problem in the recent years in which the Adivasis have become victims of the developmental processes. While in the past their customary system was their social and political strength, they now face a big challenge, to have their self-governance restored even in spite of having national law (PESA) in their favour.

2.7 Jharkhand: prolonged non-formation of states becomes a reason for further exploitation and neglect

Why was the formation of Jharkhand state delayed for all these years? 72 years, if looking at it before independence and 53 years after it. How the development of the modern state was used against the basic interest and identity of the Adivasis is a serious question. It is especially, to see those policies made in the 'national interest' and 'national development' and the impact it had on the Adivasis and their social organizations.

The administration of the Jharkhand region, metaphorically speaking, was given in 'forced marriage' to Bihar state, during the British time, which continued even after the country's independence by not given the status of independent statehood during demarcation of state boundaries. Then it was the *dewani* or *lagan* – tax to the British, and now it was the revenue it generated for the state. Initially the argument for not making it a separate state was that there was no single language spoken in that region, which was one of the preconditions in demarcating the state administrative boundaries.

Nevertheless, there were three reasons given for the delayed formation of Jharkhand state. **First, as stated was the issue of language**. Here for the Adivasis, their languages, which come from mainly the Mundari and the Dravidian language families, could be counted as five different languages or more. Hindi was a much later development, which came with introduction of the Nagbasi Rajas and the landlord system. As mentioned earlier, however, these five languages of the Adivasis in Jharkhand have different names for more or less the same language, at least for the Mundari language group which includes, Munda, Santhali, Ho and Kharia, (the difference among these languages can be compared to the difference in English language for example, as the difference between British English, Australian English and American English) in addition to Kurukh, which comes from the Dravidian language family.[60] All the five language groups with the others included have the same culture, customs and practices. This did not however fulfil the criteria of one regional language unlike other states, for example Orissa state for Oriya speaking, the state of West-Bengal for Bengali speaking, of the Assam state for Assamies speakers, and so on. (See map 3 on page 113 Adivasis in India during the independence till recent years.)

The second reason was, the Adivasi 'population being illiterate', concluding that tribal people cannot run the 'modern' state administration. Therefore it had to be married to the nearest 'master', the Bihar state! The larger part of Jharkhand was tagged with Bihar and the smaller parts went to or were given to Orissa, to Madhya Pradesh (now part of it is in the Chattisgarh State) and to West Bengal.

The third reason of not giving up Jharkhand to be an independent state was because this region has the richest mineral deposits in the whole of the country. The adjoining states to whom the portions would go would be earning good revenue of the national income from its extraction.

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[60] Oraons who come from the Kurukh language group came to live with the Mundas in Chotanagpur in 1206 when Muhammad Bakhtiar Khilji invaded Gour. Large number of Oraons came to this area when the Muslim army repeatedly invaded Rohtasgarh, their capital. – Bhuneshwer Anuj, *Ateet Ke Darpan May Jharkhand* (n.p., n.d.), 191. - Rohtasgarh passed into the hands of Muhammadans through trickery of Sher Shah not until 1359 following the attacks by Khilji started in the year 1193 according to S.C. Roy, Op. Cit., 26.

Broadly speaking, these three reasons were the basic reasons for keeping Jharkhand as a 'concubine' of Bihar shared by other adjoining states. The local phrase for Jharkhand of being a part of Bihar was the 'milking cow'. Once the cow cannot be milked any more, it is sent to the slaughter house for making profit out of every bit left! The colonial time was the time of discovering this 'cow' and 'raising her to be milked' in the form of the tenancy laws and rules for administering the region for tenancy and in the past independent times for further exploitation.

In the larger frame if we look at both the socio-cultural and political issues of the Adivasi in Jharkhand in the post-independent era, we can also see clearly the legacy that was left behind by the colonial system, left to the Bihar state, that contributed much to the mindset of 'milk thy neighbour's cow!'. The colonial government left the country more than fifty years ago, since India attained independence. However, it is observed that the process of colonial exploitation has not stopped with independence, rather "in the name of development, a new form of domination referred to as internal colonialism is being unleashed… It is also observed that the ruling elite look at Jharkhand and its inhabitants as commodities of exploitation, probably the cheapest and most sought after commodities in the Indian market." [61]

The extant of exploitation and marginalization of the Adivasis is widespread, despite of the provisions of the Fifth Schedule of non-transfer of Adivasi land to non-Adivasis, the Chottanagpur Tenancy Act, the Santhal Pargana Tenancy Act and the Wilkinson Rule together reserved this right of the Adivasi, but the amendments made exceptions for transfer in it for 'public purpose' etc. The extent of displacement in the process of industrialization is illustrated by the following few historical facts cases.

2.7.1. Development & Displacement: What happens to the Adivasis

In the time of the post independent period industries like: Rourkela Steel Plant, expansion of Jamshedpur from town to a city, Heavy Engineering Corporation Ranchi, Bokaro Steel Plant and a number of other such estates which were said to be

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[61] Mathew Areeparampil, *Struggle for Swaraj, A history of Adivasi Movement in Jharkhand (from the earliest time to the present day)* (Jharkhand: TRTC, 2002), 1.

the 'modern temples of the nation'[62]. Though it was a sign of the new independent nation on its modernization and industrialization process, it is important to note that they were all planned and made in the Adivasi areas, if not all on the Fifth Scheduled areas, either after de-scheduling them or in the 'public interest'. It is the Adivasis who were made to be sacrificed in the altar of these 'modern temples', example take the following case illustrates the same:

The Rourkela Steel Plant, (falling in the state of Orissa, area part of earlier proposed Jharkhand state) started in 1956 and caused the displacement of 32 villages consisting of 2,465 families of which 70% were Adivasis. Only 1,200 of these families have been rehabilitated in the two settlement colonies at Jolda and Jhirpani.[63]

The Heavy Engineering Corporation was established in Ranchi with Russian collaboration in 1958. It acquired 9,200 acres of land from 25 villages. As a result, 2,198 families or a total population of 12,990, mostly Adivasis, were displaced. Those families belonged to Oraon and Munda groups and some Hindu castes. Only some of these families were rehabilitated. At the Bokaro Steel Plant, 46 villages were acquired for the construction of Bokaro Steel City displacing 12,487 families, 2,707 of them Adivasis.[64] The outside population here swelled as these industrial cities grew significantly, not to mention the business interests and service infrastructure for these estates and the opportunities this would bring along, marginalizing the Adivasis in all respects not only in number. Jharkhand area which covers 29,821 sq **miles** of land according to 1951 censusthe population had a total population of 9,318,792 persons in which the Scheduled Tribal population was 3,430,599.[65] In 1991 the same land area measured in **kilometres** now (79,732 sq kilometres) had the population of 21,848,860 in which the Schedule Tribe population was 6,044,010. The non-Adivasi population increased more then two and a half times where as the Adivasi population increased even less then one time in these forty years.[66]

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[62] J.L. Nehru, the first Prime Minister of India used this term in several of his speeches.

[63] Mathew Areeparampil, *Tribals of Jharkhand: Victims of Development* (Delhi New: Indian Social Institute, 1995), 25.

[64] Areeparampil Mathew, *Tribals of Jharkhand: Victims of Development* (New Delhi: Indian Social Institute, 1995), 26.

[65] Census of India 1951 vol. V, Bihar Part II-A (tables A, C, D & E series) – General Population Tables (n.d).

[66] Amit Prakash, *Jharkhand Politics of Development and Identity* (New Delhi: Oriental Longman Ltd., 2001), 135.

With regard to the categories of the Adivasis lands taken from these (revenue) [67] villages that have gone into making of these industrial estates are not present here, however. This was just simply to demonstrate the scale in which the acquisition could evict and dispossess people who own it for no or very little in return. In Jharkhand most of the Adivasis from either of the groups would have inherited their ancestral lands, unless they have fully mortgaged it or left it completely for reasons of it not being cultivatable or other reasons. In the above cases, if we could find case studies done on them, which is not very likely, there would be many examples.

In fact the acquisition of land in India and other immovable properties are mostly acquired under the Land Acquisition Act of 1894 (as amended in 1984). "This law was not enacted with the resettlement in view. It was enacted in the nineteenth century when the maintenance of law and order, and not development, was the main focus of colonial government administration" says, Hari Mohan Mathur in his book '*Managing Resettlement in India*'. Mathur who is a development management and resettlement specialist worked in government also remarks that resettlement was not the issue that it is today when this law was promulgated. This 'archaic law', still in force, however is inadequate to meet the problems that people now face due to loss of their lands for dams… thermal power stations, mining operations, and other similar developmental projects, making reference to Sukumar Das's essay.[68]

2.7.2. Case illustration: Peraj East Open Cast mining project and displacement

What is it like for an Adivasi to be evicted, uprooted, or in milder words 'displaced' from his /her ancestral land and its surrounding for certain projects -mining, dam, or other industries? Once evicted, the slang used among the local people for a displaced person is 'uthlu' in the Hazaribag area, a term to express a sense for those having lost their very ground or social base of their identity to be part of a larger society. But how the Adivasis themselves feel about it, and why they feel so, could be seen from one of

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[67] Revenue village is an administrative unit of a village with several helmets and its different categories of land around the village and its several helmets. Each family could have five to twenty acres of lands.
[68] Hari Mohan Mathur, *Managing Resettlement in India* (New Delhi:Oxford University Press, 2006), 8

the pilot projects of Peraj East Open Cast Coal Mining Project in Hazaribag.[69] One out of the three pilot projects of the World Bank (WB) with Coal India Ltd. (CIL) the Indian mining company. If it was found to be successful it would receive World Bank funding for twenty five mining projects in three states of India under its Environment and Social Mitigation Project (ESMP).

Mathur makes a reference to Hasan's essay[70] on "the issues and lessons emerged" from the ESMP and the CIL project (1996-2002) which the World Bank approved as a larger Coal Sector Rehabilitation Project. Since I had volunteered to initiate the work with Chotanagpur Adivasi Sewa Samiti (CASS), an NGO in Hazaribag from 1995 to 1997 to support the people who were being evicted from ESMP's pilot project - Peraj East, I have some personal experience to say what social impact such projects can have on Adivasi people in particular and displaced persons in general. Mathur makes reference to this experience in his book:

> "The NGO [CASS] complained that the Bank had violated its own policies –WB's Operation Directive– on involuntary resettlement and failure to provide income restoration has led to widespread impoverishment. On investigation, the panel –WB's Independent Inspection Panel– found several instances of non-compliance with the Bank policy and procedures and the Bank management also concurred, but whether this will lead to restoration of livelihoods of those who have lost them due to the mining project remains uncertain."[71]

If seeing the facts behind the project as given in the World Bank's Staff Appraisal Report (No.15405-IN. April 24 1996), of the Coal Sector's Environmental and Social Mitigation Project (CSESMP) it is as following:

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[69] Hazariba is one of the districts of Jharkhand, best known for coal mining, though not covered under the Fifth Schedule provision but has a significant Adivasi population.
[70] Hari Mohan Mathur, Op. Cit., 13.
[71] Hari Mohan Mathur, Op.Cit., 14.

CSEMP which covered 25 projects in three different states, one of the states being Jharkhand	Full phase of the Parej East project as one of CSEMP in Hazaribag in Jharkhand. Here it is the Central Coalfields Ltd. (CCL) the subsidiary of CIL that operates this project
Total land acquired in these 25 projects: 1827 ha	Land Acquired for Parej East project: 237 ha
Total number of persons affected by the project : 17632	In Parej East the total number of people affected: 1172
Total number of Tribal persons affected are: 4619	In Parej East they are : 487*
Total population of these area are : 185811	In Parej East the total population is: 2913

These figures are misleading because the project actually affects communities in 11 villages and from this figures one is made to believe that the number of Adivasis is very small. The figures can be distorted; however the project fails to show that the damage is not just contained in Parej East alone. Peraj village is one of the 11 villages and their lands are covered in this project. It had intensified the problem further which is talked about in the study done by CASS.

I would like to state an example, from my two and a half years involvement with the project affected people during the first phase of the project. This was in direct confrontation with the project authorities; one can very clearly see how it is when Adivasis lose control over their land and livelihood resources. I would like to quote a small portion from my field notes used in this study:[72]

It is 5 years since the 9 Turi families have been displaced. Recently, Rameshwer and Bisheshwer went to the Project Officer (PO) Mr Gopal Singh of East Parej at his residence which is just adjacent to theirs, to share their grievances. The PO got annoyed with them and shouted at them saying "I don't know who you are!" The PO also got angry with his driver for allowing such people to meet him. But when Rameshwer wasn't displaced and he was on his land, then the CCL went pleading to them for land. There was Mr MP Mishra another General Manager in 1996 who told us, "**today, at least we are talking to them**".[73]

After the land is taken from the Adivasis for the project they have to comply to the rules of the government in all levels:

The Government's attitude has also been pro-company. Take the example of authentication of land paper/land titles. Once the land is given on lease, the government refuses to authenticate land. If a man whose name is on the land paper has died, his heir has to get a succession certificate which is a lengthy court process. On the other hand, in the case of Borwa tola which did not shift or want rehabilitation, the company got the local administration to bring the police and evict the people, and the reason the Deputy Commissioner gave was that World

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[72] Bineet Mundu, "India: Breaking the Trust" Case Study on Indigenous Peoples, Extractive Industries and the World Bank – Presented at the Workshop in Exeter College in the University of Oxford – UK, held on the 14th- 15th April 2003.
http://www.forestpeoples.org/documents/prv_sector/eir/eir_internat_wshop_india_case_eng_apr03.pdf
[73] Ibid. 8

Bank machines are lying unused. So the people are caught between the Indian government and the World Bank. And the World Bank is **supporting this dirty business**.[74]

**The Forced Eviction
("relocation"- World Bank)
of Borwa Tola in December 1999.
17 families were evicted in
this manner, the families
were carried in dumpers
and left at the Pindra
Rehabilitation site.**

**The only use the school,
community hall and primary
health centre provided, was to
shelter for these displaced families,
while they hurriedly built
their houses at the
rehabilitation site.**

In the case of Bhola Manjhi, a Santhal in Parej Project displacement:

**Bhola Manjhi, Borwa Tola, the day he
was " involuntary relocated", sits shocked
& helpless on the grable of his earthern
house buldosed a few hours ago on
Dec 21. 1999**

**After having lost 2 acres of land to the Parej mine, his two sons were not given a job and his entire family faced total loss.
A farmer by occupation he had to be contented with Rs.50,000/- as compensation for not choosing to go to the Pindra
Rehabilitation site.[75]**

*"In the Panel's view, it is difficult, if not impossible, to reconcile the Bank's aim of development with a one time cash grant
for acquisition of home and land."* **(IP.20,p.x)**

In another case of Santhal women Lalbatti Murmu, also in Peraj Project displacement:

**Lalbatti Murmu. Evicted from Borwa tola
December 1999 died in September 2002. She is
one of the several women to have died after
having being displaced, a victim of the one-time
grant for acquisition of land and homestead, as
well as not being compensated at replacement
value. Her death and the suffering of several
women demonstrate a lack of support during
the transition period in the resettlement site.**

**Her young teenage daughter Birsi was a
domestic servant in one of the company
official's quarters in Premnagar.   "Late at
night she was brought home dead - she had
'died under mysterious circumstances'".
Another younger son also died of sickness. Her
husband is Jagdish in Pindra Rehabilitation
site.[76] (Photo Source: Bina & Philan)**

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[74] Ibid. 10
[75] Ibid. 13
[76] Ibid. 14

In this experience there are two things worth mentioning here. Firstly, the Adivasis' special relation to their ancestral lands, and only when it remains with them does their customary social system have its significance. In other words they both complement each other. The knowledge base or the school of knowledge for the Adivasi people (including their language) within the basic rules of their institution of their customary system/law establishes their independent life and their livelihood. When hindered it leads to impoverishment in all respect. Whereas, the impoverishment for the non-Adivasis as project affected persons, when displaced is not at the same level. I have talked about that difference in the third chapter of this thesis.

