

## A TRIBAL CHIEF AND A COLONIAL LEGISLATION: THE EXCLUDED AREAS ACT OF 1846

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*This article explores the nature of colonial sovereignty from a Hobbesian lens of 'state necessity' by taking the example of the Excluded Areas Act of 1846. This Act was a special law that placed the Bhil tribes of the Khandesh and Ahmadnagar districts (in present-day Maharashtra) outside the purview of the general laws in the Bombay Presidency. By drawing from archival sources, including records of the East India Company and legislative proceedings, the paper contrasts precolonial tribal autonomy with authoritarian and paternalistic colonial rule by a British Agent under the Act. First, the paper locates its argument on colonial rule in an 'unruly' tribal periphery through exceptional/emergency legislation in the larger body of work on colonial sovereignty. Second, it sets out the nature of tribal autonomy and the role of the hill chiefs in these regions. Third, it uses primary material to elaborate on Kuar Vasava's (a Bhil tribal chief) interactions with and rebellion against the East India Company state. Fourth, it briefly explains the law-making process in early colonial India. Fifth, it analyses the promulgation of the Excluded Areas Act of 1846 and the powers of the executive under the Act as direct consequences of Kuar Vasava's rebellion, and argues that the law was used as a tool to undermine tribal autonomy and impose colonial rule. A short conclusion follows.*

### I. INTRODUCTION

...[I]t may be that the history of law has no separate existence except as the history of jurists; but this is not a bad sort of existence for a branch of the sciences of man. Understood in this sense, the history of law sheds some glimmers of light upon phenomena which are extremely diversified, yet subject to a common human activity, and these glimmerings, if necessarily limited in their scope, are very revealing.<sup>1</sup>

In the above quotation, the great historian Marc Bloch comments on the limited “glimmerings” that the history of law may shed upon social phenomena. However, the connection between law and society, which he draws our attention to, has been of abiding interest to historians. This article contributes to the discussion on the social history of the law as it documents the history of the Excluded Areas Act of 1846, a legislation that originated in the Bombay Presidency and was passed

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<sup>1</sup> Marc Bloch, *The Historian's Craft* (Manchester University Press 1992).

by the Government of the East India Company. The Act of 1846 was part of a long series of legislations pertaining to the tribal areas in the hill-forest regions of the subcontinent. These exceptional laws resulted in the creation of a special jurisdiction for tribal groups, who were thereby exempted from civil and criminal jurisdiction of the courts in colonial India and were placed under the direct control of a British Agent.

This paper explores what occasioned the framing of such special laws. As this paper illustrates, the rebellion of a tribal chief led to the passage of the Act of 1846. While tracking the career of the Bhil chief, Kuar Vasava, this article provides an account of a prolonged conflict between the chief and the early colonial state. The co-option of the chief as the head of a police establishment under Company rule proved to be short-lived. The chief crossed the line and took up arms against the new regime. The act of rebellion, as it was construed by the modern colonial state, and the violation of his chiefly rights and privileges, as understood by the chief himself, takes us to a discursive field that opens a window into the pre-colonial past wherein lies the reason for the chief's rebellion. The article provides a glimpse into that past to underscore the enormity of the situation for the chief whose political power and authority were being severely undermined. The colonial sovereign's response to the Bhil rebel was to remove him, and other hill chiefs, from the normal regulations of the Bombay Presidency and place them under a special law.

While there is a rich body of work on legal exceptions in the colony, this article proposes to tease out an aspect that is implicit in much of the scholarship but is usually not the focus of study, namely, the Hobbesian nature of colonial sovereignty. As Mithi Mukherjee has argued, the East India Company's government had its own notion of sovereignty that derived from the idea of 'state necessity'. This was grounded in the idea of self-preservation of the State. The colonial philosophy of the state viewed the law more as an instrument of enforcing order and exacting obedience, rather than a guarantee of rights and freedom.<sup>2</sup> This characterisation of the colonial state of the East India Company ties in with observations made by other scholars. Nasser Hussain has argued that the rule of law in a regime of conquest often amounted to rule *by* law.<sup>3</sup> Further, Lauren Benton has argued that the imperial rule of law represented a political and legal project that involved the definition of rules about rule.<sup>4</sup>

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<sup>2</sup> Mithi Mukherjee, *India in the Shadows of Empire: A Legal and Political History 1774-1950* (Oxford University Press 2012) 58-60.

<sup>3</sup> Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (University of Michigan Press 2003).

<sup>4</sup> Laura Benton, 'Empires of Exception: History, Law, and the Problem of Imperial Sovereignty'

This article foregrounds the political necessities of rule that were the very reason for the passage of the special legislation. It also draws attention to the outcome of such a legislation, i.e., the introduction of a paternalistic and authoritarian rule of a British Agent in the tribal districts.

The early colonial records of the East India Company in the holdings of the Maharashtra State Archives, Mumbai and Pune, and the National Archives of India, New Delhi, as well as a few legislative proceedings of the Government of India in the colonial period, now available on digital platforms, constitute the primary sources for this article.

