CHAPTER 2
CUSTOMARY LAW DISCOURSE IN INDIA:
COLONIAL, NATIONALIST AND TRIBAL DISCOURSE

In order to comprehend the particular course of events that shaped the history of tribal communities and their customary law, during and after colonial rule, both in India in general and in the Northeast in particular, it is necessary to understand the underlying discourses that were constantly twisting and turning the tribal trajectory. Various governmental policies and measures implemented by the Colonial Government and later, by the Government of India were the outcome of these discourses. In the Indian context three discourses tried to articulate the tribal situation. They are the colonial discourse, the nationalist discourse, and the tribal discourse. This section will deal with these three discourses.

Colonial discourse refers to the various discussions and deliberations that took place among British officials and administrators as regards the approach to administration of areas during colonial rule. Nationalist discourse refers to the thinking among Indian leaders, especially in the 20th century. Tribal discourse refers to the stand of tribal leaders regarding the destiny of their communities during and after colonial rule.

A discourse refers to various strands of thinking surrounding a particular issue. It contains conflicting voices and murmurs. Sometimes the shades of differences in these voices are diametrically opposed to each other and other times, the differences are minor in nature. Sometimes the voices are silent and unspoken. They seem blurred and hazy; other times the voices are loud and clamour for attention. Silence does not mean the historical agency belongs only to the powerful or the dominant forces. Subordinate
groups do play an equally important role in guiding and shaping the march of history (Guha: 1996).

Sean Cadigan, while critiquing the works of Gerald Sider, *Between History and Tomorrow*, and Jerry Bannister, *The Rule of Admirals*, on the history of Newfoundland and Labrador fishing communities, accuses them of undermining the determining role that the dominated community, i.e., the fishing communities, played in shaping their history in the 18th century (2004). Cadigan finds Bannister overemphasizing the role of merchant capital in fashioning the course of history of those fishing communities and says “…he only finds the intentions of the powerful to be important in the creation of law in 18th-century Newfoundland because that is all he looked for. *While power may be the preserve of elites, historical agency is not.*” [Italics mine]

Nag, while trying to write a Northeast Indian historiography, underlines Cadigan’s point of silencing or erasing the voice of subordinate groups in the writing of history (2002). History is written from the perspective of the ruler or the victor and the voice of the ruled or the conquered is often unheard if not completely muted. The history of Northeast India is not an exception to this trend. In the prologue to his book, he quotes the works of both British and Indian historians, during and after colonial rule, to highlight this trend of historiography. In the initial stage of colonial rule, i.e., from the moment the East India Company took the reins until the end of 19th century, it was the colonial discourse that largely decided the nature of administration to be operationalized and the type of policies to be implemented vis-à-vis tribal communities in India. That does not

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mean the tribal communities were mute spectators to the actions of British. They either assented or dissented to every policy turn, thus becoming active players in the making of their history. According to Nag, this fact of tribal assertion, through action or inaction, gets scant attention in the history of Northeast Indian tribal communities. One can broaden the application of this argument and say that this phenomenon affected tribal communities in general all over India.

An image which was created in colonial writings that tribal communities were passive recipients of benefits of their rulers is contested in this chapter. More than just assenting or dissenting, the tribal communities had a social and political negotiation mechanism through which they gained some and lost some. They agreed to some programmes, rejected others, and revolted when they thought it was necessary to fight against the oppressive practices of the British and their Indian counterparts. In the process of this encounter with the external powers, both political and religious, British as well as Indian, they stubbornly held on to most of their customary laws while changing some and making space for new ones.

**Colonial Tribal Discourse**

Much has been written on the colonial approach to tribal communities in India. Most early British administrators sketched a demeaning and debasing portrayal of tribal communities (Rowney: 1882). The early British writers found them ‘primitive’, ‘savage’, ‘wild’ and ‘barbarous’ and thus the British had the onerous responsibility of ‘civilizing’ them (Wheeler 1972, first published 1879; Chaube 1999: 31). One of the strategies they

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followed in this ‘civilizing mission’ was to isolate tribal groups and keep them separate in their abodes. Verrier Elwin, who drafted the Dhebar Commission Report on the Scheduled Tribes, had this to say in the published version of the report about the British approach in dealing with tribal communities.

The tribal people living in their remote hills and forests for many centuries led a life of their own, generally uninfluenced by the main currents of history. It was only with the entry of missionaries into these areas that the officers of government started paying some attention to them. But this contact was superficial and prompted them to come to some equally superficial policies, the foremost of which was to isolate the tribal people from the rest of their country men and separated the tribal areas from the purview of the normal administration.\[it\]

Echoing Elwin’s observation, Prakash (1999) reiterates the approach of segregation as the central approach of the British towards tribal communities in colonial India: “The central premise of the dominant strand of colonial discourse in relation to the tribal population of India was that until the time when the tribal communities were integrated into the dominant politicosocial systems, they required a great degree of protection.”\[it\] What was the rationale behind segregating tribal communities and providing them with protective measures? Perhaps a passage from the Simon Commission might shed light on the reasoning behind isolating the tribal communities from non-tribal majority in colonial India.