Secondly, in this case it was noted that those other than the Adivasis, i.e. the Muslims and the caste Hindu project affected persons were more receptive to displacement with cash compensation and jobs in the company. It was also seen that they also organized themselves to better negotiate with the company. The Adivasi in this case who wanted land for land in the first place were not given any priority by the company, who said there was no land the company could make available to them. The Adivasi youngster also wanted to have contract work with the company and was not totally against cash. Most of Adivasis' spending were on non-income generating or utility goods, whereas the caste Hindus or Muslim displaced would invest their money in buying plots of land some where else and buying vehicles that could be used as income from transportation or rent. For non-Adivasi project affected persons land, trees, house structure –by size, and every thing material was seen in monetary profiting terms, but for Adivasis it was only money (cash to be spent).

In the words of Grogory Bahla of Bondabahal in Orissa who was displaced from Raurkela industrial estate says: "We dream of our land. Everything that we see, that we walk on, that we feel through our body; it belongs to our land. We need the land to think about ourselves, to know who we are. We are no people without our land. The government should understand this! This is not negotiable! Land cannot be compensated."[77] But when their social system is broken their community is fragmented, and as individuals they do not have any basis to negotiate.

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[77] Ibid., 3.

2.8 Which direction is the 'development' politics leading the Adivasis into?

The government launches very ambitious development plans to deal with the wider contemporary political and social realities the Adivasis in Jharkhand face. It is seen that soon after the Jharkhand government was formed, they have signed more then 40 memorandum of understanding (MoU)[78] with big companies. These companies who have their shares with foreign and multinational agencies, invited to Jharkhand for further industrial development and industrial expansion and for exploitation of its natural resources. These companies' field of operation, exploration and exploitation extends not only in Jharkhand but to the adjoining states. As stated earlier, Jharkhand is the richest natural and mineral resource areas in the country, and the challenge for the Adivasis here is much greater.

This whole region has become an industrial and mining magnet. Here the Adivasi or indigenous peoples have been exploited, and continue to be exploited to the maximum in all respects. Areeparampil observes that the Adivasis in Jharkhand are 'systematically' and 'methodologically' being dispossessed of their ownership of their livelihood resources and their 'very means of human existence'. Among the dispossession is their political autonomy as their community is becoming fragmented in the name of 'national interest'. This includes an unjust 'integration' on unequal terms and a kind of 'cultural assimilation' into the national mainstream.

These changes are bound to produce social maladjustments when a people who have a different history are forced to live in administrative conjunction with another group i.e. the Biharis, Bengalis and members of other dominant societies, socially and culturally differ in varied proportions, and still hold the key positions in the state administration.

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[78] From the news March 2006, compilation of Bindrai Institute for Research Study and Action (BIRSA) in Ranchi

The state administrative mechanism in the hands of people from these adjoining regions or state, who have manipulate matter in the ways they would go in their favour, or the groups they represent, making the state its administrative system, including the legal systems, work to their advantage.

A whole range of issues can be listed here falling out of the mentioned situation. One among the important issues worth mentioning here is the census of population distribution of different groups. That is, if a certain block within a district or a district itself in a state, percentage of Adivasis is shown lower than a required for it to be a scheduled district; the general rule will be applied to these areas as against the special rules for Adivasi dominated areas. It would no longer give special consideration to the special rules that protect the Adivasis customary and traditional rights. The non-Adivasis coming from outside will be able to own land in these regions for private and commercial purposes or exploit it for commercial purposes. Rules regarding use of forest and land, including timber logging, mining and other developmental plans will apply. Adivasis in this case will no more be having special privileges as against the general category population. The general category groups see most of these areas as potential areas for commercial exploitations, which today they claim the Scheduled Area' rules to be an obstacle in its exploitation. In the last section of the next chapter I have elaborated how the re-distribution of blocks and districts can show the Adivasis to be less than the required percent in the census, thus the threat of de-scheduling of these areas. However, before this we shall discuss in the following chapter of the political association of the Adivasis, investigate where the difference lies and its importance.

CHAPTER THREE: Adivasi Politics

3.1. Adivasi organisation as a political association

In this chapter before looking into the Adivasis' political association, it would be important to briefly look into the discourse of political thought of nation-state first. Thereafter, I shall take the insight given by Max Weber on the 'tribes' and the 'caste' in India in his *Essays in Sociology*[79] which can be a basis for discussion. As a follow-up it will be to place the Adivasi political association in the discourse of political thought.

In the political thought, according to Scruton, the state, in the modern use of its definition (Machiavelli) there are two adherences, the rights theory of politics and another, power theory. The first consider (Hegel) 'the state is actuality of the ethical idea', whereas, the second considers (Weber) that the state is organisation which 'monopolizes legitimate violence over a given territory'. Both views accept the distinction between the state and society; however, law in it may be essential to the first view and not essential to the second. The many obscurities are thus revealed if the definition of the state is broken down into components. (i) Association among persons for the end of government; (ii) legal organisation: i.e. the power of the government is exercised partly through law, and hence may be determined and limited in certain cases by a constitution; (iii) attachment to a particular territory over which jurisdiction is exercised; (iv) personification: i.e. the state is both a juristic person and a kind of quasi-person in popular thinking, with rights, obligations and also a personal identity over time distinct from the identity of its members. Furthermore the state has agency and responsibility, whether or not in law.[80] Employing the said explanation for the state and within it analysing the Adivasis' political association, will help us find where lies the problem for the Adivasi in the context of India. However, before going into it one could ask how to define the political association of the Adivasis. This is

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[79] H.H. Gerth and C.W. Mills, *Max Weber: Essays in Sociology*, (London: Routledge, [1948], 1991), 398.

[80] Roger Scruton, "State", *A Dictionary of Political Thought*, London: Pan Book Ltd. with the Macmillan Press 1982, 446-7.

where we may have to take Weber's explanation of 'tribe' and their political association.

3.2. The notion of political association of the Adivasis & its place in the nation and state legislations

In this and the following sections I shall focus, firstly on the concept and historical development of *phyle* –the political association– by employing Max Weber's model of "tribe" for Adivasis' case in Jharkhand; secondly, the issue of its legitimacy in the present legislation; the third, importance and scope of this association within the Adivasis themselves will be discussed towards the end.

According to Weber the government systems can be classified into three broad categories: Traditional authority of kingship or monarchy, which is gaining that authority through inheritance of blood line; secondly, the charismatic leadership, who gains that position through his (/her) own merit, and lastly; lastly the bureaucratic system which elects their leader through modern elective system. Among, this bureaucracy is considered to be the best form of government today, combined within the parliamentary structure. To place the Adivasis, referred to as tribes in the social and political context of the country, it would be important to place them in a broader context to be able to point their distinctiveness with other social groups.

If we try to look at what influences the governance of any of the above categorized government systems we have to see what Weber himself has to say. The case of India, is obviously the parliamentary democratic bureaucratic system. In this context Weber observes the *Caste and Tribe* in his essay[81], when he says, "As long as a tribe has not become wholly a guest or a pariah people, it usually has a fixed territory." But for the *caste* he says, "A genuine caste never has a fixed territory", having differentiated the two groups on the grounds based on the Veda categorization of the Hindu social hierarchy system.[82] In this essay Weber further makes an interesting and important observation on India's *Caste and Tribe*'s social organizations, when he says,

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[81] H.H. Gerth and C.W. Mills, *Max Weber: Essays in Sociology*, (London: Routledge, [1948], 1991), 398.
[82] Ibid., 397.

"Originally, a tribe normally comprised many, often almost all, of the possible pursuits necessary for the gaining of subsistence. A caste may comprise people that follow very different pursuits; at least this is the case today, and for certain upper castes this has been the case since very early times."[83] Very often, even today, 'caste' and 'way of earning a living' are so firmly linked that a change of occupation is co-related with division of caste. This is not the case for a 'tribe'.[84] This is a very basic difference that can be observed in the social organization of people in Jharkhand too, when it comes to the issue of Adivasi (tribe) and the non-Adivasis (caste) groups and their political associations.

By employing Weber's explanation, one can conclude that the caste system of the Hindu society and the collective communitarian system of the 'tribes' have different structural founding. In this case when there are different social organizations of the two peoples who have different orientations and a long history of conflicts, there is a need to have a system of administration that would serve different interests. Further the issue of their organizations having these two orientations we can reiterate from Weber's explanation, when he says,

> "It is decisive for a tribe that it is originally and normally a political association. The tribe either forms a independent association, as is originally always the case, or the association in part of a tribal league; or, it may constitute a *phyle*, that is part of a political association commissioned with certain political tasks and having certain rights: franchise, holding quotas of the political offices, and the right of assuming its share on turn of political, fiscal, and liturgical obligations." [85]

Talking about Adivasis' independent association, I have looked into the recent historical sources with which it can, no doubt, be established that the Adivasis of Jharkhand always have had, in their system, an independent political association reflected in their customary practices. (Most of the references have already been made here) Their association has also been firm on certain principles but has been adaptable

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[83] Ibid., 398.
[84] Ibid.
[85] Ibid.

and changed if there was a need.[86] Moreover, their social and political associations manifested in their customary system is not exclusive to one Adivasis language or ethnic group alone, but several – Santhals, Munda, Ho, Urons and Kharias. In addition they have accommodated the non-Adivasis social groups as well who have lived with them as a part of their community in the recent past so long as they respected their social codes.

3.2.1. The Adivasis notion of political association before and during colonialism

The literature dealing with political system of Adivasis reveal that administration in "tribal societies" was managed through political institutions like the Council of Elders, Village *Panchayat*, (*Panchayat* meaning councils) Village Head, Inter Village *Panchayats,* and Adivasi Chiefs. Accordingly, it is concluded that traditional Adivasi administration was "simple and democratic".[87] As said earlier, in their book *Tribal Development in India (a critical appraisal) 2003*, Upadhyay and Pandey states that, with the "details available", it "highlight that our tribal brethren were the original inhabitants of the land of Bharatvasha."[88] While this textbook gives a basic overview of political and legislative developments, on this theme it further reads,

> "They (Adivasis – called here as the 'tribes') claimed the virgin forests and converted them into cultivable lands of our country. There was a time when they possessed entire forest and land of our country… but they were driven towards hills and forested areas by non-tribals who came to settle here from foreign countries and laid the foundation of Aryan civilization and Hindu religion…they have excessive love for their land… have their own traditional political and administrative system to control the society, forest and land…"[89]

However, before coming to the post – colonial time administration, very briefly it should be observed that these authors' phrases the continuation of the traditional

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[86] Jagdish Chandra Jha, *The Tribal Revolt of Chotanagpur (1831-1832)* (Patna: K. P. Jayaswal Research Institute, 1987), 32-33.
[87] , V.S. Upadhyay and Gaya Pandey, *Tribal Development in India (A Critical Appraisal)* (Ranchi: Crown Publications, 2003), 31.
[88] Indian sub-continent in the early AD was referred to as *Bharatversha.*
[89] V.S. Upadhyay and Gaya Pandey, *Tribal Development in India (A Critical Appraisal) op. cit.*

system of the Adivasis that: "The traditional administrative system for forest and land for tribals continued untill the Mughal period. Neither Hindu kings nor Muslim rulers attempted to disturb the traditional administrative system." Perhaps it was, however, obvious that within the policy of 'divide and rule' their system was given a 'legal recognition' when the "British Government attempted to bring the administration of tribal areas under government rule." [90]

There have been two different approaches in dealing with the matters of the Adivasis, both during the colonial and the post-colonial times. Adivasis have been seen as poor, 'socially backwards', and the 'exploited lot' due to their distinctiveness in the caste based society. Within this reality, their socio-economic situation needed some alleviation to come to the common social standards of the mainstream. But on the other hand the colonial authorities had to deal with occasional uprisings and resistance from the Adivasis, and for that reason they had to be dealt with in a different way.

In the background of colonial rule the prime objective was to have administrative control over the land, forests and resources, after the "*Diwani* (throne and acclaimed authority of collecting taxes) of Bangal, Bihar and Orissa was given to the East India Company in perpetual grant by Sah-Alam, Emperor of Delhi on 14th August 1765…"[91]Taxes levied on Adivasis by Muslim rulers, now were replaced by introducing *Zamindari* (landlord) system by the British authorities during the colonial period. "*Zamindars* introduced *jagirdars*, *thikedars*, (-tax collectors and knights) courtiers etc. in tribal areas and their muscle men exploited and oppressed the tribe mercilessly." [92] The landlord system in the Adivasis areas in the eighteenth and early nineteenth centaury led to fierce rebellions in parts of West Bengal and Bihar (south of Bihar now Jharkahnd) again when the British responded by removing landlords and passing land settlements aimed at securing 'tribal tenure' in these areas.

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[90] Ibid., 31.
[91] Manual of Chotanagpur Tenancy Laws, 2002 ed., Vol 2, s.v; "Introduction", xi.
[92] V.S. Upadhyay and Gaya Pandey, *Tribal Development in India (A Critical Appraisal)* op. cit., 9.