The article is divided into six sections. Section 1 surveys the historiography on legal exceptions in colonial India. Section 2 elaborates on the theme of tribal autonomy in the pre-colonial period. Section 3 describes how early administrative interventions resulted in a significant attenuation of the powers of tribal chiefs while retaining a semblance of the older structure. Section 4 tracks the career of Kuar Vasava, the tribal chief who rebelled against the Company Government. Section 5 sketches out the institutional framework of law-making under Company rule. Section 6 focusses on the passing of the Excluded Areas Act of 1846.

## II. LAW AND ITS EXCEPTION

The governance of ‘unruly’ terrain posed a special challenge to colonial rulers. In a large body of work, historians of modern South Asia have documented the emergence of exceptional forms of rule in these difficult geographies.<sup>5</sup> More recently, the exceptional *legal* geographies of the empire have emerged as the focus of study.<sup>6</sup> It has been argued that oceans, islands, and hills and mountains, were configured as distinctive kinds of spaces in European imagination, and that they witnessed the shaping of a diverse array of legal regimes.<sup>7</sup> In these legally archaic zones, the European powers strived to construct and sustain metropolitan understandings of sovereignty. This project resulted in the “peculiar and enduring lumpiness of the imperial legal space”.<sup>8</sup> While Benton’s work foregrounds the connection between law and geography, colonial India offers many

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<sup>5</sup> K Sivaramakrishnan, *Modern Forests: Statemaking and Environmental Change in Colonial Eastern India* (Oxford University Press 1999); Nandini Sundar, *Subalterns and Sovereigns: An Anthropological History of Bastar 1854-1996* (Oxford University Press 1997); Gunnell Cederlof, *Founding an Empire on India’s North-Eastern Frontiers 1790-1840* (Oxford University Press 2014).

<sup>6</sup> Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400-1900* (Cambridge University Press 2010); Benton, ‘Empires of Exception: History, Law, and the Problem of Imperial Sovereignty’ (n 4) 54-67; Laura Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge University Press 2002).

<sup>7</sup> Benton, *A Search for Sovereignty* (n 6) xi-xiii.

<sup>8</sup> *ibid* xiii.

examples of legal exceptionalism arising not only due to the difficult geographies but also the presence of the native princes and their residual sovereignties.<sup>9</sup>

The tension between political exigencies and legal rule in the colony is a point that Naseer Hussain makes in his work.<sup>10</sup> He argues that there were competing visions of rule by sovereign decree and rule by law in colonial India. Benton proposes that the rule of law in the empire depends upon peculiar kinds of rules, what she calls “rules about rule”.<sup>11</sup> The political hegemony and the coercive power of the colonial state are captured in some of these formulations.

Historians have commented on the proliferation of special legislations in colonial India. In the context of legislations pertaining to collective crime, Sandria Freitag argues that these arrangements grew as a covert legal structure forming an alternative to the overt legal structure.<sup>12</sup> In contrast, Radhika Singha argues that both these elements existed in the same body of law. Even if extraordinary measures were introduced, they eventually had to be integrated into the rule of law.<sup>13</sup> The violence residing at the very heart of the colonial order has been the concern of scholars working on frontier regions.<sup>14</sup> While documenting the history of the Murderous Outrages Act, Elizabeth Kolsky comments on the colonial rule of law and the legal regime of exception. She argues that the law and states of exception together defined and constituted imperial sovereignty.<sup>15</sup>

More recently, Milinda Banerjee has made a strong case for highlighting the ‘sovereign’ in the narrative of sovereignty-construction in modern India. Drawing attention to Carl Schmitt’s work, Banerjee mentions the centrality of rulership ideas to the construction of modern notions of state sovereignty in Europe, and links it with monarchic thinking in modern South Asia.<sup>16</sup> While

<sup>9</sup> Sudipta Sen, ‘Unfinished Conquest and Residual Sovereignty and the Legal Foundations of the British Empire in India’ (2013) 9 *Law, Culture and the Humanities* 227, 233-4.

<sup>10</sup> Hussain (n 3) 7

<sup>11</sup> Benton, ‘Empires of Exception: History, Law, and the Problem of Imperial Sovereignty’ (n 4) 54-67.

<sup>12</sup> Sandria Freitag, ‘Crime in the Social Order of Colonial North India’ (1991) 25 *Modern Asian Studies* 227, 227-231.

<sup>13</sup> Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press 2000) 170.

<sup>14</sup> Elizabeth Kolsky, ‘The Colonial Rule of Law and the Legal Regime of Exception: “Frontier Fanaticism” and State Violence in British India’ (2015) 120 *The American Historical Review* 1218; Reeju Ray, *Placing the Frontier in British North-East India: Law, Custom, and Knowledge* (Oxford University Press 2023) 6; Reeju Ray, ‘Interrupted Sovereignties in the North East Frontier of India, 1787-1870’ (2019) 53 *Modern Asian* 606.

<sup>15</sup> Kolsky (n 14) 1245-1246.

<sup>16</sup> Milinda Banerjee, *The Mortal God: Imagining the Sovereign in Colonial India* (Cambridge University Press 2018) 12-18.

Banerjee's focus is the 'hybrid' sovereign figures in colonial and post-colonial India,<sup>17</sup> this article draws attention to the authoritarian character of the colonial sovereign. As pointed out earlier in this article, Mukherjee's argument about notions of colonial sovereignty deriving from ideas of 'state necessity', combined with the idea of the centre-staging of the sovereign in colonial India, helps underscore the supreme authority of the colonial sovereign.