These backward races are commonly supposed to be remnants of pre-Aryan autochthonous people into whose strongholds in the hills and forests the invader found it difficult and unprofitable to penetrate. Some of them live by hunting, and by a type of shifting cultivation…In the valley, the tribes have with a great labour terraced isolated fields, producing abundant crops, but at no time before the establishment of British rule were these plots coveted by the plainsman, for he could not have collected rent from the occupiers. But the moneylender and the


trader took advantage of the new reign of law to reduce the aboriginal owners to practical serfdom.\textsuperscript{63}

As can be inferred from the above passage, in colonial India there were two different colonial discourses, one for tribal communities and another for non-tribal communities. The tribal community was a backward race. They were pre-Aryan. The Aryan invader could not penetrate the stronghold of the remnants of pre-historic people. The tribals nourished themselves by hunting and shifting cultivation. Therefore, they were not civilized like the non-tribal population of colonial India. Such an image of a tribal community emerges out of a memorandum submitted by the Roman Catholic Bishop of Ranchi to the Indian Statutory Commission in Patna:

The degree of civilization attained by the aboriginals of Chota Nagpur is still so far below the degree attained by other races of Bihar and Orissa that the aboriginals are unable to meet these other races on an equal footing...As the matters stand now, an illiterate Bengali is more aware, more wide awake, more civilised than an aboriginal who has completed the primary course of schooling — or even the secondary course. The illiterate Bengali indeed obtains all the advantages arising out of his civilized surroundings; the educated aboriginal loses much of the fruits of education on account of the backward society in which he lives. The aboriginal society is still in the privative stage.\textsuperscript{64}

A stereotyped picture of a tribal community appears from these passages which pits it against the non-tribal community in colonial India. The tribals are portrayed as “ignorant” and thus easily amenable to exploitation by outsiders. To mainstream any “primitive” and “backward” tribal community, a paternalistic administration that would protect the natives from the exploitation of non-tribal moneylenders and land grabbers was a necessary step. Such a standard bleak portrayal of tribal communities, vis-à-vis

\textsuperscript{63} Quoted in Amit Prakash, ibid., p.469.
\textsuperscript{64} Quoted in Amit Prakash, ibid., p. 471.
non-tribal communities, was constantly being playing out in shaping and designing the colonial policy of isolation.

Though the above passages from the Simon Commission and from a Roman Catholic bishop belong to first half of the 20th century, segregation of tribals as a general policy was implemented as early as the last quarter of the 18th century. When the daring raids of the Paharias of the Rajmahal Hills on the plains people in colonial Bengal became uncontrollable towards the end of 18th century, the British administration sent Augustus Cleveland to find a way out of the problem. He succeeded in checking the Paharias from ‘plundering’ the plains by paying a fixed amount of annual bribe to the chiefs of Paharia. Apart from this, the tribe was kept off from regular administration. He introduced a special self-government plan by creating a council of chiefs of Paharias, to administer and maintain the law and order situation in the hills (Sachchidananda 1997: 51-52). This was the first attempt by the British to cut off the tribal population from the plains people, thus allowing the tribal communities to administer their own territory. This policy brought peace for a while between Paharias and the plains Hindus. Thus began the era of isolating the tribals from mainstream communities, which was later called the indirect rule (Ghurye 1963: 26).

Cleveland had the intention of gradually encouraging interaction between the two groups, for he thought the tribal communities could advance and grow only through mingling with the plains people. Fortunately or unfortunately he died and those who succeeded him did not think in this line. By 1827 this policy of isolation of the Rajmahal Hills was repealed by J. P. Ward (Ghurye 1963: 73-74). A similar experiment in indirect
rule was also implemented as a reaction to the Kol insurrection in the first half of 19\textsuperscript{th} century (Sachchidananda 1997: 52).

During the 19\textsuperscript{th} century, Hindu rajas, landlords, moneylenders and merchants in the central provinces of British India exploited the indigenous people. The reaction to this economic and social exploitation was many uprisings and insurrections. There were the uprising by Hos of Singhbhum in 1831, the Santhal rebellions of 1836 and 1855 and the Khond uprising 1846 (Thakur & Thakur 1997:3; Tripathi 1997:114). The East India Company had to find ways of containing these rebellions. In the Northeast, the Nagas, the Mizos, the Garos, the Akhas, and other tribal groups were descending onto the plains, and this became a threat to British economic interests. To tackle the ‘unruly’ tribes, the British had to undertake many punitive expeditions to the Naga Hills, the Mizo Hills, the Garo Hills and to the land of Akhas to subdue them (Mackenzie: 1884).

The primary concerns of the British colonial governments were to maintain law and order, to establish a system of collecting taxes, and to supply raw material to Britain from their colonies (Cohn 2003:205). Any hurdles on the way to realizing these concerns were dealt with ruthlessly. When the raids and uprisings of tribal communities jeopardised political stability and affected economic projects, the British administration tried to subdue them. Despite the draconian measures, they could not stop the raids and insurrections. To counter this defiance of the tribes the British had to find some other policy and resorted to indirect rule.

McLachlan, writing in the context of colonialism in Africa and Northern America mentions that there were a set of assumptions which guided this policy of indirect rule.
The colonial administrators thought of tribal society as immutable and hierarchical, with their customary laws coming down from time immemorial.