3.2.2. Historical Benchmarks

In this section I shall be talking of the issue of legitimacy of the Adivasis' political association which was our second point for discussion in this series. There were nearly nine major historical benchmarks in the British India around and after Adivasi resistances and insurgencies that laid down provisions in the administration that would acknowledge or recognize the presence of Adivasis in respective areas. These rules were aimed to have better control over Adivasi land, forests, and resources for taxation through the landlord system, which was strongly challenged, by Adivasi insurgency and uprisings. Among these policies and plans for the 'tribal areas' were as following[93]:

1. The Bengal Act, XIII, of 1833: It was the first setup for Jharkhand region to be accepted as an area outside the operation of general laws. This area was kept under the agent of governor – general.

2. Cleveland's Hill Assembly Plan for Rajmahal Hills of Santhal Pargana: the policy to provide arms to Paharia archers like regular police and transfer the cash of Paharias to the tribunal of the chief. Mr Cleveland to this end established regular market here encouraging Adivasis for selling forest produces in the *haat* or local market.

3. Wilkinson Act: the agent of Governor, General Captain T. Wilkinson established an act for the judicial administration in the tribal area of Chota Nagpur. In this act the traditional role of Munda, Mankis, and other village functionaries were accepted in the local administration.

4. Act 1855: After the Santhal insurgency the dami-e-koh and other Adivasi districts were made free from the influence of common rule.

5. Act 1870: Due to strong oppositions by the Adivasis of their land being grabbed by non-Adivasis, special rules were formulated to save the transfer of Adivasi land. The

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[93] Ibid., 10-12.

policy of non-disturbing of the Adivasi customs and traditions was adopted by this Act.

6. Scheduled Areas Act 1874: Also called the Scheduled District Act, this act gave local administration power to notify areas as 'scheduled areas' to solve the crime and civil cases to determine revenue and to collect taxes and levies. It was applicable in all India where there was a significant number of Adivasi or tribal population.

7. Chottanagpur Tenancy Act 1908: After the Birsa Munda's movement this act was passed to stop the transfer of Adivasi land to the non-Adivasis. This developed from the Chota Nagpur Tenancy Act (Act 2 BC, 1869) and Chotanagpur Landlords and Tenants Act 1879.

8. Government of India Act 1919: this identified and classified Backward Areas into two categories, (i) Fully Excluded Areas and (ii) Corrected Excluded Areas, henceforth the policies and provision to be implemented here.

9. Government of India Act 1935: By constituting the Simon Commission in 1927, the government made an inquiry into the administrative system, educational development, and representative institutions in different parts of India. On the issue of the Adivasi the commission observed and concluded that there was no representation in the government due to backwardness. This led to establishing rule of the Governor into now called the 'Excluded and Partly Excluded Areas' where the rule of centre and the state will not be applicable but that of the appointed Governor General.

This however illustrates acts and that gave direct recognition and legitimacy to the customary system of Adivasis in the colonial India's legal system. These can be seen clearly spelt out in the **Bengal Act XIII of 1833, Wilkinson Act, Act 1870,** and the **Scheduled Areas Act 1874.** These were followed and further contextualised in the **Chota Nagpur Tenancy Act 1908.** Also in the **Santhal Parganas Tenancy Act 1949** (thought it was after the independence of the country, and the issue could not have been ignored because of the strength of the Santhal Adivasis) giving legal recognition to the customary laws of the Adivasis in Jharkhand region. However, before going into the third point of discussion, it will be helpful to see how the

independent national's developments have brought in a new change in presenting the Adivasis and their reality. This new perception of themselves (Adivasis) in the administration in the hands of Indian elite brings in a newer change for the Adivasis.

3.3. The state's political notion and Adivasi developments after India's independence

The independent India, now free from the colonial rule, was to be governed by the new Constitution, led by the elected representative from the country who had to choose a model of development for this new nation. The question for the National Planning Committee (NPC) set up by the Congress Party then was that, from among the two perspectives and approaches of development models, which one would formulate a plan for India's development, mainly the industrialization aiming for the nation's 'economic regeneration'. Gandhi's plan had a strong emphasis on small-scale, cottage industries to be the primary units of larger industry but was received with suspicion and criticism in NPC. Nehru, the NPC's chairman, and the Prime Minister of the independent India had long believed that the large-scale industrialization alone could solve India's problems of poverty and unemployment. Apart from Nehru's own beliefs, the NPC's reports on different spheres of development reflected the vision of a powerful and growing class of industrialists, their supporters in politics and intellectuals with high qualifications in different areas, including science and technology[94].

The national policies regarding Adivasi or 'tribal developments' that came in the fifth decade after the independence started with that of *Bhoodan* (donate land) Movement in 1951, followed by Community Development Programme in 1952, village housing scheme in 1957, etc. These were followed by Agricultural District Programmes in the following decade in 1960 and the Tribal Areas Development Programme in 1962. By the year 2000 one could see that there were over 35 different programs implemented in the 'Scheduled Areas' and 'Tribal Areas'.[95] However, the approach in the implementation of these programs for the Adivasis in these areas was supposed to be

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[94] Krishna Kumar, "Mohandas Karamchand Gandhi (1869-1948)" *Prospects*, Vol. 23, 3/4, (1993), 507–517.
[95] V.S. Upadhyay and Gaya Pandey, *Tribal Development in India (A Critical Appraisal)* op. cit., 193.

specified, as the socio-cultural orientation was not the same as it was of the other communities here. Therefore, it was the *Panchsheel* – the five principles formulated by Verrier Elvin[96] and enunciated as a policy document by Nehru that seemed to be the most ideal principles, when it came to implementing these developmental programs for the Adivasi and tribal peoples, actually it was accepted that the Adivasis should: a) develop along the lines of their own genius and nothing should be imposed upon them, b) that their rights in the forest and land should be respected, c) that the role of outsiders in their development should be limited to building their own capacity for governance, d) that the Adivasi areas should not be over-governed and loaded with a multiplicity of schemes and that indigenous institutions of Adivasis should be tasked with self-governance, and finally e) that the results of these efforts should be judged not by statistics or the amount of money spent but by the quality of human character that is evolved. However, the *Panchsheel*, is said to have been 'forgotten, even before the ink it was written with had dried'.

What was different for the Adivasis in the independent India? One can see that, as already referred in the first chapter, their status now had changed from Adivasis and Aboriginals to 'Anusuchit Jana-Jati' and 'Scheduled Tribes'. The new Constitution thus has made some provisions for these 'Scheduled Tribes' to be put up in four broad headings.

1. Protective provisions
2. Developmental provisions
3. Administrative provisions
4. Reservational provisions

There are several sets of articles in the constitution, specifying the said provisions applicable to the Scheduled Tribes, including some other scheduled categories as the case may be. It may not be necessary to go into the details of each of the above provisions, but the only one that deals with **administrative provisions** would be important for us to critically look into, when it comes to policies both at the central as well as state level administrative provisions.

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[96] Verrier Elvin: An English anthropologist who is well known for his remarkable works on Tribal people in India.

The **Scheduled Areas Act 1874** now in the new constitution (article 244) also acknowledges that the area that has different proportions of Scheduled Tribes population in the different states be termed as 'Scheduled Areas and Tribal Areas', continue to be exclusively for 'tribal administration'. Both these terms 'Scheduled Areas' and 'Tribal Areas' in the legislation is used for administration in the Fifth Schedule and Sixth Schedule of the Constitution respectively which are mostly Adivasi dominated areas.

In the whole country, nine states have their areas covered under the Fifth Scheduled and some four states in the northeast India covered under the Sixth Schedule of the constitution. The differences between the two schedules are that the Adivasi or tribal people in the Sixth Schedule enjoy more autonomy in exercising their customary practices and rights than those in the former. Jharkhand is among the nine states where the areas are covered under the Fifth Schedule[97]. These areas have special rights of administration, such as the non-transfer of Adivasi land to non-Adivasis by law and provisions to be governed by the local and customary laws. In addition, certain constitutional bodies that are mandatory for the rest of the country to be constitutes i.e. the *Panchayati Raj* bodies cannot be formed in these areas. However, in the Jharkhand state there seems to be a serious problem when it comes to the issue of respecting Adivasis basic rights which are acknowledged and supported in the national and state legislation because the Jharkhand governments take an unconstitutional stand.

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[97] Most of the Adivasi areas in India are covered under the Fifth Scheduled, as these areas contain non-Adivasis along with the Adivasis. Fifth Schedule accommodates non-tribals in this area by the central government or constitution. Here the Adivasis have been exploited by the non-Adivasis by means of grabbing their lands and forests and enriching themselves by many other deceitful means. The provision of Fifth Schedule leaves many holes for the non-Adivasis to continue exploitation of the Adivasis.

3.4. Rules & laws specific to Jharkhand pertaining to the powers of the customary structure vs. Panchayti Raj – the state system

To follow up from the discussion from the previous section, here I have elaborated on those developments that have led to disrespecting the legal protective provisions which support Adivasis customary systems in present Jharkhand state.

As said earlier the three main regional Rules and Acts that exist are: 1. the Wilkinson Rule, 2. Chotanagpur Tenancy Act (CNTA) and 3. The Santhal Pargan Tenancy Act (SPTA). Together these form the legal backbone for the Adivasis of Jharkhand when it comes to their customary laws and collective rights based on these customs. There are several other cases such as the Land Acquisition Act, Indian Forest Act, Coal Bearing (Areas Development) Act, etc. which could be used to directly or indirectly violating the above regional protective provisions. There are still other forms of smaller encroachments into the customary and traditional lands of the Adivasis by non-Adivasis that have gone unnoticed in the past decades. Only a thorough objective investigation could reveal the extent of illegal encroachment of Adivasi lands to this date.

In this context it would be important to point out two other developments that that have an impact on the political association of the Adivasis. One, the *Panchayati Raj Act* (for All India) - which is not to be implemented in Fifth and Sixth Scheduled areas. The second development is the central government's new **Provision of Panchayats [Extension to the Scheduled Areas] Act, 1996** -in short called PESA 1996; this Act supports the governance of the Adivasi village through their own customary systems and is supposed to be implemented in all the states in the country with Scheduled Areas.

Surprisingly, the Jharkhand government instead of implementing PESA introduced the Jharkhand Panchayati Raj Act 2001 which goes along the line of the Panchayati

Raj Act (meant for all India). The Jharkhand Panchayti Raj Act 2001 on one hand gives "more power" to the village councils and enables them to have "direct links to the centre", but does not support the customary system of governance for the Adivasis in the Scheduled Areas of the state.

The question here is then what is the problem for the Adivasis lie? Moreover, why should the Adivasis have problems with it, when the then Chief Minister (CM)[98] of the state, was an Adivasi himself claiming to be supporting the interest of the Adivasi peoples? As a result of this development there are three cases (Devendra Nath Champia vs. State of Jharkhand WP (PIL) 5939 of 2001; Sathee vs. State of Jharkhand, WP 5669 of 2001; Adivasi Aatu Boisi Self Governance Committee vs. State of Jharkhand, WP 2993 of 2002)[99] in the Jharkhand High Court concerning the effects of Jharkhand Panchayti Raj Act 2001's proposed elections on the traditional political structure of the Adivasis and another ten cases raising the issue of reservation and boundaries of Scheduled Areas.[100]

According to the analysis given on this issue by Nandini Sundar, there are four different sets of interest groups in Jharkhand. The first set of groups is of the Adivasis themselves, i.e. the Jharkhand Pradesh Parha Raja, Manjhi Parganait Manki Munda, Doklo Sohor Maha Samiti, who oppose having the Jharkhand Panchayati Raj elections in scheduled areas. They argue for their own customary system and their heads *munda-mankis*, *manjhi-parganaits* to be their representatives instead of the *Panchayt's* three-tier elected system. PESA enables to form government which are built upon local traditions of participatory democracy, instead of the divisive party politics and money that are associated with representative democracy in India.

The second set of groups comprise mainly Kurmi Mahto[101] and other non-Adivasi groups, like the Chatra Yuva Sangharsh Samiti and the Jharkhand Pradesh Panchayatiraj Adhikar Manch (JPPAM), who do not see a special future for Adivasis

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[98] Babulal Marandi, the then Chief Minister of Jharkhand state. He comes from the Santhal Adivasis
[99] Nandini Sundar, "Custom' and 'Democracy' in Jharkhand", *Economic and Political Weekly* (8 October, 2005), 4432.
[100] Ibid.
[101] In the earlier and pre-independent India these groups from Hindu background who had come to live with the Adivasis as their guests and service communities were listed as Scheduled Tribes, but later in the post-independent India they were given another status, – the Other Backward Class (OBC).

in Jharkhand. They argue that reserving the chair's seat for Adivasis in scheduled areas violates their own citizenship rights, and have called strikes to de-schedule certain areas where they claim Adivasis are in a minority.[102] As it is, only 2,228 *gram* –village *panchayats* out of 4,544 *gram panchayats* are reserved for the Scheduled Tribes and of these some 35 *panchayats* have recently been de-reserved. [103]

The third set of groups are the Left parties, some NGOs (and the government of India), demanding *panchayat* elections under existing laws, pointing to the fact that *panchayat* elections have not been held in Jharkhand (and Bihar) for 28 years. Followed by the fourth set of groups consists of the Maoists who are opposed to elections, but have formed their own village assemblies to replace traditional "feudal" structures like that of the headmen.

In this discussion, Sundar observes, that the Jharkhand Government is playing a dubious role, asking the district officials to consult the *gram sabhas* in Scheduled Areas when identifying development schemes and its beneficiaries despite its own repeated circulars.[104] At the same time it pleads in the court that in the absence of Jharkhand Panchayti Raj elections, there can be no *gram sabhas*.[105] The aim of the Jharkhand government here was to circumvent the PESA provision (4i) requiring consultation with *gram sabhas* before land acquisition for any developmental purposes.[106] To do this, first the government of Jharkhand argues in the court that customary structures have died out, and therefore there is no need for any special law for Scheduled Areas,[107] while at the same time it is sending circulars describing these

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[102] There are some eight blocks in different districts of Jharkhand where the population of Adivasis has been shown as less than 50 per cent, criteria for a block to be de-scheduled from the Fifth Schedule privileges. Jharkhand Indigenous Peoples Forum, consisting of 48 Adivasi organisations by issuing a public statement on August 9, 2005 have contested that the census figures there has been systematic undercounting the Adivasis.

[103] Nandini Sundar, "Custom' and 'Democracy' in Jharkhand", *Economic and Political Weekly* (8 October, 2005), 4430.