While talking about the implications of rule of law in a regime of conquest, Hussain draws attention to certain features of colonial rule that were exceptional in themselves, such as a strong insistence on the discretionary authority of the central executive, the fact that the legislature was itself part of the executive, and the absence of an electoral process in the colony.

The extraordinary powers of the executive, we may argue, were an inescapable condition of colonial rule. It is important to note that both Hussain and Milinda Banerjee have referred to Carl Schmitt while commenting on the notions of sovereignty in the colony. Schmitt's definition of the sovereign "as he who decides on the exception" is particularly apt when we are discussing the rule of law and its countless exceptions in colonial India. The authoritarian origins of the modern state were ever so palpable in the colonial context.

In more recent scholarship, the interplay between law, power, and colonial sovereignty has been demonstrated through the passing of an exceptional law sanctioning judicial and summary punishment of whipping through Act No. 6 of 1864. Alastair McClure has argued that the application of judicial violence was part of an attempt to manage and police social hierarchies upon which colonial sovereignty depended.<sup>18</sup>

It is important to note that the growing body of scholarship on Northeast India is increasingly focusing on the pre-colonial forms of shared and layered tribal authority in this region, and the survival of these pre-modern forms of authority in the post-colonial period.<sup>19</sup> However, Reeju Ray

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<sup>17</sup> Expanding the ambit of the term 'sovereign', Banerjee points to 'hybrid' sovereign figures of multi-sited provenance-God, as well as divine or historical human rulers, or the British monarch. He talks about shared and democratised programmes of rulership wherein disempowered groups are identified with divinity and regality. In sum, the figure of the sovereign, in elite and peasant politics alike, is the focus of his study. *ibid* 20-25.

<sup>18</sup> Alastair McClure, 'Archaic Sovereignty and Colonial Law: The reintroduction of corporal punishment in colonial India, 1864-1909' (2020) 54 *Modern Asian Studies* 1217.

<sup>19</sup> Jelle JP Wouters (ed), *Vernacular Politics in Northeast India: Democracy, Ethnicity, and Indigeneity* (Oxford University Press 2022); Banerjee (n 16). In global history scholarship, the prevalence of polycentric forms of power through much of human history has been noted, implying thereby that modern sovereign state form occupies only a narrow segment of human history. See, for example, David Graeber and David Wengrow, *The Dawn of Everything: A New History of Humanity* (Penguin

has shown that the colonial administrators employed plural sovereignties and overlapping jurisdictions as strategies of governance in the frontier hills which de-centered the authority of the Chiefs and local rulers in Khasi polities.<sup>20</sup> In fact, this governing strategy helped further entrench colonial power in the frontier hills.<sup>21</sup> Thus, in light of the recent research on the Northeast, it can be argued that colonial authority was supreme in the Northeast as well, albeit in a different form. I would argue that the difference between indirect rule and direct rule<sup>22</sup> seems to dissolve in the face of such evidence. However, indirect rule lasted much longer in the northeast, and so did the political autonomy of the tribal chiefs. Climate, ecology, and topography were the factors that helped sustain this autonomy.<sup>23</sup>

Taking its cue from a large body of work that has drawn our attention to the co-existence of the normative legal rule and exceptional/emergency legislation, the latter weighing the scale in favour of the executive authority in the colony, this article looks at the archival evidence that shows similar processes at work in the Bombay Presidency. However, what we notice here is the constitution of a new kind of power and authority in the hill-forest tracts, one that is paternalistic in nature, which undermined tribal autonomy, and sought to integrate the tribal fringe into the colonial order.

The subject of this article is a tribal chief who crossed swords with the mighty Company *Sarkar* in early nineteenth century Western India. Kuar Vasava belonged to the powerful clan of Vasavas and was a member of the Bhil tribe. The term ‘tribe’ has been used in this article with full awareness of the colonial provenance of this term and the preference of the people so described to be called *adivasis*. While the latter usage has been the marker of tribal political identity since early 1930s, the former carries with it the burden of the colonial past.<sup>24</sup>

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Books 2022).

<sup>20</sup> Ray, *Placing the Frontier in British North-East India* (n 14) 13-15.

<sup>21</sup> *ibid* 14.

<sup>22</sup> British conquest of India was a slow and gradual process that entailed multiple strategies of rule. Annexation of territories through military conquest brought them under direct British rule whereas a large part of India, mostly under princely and chiefly rule, was placed under the indirect rule of the East India Company, and then under the British Crown after 1857, through the treaty system. Michael Fisher has defined indirect rule in India as “the exercise of determinative and exclusive political control by one corporate body over a nominally sovereign state, a control recognised by both sides”. See Michael Fisher, *Indirect Rule in India: Residents and the Residency System, 1764-1858* (Oxford University Press 1991) 6; Barbara N Ramusack, *The Indian Princes and Their States, The New Cambridge History of India*, vol III (Cambridge University Press 2005).

<sup>23</sup> Cederlof (n 5).