The colonizers began with their own image of customary society as, above all, unchanging and hierarchical. That it should be unchanging squared both with the notion of custom in English law as existing from time immemorial, and with a prevailing ideology of legal evolution which placed customary law alongside ancient law in its emphasis on status. It also drew upon the “noble savage” tradition in finding customary societies expressive of some changeless balance within the community and between the community and the environment. The image of hierarchy not only squared with common conceptions about customary societies as bound by status and rules by chiefs, it also suited administrative and economic convenience. The chief became a conduit between the colonizers and the colonized: he conducted trade, carried out orders, held courts and represented views. The idea of the chief became so important that, if there were none, they were invented, and their power and position were bolstered in a way, which suited the patriarchal face of colonialism.  

These assumptions had influenced the colonial administrators in shaping indirect rule in the Indian context too (Bhattacharya 1996).

According to Elwin, three factors seemed to have prompted the British administration to adopt this policy of ‘leaving them alone’ (Mukhopadhyay 1989: 12-13). First, the tribal areas were economically unrewarding and direct rule would have resulted in incurring huge expenditures. Second, the British wanted to stop the tribals from joining

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the freedom struggle. Third, there were many administrators like J. H. Hutton, who sincerely felt that direct administration would result in acute discomfort to the tribals.

A number of Acts were passed to implement the policy of segregation. “Segregation was the initial British policy for the frontiers. Section 2 of the Bengal Eastern Frontier Regulation of 1873 made it lawful for the government ‘to prescribe, and from time to time alter by notification...a line to be called the Inner Line and to prohibit any subject living outside the area from living or moving therein.’”66 The demarcating of the inner line effectively separated the tribal people from the rest of the country. The Scheduled Districts Act of 1874 established a different administration in the Scheduled Districts where tribal people and other ‘backward’ people lived. This act was followed by Government of India Act of 1919, which cemented this policy and gave many powers to the Governor General in Council. The Government of India Act 1935 refined the previous policies with some modifications and created two categories among the excluded areas, naming them “excluded” and “partially excluded” (Ghurye 1963: 70-132; Chaudhuri 1997: 142).

Some authors, echoing the first reason of Elwin, mentioned above, tended to feel that it was the exigency of the situation, especially the political fallout of the context, which determined indirect rule (Ghurye: 1963; Choudhury 1988: 35; Misra: 2002:21). “The British policy of segregation was not inspired by any solicitation for the well-being of the tribesmen, but followed the expediency of non-interference in so far as the events in the hills left them alone.”67 But McLachlan, commenting on colonial rule in Africa and

Northern America had a slightly different understanding of the situation: “The attitude of the colonisers to customary law was not conditioned simply by the exigencies of governance or by economic factors, although both of those were important. It was also conditioned by a set of ideas, both about the nature of customary society and about the effect of colonisation upon it.”

McLachlan tends to explain colonial policy as something well planned with a definite philosophy and not simply an outcome of chance and exigency. It is true that the policy of indirect rule in Africa was formulated later than India and the context in Africa, with predominantly tribal population, is not analogous to the context in India. But the policy executed in Africa was based on the experience of indirect rule in British India. Thus expediency, no doubt, played a major role but there was also some deliberate thinking and planning behind such a policy. The factors for such deliberate thinking will be discussed a little later.

The second reason articulated by Elwin mentions sealing the tribal population from getting influenced by the Indian freedom struggle. Protective measures like the inner line permit, and the creation of ‘backward area’ and ‘excluded area’, alienated tribal people from the freedom of movement and kept them aloof from the mainstream. Indian political leaders were not allowed to enter tribal areas due to apprehension that they would arouse the tribal people against colonial rule. According to Misra, “Several legislative measures like the Excluded Areas Act and the Partially Excluded Areas Act virtually put an end to interaction between the hills and the plains. The “Excluded Status” of the hill districts gave an added advantage to the British administrators in later years

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when they used this provision to prevent national political parties from extending their influence in this region.

Many social scientists felt that this policy of segregation was the main cause which, during post colonial times, led the tribal communities to demand secession from India (Ghurye: 1963; Chaube: 1999). Even Nehru voiced the opinion that tribal people were not part of the anti-colonial struggle due to the exclusionary measures practiced by the British (Mukhopadhyay 1988: 14-15).

Earlier, while discussing Elwin’s first point of expediency determining the indirect rule, a point was made that there were also some values and deliberate planning behind such a policy. If there were some semblance of meticulous planning in administering the hills and if there was a philosophy which rejected wholesale intervention in the social, cultural and political life-style of tribals, the credit goes to some anthropologically-minded administrators. Sundar (1997: 161-66) refers to the constant tension between those colonial officials who had anthropological background and the professional administrators. Hutton, Mill and many others felt that direct administration would result in the wanton destruction of tribal cultural heritage.

While the ‘professional administrators’ had the concrete ‘cost-benefit’ equation of the context in mind, the ‘anthropologically minded administrators’ were keen on not disturbing the tribal way of life. In fact, there was an ongoing policy battle between the professional administrators versus the ‘anthropologically minded administrators’.