[104] Reference made to the circulars of Bihar government, from Mining Department to all commissioners, March 6, 1998, 3/BM/L/51/97/1014; from Panchayati Raj Department to all DCs, scheduled areas, January 12, 1999, 7P/N-20/97-97; Regional Development Office to all DCs scheduled areas, June 12, 1999, No 1037 – all reiterating the need to involve gram sabhas in scheduled areas.

[105] Jharkhand Government's counsel submission in the *Rajmahal Pahad Bachao Andolan vs Union of India* case WP 6348 of 2003.

[106] The Jharkhand Panchayti Raj Act 2001 is silent on this provision but this can be legally challenged with reference to PESA.

[107] Government of Jharkhand counsel submission in SATHEE (Society for Advancement in Tribes Health Education and Environment) vs State of Jharkhand, WP 5669 of 2001.

customary structures and asking officials to keep them in mind when convening *gram sabhas*.[108] What is equally striking is the court's (indeed the same judges) uncritical acceptance of these contradictory stances. Therefore, both the anti-election and anti-reservation groups have filed a number of legal challenges to the Panchayati Raj Act in the Ranchi High Court as referred to earlier.

The stands of the above mentioned four sets of groups with the unclear stand of the Jharkhand government itself clearly indicate that there are seriously conflicting interests. One is the interest of those who associate themselves with the issues and struggles of the Adivasis and the other interest is those who try to address the issue in general and representative of an "anti-Adivasi" stand. It is not necessary that either of the two would be based on ethnic grounds alone, but on grounds of common understanding, values and respect for each other.

It is important to return to the concept of ***phyle,*** –the political association in the context of Jharkhand, with three other sets of interest groups. The two opposed forms of political associations of "caste" and "tribe" can clearly be seen here; one which has more of a customary systems structure (to be seen not in its essentialist form but in its progressive form), where as the second, however, is more a "legally" constructed body (the JPRA). Both of these bodies, not to mention the last set of group from the above case, are representatives of these two identities. One associates with that of "more power" and "direct link" to the centre. The other is within the nation-state not necessarily with only a certain ethnic groups' identity but with 'historic communities' who have their own social and customary systems of managing their affairs as their political association.

The stated position here of different interest groups and the root cause of their conceptual difference comes from the unaddressed "caste" and "tribe" orientations. It is possible for them to live together; however, there is a need for understanding the core essence of the "tribes" as a historic community to revive their customary system for their own governance.

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[108] Government of Jharkhand, Panchayati Raj Department, to all deputy commissioners, Scheduled areas, September 2, 2003, subject: Forming *Gram Sabhas* in Scheduled Areas under the Jharkhand Panchayati Raj Adhiniyam 2001, Section 3 (iii).

3.5. The "Tribe" /Adivasi identity in conflict with the State?

The issue of the Adivasis' identity, earlier represented through their customary institution as a political association in the more recent years in Jharkhand (referred to as "tribe" by Weber as opposed to the "caste"). The Adivasis here more than one **ethnic group** and a homogenous cultural group, who have been through a historical process of defining their **political identity** now have to find a place in the discourse of the modern nation-state. (This too has been the issue with Adivasis in other parts of India) As in the previous chapters I have referred to Adivasis' struggle as an ethno-lingual-cultural group against the colonial administration. In these context Adivasis' customary systems have been a part of their culturally evolved political association, and proven to be a source of their political strength. However, what failed the Adivasis to maintain this identity of their in the post-colonial time? Most of the rules and laws for this part of India (Jharkhand) as well as for the whole country were made during the era of colonial rule; in many ways, they still are the backbones of the present day Indian state. With these questions we can also point at the basis of why and the Adivasis association is important as asked in the third point raised in the beginning of this chapter. It is also the importance and the scope of Adivasis political association in the present context and also within the Adivasis themselves. Has their identity based on collective social system failed the Adivasis?

It is important to start with the theoretical interpretations of the concepts of **Adivasis identity**, and see if it is the same as **ethnic identity** and its relation to Adivasis political association. In this regard Amit Prakash taking the case of Jharkhand explains how **implementation of public policy influences** the political identities premised on ethnic, linguistic, and religious or other similar grounds. He observes that the failure of development policies to intervene socio-economic conditions encourages societal groups to organize themselves as political identities. He also stresses that the issue of identity both in political and ethnic terms appears more sharply. Prakash opens this discussion by saying that we can, "after locating [at] the

tribal policy of the colonial and post colonial Indian state [see it] in the dynamics of the colonial nationalist discourse."[109]

In his same study of Jharkhand's '*Politics of Development and Identity*' Prakash highlights the issues between the ethnic identity (/ies) in the face of the national identity. Here can we place the "tribe" as an ethnic group and the "caste" – as a wider understanding, of national identity, since the Indian nation-state is largely a composition of caste based societies where the "tribe" is a negligible minority [– emphasis mine]. Prakash, making references to Nevitte and Kennedy (1986), Smith (1981), and again Smith (1986), and Barth (1969) and presents that the **two identities (ethnic and national or sub-national)** can also be differentiated in terms of demands they make on political processes. Largely, national identities (in the case of Jharkhand the sub-national identity) might be included to seek statehood, where as ethnic identities might seek autonomy and adequate representation within the existing State. [110] ('State' with an upper case here is in reference to political concept of a State, and 'state' with a lower case is for a state within the India, i.e. a province.)

Further, Prakash based on Brass's conception, says that:

> "An ethnic identity is therefore 'a subjectively self conscious community that establishes criteria for inclusion and exclusion from the group. This inclusion or exclusion from the group hence, involves explicit or tacit adoption of rules of endogamy or exogamy as well as a claim to status and recognition, either as a group at least equal to other groups.' Thus, ethnicity emerges as 'an alternate form of social organisation' but is a contingent and mutable status that may or may not be articulated in a particular context or time. Further on, ethnic groups may tend to seek a major say in the political system in order to protect, preserve and promote their interests. This may lead to an ethnic group aspiring for a national status and/or political recognition, either within an existing State or as a new State." [111]

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[109] Amit Prakash, *Jharkhand Politics of Development and Identity* (*New* Delhi: Oriental Longman, 2001), xiii.

[110] Amit Prakash, *Jharkhand Politics of Development and Identity* (New Delhi: Oriental Longman, 2001), 2-4.

[111] Paul R Brass, 1991. *Ethnicity and Nationalism: Theory and Comparison.* New Delhi: Saga Publication, 1991), 14 cited by Amit Prakash, *Jharkhand Politics of Development and Identity,* op. cit., 6-7.

In the political nation here, the relation of an ethnic group or groups (formed of "tribes") to the national identity (formed of the caste society mainly) would give a sense of ethnic belonging to Adivasis. Contrastingly the sense of national identity (as equal Indian citizens) can only come when the ethnic group has the freedom of some level of self governance, i.e. the structural position of the modern India State vis-à-vis the Adivasi, parallel to the position of the English government vis-à-vis the Indian sub-continent during the colonial times.

Within this frame if we look at Brass conception as referred by Prakash, this ethnic identity formation is a result of three sets of struggles between the state and the society.[112]

1. The struggle within the ethnic group itself, for control over its own symbolic and material sources, which in turn involves defining the group's boundaries and its rules of exclusion and inclusion. (In the case of Jharkhand struggle between "caste" and "tribe" both being put in to one national identity- Indian).

2. The struggles between ethnic groups competing with one another for rights, privileges and available resources. And, (again in the same as the case of Jharkhand struggle between "caste" and "tribe" both being put in to one national identity- Indian)

3. The struggle between the state (– province's authority) and the groups that dominate it (the non-Adivasis), on the other hand, and the population that inhabits its territory (Adivasis), on the other. [113] (i.e. the "caste" group that controls the state mechanism while the "tribe" that inhabits its territory)

Each of these sets of situation can be used both in the nation and state relation as well as within the state. Each of these sets can also be seen separately to analyze the role of the State vis-à-vis a selected ethnic groups or groups. At the same time these three sets can never-the-less, intersect each other.

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[112] Ibid., 8-9.
[113] Paul R. Brass, *Ethnic Group and the State* (Australia: Croom Helm Ltd., 1985), 1.

With this position if we look at the case of Adivasis in Jharkhand it is the *power theory of politics* (see section 3.1) that is dominating. The state as within the structure of State is playing a role of the 'legal organisation' in making and implementing state policies: With the following fact we can very well make out why the Adivasis need to have their political association (the rights theory of politics) which is inclusive of representation through their customary system being central for their self-governance.

Taking the facts into this frame for analysis, firstly, it is only in 2000 that Jharkhand was made to be a new political state after the country's independence in 1947. The demography of Jharkhand had drastically changed within the span of five decades already. One would say beyond any 'well-wishers' comprehension, that this occurred because this region is not only a rich mineral resource area, but also an area where mega industrial estates were founded soon after the independence of the country, opening job opportunities for people from neighbouring states. The region was rich in natural resource, but the people were 'backward', 'illiterate' and 'poor'. Therefore, 'technical', 'literate' people had to be brought in to run the industrial estates; infrastructures had to be built, urbanization and expansion of towns to cities, Bokaro, Dhanbad, Tatanagar etc. for example was in progress[114]. Jharkhand was a part of Bihar for all these years, where not only the key positions but all the jobs from top to bottom were occupied by Biharies, Bangalis and others, except for the reserved seats in jobs. Patna, was the capital of Bihar being the headquarters of all the state's affairs red-tapirs, nepotism, and bribery was in every level of state affairs. Since Patna was socially and culturally different, this situation in many ways created a north south divide. The South had all the resources and 'opportunities', but a weak political representation, with all office headquarters in the north. South Bihar was thus "given" to be exploited to the guise that 'we are all Indians' dominated the notion of national identity, and the Adivasi thus had to be affiliated to one national identity with no voice of their own. Therefore, we can take Brass's theoretical frame of 'the struggle within the ethnic group' to interpret the Bihar / Jharkhand context. While it can not be taken word to word, however, the constructivist interpretation of the ethnic group(s) identity fits the first set of struggle quiet well.

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[114] Government is often in a hurry to industrialise the area and the country without giving a chance and opportunity to get the required education for running the industries. This policy has led the Adivasis to die an un-natural death.

The policy of "'tribals' to develop according to their own genius" which was one of the principles of *Panchsheel* was never implemented. Rather, as a part of integration process of the country, the country, claimed to be a 'melting pot' and all its citizens were supposed to be a part of it. All the development of the country was planned, and this process and the government developmental policies and programs in general, particularly affected the Adivasis adversely contrary to what these programs were intended to do, (unfortunately it still carries on). However, in the larger picture the impacts are both positive as well as negative as a result of these developmental processes. As a result of these processes the major problem Adivasis faced was land alienation, leading to social and economic marginalization, with seasonal migrations turning into more permanent migrations in search of a living and more. The cities and towns also expanded at a rapid rate due to the inflow of outside populations which made it difficult for the Adivasis to be able to prove their majority in their own home region boundaries.

Secondly, the districts, which have been redistributed, have further reduced the majority number in proportion to the population that has come in recent years. The issue of domicile and to have reserved seats in education and jobs also has been another serious issue, seen as a cause of ethnic violence in the past years after Jharkhand became a state. The severe competition for jobs that are reserved for the Scheduled Tribes as against the general population, where the issue of domicile demands 27 percent reservation in jobs makes the political scenario very tense. The Scheduled Tribes now are only 27 percent in a total of 22 districts of Jharkhand, but if taken the Scheduled Areas within the state they comprise about 50 per cent of the population. Moreover, in these 12 districts which are Scheduled areas within the state of Jharkhand if we remove the urban population (for example Ranchi, Jamshedpur, Chaibasa, Chakardharpir) which does not fall in the *Gram Panchayat* (– where the PESA provision is applicable) area, than the Adivasi population would go above 60 percent.[115]

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[115] Salkhan Murmu, *PESA Kanoon aur Adivasi Astitwa ka Prashan* (Ranchi: n. p., 2005), 2.

Finally, it is those groups who have come from outside in the recent past dominate and control the bureaucratic machinery of the state. Even though the capital has moved to Ranchi, the same characteristic and culture of exploitation persists. Common talks are such as the "*dikus* –meaning outsiders here referred to Biharis, Bangalis and other non-Adivasis, would not give up the south of Bihar state (now Jharkhand), which has been the *dikus* 'milking cow'," so the exploitation continues in the system as long as outsiders control it. Therefore, "*dikus* would not want the original settlers or the native people (the Adivasis) to rise up to higher social level". We find that all 'the tricks of the book' are being used to break the already weakened social system of the Adivasis who have lived here for ages.

At the same time when we try to understand the situation of Adivasis in a given context, there are questions asked by the general category of people saying why should they (Adivasis) be seen as a distinctive group and have special privileges? Some non-Adivasis would also argue, that by defining them as different (or called, to be the indigenous), they are being encouraged as an ethno-political entity in the region leading to the notion of fragmentation in the national integration.

The former rule of Bihar, including the culturally different south and now Jharkhand has more or less the same administrative and bureaucratic character even today. The Adivasi movement in Jharkhand is from a given theoretical frame of ethnic identity, national identity according to Prakash, is termed as the "sub-national political movements". The Jharkhand movement started with the Unnati Samaj in 1914 for "tribal autonomy" and "reformation in terms of abandonment traditional customs and practices and adoption of education and new values."[116] The Adivasi Mahasabha in 1938 "in the form of a socio-cultural movement began with a certain degree of militancy for rejuvenating and revitalizing the tribal society"[117] This was headed by Congress worker Jaipal Singh, which later formed itself to become the Jharkhand Party in 1950 started with two objectives. First was the demand for statehood for the

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[116] K.L. Sharma, "The Question of Identity and Sub-Nationality: A Case of Jharkhand Movement in Bihar"in *Jharkhand Movement Indigenous peoples' Struggle for Autonomy in India* edited by R. D Munda and Basu Mallick (Copenhegen: IWGIA, 2003), 234.
[117] Ibid.