<sup>24</sup> Scholars have argued that tribe is a colonial category and a product of colonial theories and practices. See Ajay Skaria, ‘Shades of Wildness: Tribe, Caste and Gender in Western India’ (1997) 56 *Journal of Asian Studies* 726; Sumit Guha, *Beyond Caste: Identity and Power in South Asia, Past and*

### III. TRIBAL AUTONOMY IN THE PRE-COLONIAL SETTING

In South Asia's long historical past, tribal peoples' engagement with dominant state forms in the subcontinent was mostly conflictual, though at times accommodative.<sup>25</sup> In the early medieval period, the territorial expansion of Rajput power in western and central India was achieved at the expense of the erstwhile tribal settlements. Inscriptions speak of the suppression of the Sabaras, Bhillas, and Pulindas.<sup>26</sup> Further, Nandini Sinha Kapoor in her work on medieval Mewar has demonstrated that the Bhil chiefs of Oghna-Panarwa were integrated into the state structure. The Rajput Guhila State conferred the prestigious title of *Rana* to the Bhil chiefs of Panarwa. The chiefs paid tribute to the Guhilas, but enjoyed their independence.<sup>27</sup>

In his work on eighteenth century Maharashtra, Andre Wink discusses the place of tribal polities in the regional political economy. He points out that the Bhils, along with other tribals and petty autonomous chiefs, constituted a political sub-system that enjoyed autonomy vis-à-vis the Maratha rulers in the seventeenth and eighteenth centuries. These autonomous zones were called '*samsthans*' in Marathi. Wink uses the term 'co-sharers of the realm' for the semi-autonomous chiefs, rajas, and naiks. These *samsthans* enjoyed administrative as well as fiscal autonomy. They were not brought under the surveys for the assessment of state revenue demands. Their only obligation was the payment of tribute to the state.<sup>28</sup>

We now turn to an account of the rights and privileges (*baks/huks*) of the Bhil chiefs/naiks in the British district of Khandesh. Our Bhil chief, Kuar Vasava, resided in this district. Khandesh lay along the north-western boundary of the Bombay Presidency.<sup>29</sup> The topographical features of this area and the political geographies, the two being inextricably linked, gave a distinct political and strategic advantage to the Bhil communities. The difficult terrain, hilly and forested, resulted in

*Present* (Leiden and Boston 2013). In reaction to this, many 'tribal' people assertively claimed to be *adivasis*, or 'original inhabitants'. See David Hardiman, 'Dalit and Adivasi Assertion' in Sumit Sarkar and Tanika Sarkar (eds), *Caste in Modern India: A Reader*, vol 2 (Permanent Black 2014) 413.

<sup>25</sup> Ajay Skaria, *Hybrid Histories: Forests, Frontiers and Wildness in Western India* (Oxford University Press 1999) ix.

<sup>26</sup> BD Chattopadhyaya, 'Origin of the Rajputs: The Political, Economic and Social Processes in Early Medieval Rajasthan' in *The Making of Early Medieval India* (Oxford University Press 2010) 62.

<sup>27</sup> Nandini Sinha Kapoor, *Reconstructing Identities: Tribes, Agro-Pastoralists and Environment in Western India (Seventh-Twelfth Centuries)* (Manohar 2008) 37-40.

<sup>28</sup> Andre Wink, *Land and Sovereignty in India: Agrarian Society and Politics under the Eighteenth-century Maratha Svarajya* (Cambridge University Press 1986) 191-192.

<sup>29</sup> Khandesh District Gazetteer, *The Gazetteer of the Bombay Presidency, Vol XII, The Government Photozinc Press, Pune, 1985 (Originally Printed in 1880)* 1.

political autonomy for the clan brotherhoods and their chiefs.<sup>30</sup> Nestled in the mountains of the Satpuras and protected by the thick forest cover of the region, Bhil villages continued to be the outliers of the Maratha empire in the eighteenth century.<sup>31</sup>

The Mughal conquest of this area in the seventeenth century did not result in the subordination of powerful tribal chiefs. On the contrary, Shahjahan and Aurangzeb, the latter first in his capacity as the governor of the Deccan and later as the emperor, decided to bestow land grants and the right to collect custom duties/tolls on tribal chiefs while encouraging them to convert to Islam. These privileges were granted in exchange of some services that the imperial government demanded, namely, that the chiefs should function as the head of the district police, and that they should also guard the mountain passes that connected the arterial trade routes of the region.<sup>32</sup>

The political autonomy of these chiefs dates back to the seventeenth century, if not earlier. It also underscores the negotiated nature of this autonomy via-a-vis the Mughal empire as well as the Maratha Swaraj in the eighteenth century. The ability of these chiefs to galvanise support from the clan brotherhood and the extended kin network, and make a *bund* (insurrection) against the *Sarkar*, accounted for their political power. Kingdoms and empires in the region often shared power with the chiefs due to their political and military eminence.<sup>33</sup>

#### IV. COLONIAL TRANSITION AND CHIEFLY POWER

At this point, we leave behind the long historical past and focus on our narrow time-frame, the first half of the nineteenth century. We find that the early colonial state entered into negotiated settlements with these powerful chiefs. In keeping with the governing practices of the past, the British Government thought it prudent to continue the vested rights of some of these chiefs. So, the role of the head of the police, the warden of the passes, and the rights and privileges granted for these services continued, albeit with one difference, i.e., the granting authority was the British colonial government.<sup>34</sup>

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<sup>30</sup> Letter from Briggs to Elphinstone, dated 24/09/1818, vol 172, Gen no 212, Deccan Commissioner Files (DCF), Maharashtra State Archives Pune (MSAP) 310-319.