The ‘anthropologically minded administrators’, too, had differences with mainstream administrators as to what the colonial authorities should be doing, though they did not doubt the necessity of colonialism itself. In arguing for the isolation of tribal

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groups from the corrosive influences of mainstream India, the anthropologist-administrators came up against both the upper echelons of the British administration and the Indian nationalists. The senior administrators were keen on the extension of administration and to give one example, further restrictions on shifting cultivation to increase the scope for commercial exploitation of forests.  

Dr J. H. Hutton, one of the anthropologically minded administrators, deplored the adverse effect of British administration in so many words: “Far from being of immediate benefit to the primitive tribes, the establishment of British rule in India did most of them much more harm than good...Many of the results of these changes have caused acute discomfort to the tribes.”

Ghurye, on the other hand, lists a number of British administrators to prove the contrary point of view, that tribals had to be assimilated into the Hindu fold in order to advance and get ‘civilized’. He quotes Forsyth (who worked with Gonds of the Narmada), Bradley-Birt (Paharias of Bengal) and C U Wills (Paikra Kanwars of Bilaspur) to prove the beneficial effects that tribal-Hindu interactions had on the former (1963: 23-50). But the administrators quoted by Ghurye are those without anthropological background. They were the hardnosed bureaucrats who kept the expansion of British rule as their prime motive.

We have discussed the colonial discourse on the tribal situation. Most early British records paint a picture of tribal people as ‘uncivilized’ and ‘barbarous’ and thus

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the British had their work cut out for them in the mission of civilizing the tribal people. Initially they tried to subdue them through punitive expeditions but when they did not succeed in this, they hit upon the policy of isolation. The motives behind such a policy, as spelt out by Elwin, were contextual expediency: they include both a plan of keeping them aloof from the national struggle and the apparently noble object of preserving the cultural heritage of tribals. Perhaps one can infer from Elwin’s list of British motives that indirect rule was a mixture of selfish motives as well as noble intentions, tilting more towards the former.

Segregation in middle India was substantially different from the “unadministered status” in the northeast. In middle India the British needed the resources chiefly those of mining and in western India they needed the forests in which the tribal regions abounded; in the Northeast they needed only taxes and some of their handicrafts and other products. They did not need tribal land, except in the plains for tea gardens. So the type and level of autonomy or “isolation” differed according to this need. Much greater autonomy could be granted in Northeast India than in middle India, where only individual land was protected from moneylenders.

Nationalist Discourse on Tribal People

There is very little literature available on the views of Indian National Congress or nationalist leaders on the issue of the tribal problem during colonial rule. Two broad trends pitched battle against each other on the issue of the tribal situation in nationalist discourse. The assimilationist trend wanted the amalgamation of tribal communities into the national mainstream while the integrationist approach respected the cultural diversity of these groups and suggested that they be given sufficient autonomy to live according to
their customary laws. These approaches have been debated, discussed, defended and
denigrated in many seminars and publications (Ghurye: 1963; Pathy 2005: 41-42;
Mukhopadhyay 1988:18-19; Guha: 1999). Yet a review of the debates would benefit this
section if it is juxtaposed with similar tendencies in the colonial and tribal discourse on
customary law.

Until the end of the 19th century, nationalist leaders did not pay much attention to
the predicament of tribal communities, since their attention was focused on the other
larger issues of national struggle for independence (Ray 1972: 20). Verrier Elwin bitterly
complains about the initial neglect of Congress leaders towards tribal problems. “Indian
national workers and reformers – with the exception of the heroic little band associated
with the Bhil Seva Mandal – have neglected the tribes shamefully. The Congress has
neglected them. The Liberals have neglected them. The Khadi workers have neglected
them.”72 The efforts of the leaders of the national movement were geared more towards a
pan-Indian anti-colonial movement and this did not give them time to address the tribal
problem.

One hears of Mohandas Gandhi, A. V. Thakkar and Rajendra Prasad gradually
taking keen interest in addressing the problems of the tribal communities
(Mukhopadhyay 1988: 14; Pakem 1997:93). Gandhi opposed the Government of India
Act, 1935 which by creating excluded and partially excluded areas prevented interaction
between tribals and non-tribals. “It was their shame that they should be isolated from the

rest of the nation of which they were an inalienable part.” He faulted the British for not allowing non-tribals to interact with tribal communities.

A. V. Thakkar, a Gandhian and a social reformer, started schools in tribal areas that stressed basic education and moral development. He was known for his love for the tribal communities. But the schools started by him upheld non-tribal values and paid scant attention to the cultural ethos of tribal communities. “A particular set of norms and values was sought to be imposed upon the tribal children which were often not in consonance with the traditional life of the tribals. To quote an instance, almost all these institutions banned non-vegetarian food for the inmates.”

Elwin’s letter to William Paton written in 1936 gives some glimpses of what he thought of the approach of Congress leaders towards tribal communities. He seems to deplore and disapprove of the approach of Congress leaders in dealing with the predicament of tribal groups.

For example, it seems to be the aim of the Congress politicians to bring the aboriginal within the Hindu fold and then to treat them as though they had no special claims; they resent the establishment of Excluded and Partially Excluded Areas [established by the British government to protect the aboriginals]; they dread the claims of Anthropology to guide these areas. This company of vegetarians and teetotallers would like to force their own bourgeois and Puritan doctrines on the free wild people of the forests.