Jharkhand region and secondly, the protection of the Adivasis from the *dikus* – the outsiders. These objectives were clearly indicative of Jharkhand Sub-Nationality.[118]

The emergence of the Jharkhand movement Nirmal Sengupta, implied that the *dikus*-'outsider –exploiter' who came from the three neighbouring states Bangal, Orissa and Madhya Pradesh is the main cause of the problems.[119] However, with the formation of Jharkhand Mukti Morch later in 1973 political extremism also could be seen in the Jharkhand movement. Within a year some "120 violent incidents including looting of crops or forcible harvesting of crops standing of lands of illegal possession of money-lenders, attacks on 'exploiters' arose and murder" took place.[120] Prakash also indicates to yet another development in the same continuation that "the sub-national identities in most parts of India draw upon a **socio-economic factor.** In addition to their cultural basis of mobilization, the socio-economic factor has led them to adopt a radical leftist idiom of politics in the some regions, particularly in the tribal regions of West Bengal and Bihar [Jharkhand was still a part of Bihar when this reference was used] and in some parts of Andhra Pradesh, known as 'Naxalite' politics that advocated radical action such as execution of 'exploiters' after trial in a 'people's court', forcible harvest of fields alienated from the tribal peasants, and violent overthrowing of the existing administration."[121]

It is also that amongst many the instances of assertion of sub-national identities in India, that the case of the Jharkhand movement is "unique in character". According to Prakash, "the **movement draws upon the tribal cultural heritage** [where the customary system of governance included other non-Adivasi communities who respected their culture were accepted as a part of the Adivasi community] of the Chotanagpur region"[122] which has evolved to *include* the **socio-economic problems**

[118] Ibid., 238.

[119] Nirmal Sengupta, " Jharkhand Movement and Tribal Identity" in *The Jharkhand Movement* edited by R. D Munda and S. Bosu Mallick (Copenhagen: IWGIA, 2003), 333.

[120] K.L. Sharma, "The Question of Identity and Sub-Nationality: A Case of Jharkhand Movement in Bihar"in *Jharkhand Movement Indigenous peoples' Struggle for Autonomy in India* edited by R. D Munda and Basu Mallick (Copenhegen: IWGIA, 2003), 96.

[121] Amit Prakash, *Jharkhand Politics of Development and Identity,* op. cit., 16.

[122] R. D. Munda, In Search of a tribal homeland. In *Ethnopolitics and Identity Crisis*, ed. Buddhadeb Choudhari (New Delhi: Inter India Publications, 1992), 377-86 cited by Amit Prakash, *Jharkhand Politics of Development and Identity* (New Delhi: Oriental Longman,2001),18.

of the region as one of the primary basis of the articulation of a sub-national identity. This has led to a regional basis for political mobilization in Jharkhand movement.[123]

This very character and nature of their politics coming out of the collective reflected in the Jharkhand movement, however, cannot only be understand only within the frame of ethno-political, which addresses mainly the socio-economic issues. What brings in their politics the 'unique character' in the Jharkhand movement is a third component, which is the cultural aspect. In which the Adivasis demand not only the socio-economic problems caused by the long drawn 'state' and 'society' relation but an aspect not very relevant in the political thought; the geo-cultural aspect. This means the culture that has developed in a certain geographical context. It is the geo-cultural politics. (If the question can there is a State without a territory? Jewish State? Why could there not be a State or state which includes the politics that is based on the culture which develops on a given geography?)

When the state as a 'legal organisation', makes and implements the rules and policies, as it has among the Adivasis has provoked strong resistances and uprising in the past. However, since this 'legal organisation' is missing the very source which gave the Adivasis customary system its basis. If all the components put together in the Adivasis political association, which illustrates in their understanding of 'nation', for example; no member of the community is above the other member, and roles and responsibilities to run their system is not absolute (or the power vested in an authority) but only as an convener. Yet another important aspect is that the context they live in the land, forests and water, is not only a 'source' for them to meet a certain 'economic' ends, but it is only used for subsistence and not as an end in itself. Having this third component in Adivasis political association makes their politics a geo-cultural politics which is inclusive of their 'living rule or law', but not limited themselves to ethno-politics alone. The third component (culture that develops in a symbiotic relation with nature) plays an important part in the Adivasi customary system. Which however, has no place in the political thought either in neither the rights theory of politics nor the power theory of politics. This is where the issue of individualism comes in conflict with collectivism.

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[123] Amit Prakash, *Jharkhand Politics of Development and Identity*, op. cit., 18.

The third point mentioned earlier in this chapter regarding the importance and scope of Adivasis political association within the Adivasis themselves will be discussed in the following chapter.

CHAPTER FOUR: The customary system in the present day scenario

4.1. The customary system: a legal and a political issue

In the previous chapters we have looked at the sources of Adivasi community's existence in past, their differences and conflicts with the non-Adivasis on the basic social life orientations, both within Hindu and also in the Muslim periods, including their struggles through their political associations in the colonial and post-colonial time in the country. Adivasis, at least in this part of India, were able to make their own legal space within the colonial administration, and could not have been ignored in the legal systems of independent India. In this chapter I am going to deal with some issues of their social and political lives today.

Before we analyze the changes in the Adivasi social and political life it will be important to identify the point from where we should start the discussion. To start with, in Jharkhand, we find a change in perspective of the Adivasis in the Jharkhand movement itself since its inception. This is still in many ways responsible for directly or indirectly shaping the course of the political actions of the Adivasis in the recent past. As mentioned in the previous chapter, the Unnati Samaj (started in 1914) for "tribal autonomy" took a stand to "abandonment (of) traditional customs and practices and *adoption of education* and *new values.*"[124] However, today we find that the Jharkhand Pradesh Parha Raja, Manjhi Parganait Manki Munda, Doklo Sohor Maha Samiti, and the indigenous people's organisations along with people's interest groups with them, argue for the empowering of the their own customary system for the governance in the Jharkhand state.[125] This change in their perspective and positions taken by the Adivasi organisations opens up a wide range of issues to be brought

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[124] K.L. Sharma, "The Question of Identity and Sub-Nationality: A Case of Jharkhand Movement in Bihar" in *Jharkhand Movement Indigenous peoples' Struggle for Autonomy in India* edited by R. D Munda and Basu Mallick (Copenhegen: IWGIA, 2003), 234.

[125] Nandini Sundar, "Custom' and 'Democracy' in Jharkhand", *Economic and Political Weekly* (8 October, 2005), 4430.

forward for discussion on the issue of Adivasi political autonomy and their preferences for their system of governance. Here I am going to deal with some of the basic and important factors within Adivasi perspective and approaches while keeping in mind the external factors that have been discussed in earlier chapters.

We have seen from the Adivasi community, that the "tribe" oriented communities are different from the "caste" oriented societies in a number of ways. This is not only in the case of Jharkhand but also in other states of India. These differences have not been addressed effectively enough when necessary, especially in the course of nation building and policy implementations. The process of ethnic identity formation of certain ethnic groups in the nation-state in reference to Brass's third set of struggle, (referred to in chapter three), i.e. the struggle between the state and the groups that dominate it, as against the population that inhabits its territory,[126] applies well here. The question here would be: what are the strengths and weaknesses of the Adivasi groups in this case which can determine their position in the existing modern nation-state? Given their cultural and socio-economic background, how can Adivasis individuals, as "an ethnic identity…'a subjectively self conscious community… that establishes criteria for inclusion and exclusion from the group… claim to status and recognition, either as a group at least equal to other groups'…"[127] determine their position? Let us take a few examples from different states in India with Adivasi or tribal population which are either covered under the Fifth or Sixth Schedule of Constitution, to see if the customary systems are being used for any particular or general reasons, before looking deeper into the Jharkhand case.

1. The Deccan Herald, (national daily) July 21, 2005, report from Agartala: In the state of Tripura (Agartala being its capital) in the north-east India, where the state Government has urged the Law Research Institute (LRI) of Gawahati High Court to accelerate a codification process of the customary laws prevailing in the tribal societies of the state. The reason given for this is that:

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[126] Paul R Brass ed., *Ethnic Groups and the State* (Australia: Croom Helm Ltd., 1985), 1.
[127] Paul R Brass, *Ethnicity and Nationalism: Theory and Comparison* (New Delhi: Saga Publication, 1991), 14, cited by Amit Prakash Jharkhand Politics of Development and Identity (New Delhi: Orient Longman Limited), 6-7.

The crime rate in Tripura has shown an upward trend which has forced the state government to go ahead with the codification of customary laws. [128]

2. In Meghalaya, another north-eastern state of India Ritiwick Dutta makes a reference of the Khasi tribes' customary system, about its use and misuse in relation to Khasi's own forest resources and its managements. He brings up this issues in his paper "Community Managed Forests: Law, Problem and Alternatives" [129] illustrate what difference it makes in the management of these resources when this customary system is used. I shall talk about in my analysis of Jharkhand case.

3. Yet another illustration, which I shall be elaborating further, is of Jharkhand: the customary system and its practice of the Ho Adivais in Charai *Pir*, the Kolhan area in the southern part of this state is taken as a case study here.

Ultimately the question with regard to these customary systems of Adivasis boils down to: if the Adivasis identify themselves with this system? Moreover, could these systems, which Adivasis claim to have represented in their social and political governance in the past, be instrumental in meeting the 'modern' social and political needs today? What is its scope in the modern nation-state? How democratic would it be? Would the role of women in this system be any different from its 'traditional' form, and moreover, how inclusive would it be for members of those communities who do not come from an Adivasi background?

4.2. What does the customary system have to do with the Adivasi identity today? Also the question of modern vs. traditional

The reality of the Adivasis identity in the present day context cannot be seen in isolation. The Adivasis are not only 'exotic' beings of the past but a people who have

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[128] "Tripura Moves to get Authority for Customary Laws" *Deccan Herald*, 21 July, 2005, http://www.deccanherald.com/deccanherald/jul212005/national1319272005720.asp (15 July 2006).
[129] Ritwick Dutta, "Community Managed Forest: Law, Problems and Alternatives" Cited in http://dlc.dlib.indiana.edu/archive/00000815/00/duttar020402.pdf as on 10th July 2006.

survived through different periods of history and struggle to uphold and keep their traditions and customs from the past. As of today, Adivasis, as a people, face a loss of recognition of who they are, not only in the legal and political battle with the non-Adivasis, but also among themselves. This is not because, they come from an oral tradition which has changed with times and lost many of legends, but due to reasons that are either gone beyond their control or not realized as important for keeping their identity. However, there are still some elements that remain and we can try to look at the strengths of the Adivasi communities. The strengths are: (i) their languages which include their legends, folklore, and mythology; numerical and also place names that have meanings found, from the north of India to central and up to eastern part. There is an interesting observation made in the Deber (Dehber) Commission report about Adivasi philosophy, which reads that:

> "There is something in the tribal philosophy which has kept these people free from the unseemly greed of material possession… Although tribal societies do not yearn obviously for improving their standards of living, their approach to the question of need is still normal and rational."[130]

(ii) their cultural practices which is the basis of their belief system, a few of their festivals and certain musical tunes and rhythms specific to certain festivals and occasions, also their cultural symbols i.e. *Sarna*, *Jaher* – the sacred groves and the *sasang diri* – burial stones placed in a certain manner, (found in most of north-west, central and eastern parts of India); (iii) their democratic as well as egalitarian social and political system reflected in their customary practices of governance, still prevalent among all the five major Adivasi groups of Jharkhand: Jaipal Singh has proclaimed the notion of equality among the Adivasis and their society being the "most democratic element in this country,"[131]; (iv) large areas of customary lands and forests in the past registered under their *khatiyans* - individual titles, with certain categorisation of lands, among them also some customary properties, which are for Adivasis who have obtained the *khatiyans*, but do not have it in their possession any

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[130] Report of the Scheduled Caste and Scheduled Tribes Commission (Debar Commission) (New Delhi: Government of India, Government Printing Press, 1983)
[131] "*Jaipal Singh's speech in the Constitution Assembly Debates*" (New Delhi, 1949, 9 pt.17) cited by Amit Prakash, Jharkhand Politics Development and Identity, (New Delhi: Orient Longman Limited, 2001), 653.

more. These realities portray more or less a broader picture of their social, cultural and political being, but there are weaknesses too.

On the other side of the Adivasis reality, particularly if we look at them from their own side again, we find a good number of those issues that have become their weakness and limitations: Among which are, (i) a difficult legal system of the state which is either not understood or too complicated so simple Adivasis get trapped in it for no fault of their own; (ii) modern or mainstream ways of life orientation, mostly influenced by Hindi and Hinduised culture; a perspective in their education centred around a rational way of thinking results in defiance of their own knowledge sources. Yet on the other hand, conversion to Christianity also has played a big role in shaping their way of thinking, including a divide caused between those converted and those not; (iii) the economic factor which led to large scale immigration in the pre-independent era, i.e. to Assam and Bhutan to work for the tea gardens, to Punjab as cheap laborers and to Andaman and Necobare Islands as timber fellers, which has not healed the Adivasi community but further aggravated their situation.[132] (See map 3) On the other hand, in post independent India, the qualified Adivasi individuals have immigrated to cities and towns to avail reserved government jobs for the Scheduled Tribes. Yet, among them the 'unqualified' migrate is in the metropolis as domestic workers, and unskilled workers for the lowest paid jobs; While in their home region the 'tribal economy' system has further deteriorated allowing outside patty businesses to take roots, developing into a very intact network of a non-Adivasi business control market with their monopoly; (iv) with the change of demography within the state, an increasing dominance of non-Adivasis here, also introduced different names of the places[133] which ones had Adivasi names changes the whole character of the geographical areas here; (v) in the absence of their own Adivasi languages, Hindi, Bengla, or Oriya languages have become the 'link' languages and have become more dominant than the Adivasi languages, making it a stigma for them to speak their own

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[132] *Kora Raji* a documentary film made by Biju Toppo illustrate the Adivasis who were taken to Assam and Bhutan, today are not regarded as Scheduled Tribes, but "Tea Tribes" which does not give them any status for any constitutional benefit while tea export is a fading business for the tea industry here. Nor is the situation of Adivasis taken to Andaman and Nicobar Islands as timber fellers, today as the timber logging has been completely banned by the Supreme Court order, they have lost their jobs and struggle for livelihood. (See map…) Biju Toppo, "*Kora Raji: An Episode of Jharkhand Diaspora* ", AKHRA, Jharkhand, n.p.

[133] Nabin Mundu, "Munda Sabha Ranchi Chikate?" *Senra Seteng* III/2 (October, 2006): 7.

language called to be 'the languages of the jungle -forest dwellers'; (vi) ultimately all these factors have contributed to de-linking the Adivasis from among themselves and thus have been a cause for the fragmentation of the Adivasis society in all possible respects. Besides these realities there are a good number of other issues which further contribute to de-culturisation of the Adivasis in Jharkhand region.

Within these strengths and weakness of the Adivasis we find both the cultural and political aspects to be handled in the Adivasi identity. Culture is the most important part of the identity formation of the Adivasi and an important aspect which is being ignored in the presence of caste and western influences. There are a good number of festivals, sacred rituals, and cultural dresses to add to the visual side of the Adivasi identity. On the other hand the political and legal part – the maintaining of social code and law that govern the Adivasi community, needs wisdom and roles with logical thinking. Here in this social reality we find there are lesser initiatives by the qualified and 'literate' Adivasis individuals who find it difficult to address and handle the issues that contribute in building a vibrant community.