<sup>31</sup> *ibid* 252-254.

<sup>32</sup> Letter from Briggs to Chaplin, dated 16/04/1825, Political Department Mixed (PDM), vol no 9/192 of 1825, Maharashtra State Archives Mumbai (MSAM) 477-478.

<sup>33</sup> Wink (n 28); Sumit Guha, *Environment and Ethnicity in India, 1200-1991* (Cambridge University Press 1999).

<sup>34</sup> DC Graham, 'Historical Sketch of the Bheel Tribes Inhabiting the Province of Khandesh', Selections from the Records of the Bombay Government (hereafter SRBG), No 26, New Series, Bombay 210-212, Appendix A (Synopsis of the Bheel Settlement in Khandesh from 1818-1843)



The chiefs were now confronted with a modern form of state, a sovereign power, which ruled over its colonial subjects.<sup>35</sup> The British Government offered pensions in lieu of the traditional *haks* of the Bhil Naiks. Some of the naiks returned the pensions, others never entered into an agreement with the British. Khandesh continued to witness Bhil raids and rebellions for the first seven years of British rule.<sup>36</sup>

The Bhil rebellion in Bagalan (1825) was the high point of a long series of intermittent acts of plundering raids and insurrections. In Bagalan, a large assemblage of Bhils, about 1200 strong, plundered villages in the plains, killed a *bania* (merchant) and carried off the *shaikdar* (a petty revenue officer) and his wife to the hills. The crowning glory of this rebellion was the coronation of Sewram Singh, the mastermind of the insurrection, as the ruler of this area. It is important to note that Sewram Singh was a blacksmith by caste and he belonged to the neighbouring forested region, the Dangs. He claimed that he was commissioned by the Raja of Satara to organise a *bund* (insurrection) against the *Sarkar*.<sup>37</sup>

The Bagalan rebellion of 1825 was a wake-up call for the British, a rude reminder that the negotiated settlements had run their course. Post-Bagalan, we have the formation of the Bhil Corps and the Bhil Agencies, twin projects that were designed to bring the rebellious Bhils and their kin under the surveillance-net of the colonial state. A few chiefs, for example, Jiva Vasava and Gumani Naik, were still allowed to run their police establishments, but received their payments from the Government.<sup>38</sup> The co-sharers of the realm were thus reduced to paid functionaries of the state whose rights and privileges would now solely be determined by the British paramount power. The clan brotherhood and the kin network had already been subdued by this modern militarised state.<sup>39</sup>

229-237.

<sup>35</sup> Initially, under John Briggs, the East India Company Government tried to settle the Bhils by recognising their traditional *haks* and commuting these into pensions/monetary allowances and holding the Bhil chiefs and their retainers responsible for maintaining peace in the countryside. This approach was successful, only partially. The British had to resort to brute force to suppress recurrent rebellions and raids. For an account of these administrative experiments in the early years, see Arvind M Deshpande, *John Briggs in Maharashtra: A Study of District Administration Under Early British Rule* (Mittal Publications 1987) 70-115.

<sup>36</sup> Graham (n 34) 210-212.

<sup>37</sup> For a brief account of the Bagalan rebellion, see Amrita Tulika, 'Bhil life - worlds in the colonial transition' (2021) 740 Seminar 14, 15-16. For a detailed account, see Amrita Tulika, 'Bhils of Khandesh: A Historical Study c.1800-1900' (DPhil thesis, University of Delhi 2004) 73-89.

<sup>38</sup> "Summary of all Proceedings respecting the Bheels in Candiesh", Foreign Political (FP), 06/03/1834, No. 1, National Archives of India (NAI) 1-29.

<sup>39</sup> For the military reprisals against the Bhils, see *ibid* 1-29. Also see Tulika, 'Bhils of Khandesh: A Historical Study c.1800-1900' (n 37).

The tribal chiefs had lost the political leverage that they enjoyed in the pre-colonial period.

This thumbnail sketch of the historical context would allow us to tell the story of Kuar Vasava. Kuar was the son of Jiva Vasava. Early colonial reports offer a detailed account of Jiva's political and military eminence on the eve of British rule:

Jeeva like other Bhil chiefs in this part has taken advantage of the time to establish his power and rights over the neighbouring fertile districts. His family land consists of 84 villages in Raj Peepla... he became the dread of the surrounding country, he levied tribute from several zemindars, made passengers and merchants pay toll for their free transit through the country and triumphantly boasted that at his whistle, he could command the service of 4000 bowmen.<sup>40</sup>

John Briggs, the author of this report, was the first political agent in Khandesh district. In the early days of the British acquisition of this territory, Briggs was the head of district administration. Clearly, Briggs' concern was political in nature.<sup>41</sup> The likes of Jiva Vasava posed a political threat to the nascent colonial state. However, in yet another report, Briggs gave an account of the role and functions of the Bhil *naiks* (chiefs) and other Bhils in the districts/villages of Khandesh in the pre-colonial period. The duties of the village Bhils were "...to show the road and to watch the proceedings of the strangers; to track thieves; to protect the threshing floor when the corn was lying in them; and in every point of view, to form the guard for the village protection."<sup>42</sup>