What becomes clear from the above quote is the assumption of Congress leaders that tribal people were to be assimilated into the broader Indian society. Sundar, commenting on the stand of Nationalist leaders, mentions “The nationalists, for their part,

75 Quoted in Ramachandra Guha, 1999. op.cit., 105.
saw the policy of protecting tribals from other Indians as a policy of divide and rule and favoured assimilation as a way of ‘uplifting’ the tribes.\(^76\)

Until India gained independence, Congress leaders did not have time to attend to or articulate their views on the tribal problem. Apart from vehemently criticizing the ‘isolation’ policy of the British and preferring in its place the assimilationist approach, they did not come out with any constructive plan of action to deal with the tribal question.

After India gained independence, it was Nehru who guided and shaped tribal policy and gave it a new direction.\(^77\) He criticized the colonial policy of ‘exclusion’ and did not find anything substantially done by the British to ameliorate the condition of tribal people (Mukhopadhyay 1989: 16). He appreciated the diverse cultures of various tribal communities and saw to it that these cultures were preserved and allowed to grow from within in independent India. “It is our policy that tribal areas should have as much freedom and autonomy as possible so that they can live their own life according to their own customs and desires.”\(^78\)

Writing to the secretary of the Naga National Council, Mr T. Sakhrie, on the 1\(^{st}\) of August, 1946, Nehru exhibits his respect for the tribal political and judicial organs. “I see no reason whatever, why an extraneous judicial system should be enforced upon the Naga Hills. They should have perfect freedom to continue their village panchayats, tribal courts, etc., according to their wishes. Indeed, it is our wish that the judicial system of

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\(^76\) Nandini Sundar, 1997. ibid., 159.
\(^78\) Mukhopadhyay. K. 1989. op.cit., p.16.
India should be revised, giving a great deal of power to village panchayats." He takes note of the unique cultural heritage of Nagas and assures Mr. Sakhrie that in the Independent India efforts will be made to make space for the Naga social, political and legal institutions.

Nehru was a strong exponent of an integrationist approach in dealing with the tribal situation. "In his plan of total integration and total revolution — scientific, industrial, economic, social and political — the idea of autonomy for the culturally homogeneous people got priority and he fostered it despite bitter and short-sighted opposition from some colleagues at the Centre as well as leaders in states." He found a middle path between the so-called 'national park' approach (which wanted to preserve the tribal culture as it is) and the assimilationist approach. His views are well summarized in his foreword to Verrier Elwin's *A Philosophy for NEFA*, which are known as *Panchsheel*. The quintessential idea that reverberates Nehru's tribal policy can be summarized in the first of the five principles he enunciates: "People should develop along the lines of their own genius and we should avoid imposing anything on them."

In developing his ideas on tribal communities he acknowledged the influence of Verrier Elwin (Choudhuri 1989: 33-53). Elwin, who was not a professional anthropologist, had worked with tribal communities in Central and Northeast India and had fought for their cause through his writings.

The Constituent Assembly debates on the tribal question, especially on the provisions of the Fifth and Sixth Schedule, summarize well the position of nationalist

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leaders of various motivations and approaches. Mr Brajeswar Prasad of Bihar was against any arrangement of autonomy for tribal people: “I will not jeopardise the interest of India at the altar of the tribals. The principle of self-determination has worked havoc in Europe...It led to the vivisection of India.”\(^{82}\) There were many others who supported this stand and expressed their views in strong words against the provision of the Sixth Schedule (Chowdhury 1989: 39).

According Nongbri (1997: 330) quite a lot of literature on tribal people was published after Indian independence to establish the ‘Indianness’ of these people. Most of these publications tried to find a place for tribal people in the ancient Indian civilization through historical reconstruction. G. S. Ghurye (1963) was one author, who was vocal in expressing his views on the assimilation of tribal people into the Hindu fold. Considered a pillar of Indian sociology, he fought a polemical battle with Verrier Elwin, accusing him of keeping the tribals in the zoo as anthropological specimens.

His book, *The Scheduled Tribes*, which was written more to tear apart Elwin’s arguments, is a plea for the assimilation of tribal people into Indian society. He bolsters his position by generously quoting British administrators. Mr. C. U. Wills is quoted to prove the beneficial effect tribal communities had from their interaction with Hindus. “The Paikra Kanwars, a very numerous, well disposed and prosperous community in all the seven northern zamindaris, are an instance of what Hinduism can do to teach primitive people social decency and self-respect, carrying with it lessons of thrift, industry, and self-restraint.”\(^{83}\) Likewise, Bradley-Birt is quoted to drive home the point that only mixing with Hindus would bring about development among the tribal people:

"Nothing but their descent into the low-lying skirts of the hills, and their adoption of the life and interest of the plains, could raise them from their backward state." Thus, the echo in Ghuye's book seems to be that the tribal people will profit greatly by association and assimilation with Hindus.