In the modern context some Adivasis believe that the customary systems and laws are not relevant any more. But to prove it otherwise, referring to what Bekker (reference made in chapter two) defined the customary system or laws to be "…an established system of immemorial rule which had evolved from the way of life and natural wants of the people… until forgotten, or until they become a part of the immemorial rules."[134] In the context of Jharkhand customary system is a *living* and *evolving* fact. We find this practice today among the Adivasis in the 'Scheduled Areas' as well as in the 'Tribal Areas' in India today.

4.3. The Customary law system operational in the south of Jharkhand

In the following section I have brought forward this customary system as an example from the Kolhan area in Jharkhand. The Kolhan region was the last area to be

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[134]Raja Devasish Roy, *REPORT Traditional Customary Laws and Indigenous Peoples in Asia* (United Kingdom: Minority Rights Groups International, 2005), 6, Citing J.C Bekker, *Seymour's Customary Law in South Africa*, (Cape Town: Jeta & Co. Ltd., 1989), 11.

colonized. It falls under the Wilkinson Rule established in 1837 in Jharkhand while the other parts of the region managed under the CNTA and SPTA.

According to findings of Sunder, the Kolhan estate office (West Singhbhum district) maintains a list of 26 "pirs" and has given the *mankis* and *mundas* "hukuknamas" (a formal record of rights). Up to 1992 they were paid a symbolic stipend (Rs 75-100) in addition to a revenue commission. The rights and duties of the *mundas* and *mankis* include: the right to settle waste (which meant no-one went landless for long); the right to collect revenue; to arrange for and maintain natural irrigation sources and fallows; to act as police head for his village/*pir* and maintain law and order; to engage in social forestry; to protect protected forests and reserved forests.[135] Wilkinson's Rules (1837), still in force for the Kolhan, provided for disputes to be settled by local *panchayats*, and prohibited lawyers. In the rest of Chhotanagpur too, the rights and obligations of village headmen are part of the record of rights of each village under chapter XV, Sec 127 of CNTA. Their duties are similar to that of Ho *mundas*. However, unlike the recognition given to Ho *mankis* and Santhal *parganaits* there is no formal recognition of the *parha* system of the Mundas and Oraons.[136] In my field work, I talked to one of the *Mankis* from this region. His statements and two of the cases from his court I have presented as an illustration here.

4.4. The case illustration of Shivcharan Parya, the *Manki* of Charai *Pir*:

Shive Charan Parya, is a *Manki* (chief according to the customary system) of Charai *Pir* in Chaibasa who belongs to the Ho Adivasis group in south of Jharkhand. He explains how the customary system works and how he has used his position to settle social and legal disputes within his *Pir* which includes 28 revenue villages in the Singhbhum district of Jharkhand. He says, if he is called outside his work area he goes there as one of the "teen Manki". This is a special court based on the customary system including three different *Manki*s from different *Pir*s. If the member of the community does not accept the judgment of the *Manki* he/she makes an appeal to the

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[135] 'Kolhan Ksetra mein Manki/Munda ka Dayitva', Notice issued by Kolhan Estate Superintendent, Cited by Nandini Sunder in Economic and Political Weekly, op. cit.

[136] Sundar, Nandini. "Custom' and 'democracy' in Jharkhand (Land and identity in Jharkhand)". *Economic and Political Weekly* 40/41 (October 8, 2005): 4430-4434.

teen Manki court. That does not limit Parya's work to just his *Pir* but he can render his services in the entire Kohalan and Porahat area which are within the West Singhbhum District of Jharkhand. The *Manki*'s responsibility as a customary chief is further authenticated by point 20 of Wilkinson Rule.

The customary system which was given recognition during the colonial rule for resolving local disputes still continues. On the basis of this authority he says that his decisions and approval also have a legal relevance; with relation to his judgments on cases, "if proven right… the decision here cannot be challenged in the High Court or Supreme Court, the case will not be accepted there… more so when the case has been taken up by the 'teen manki' or among the 'ilaka mankis' – region *Mankis*." He claimed to have a number of examples of such cases, in which the judgments given by him based on the principles of customary laws have not been accepted in the district court of law.

Upon Parya, being asked for an example said, "Tyiber's case is one, it is related to land dispute. I looked at the case and gave my decision. However, the party that lost the case was not satisfied, and he took the matter to the Civil Court, but his plea was not accepted there." This person was advised there, "that since the *Manki* has written up the matter clearly it is no use for him to make an appeal. Even if he did, as per the matter in the case, he would still lose the case." Because the decision the Manki has given, he was told, that the decision "is right and if he dose not agree with the decision, better he should again go to the Manki for his advice…"[137]

The Manki, on being asked by the person, advised him that if he wished to further reopen the case, he needed to give a written request to the Kolhan Court, not to the District Court or Civil Court, requesting with a good reason that the court to be look into this matter in the *Ilaka Manki*, saying that he was dissatisfied with the decision given and that the case should be seen once again in this court.

In this interview Parya also shared the weak side of the Adivasi community when it comes to acceptance of the customary system and the Manki's roles. On the one hand

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[137] Interview with Shiv Charan Parya, Manki, Chrai Pir Chaibasa, 12 June 2005.

Parya pointed out that, "not that all Mankis are learned and well informed… those who are well informed do perform well and are able to give an objective judgment." And therefore, according to Parya's own observation the general understanding among the Adivasis today is that to become a Manki today, the person has to have nothing important to do in his life.

This is the situation today he argued, especially after the independence of the country. Those who got some education now don't want to be the Manki or Munda but prefer to go for jobs, and thus "those persons who are seen as not useful member of the community, drunkards… not having any thing useful to do…, they are just nominated to be the Manki of the village. The competent and educated prefer to find jobs and leave such responsibilities… to the district court and the state police."

Parya explained his own case as being somewhat different than what he explained above. He said: "For me, I have been appointed Manki in 2002. Before it was my father's elder (brother's) son who was the Manki, and because he was found unfit for the responsibility, therefore I was asked and offered to take up this task." Adding to this he further said, "I am doing my work, I don't know how well I am doing… but when my decisions are respected by the court - state court of law, then I feel that it is making a difference. The people in the district court now know me for what I do." (Parya is an educated and a learned young man, and from the people who had come to his office the day I visited him, he was addressed and treated with respect. I was also strongly recommended about meeting him, both in Ranchi and in Chaibasa if I am writing on the chosen theme.)

Giving the background of the customary system in Kolhan, Shiv Charan Parya informed that there are 75 Mankis in total (in Kolahan region); however, after they died there are many who have not had a proper nomination and appointment. Proper updating has not been done of the new appointments with the state office nor are proper records kept of the same in the District office. According to him, a lack of understanding of such a system among the people in general is also the reason for such a neglect of this system.

The positive side of it is that people like him who have taken initiative for reviving it have changed the opinions of many in the district. Earlier Adivasi people had difficulty going to the "open market" (local term used for the District and Civil court of the state) for land dispute cases which is not the case with the customary system. He claims that there are "good people coming as initiatives are taken to find capable people in the running of the customary system."

While further explaining the nomination and appointment he also gives a background of the basis in which a Manki is selected. He stressed, that their responsibility is to represent and uphold the Adivasis collective interest and its values, and be fair in decision making. With regard to the nomination and appointment of the Mankis he says, "… in our great grand parents time to save our land and our regions… for example, Icha Raja came and attacked several times to capture these regions… and the one who led the defense line became their representative… people also gave him their consent… the one who has the strength and the courage leads…" Thus people nominate him as their Manki for his guidance and in return he has people's support and consent his social administrative functioning. Manki was nominated because people needed him not because British officials appointed him during the colonial rule, Parya argues. He further says, "The Manki system was here and where the Manki system was not there it was felt that such a system should exist for better functioning and co-ordination. And therefore through the British authority with their *hokum~nama* they were appointed." Here we also find that there are different *pir*s, each one has its own area and villages. In one *pir* there can be one Manki or more than one. For example, Parya is responsible for 28 villages, likewise there is a Manki who is responsible for 60 villages, but there is also one Manki responsible for just one village.

What kind of functioning did the Manki system have during the colonial period and how is it now? He answered to this question by saying, "A civil crime which needs investigation such as murder, looting (taking away some ones belonging at gunpoint) with a death threat and rape etc. is handed over to the state police whereas the other disputes are handled by Manki because these [former] were a new kind of crime." Initially, Parya observes, that among the Adivasis such crime, i.e. murder, looting and rape etc. were not known until recently.

In the Kolhan area the decisions of Manki on dispute cases are recognized in all the courts to the district, State or Supreme Court, according to Parya. However, the authenticity of the matter is also taken into consideration in that decision or judgment.

To prove his point Parya gave an example from one of his own cases of Jambo Kui vs. Jogesh Bodra; it is a case of land dispute in which the decision he gave was taken into the district court, but then was sent back to him. In these cases, Parya says, "The petitions need to be done in a proper manner, so that it also can be seen or taken to the usual court proceedings. I also help to make these petitions with all the necessary background needed for a case to established. This is done for the parties who are the applicant." While explaining of how he handles the cases he further said, "my prime objective is to have a proper look at both parties' petitions for a fair judgment, which should be for community's well being. After seeing all the facts I circulate the notice accordingly. (From here on the case could go either to the district or state court or to the Manki's Court) In the regular court it is not necessary that the petition is done with all the necessary evidences which can lead the petitioner unnecessary botheration and prolonging of the case."

From the interview there were two other important and interesting facts that appeared. One was that the Khutkatti system – a special category of land ownership system found among the Mundas in the central part of Jharkhand also appears to have existed among the Ho group. As Parya said, "Kuntkatti: here (south of Jharkhand) also our lands titles were referred to as *kuntkatti* if you look at the land records of 1912-13. (Kuntkatti means the area, which has been original acclaimed by the first comers who cleaned the forest for cultivation, and land uses). He clarified, "it is proper to say that Kuntkatti system is a system practiced here as well, while the *Munda* and *Manki* system is (only) the functionary post or position."

The second important and interesting part is that this customary system also includes non-Adivasi members into their social system. It were those communities who came to live with the Adivasi community as service providing communities, such as potters, blacksmith, weavers and carpenters etc. who also are beneficiaries of this system. Parya gave an example of the same when he said, that "in some places there can be a

Munda (a post within the customary system) who is not from the Ho Adivasi, such as in my areas in Chhota Modi there is one Nayak."[138] (Nayaks are non-Adivasis. These groups have settled with the Adivasis for long time, though Adivasis usually don't have marriage relations with them but share all other social benefits).

4.5. Case illustrations of how the Manki's court work

Here is a demonstration of two of the cases of disputes over land property within the Adivasis community of Charai *Pir*, in Kolhan -south of Jharkhand, where Shivcharan Parya, the *Manki* functionary head of the customary systems, resolves the matter in his court.

4.5.1 The case of Soma Deogam vs. Chokro Deogam
In this case everyone was members of the Ho group in the *Ilaka* Manki's Social Customary Court of Charai Pir, Kolhan, West Singhbhum in Jharkhand. The case was a dispute over land property between, Soma Deogam the uncle, and Chokro Depgam the nephew. Chokro Deogam took the side of Laxmi, the unmarried daughter of the late Bhugon Deogam, the only descendent of the family to be the rightful owner of the land.

The dispute was over one plot of land between two members of the descendents of Mugru Deogam. The land rightfully belonged to Bhugon, but Bhugon died leaving behind his wife, Namsi, and his only daughter Laxmi. After Bhugon's death, Namsi was threatened by Soma, her distant brother in law and for some reason she left her late husband's village with her daughter Laxmi to her parents' village in the neighboring district in Orissa state.

In the periodical distribution of land among the family members, Bhugon's portion of land was considered to be 'land with no claimant from their lineage' and therefore it should be distributed among the nearest members of the family. The villagers also said that Laxmi, being the daughter of Bhugon, was living and therefore deserved to get her share of the land.

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[138] Interview with Shivcharan Parya, Chaibasa.

The case was investigated by the Manki, who, based on the documented proofs, witnesses written testimonies and examination of all the oral and documented facts, gave his decision in writing: Namsi, before leaving the village, gave her husband's share of land to Chokro in *bandhak*, [139]-kind of bond for ten years in return for some money. Thereafter, the ownership of the land was supposed to return to their daughter Laxmi. Some years later Laxmi was brought back to live with her father's relatives while her mother Namsi got married to someone else. The Manki collected witness statements of Bhugon's and Namsi's marriage and also of witness of Lakshmi's birth including photo of her taken with her parents and relatives as proof. Now, when Laxmi was brought back by Namsy's brothers to Bhugon's village, still young and could not manage an independent life, the matter was discussed with the *munda* of the village and it was agreed that she live with Chokro's guardianship until she has grows up. It was also found that Chokro cultivated this land for one year and left it fallow feeling guilty that he had paid such a small sum of money for the land. Soma seeing that the land was not being used for any purpose now wanted it to be shared among the male members of the family. Making a record of all the facts, the Manki gave his decision in favor of Chokro, who was fighting the case on behalf of Laxmi. In this decision Soma, should have nothing to do with this land. Thus, this disputed land should be in the possession of Laxmi for cultivation or for other use until she is married. (After she marries this plot of land would go back to the Deogam family for redistributed in the next periodical distribution of land to their younger generation. If she decides to stay unmarried she will have the plot of land to herself until she dies, and if she is married she would leave this plot of land and join in the land property of her husband in another village.)

4.5.2 The case of Jambo Kui vs. Jogesh Bodra

There was a complaint by Jambo Kui against Jogesh Chander Bodra. According to the Manki the opponent, Bodra, "did not have full information about the matter", where as the petitioner Jambo Kui "had documented proof – the sales deed from the district registrar's office with her" and therefor the decision went in her favor. Kui argued that this plot of land, on which she was making a house, was being stopped by Bodra

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[139] Bandhak – a bond, which could be oral or written. In this case it was a written one.

saying she was illegally building house on his property. Whereas Bodra claimed, this land originally belonged to Jena Bodra, his father's elder brother, who had given it to him before this old man died issueless in 1965. The sales deed Kui produced in this case is of 1961 when she claims to have legally obtained it with the thumb impression of Jena Bodra. Jogesh Bodra challenges it by asking why Jena would make a thumb impression on the sales deed instead of signing on the document, since Jena was a literate and an educated man. However, witnesses of both sides were not aware of the sale of this land to Kui when cross examined. Bodra also argued that this land's tax receipt (which obviously would have Jena's name and not his) was with him because he had been paying tax for it. This was his basis of claming his ownership over this particular plot of land. Bodra lost the case because of the documentary proof Kui had obtained from the district office through a lawyer there.