These Bhils were called *jaglia* (village watchmen). The duties were similar to those of the *taliaris* in South India.<sup>43</sup> A more comprehensive account of the role of the Bhils and their chiefs in the plains villages was given by Charles Ovans, the Bhil agent, who said "The Bhil naiks enjoyed 'huqs and inams as the hereditary superintendent of the police of the different Purganas of which they are the Wuttundars."<sup>44</sup>

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<sup>40</sup> Letter from Briggs to Elphinstone, dated 24/09/1818, vol 172, Gen No 212, Deccan Commissioner Files (DCF), Maharashtra State Archives Pune (MSAP) 318-319.

<sup>41</sup> Deshpande (n 35).

<sup>42</sup> Letter from Briggs to Chaplin, dated 16/04/1825, Political Dept Mixed (PDM), vol 9/192 of 1825, Maharashtra State Archives Mumbai (MSAM) 501.

<sup>43</sup> *ibid.*

<sup>44</sup> Letter from Ovans to Malcolm, dated 12/08/1830, Judicial Dept (JD), vol 3/196 of 1830, MSAM 15.

According to the immemorial usage of the Country, the Naik was considered answerable for the general police of the Purgana, the Jagleea for that of his particular village, and the Naik was also bound to see that the Jagleas did their duty, the Naik originally seems to have had the right of appointing all the Jagleas of his Purgana or district...For the performance of his duties, the Naik was paid by Hucks, chiefly in kind, on every village of which he was the Wuttundar, and the Jagleea received his...like the part of the Baruh Balote.<sup>45</sup>

The quotes above clearly demonstrate the duties and obligations of the naiks and their lesser brethren. “*Baruh Balote*” or *Bara Balute*, the twelve *Baluta* servants were part of the Maharashtrian village community. The twelve *balutas* or village artisans or servants were *vatan* holders and enjoyed a monopoly of their particular trade in the village. Under the *Balute* or grain-share system, a certain grain-share was paid every year by each farmer to all the village artisans at the time of the annual harvest. This payment was made not in cash but in kind. Ten occupational groups were almost regularly included in the list of *bara balute*: *sutar* (carpenter), *lobar* (blacksmith), *kumbbar* (potter), *chambbar* (leather worker), *mang* (ropemaker), *navi* (barber), *parit* (washerman), *joshi* (astrologer), *gurao* (Hindu shrine-keeper), and *mahar* (village watchman).<sup>46</sup> Bhils and Ramoshis, both hill-forest tribes, worked as watchmen only in those villages that were in close proximity to the hilly-forested tracts.

We now return to the case of the Vasavas. John Briggs, the chronicler of these turbulent times and the head of the district administration, arguably an authority on the “Bhil problem”, wrote:

In the vicinity of Nawapoor, Nandoorbar, and Sooltanpoor I found Jeeva Wussava, a Bheel chief with estates lying between those districts, and the Bheel Rajaships of Raj Peepla and Nandode. He had been one of the most powerful freebooters in that part of the country and had not only forcibly levied blackmail for several years on the neighbourhood but had dictated to merchants the terms on which they should pass his limits. I entered early into a commutation with this chief for the custom tolls, and other

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<sup>45</sup> *ibid.*

<sup>46</sup> Hiroshi Fukazawa, *The Medieval Deccan: Peasants, Social Systems and States, Sixteenth to Eighteenth Centuries* (Oxford University Press 1991) 202-210.

exactions which he had established on trade and travellers, and went so far as to take part of his horsemen and sebundies into our pay and enabled him to pay off and discharge others. The fidelity he evinced during his own lifetime by the sacrifice of one of his sons who lost his life, and by the exposure of his own, in the act of recovering the cattle which had been driven off on one occasion from our district, sufficiently proves that my confidence in this chief was not misplaced.<sup>47</sup>

In this exculpatory retrospective, Briggs was recounting his dealings with Jiva and other chiefs. Administrative reports of the early colonial period frequently refer to the tribal chiefs as “freebooters” and label their activities as “blackmail.” This article argues that the semantics here represent a near complete lack of understanding of the socio-political structures before colonialism.<sup>48</sup>

The boundaries between the hills and the plains, the forest and the farm, tribe and caste, ‘wild’ and ‘civilised’ were porous. It is important to note that the give and take between the two was not confined to exchange of material goods. It permeated through the fabric of society and the articulation of its polity. Thus, powerful Bhil chiefs and their followers would lend support to the Maratha *sardars* in times of crisis and would be rewarded with land grants, the right to collect revenue in plains villages, as well as the right to collect toll (*kebunti*, in the local parlance) on the highways.<sup>49</sup> So, what the British called “blackmail” was viewed as “just” rights and claims by the tribal peoples.<sup>50</sup> More importantly, these vested or *vatani* rights originated from the services that hill folks provided to the caste Hindu villages as well as the kingdoms and empires of the subcontinent. Soldiering and policing would be their job description, to use more contemporary terms.<sup>51</sup>

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<sup>47</sup> Letter from Briggs to Chaplin, dated 16/04/1825, PDM, vol 9/192 of 1825, MSAM 477-78.