To summarize the nationalist discourse on tribal situation until the 20th century, the nationalist leaders were busy with strengthening the anti-colonial movement and so could not spare time to fight for tribal rights. During the 20th century, Gandhi, A. V. Thakkar, and Nehru tried to work for the tribal cause but due to colonial policy of 'exclusion' could not directly commit themselves. Some reforms in the educational arena initiated by A. V. Thakkar such as vegetarianism were not in keeping tribal values. The post independence nationalist discourse had various strands, the two most important ones being the assimilationist and integrationist approach. Under the leadership of Nehru, it was the integrationist approach, which shaped the tribal development programmes and projects.

**Tribal Discourse**

The tribal response to colonial rule has not been well documented and has not been considered part of the Indian freedom struggle (Nag 2002: 21). Whatever little historical information that is available on tribal resistance to colonial rule can only be retrieved from colonial records. It was already noted, while dealing with colonial discourse on the tribal situation, that such a literature expresses a British point of view on tribal resistance to colonial rule. So the written sources picture one side of the story.

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84 Quoted in ibid., p.26.
85 K. S. Singh edited two volume study titled *Tribal Movements in India* (1982-1983) is an extensive work on Tribal Movements in India.
Most Indian national leaders were not even aware of tribal resistance to British rule. Even Nehru, the architect of the tribal policy of Independent India, intentionally or unintentionally, downplayed the role of tribal communities in their struggle against the British. “They [the tribals] never experienced the sensation of being in a country called India and they were hardly influenced by the struggle for freedom or other movements in India. Their chief experience of outsiders was that of British officers and Christian missionaries who generally tried to make them anti-India.” Dolly Kikon, writing in the context of the tribal communities of Northeast India, points out that this situation has continued even to the present day. “This region does not find itself within the narrative and memory of the nation, yet continues to occupy a central position regarding the territorial integrity of India.”

Notwithstanding such negligence and non-recognition by the nationalist leaders even to this day, tribal groups have courageously fought the battle against imperial expansion into tribal lands. For example, the Nagas waged a war against British expansion for nearly 50 years, until they were mauled at the Battle of Kohima in 1878 (Ramunny 1993:8-9). The Garos, the Mizos, the Akhas and other tribal groups too put up a brave front before being defeated by the colonial power (Mackenzie 1884; Sangma 1981). In the central provinces of colonial India, there were the Paharia, Santal, Ho, Khond, Munda and Oraon uprisings which signalled tribal resistance to British political rule (Tripathi 1997: 114; Sharma2001: 133).

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In south India there was the Rampa rebellion in Godawari District of Andhra Pradesh, Alluri Sitarama Raju’s uprising, the Gond revolt of 1940, and many such protest movements against the British as well as against the non-tribal land owners and money lenders who were exploiting the tribal people. In the context of the Rampa rebellion, which was a retaliation against both British and non-tribals for denying toddy tapping rights to tribals, Prof. Haimendorf makes the following comment:

The history of Rampa Rebellion is important in two respects: it shows firstly that aboriginals, even if inherently not of warlike character are capable of considerate efforts when driven to extremities, and secondly, that it is both inexpedient and dangerous to allow the control and exploitation of aboriginal populations to fall into the hands of unscrupulous outsiders, who although not directly responsible to Government, are backed by the authority of the police and the law courts. 88

The Rampa rebellion was a clear protest movement against the exploitation of tribal people in the hands of British and non-tribals. In a similar vein, mention must be made of Birsa Rising among the Mundas of Chota Nagpur towards the end of the 19th century against the beth-begari (unpaid labour to landlords) system. Land of a tribal community had been taken over by landlords and they were made to pay rent to them. The original communal ownership of land was turned into a feudal land tenure system, which led to oppression. The Mundas, who were the original inhabitants, had to pay high amounts of rents to landlords who were backed by the British administration. It is in this context of oppression that Birsa claimed himself to be a prophet and messiah of the Munda people. He initiated religious purification ceremonies such as giving up of worshipping the bhuts (minor spirits) and banning of meat-eating. Soon the movement took a political turn. Birsa told his followers to defy the administration. Two uprisings led by Birsa Munda took place in 1898 and 1900 to reclaim their lost land and against

the beth-begari system. Both the uprisings were quelled by the British, but not before meeting stiff resistance by over 30,000 Munda warriors threatening to overthrow the administration with their arrows and spears (Ekka 2003: 200-214).

Another powerful rebellion against the oppression of the landlords and British was the Tana Bhagat Movement among the Uraons of Chota Nagpur which took place during the second decade of the 20th century (Bhardwaj 1977:155; Sharma 2001: 158). Similar in origin to the Birsa uprising, this movement, too, started with religious purification ceremonies. Later the teachings of the leaders took political overtones and they openly disobeyed the British authorities and attacked police stations. They fought a valiant battle against the British before being defeated by them. Gradually they joined hands with the Indian National Congress in their fight against the British. They participated in the civil disobedience movement in 1921 and afterwards took active part in all the protests and marches against the British (Ekka 2003: 221-245).