4.6. Analysis

What is particularly important and also at the same time different in these two cases from Charai *Pir*? From these two case illustrations of Lakshmi and Jambo Kui we can conclude:

- That the merits of these cases are seen rationally and with sufficient evidence to back up the arguments of both the parties involved in the case. In its proceeding this court follows more or less the same principals of the district and the state court system, however, with no bureaucratic stacks attached with it.

- Legal documents play an important and decisive role in these cases; however, these legal documents which are usually the domain of the state authority here, at times can be questionable of its fairness in the way it has been obtained.

- The witnesses in this court add weight and authenticate to the arguments brought forward. However, witnesses are not only produced by the parties' own choice to prove the matter to be in their favor, but also that the matter of the case is cross verified by Manki's own sources built upon individual and social trust of the members of the village and larger community. Fabricating evidence to some one's own advantage usually has less room, as the court process is more open and more

consultative depending on the Manki's logical thinking and fairness in his/her[140] judgment.

The statements of Parya and the two cases presented as illustrations here show that there are certain issues that come to light which calls for some explanation and comments.

Firstly, from the statements made in the interview with the Manki including the referred secondary sources, it can be noted that the customary system of the Adivasis is not only a historical fact but an existing reality. This system, has its strengths and weaknesses as an old system, but it has a clear picture of itself of its objectives. Secondly, there is an issue of its wider legitimacy and acceptance within the modern nation-state on one hand, and its popularity on the other hand among the Adivasis themselves. Thirdly, there is the issue of how the Adivasis themselves see the future through this age old system is a challenge in itself.

In this system, the role of Manki in both these cases shows his commitment to deliver justice with farness to their members and reflects a sense to uphold the Adivasis community's independence in handling their domestic affairs by themselves. They can decide what is best for them as individuals and as members of the community, irrespective of gender and age differences. On the issue of gender in the case of Adivasis of Jharkhand, however, there are roles and limitations in keeping the community's orientation and its own interest. Since Adivasis groups have a patriarchal orientation the ultimate inheritance of land property goes to the men of the group. It is therefore; as long as Lakshmi is unmarried that the plot of land will be rightfully her's which she can use for her sustenance and its economic benefit.

The second case is, again about the ownership of a woman over land property. The documents here show that the same belongs to Jambo Kui. However, the documents are obtained from the district and state court authorities, based on the information provided and available to them from their records which has its own mechanism. In

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[140] I refer here for Manki to be representing both the genders, as for example among the Santhals a woman can also be a Manjhi (the same post as that of a *Manki* among the Hos).

the state mechanism and its process there is the question of *how* the document was obtained, and if obtaining of the documents was carried out in fairness. The cross verification of the documents could be done by going to the original source itself, which is not always easy due to bureaucratic formalities and complications. Moreover, it is not in the domain of the Adivasis so the cooperation is not always guaranteed. The Manki gave his decision on the basis of documents produced by Kui with her appeal. The speculation here arises when Bodra argues that the documents produced by Kui are forged. This challenge has not been taken up in the second case as of now in the Manki's court.

To conclude on the analysis of the cases, we first look at the merits and weaknesses of the whole system closely. We find the strengths of the Adivasis governing themselves within their own system. However, as a weakness, there is a newer problem. If we look closely into its functioning, we can see what happens when witnesses don't take sides, as in both the cases they have not lied, but rather supplement useful information as in the case of Laksmi. In the case of Kui, witnesses from both parties do not testify legal document "obtained" which is the only proof, lest they be proven to have been falsely forged. The Manki would have to take it as a challenge.

 On the whole there is the issue of gender and equity that arises here. Since the Adivasis community of Jharkhand is based on the patriarchal ownership of property, the same is passed on to the sons, in which the eldest son takes a bigger proportion than the younger ones.[141] It is not only the issue of equity, but also gender equality not being the same, within the practice of the customary law which raises many question today. Here it is important to answer why this is so. It is because of the centrality of the community where the land may remain within the community, i.e. if an Adivasi woman marries to a non-Adivasi she has no right over her parent's property – especially the customarily owned land. This is not always the same for Adivasi men. However, to illustrate the centrality of community and what belongs to the community, the entire matter could be seen the other way around. It is in the case of the Khasi Adivasi groups in Meghalaya, a state in the northeast part of India. Among the Khasis the youngest daughter of the family becomes the owner of her ancestral

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[141] S. C. Roy, *Mundas and Their Country*, 269, op. cit.

property.[142] The son will only have the right in his parents' property as long as he lives with them; after he gets married he joins his wife's property and possessions. The centrality of the community is primary and more important than the equity in the ownership of its property by its members. In both the cases, the Adivasis of Jharkhand and of Meghalaya, ownership by a man or woman is a secondary element.

In the following concluding chapter of my thesis, I shall discuss the issues of the Adivasi in a broader spectrum. As focusing in the earlier discussions on how Adivasis' customary systems are representative of their ethnic and cultural identity but not restricted to ethno-politics. Further I will look into what the real issues such as the different perspectives of certain groups asking why some groups in the State have "more privileges" than others being citizens of the same country. From these points we can find an answer to why the Adivasis are not accepted as the indigenous peoples of the country.

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[142] Raja Devasish Roy, *REPORT Traditional Customary Laws and Indigenous Peoples in Asia* (United Kingdom: Minority Rights Groups International,2005), 23.

CHAPTER FIVE: CONCLUSION

5.1. Basic issues in a broader spectrum

Special provisions in the Indian Constitutional and special laws meant to protect the interests of minority, lower caste groups, the Adivasis and other less privileged sections in the country, in principal, give a basis for protection and privileges of these sections. One basic issue here that arises for the Adivasis in the modern state is a question, why they should have the said privileges and special rights. This comes as an argument from those sections on the other side who feel their democratic rights and principal of equal citizenship rights given in the Constitution are being violated. As it is seen in the case of Chatra Yuva Sangharsh Samiti, the Jharkhand Pradesh Panchayatiraj Adhikar Manch (JPPAM) and others with them in Jharkhand argued against Adivasis' claiming for their special rights in the state. (See chapter three)

Based on the same line of argument as above, the issue of indigenousness as against the non-indigenous or non-Adivasis in the case of Jharkhand has caused social and political tensions both in history and in the recent years. For example, on the regional level a certain number of seats are reserved in jobs, education, *Panchayats* -village council, seats in state legislation etc. for groups claiming their domicile here. However, if we observe the conflicting areas between indigenous or Adivasis versus non-Adivasis, issues in this context are more serious and larger. They are long, drawn-out realities, reflected in historical struggles of the people obtaining and practicing certain levels of autonomy and governance in their own community and social affairs. It is also observed that the modern state is reluctant to enforce these constitutional protective measures and a few privileges even with slightest oppositions to them by the anti-Adivasi sections. The Adivasi interest and its representation on different fronts also becomes an issue among them in the process, which includes different perspectives including the modern vs. traditional approaches: the traditional customary institution of the Adivasis on one hand and the Jharkhand Panchayti Raj Act, a representative of the modern state system on the other.

Where does this divide of different positions of these two sectors lead our discussion? To answer this question, the discussion is not limited to Adivasi and anti-Adivasi positions here. It is about two different perspectives and life orientations and the values attached, i.e. the collective and communitarian vs. the individual and market oriented. In the context of modern nation-states, this distinction has been raised as the basic survival question for the indigenous groups by their representatives in the last two decades at the United Nations through the introduction of the draft Declaration on the Rights of the Indigenous Peoples. However, the issues raised here are not denied by the state governments, but there has been an on going debate on the definition of 'indigenous'. In the United Nation Working Group' process, it has also been argued at a point that the issue of indigenous people does not arise in Asian and African countries.

The argument here is that the Adivasis are not accepted as Aboriginal on their land, but only as 'Scheduled Tribe'. Moreover, the protective measures in their constitution, limits their own basis to have autonomous communities with their own social and cultural orientation. On the one hand the modern state treats them as individuals on the same level as other citizens, yet on the other hand there are conditions that arise which limit them from letting them 'develop with their own genius' – which has its basis in their social and cultural orientations. What causes this limitation is, when large scale developmental structures are introduced in their areas limiting Adivasis participation to the "reserved" seats. At the same time on the other hand, there is a need among the Adivasis and indigenous peoples for wider consolidation of their perspectives.

5.2. In search of modern benchmarks

There could be a few broad areas of thoughts emerging out of the discussion on the formation of this indigenous identity and the historical struggles for protecting itself and their distinctiveness. The argument brought forward from the earlier discussions, is to reiterate that the customary system of the Adivasis in Jharkhand is the manifestation of their holistic identity. This identity is at threat of being overshadowed due to certain factors not questioned before. Thus, the question is how

do we look at it to find the distinctiveness? We may have to look at it from different perspective. These questions lead us to a different level to see what is causing these problems. From all the discussions we had in the earlier chapters of this thesis the conflicts identified here boil down to broadly two different perspectives: collective as against individualism.

5.2.1 Individualism vs. collective perspective

What is the difference between the Adivasis customary system as a traditional institution versus the modern State system? Is it on the ground of individualism as against collectivism? How and where should we see the problem?

Taking the basis of 'state' from what Scruton has explained, the Indian State, broadly speaking is based on the principle that all individuals in it are its equal citizens, irrespective of caste, class, sex or religion, however, the state authority is sovereign over its citizens. When it comes to governance and execution of laws and rules, as it is a sovereign over its citizens that can exercise all the power it has to govern them.

Now, if we look at the Adivasis customary systems, and the issues around it, discussed with illustrations in the earlier chapters, their customary system has all the reasons to be seen as based on the Adivasi' collective principles. It is, however, not correct to say that there are no individual rights within the collective customary system of the Adivasis. The collective approach could be seen in the social and cultural orientation of Adivasis customary organisations. Starting from the example, the distribution of land in the earlier stage which was not owned by an individual family but the ownership rotated. The positions as Parha, Manki, Munda too, and so on were not totally hereditary, until it changed for certain political and social reasons as discussed in chapter two.

We find that in the Adivasis struggle for autonomy and their demand for a separate state (province) of Jharkhand from Bihar, many Adivasis did not fully support the movement. However, it seemed for many Adivasis to identify with their Adivasi

identity was a stigma to keep their cultural and social distinctiveness. This distinctiveness based on their collective orientation (and their traditional institutions that represented them) were under threat by the very nature and character of individualistic profit and accumulation, causing overexploitation of the Adivasi people and their resources.

The mega development projects (built on the "public interest") by the state, with the focus on industrial development and large scale exploitations of natural resources caused displacement of the Adivasi. Obviously, national development was the answer to the need of the hour after independence of the country. It still continues against Gandhi's vision of self sufficient villages or the village as a unit to be the centre of development. The bitter experience of displacement caused by such a development marks an un-healing scar on the displaced persons –usually the Adivasis. The Peraj displacement experience where Adivasis recovered less or none of there land compared to the non-Adivasis who benefited more, shows that the Adivasis here not only have economic relations with the land and their surrounding, but a cultural and spiritual bond, the absence of which results in premature death, e.g. the case of Lalbatti Murmu and some other Adivasis families illustrated in chapter two.

In the context of Jharkhand, the caste groups are often said to be business oriented communities with profit being their goal (which is not only true for Jharkhand alone). In the light of these different orientations the issue of special rights over equal rights comes up clearly in the court cases against PESA by members of caste groups. The opposition by Kurmi Mahtos and "Other Backward Class" -OBC for the Adivasis' to have special rights as against the equal rights, is an issue that comes up here. It is not only because this gives the Adivasis special "privileges" but it violates their equal citizenship rights when PESA reserves the chairpersons' seat for the Adivasi in the *Gram Panchayat* – the village council in the Scheduled districts. It is also because of the two groups have different orientations of 'caste' and 'tribe'. Kurmi Mahtos come from to the caste structure; they were included in the Adivasi community in the later part of the Adivasis history in Jharkhand. It is the question coming from them, which many others would also ask, why should certain groups, e.g. 'minorities' indigenous have special rights than the rest? Jarle Weigård addresses the issues of rights in this context. He refers to Kymlicka and compares with Dworkin, and says:

"…most important argument for minority rights is based on *equality[143]* considerations if you really want to treat people as equals you must take into account that they are different and want to remain different, and then arrange for this to be possible. Because circumstances give us unequal opportunities to hold on to the cultural characteristics that make us different, real treatment as equals implies that the state seemingly must treat its citizens *unequally* and give some groups rights that are denied to others[144]."

This is the precise reason that the Adivasis in Jharkhand, and other indigenous groups in their home land want to have the special rights which may be unequal as compared to the rights for the non-Adivasi or non-indigenous in Adivasi areas.

As we look at the traditional customary system of Adivasis in Jharkhand, we find the influence of the 'modern outlook' to be a big challenge for its acceptance by many Adivasis. Modernity is generally associated with westernisation which seems to be based on the understanding and approach of individualism. Individualism understood more in terms of materialism, for individual accumulations, ownership and security for prosperity in day to day life. However, for Adivasis looking at their own traditional institutions in presence of all the material need of the modern life often chose to be a part of modern world than to give their cultural values and systems a priority. Thus these customary systems and traditional institutions become less significant and unpopular or association with it also is considered to be giving them a negative image of themselves and therefore a certain reluctance to identify with these institutions.

In collectivism, not opposed to any individual that stands out within the collective, but the individualistic character who does not identify himself or herself with the collective or the principals that bind them together is the issue. It is the social bond with each other, to be identified with, to be connected and relate to, or to be a part of is what collective would mean here. Thus, be associated with the other and feel

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[143] Jarle Weigård, Is There a Special Justification for Indigenous Rights (unpublished paper, University of Tromsø,2006) citing Will Kymlicka, *Multicultural Citizenship. A liberal theory of minority rights* (Oxford: Clarendon Press 1995), 108-115.

[144] Jarle Weigård, *Is There a Special Justification for Indigenous Rights* (unpublished paper, University of Tromsø, 2006) citing, Ronald Dworkin. *Taking Rights Seriously* (London: Duckworth 1977), 227.

responsible. The witness for example in the case being investigated by Parya, in the Manki's court in both the cases, did not testify to what they did not see, or do not know about. A little favouritism by the witnesses could change the cases decision. But on the contrary they try to bring in more evidences to what they all see it to be right. But the state as the outside agency here can testify because 'it does not see or think by itself, it does what it is told' and has a legal status of what it is made to do which is usually not challenged. In this case the sales-deed. The document also could be right if the question raised by the opponent is answered satisfactorily. In a collective group trust on one another is what binds them; their relations are less dependent on any outside 'authority' to be approved and certified.