<sup>48</sup> Bodhisattva Kar has shown how the customary revenue claims of the hill chiefs of upper Assam were dubbed as ‘blackmail’ and commuted to monetary payments by the British authorities. While the *posa* recipients made an explicit demand for their joint proprietary right in the soil to be recognised, the British only agreed to grant a commuted payment in lieu of their revenue claims. Bodhisattva Kar, ‘Nomadic capital and speculative tribes: A culture of contracts in the Northeastern Frontier of British India’ (2016) 53 *Indian Economic and Social History Review* 41, 47-48.

<sup>49</sup> Wink (n 28); Guha, *Environment and Ethnicity in India, 1200-1991* (n 33).

<sup>50</sup> Guha, *Environment and Ethnicity in India, 1200-1991* (n 33) ch 6.

<sup>51</sup> Wink (n 28); Guha, *Environment and Ethnicity in India, 1200-1991* (n 33); CA Bayly, ‘Knowing the Country: Empire and Information in India’ (1993) 27 *Modern Asian Studies* 3.

So, Jiva Vasava was offered an annual payment of Rs. 3000 by Briggs. He was the head of the district police but the British Government was to maintain his troops, ten horsemen and four hundred foot-soldiers. The taxes that he earlier collected from his *vatani* villages would now be levied by the British Government and paid to him. The chief became a pensioner of the British Government.<sup>52</sup>

Kuar Vasava inherited his father's legacy. He was the *rakbwalidar* of Nandurbar taluka and of Zila Nawapoor. As the head of the police, he had to recruit men who would ensure that robbery did not take place in the area under his watch. The District Collector reported to the Secretary, Government of Bombay: "The manner in which the Police duties entrusted to him were performed, has been for years, the constant subject of dissatisfaction. Complaints were repeatedly made against him as aiding in the perpetration of robberies, in the proceeds of which he was more than suspected of participating."<sup>53</sup>

So, the head of the police breaking the law with the help of those in his employ was the constant refrain of the colonial government. Moreover, there were complaints from the *sabukars* (moneylenders) in the area that Kuar owed them several thousand rupees. The working of this system of loans requires a longer explanation. The *sabukars* in Nandurbar, the district headquarters, were quite willing to lend money to Kuar Vasava. In his deposition to the Bhil Agent, the chief admitted that two *sabukars* and an Arab, probably a mercenary as well as moneylender, were his advisers. One of the *sabukars* had supplied him with clothes and food. Further, "when I had collected the revenues of my country which amounted to 90 Rupees he lent me that sum, which when the Government Karkoon (agent) came to collect the revenue, we distributed among the ryots, who gave up their shares to the Karkoon as if nothing had happened."<sup>54</sup>

Put simply, the moneylenders were helping Kuar in perpetrating a fraud on the British Government. The chief would collect the land revenue from the peasants on his estate as he had done in the past before the establishment of British rule. Clearly, Kuar was going against the terms of agreement with the British wherein the revenue was to be collected by the British Government and paid to the chief. The fraud referred to earlier could be committed only with the active collusion of local moneylenders who were only too willing to lend money to Kuar. It was this

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<sup>52</sup> Letter from Boyd to Norris, (nd) April 1833, Foreign Political Dept (FPD), 06/03/1834, No 1, National Archives of India (NAI) 12.

<sup>53</sup> Letter from Young to Malet, dated 24/07/1846, Political Dept (PD), vol 22/1903 of 1847, MSAM 133.

<sup>54</sup> Letter from Rose to Young, PD, vol 22/1903 of 1847, MSAM 151.

money that Kuar distributed among the ryots who, in turn, paid it to the agent/ clerk of the British Government “as if nothing had happened”.<sup>55</sup> In effect, Kuar was receiving double the amount of revenue, once through direct collection which was not allowed by the Government, and the second time from the Government treasury.

Toll or transit duties (*kbunti*) were an even larger share of the revenue that the Vasava was entitled to. This had been commuted into a money payment by the British in 1818. While receiving the stipulated amount from the British, Kuar established a *naka* (check-post) at his village of Kopur to collect transit duty, and he gave it out in contract to the family of a *sabukar* at Kokurmunda. The annual revenue from this illegal source amounted to Rs. 1200-1800 per annum!<sup>56</sup>

To put these details in perspective, we may now look at the management of Kuar’s finances by the British. The Government paid him Rs.735 every month to run the police establishment – Rs. 239 towards his personal salary and the rest for the pay and maintenance of a small contingent of horsemen and armed soldiers.<sup>57</sup> Moreover, Kuar’s revenue from his patrimonial estate amounted to Rs. 4300, Rs. 1300 from land revenue and Rs. 3000 from transit duties (*kbunti*). This was an annual payment made by the British Government to this Bhil chief.<sup>58</sup> As we saw earlier, Kuar Vasava was still collecting both and even farming out the collection of transit duties to some of the *sabukars* while receiving the fixed allowance from the Government under these heads.