The Birsa Rising and Tana Bhagat Movement rose in the context of a loss of land to Hindu landlords, which led to economic depredations of Mundas and Uraons. Initially it took the form of religious reforms which led to the abandonment of tribal religion in imitation of Hindu and Christian rituals. This emulation of their better-off landlords and the religion of the British, which is better known as the sanskritization process in Indian sociological circles, was an offshoot of their struggle against the economic and political suffering meted out to them. While the Birsa Rising slowly faded out, the Tana Bhagat Movement was incorporated into the anti-colonial struggle of the Indian National Congress. Ekka suggests that although the Tana Bhagats joined the Indian National
Congress, they primarily did so in order to drive out the outsiders, both the British as well as Hindu Rajas and landlords, who had occupied their lands (Ekka 2003: 241).

The uprisings of tribal communities in Central India in the 19th and early 20th centuries are a clear proof of their resistance and dissatisfaction against colonial rulers as well as the non-tribal Indians who had usurped their land and natural resources. While Birsa Munda and Tana Bhagats tried to imitate the religious rituals and cultural life-style of the Hindus to create an identity for themselves, we see a marked departure among the Nagas of Northeast India who said they would have nothing to do with Indian culture. In a memorandum submitted to the Simon Commission on 10 January, 1929, the Naga Club, comprising representatives of various Naga tribes, thus voiced their concerns towards the end of the document:

...Though our land at present is within the British territory, government have always recognised our private rights in it, but if we are forced to enter the council the majority of whose members is sure to belong to other districts, we also much fear the introduction of foreign laws and customs to supersede our own customary laws which we now enjoy.

For the above reasons, we pray that the British government will continue to safeguard our rights against all encroachment from other people who are more advanced than us by withdrawing our country from the Reformed Scheme and placing it directly under its protection. If the British government, however, wants us to throw away, we pray that we should not be thrust to the mercy of the people who could have never conquered us themselves and to whom we are never subjected, but to leave us alone to determine for ourselves as in ancient times.89

The assertion of a separate Naga identity in contradistinction to Indian identity comes out forcefully in the above quotation from the memorandum to the Simon Commission. Though the Naga Club did not last long, their fear of being submerged into an alien Indian nation remained with Naga tribes. For instance, in a resolution submitted to His Majesty’s Government in 1947, the newly formed Naga National Council makes

clear its intent for a sovereign and independent Nagaland. This demand is based on the assertion that Indians never subjugated the Nagas. This claim was supported by a declaration that the Nagas have a unique historical governing system according to which a new Naga government would be set up.

In framing the constitution of India certain thought provoking factors must not be ignored: (i) Ethnically Nagas are from a distinct stock. (ii) They have a distinct social life, manner of living, laws and custom and even their method of governance of the people is quite different. (iii) In religion, the great majority of the Nagas are animists but Christianity which was introduced by the American Baptists long before the advent of the British rule is now speedily spreading. Such factors as the above make it imperative that the Nagas should have separate form of Government. The Nagas have an efficient system of administration. Most of the tribes retain to a considerable degree their ancient laws and customs and village organisation which have lasted through centuries, and these form an integral part of their life and once destroyed or allowed to decay, can never be replaced by a system so suitable to them. Democracy in its purest form exists among the Nagas.90

Some authors are of the view that this separatist tendency among the Nagas was instigated by the British officers who wanted Nagas either to remain part of a British colony or wanted them to secede from India (Nag 2002: 140-43; Sema 1986: 81). This does not in any way diminish the national resurgence among the Nagas, initiated and originated from below. It was an effort in which the traditional village leaders and chiefs as well as educated Naga leaders worked together for the realization of their demands.

It was not that there was a unanimous opinion among the Naga elite as to the course of Naga nationalism. There were moderates and extremists among them (Zhimomi 2002: 31). The NNC secretary, Mr Sakhrie and some of his followers, for instance, took

the middle path of demanding maximum autonomy for Nagaland within the Indian constitutional framework. But Zhapu Phizo, known popularly as the father of the Naga freedom struggle, parted ways with Sakhrie and demanded absolute sovereignty for Nagaland. This phenomenon of a division of opinion regarding the nature of sovereignty and autonomy vis-à-vis the Indian nation surfaced among the leaders of other tribal communities as well (Nag 2002).

While in Nagaland the traditional chiefs joined hands with the modern leaders, in Mizoram they took a collision course. The Mizo chiefs did not want to join the Indian union and wanted a separate Mizo land, but the educated Mizo elite galvanized the masses, appealing to them to become part of the Indian nation. The people of the erstwhile Mizo district wanted to liberate themselves from the thraldom of Mizo chiefs to whom they had to pay high taxes and also give free labour. Thus Mizoram became part of India on its own accord without any external coercion (Nag 2002). The Khasi Hills, Garo Hills and the rest of the Northeast tribal communities too were incorporated into the Indian nation with various political and administrative packages.

The feeling among the tribal communities all over India was that they were the original inhabitants of this country. While the Northeast tribal communities like the Nagas and the Mizos felt that they were never subjugated by any external forces except the British, central Indian tribal people felt that the Hindus had cunningly exploited them and grabbed their land. Such an understanding was articulated by Mr Jaipal Singh, the Munda leader, who was a member of the Constituent Assembly. Participating in one of the debates in the Constituent Assembly he argued, "so far as I have been able to count, we are here only five. But we are millions and millions and we are the real owners of
India. It has recently become the fashion to talk of ‘Quit India’. I do hope that this is only a stage for the real rehabilitation and resettlement of the original people of India. Let the British quit. Then, after that, all the late-comers quit.”\(^{91}\) Here was a strong assertion of tribal rights for land and natural resources by Jaipal Singh in unequivocal terms.