There is also the issue of gender equity, which is briefly touched upon in the previous chapter. The gender issue in the discussion concluded that in the customary system it is not important through which gender the inheritance should be seen, but what was important in both cases (Adivasis of Jharkhand and Khasis of Meghalaya) was the centrality of the community.

Individualism or collectivism is not in opposition with each other, but only when there are different interests and intensions associated with them it tends to becomes problematic. The following case could throw some light on this issue.

5.3 Second step in the search of a modern benchmark

Beyond the level on which the customary system of the Adivasis in Jharkhand has been elaborated, there is a question: could such a system develop to a higher level of autonomous functioning in the present modern nation-state? If it does develop, what could one hope from it? Secondly, would there be a need to develop the basis on which these customary systems are founded? This means to search for the source of that social orientation, perspectives and epistemology which demand an explanation of this system's structural properties.

5.3.1. Adivasi customary system in a more developed form

In chapter four there was a reference made to the Khasi's customary system and its customary leaders' role in the joint forest management of the state. It would be worth bringing forward some of its functioning to learn from it, as it is on a more advanced level in its operation than those of Adivasis in Jharkhand.

In Meghalaya state there are three Hill District Councils for the Khasis, Garos and Jaintias. These tribal communities are also among the Scheduled Tribes of India but their areas are marked as Tribal Areas which falls under the Sixth Schedule of the Constitution. Ritwick Dutta[145] explains that the customary institution among the Khasis represented by the Syiemship, "is in fact one of the most important element that held the Khasi society together, since they were traditional rulers of the Khasi Hills." Among them not only is the customary institution responsible for managing their communities but also their land and forest resources. Dutta informs that Syiems had lost their political importance to the British, but retained their position as an administrative entity with the focus on perpetuating cultural and customary practices of the Khasis. Dutta, while explaining the issue of forest resource management particularly makes a number of references to how the Syiems are involved in the management of their 'Raid Forests' in Khasi Hills. In his paper, however, the focus is not on the Syiems institution, but his presentation indicates its strong influence on the government policy in its management. Dutta says, "In reality, the Syiems ignore all the rules made by the Council, they in fact have their own Forest Department which deals with the issuing of permits, statement of disputes and control of forest." Here the District Council (DC) made rules, saying the Syiems should retain a portion of the royalties collected by them to the Council. Moreover, the DC has "not converted or treated the Syiemship as administrative units nor entrusted them with special functions", yet the Syiems continue to function according to their customs and traditions. The customary systems of the Garos and Jaintias are not very different from Syiems in principal and function similarly.

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[145] Ritwick Dutta, "Community Managed Forest: Law, Problems and Alternatives" http://dlc.dlib.indiana.edu/archive/00000815/00/duttar020402.pdf , (10th July 2006).

Syiems system of the Khasis in Meghalaya is not very different from the Parha, Munda Manki, Doklo Sabha system of Adivasis of Jharkhand but the 'legitimacy' of their access to their own land and forest resource makes a big difference. As in the 5th and 6th Schedules, the state governments can only introduce their rules and not impose them given the level of autonomy in these schedules. Khasis of Mehgalaya being in the 6th Schedule has been able to maintain their customary system through which they not only manage their community affairs but their resources too. Syiems, however, is neither a perfect system nor are the Parha, Munda Manki, Doklo Sabhas and others, especially when those representing it change their orientation or, changes their subsistence or "tribal economy" character to the profit and "market economy" orientation. This aspect in the customary system can also be considered to be on the cross road of traditional vs. modern, subsistence usages vs. commodity usages. If the customary system is still representative of the collective identity of the people, then the said principles that make it function as a system must also have its own corrective mechanism. However, if these customary institutions also become institutionalised they would encounter problems as any bureaucracy faces. This emphasis can be understood better with the following explanation.

If we recall the reference made to the report of the Deber Commission earlier in chapter four, the Adivasis have their philosophy "which has kept these people free from greed of material wealth…" this needs to be understood here. The same philosophy in their traditions has enabled the Adivasis to codify their social, cultural, and economic life with certain guiding principles. It can be seen in their unique religious traditions and practices which are centred on the forces of nature and the forest. Like many indigenous traditions, their religious practices indicate a belief that the natural universe is continuous with the human world of interactions and sentiments. The human, nature, and supernatural are all bound in mutual relationship.[146] However, this collective and communitarian approach represented by the customary system in the respective states (provinces) where we see growing market economies, comodification of all the resources, conversion of Adivasi indigenous territories into commercial estates and industrial cities. How can the

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[146] Pradip Prabhu , "In the Eye of the Storm; Tribal People of India," in *Indigenous Traditions and Ecology* by Surajit Chandra Singh (Cambridge: Harward University Press, n.d.), 57.

traditional customary system prove its worth for the Adivasis themselves as well as the non-Adivasi?

Sidsel Saugestad raises the question of indigenous peoples in her essay[147] on Africa's Indigenous Peoples: First Peoples' or 'Marginalised Minorities' is the similar issue for the Adivasis when it comes to accepting them as indigenous, who only have their place as 'Scheduled Tribes' and their privileges cut whenever the government wants to.

Coming back to the original question: how do the Adivasi, Aboriginal, the First Nation, the 'historical communities' and the like, when denied their status as indigenous by the individualistic natured institutions, challenge the modern nation-state and its governments? What would be the most important step for the indigenous people?

Firstly, for the indigenous peoples, it is the realisation of their rich social and cultural components exist within an indigenous shared philosophy is the first step to assertion of their rights to the State that do not regard the collective approach in the broader frame of rights.

Second step would be to take up case studies of other indigenous groups in post colonial States to compare if the new states recognise the indigenous peoples collective aspects through comparative studies.

Finally, to say that the customary systems of the indigenous peoples, not necessary that all have only good aspects in it, these aspects together however need to be studied. It is by taking a constructivist approach these systems could reveal that there is another aspect in the discourse of political philosophy which has not been explored; the geo-cultural politics. However, some thing that is its basis of it all to put it up ones again as Gregory Bahla had stressed:

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[147] Sidsel Saugestad, *"Contested Image: 'First Peoples' or 'Marginalised Minorities' in Africa?"* In Africa's Indigenous Peoples: First Peoples' or 'Marginalised Minorities'? Edited by Barnard, A. and J. Kenrick (Edinburg: University of Edinburg, 2001), 299-322.

"We dream of our land.

Every thing we see, that we walk on, that we feel through our body,

it belongs to our land.

We need the land to think about ourselves,

to know who we are.

We are no people without our land.

The government should understand this.

This is not negotiable.

Land cannot be compensated."[148]

There is a need for understanding and interpretation of indigenous traditions and their epistemologies. In the many sources they were portrayed almost as non-humans, the classical literature portrayed them as exotic, the different disciplines treated them only as part of the subjects, and the State sees them as poor, marginalised and schedules them with least priority. There is another side of the picture too; it is something which has kept them alive, which they have drawn out from their traditions, they would be willing to share. The question is, is the modern world ready to accept that there are indigenous peoples and they are not the successors of those who want to dominate.

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[148]Bineet Mundu, *India Case Study.* Workshop on Indigenous Peoples Extractive Industries and the World Bank. United Kingdom: University of Oxford, 2003.
http://www.forestpeoples.org/documents/prv_sector/eir/eir_internat_wshop_india_case_eng_apr03.pdf
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Appendixes:

International Definition of "Indigenous Peoples"

The most accepted working definition of the "indigenous peoples" by the UN Special Rapporteur Martinez Cobo:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other of the sectors now prevailing in those territories, or part of them. They form at present non-dominant sector of society and are determined to preserve, develop and transmit to further generations their ancestral territories, and their ethnic identity, as their basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems."

> This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:

> (a) Occupation of ancestral lands, or at least of part of them;
> (b) Common ancestry with the original occupants of these lands;
> (c) Culture in general or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, means of livelihood, life style, etc.);
> (d) Language (whether used as the only language, as mother tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
> (e) Residence in certain parts of the country, or in certain regions of the world;
> (f) Other relevant factors. [149]

Wilkinson Rule:

> [" 20. The Governor General's agent and his assistants are authorised, as their discretion refer suits for decision to Panchayata after the planits has been filed and defendants answer received. Either at the sadar Station or any other part of the district where the agent's or assistant's cutchery may be at the same time. The Panchayat to consist or three or four persons to be selected by the agent or assist from amongst the persons most conversant with the matter and the issue. The persons to compose the Panchayat should not be nominated until the plaintiff, defendant, and witnesses had been assembled. The plaintiff and defendant shall each be permitted to challenge any member of the Panchayat and on given sufficient reason for the challenge or other person or persons shall be selected to supply his or their place. The plaintiff and the defendant or their Agent shall each be called on. On the Governor General's Agent or his assistant determining to refer a suit to a Panchayat, and before the member of the

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[149] Jose Martinez Cobo, Study of the Problem of Discrimination against indigenous populations, UN Doc. E/CN.4/Sub.2/1986/7/Add.4 paras.379-80.

Panchayat have been nominated to enter into engagement to abide by the decision of a Panchayat to be nominated by the Governor General's Agent or his assistant shall immediately direct a Moharrir to attend the Panchayat, whose duty it shall be under the direction of the Panchayat to record their proceedings and award. He shall then direct them to proceed forth with to some convenient place in his kutchery or adjoining it to investigate the matter at issue, when the pleadings shall have been finished and evidence taken. The Panchayat shall direct the Moharrir the parties to retire, consult and decide on their award, which award have been duly attested with their signature they shall deliver to the Court appointing it, by who a decree in conformity there with shall be passed with which shall not be appealable or set aside, unless corruption can be proved against the Panchayat or unless the award shall be contrary to the common law of country or the rules enacted by the Governor General in Council."]

Indian State Delegation to UN WGIP

Full text of the statement made by the Indian delegation in UN: Ajai Malhotra,

Action on Draft Declaration on the rights of the indigenous peoples EOV before the vote by India

29 June 2006

India has consistently favoured the promotion and protection of the rights of the indigenous peoples. We have been supportive of the efforts made in the framework of the working group of the Commission on Human Rights to elaborate a Draft Declaration for the rights of the indigenous peoples. The text before us is the result of eleven years of hard work. The fact that we have not been able to reach a consensus on every aspect of the declaration despite such prolonged negotiations is only reflective of the complexity of the issue.

The Draft Declaration does not define who constitute "indigenous peoples". In our understanding, the issue of indigenous rights pertains to people in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. This is the definition used in ILO Convention No. C 169 of 1989. We regard the entire population of India at Independence, and their successors, to be indigenous, consistent within the definition.

As regards to the references to the rights to self determination in the draft Declaration, it is our understanding that the right to self determination applies only to peoples under foreign domination and that this concept does not apply to sovereign independent states or to a section of people or a nation, which is the essence of national integrity. We note that the Declaration clarifies that this right to autonomy or self government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
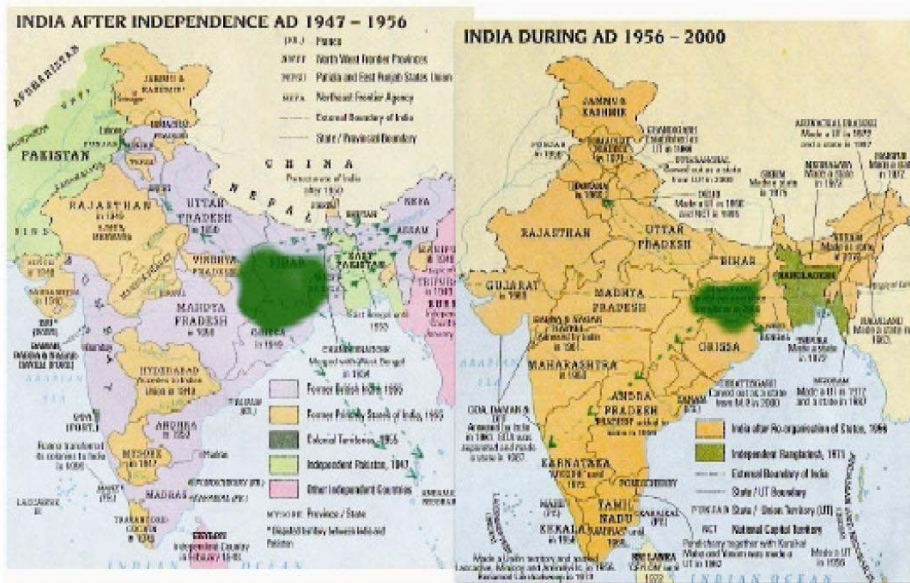
With these understandings India is ready to support the proposal for adoption of the draft Declaration on the Rights of Indigenous Peoples and will vote "yes" in its favor.

Maps 2 and 3

INDUS VALLEY CIVILIZATION 2600 – 1700 BC
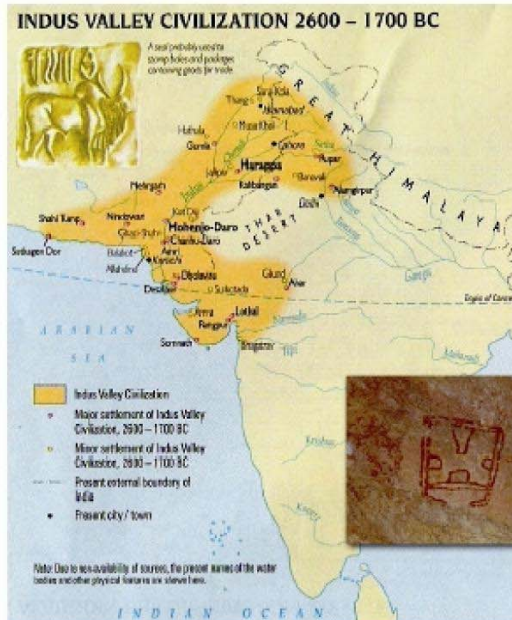
Map 2. (Left) At Isco (Hazaribagh, Jharkhand) a new script containing 93 characters of the Indus Valley script has been found (Areeparampil 2002). The photo in the inset is one of the characters.

Map 3. (Bottom) The Adivasis in the Jharkhand region in early years of independence and till recently. Both of the maps show the Adivasi population in green and the trends of migration.

INDIA AFTER INDEPENDENCE AD 1947 – 1956

INDIA DURING AD 1956 – 2000

Bineet J. Mundu, email: bineet_mundu@hotmail.com, bineet_mundu@yahoo.co.uk