One of the protective measures used to pacify the agitated tribal people of Northeast India was the package of the Sixth Schedule proposed by the Bordoloi Committee. There was heated discussion in the Constituent Assembly on this measure, which promised to give a substantial amount of autonomy to tribal district councils. Making a strong intervention favouring the Sixth Schedule status for the hill tribes of erstwhile Assam, J. J. M. Nichols Roy, a Khasi tribal leader, argued that instead of demanding that the hill tribes of Assam imitate Hindu culture, there were many values and practices of the tribal communities like equality, sharing and communal fellowship which could be emulated by the plain Hindus (Sundar 1997: 188). The observation of Nichols Roy was based on the assumption that the tribal spiritual values, cultural practices and political institutions were no less superior to those of the Indian mainstream. The two systems have to meet on an equal ground.

Supporting the motion on the Sixth Schedule, Jaipal Singh found fault with the superiority complex of certain members of the Constituent Assembly. Lampooning the derisive attitude of some of the members towards tribal self-governing institutions, he pinpointed two alternatives to administer the tribal areas of Northeast:

One was the power solution, the other was the knowledge solution. The vehement language of some of our members inclines towards power solutions. They want to force the tribal people of Assam to do things against their wishes and expressed

will. I suggest that is no solution at all. If you do that you are certainly going to bring about what you fear. You are not going to obviate, but you are going to bring about a further disintegration of India.  

The constituent assembly debates on administering tribal communities witnessed many such skirmishes among the members. The tribal leaders in the assembly, counted by Jaipal Singh as just five in number, declared in no uncertain terms the cultural difference of tribal people and fought tooth and nail against the homogenising tendency of certain sections of the constituent assembly.

Visier Sanyu, a Naga Scholar, articulates his understanding of Naga nationalism and the impact of modern state on Naga society. He captures the changes that have taken place in Naga society succinctly highlighting the carrot and stick policy of Indian government towards Nagaland.

When finally the British colonialism came to an end, their distinct ethnicity posed serious problems for the Indian government because the Angami voiced their feelings again with the rest of the Nagas for preservation of their independent political identity and for their past history. This struggle for independence continues till today. But a section has chosen to co-exist as a part of Independent India by accepting a state within India. However, events did not run that smoothly and many temptations were offered to the newly created state under various developmental programmes. Unfortunately the development continued on more uneven lines bringing in easy money to transform a few into the nouveau riche and the rest dependent on them for their daily bread. The growth of population was a simultaneous process, which helped to intensify the social stratification of Naga society on class lines. Hence, a non-state of Angamis got transformed and directly linked to the capitalism, which gave room for much faster growth.

To summarize, the tribal discourse on the tribal situation during colonial rule in Central India was mostly against economic exploitation and land grabbing by landlords, merchants and moneylenders. The resistance took the form of armed uprisings against

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92 Quoted in Nandini Sundar, 1997. op.cit., p.188.
colonial administration in a bid to oust the outsiders. The ultimate aim was to establish an independent tribal rule. In this attempt, the Birsa Rising and Tana Bhagat Movement tried to emulate Hindu and Christian religious rituals so as to boost the status of Mundas and Oraons in the social hierarchy. But Northeast tribal communities clearly carved out an identity completely in contradistinction to Indian culture and religion. In both the cases, the ultimate aim was to regain independence from external powers.

The tribal nationalist struggle in the Northeast reflects great diversity of thought and opinion. Among the leaders of the movement there were diverse opinions regarding the nature of sovereignty. Some among them thought of absolute sovereignty to the degree of secession from the Indian state; others settled for maximum autonomy within the Indian state.

Conclusion

An analysis of customary law discourse as reflected in the colonial, nationalist and tribal discourse on the tribal situation discerns varied shades of points of view regarding plight of tribal community in India. Unlike the standard bleak picture that is portrayed in colonial and, to some extent, in nationalist discourse, the discussion witnessed a rich political, economic, religious, social, and cultural negotiation that takes place between tribal communities and the forces that come in contact with them.

The dominant, whether they are a colonial power, an Indian upper class or a missionary venture, tries to impose their rule on the subordinate, i.e., the tribal
community, through political packages, development programs, religious conversion and cultural hegemony. The subordinate accepts from the dominant those components that he or she considers viable or unavoidable and retains or modifies the rest.\textsuperscript{94} The option of violent protest is not ruled out when the imposition of rule or value system takes on a hegemonic turn.

\textsuperscript{94} This has been studied by Webster in the case of conversions (see John C.B. Webster, 1992. \textit{Towards Dalit Liberation. From Indian Church to Indian Theology. An Attempt at Theological Construction.} Chennai: Madras Dalit Liberation Education Trust). After embracing Christianity, the people in Tamil Nadu accepted some things that they could not help avoid like rituals in the church where the missionary was under control. But they retained their caste system and ultimately the protestant missionaries who opposed it as the worst evil had to come to terms with it.