The debt stood at Rs. 18,674 in the year 1845 when Kuar’s estate was sequestrated by the British Government for non-payment of debt. The list of creditors consisted twenty-three moneylenders belonging to Nandurbar, Kokurmunda, and Dhulia and his *karbhari* (the person who looked after the chief’s affairs), Jadhoo Sing.<sup>59</sup> The British Government finally decided to pay the creditors, probably in instalments, out of the land revenues from his estate and the transit duties that had been commuted into money payment by the Government.<sup>60</sup>

The sequestration of the estate in May 1845 led to defiance/rebellion by the chief. Repeated summons from the District Collector and the Bhil Agent to appear in person and account for his many misdeeds fell on deaf ears. Kuar had raised the banner of revolt against the Company *Sarkar*.

<sup>55</sup> *ibid*, Kuar Vasava’s Deposition.

<sup>56</sup> Letter from Morris to Young, dated 18/06/1846, PD, vol 22/1903 of 1847, MSAM 165-166.

<sup>57</sup> Letter from Young to Malet (n 53) 139.

<sup>58</sup> *ibid* 143.

<sup>59</sup> Statement of the debts of the Kuar Vasava of Chikly, Appendix B, Letter from Young to Malet, dated 24/09/1846, PD, vol 22/1903 of 1847, MSAM 222.

<sup>60</sup> Letter from Young to Malet (n 53) 141.

He would not allow any person from the local administration to enter his village. On one occasion, the Bhil Agent managed to enter by misleading his followers who were zealously guarding the entry to the village, only to discover that the chief had escaped. The Bhil Agent chased him on horseback, all the while entreating him to come and meet the District Collector and explain the reason for his defiance of British authority. While the vigorous pursuit of a political offender by an overzealous British officer must have been a sight to behold, it eventually ended in failure.

Kuar submitted his own list of grievances to the Collector:

The Sirkar should restore my country and Khoontee or custom dues. From the scarcity of the current year, and the consequent dearness, man and horse suffer, so that the Sirkar should grant the release.

I have not for the last four or five years received the amount of the liquor manufactory in my Jagheer villages... The same should be paid to me, as well as the amount of Land Revenue which is under attachment.

I have certain rights upon people who resort to my country... for pasturing cattle and sheep; these rights are to be continued to me. Certain Horsemen and Sebundies (mercenary soldiers) are employed in the Sirkar on my part; my control over them should not be interfered with by anybody, and the power of their entertainment and discharge should be vested in me...

In the event of robberies I shall follow up any real tracks or footprints, and trace and deliver up robbers, but the Sirkar takes into consideration the false accusations made by people...

I have not received my allowance for five months. If that is paid, I shall make arrangements regarding my horse and men and wait upon your honor.

I have for a length of time enjoyed stipend for the fulfillment of certain stipulations, this the Sirkar has diminished, so that it is not sufficient for the proper performance of the engagements as before. If the Sirkar makes a proper provision for my maintenance, I shall

act up to the Sirkar's requisitions.

People belonging to my purganah and family are in the habit of resorting to the mart at Kookurmoondah where they meet with obstruction. Your honor should enquire into the nature of such interruption as to whether it is offered upon Sirkar's authority or otherwise and effect such arrangement that they no longer meet with like treatment.<sup>61</sup>

Kuar was demanding restoration of his rights as the owner of an autonomous principality, rights he had been divested of unceremoniously by the British Government. Moreover, the allowance he was receiving for running the police establishment was not enough and he was demanding more resources to help improve the function of the police. Thus, the act of rebellion was probably a desperate attempt to renegotiate his settlement with the British Government.

Was Kuar being politically naïve in raising the banner of revolt against the British Government? Was he completely mistaken in the hope that the act of rebellion would force the British to offer better terms to him? The outcome of the rebellion points towards an answer in the affirmative. The rebellion was crushed by the Indo-British army, Kuar was taken captive, and tried in a court of law.<sup>62</sup> The next few months saw hectic parleys in the official circles to facilitate the passage of a new law, the Excluded Areas Act of 1846. But before we begin tracking the passing of this legislation that forms the subject of this article, let us revisit the reasons for Kuar's rebellion.

Vasava was only following the old practice of making a *bund* against the Sarkar. A *bund* would have resulted in new *giras*, *huqs*, and *kbunti* rights in pre-colonial times. There are numerous instances of such negotiations in the eighteenth-century Maratha polity. These are well documented in historical records and commented upon extensively in historiography.<sup>63</sup>

The power of the Bhil chiefs rose as they wrested more rights from the powers-that-be and diminished if the rulers crushed their rebellion or, in some instances, killed them en masse. Also,

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<sup>61</sup> Translation of a letter from Koor Wussawah Bin Jeewah Wussawah of Chicklee Mawas Gungthe to Adam Campbell, Assistant Collector-in-charge Candeish, dated 11/02/1846, PD, vol 22/1903 of 1847, MSAM 336-341.

<sup>62</sup> Report by Capt Rose, SRBG, New series, No XXVI (1856) 239.

<sup>63</sup> Sumit Guha, 'Forest polities and agrarian empires: The Khandesh Bhils, c. 1700-1850' (1996) 33(2) *Indian Economic and Social History Review* 136; KB Marathe (ed), *Selections from the Satara Rajas' and the Peshwas' Diaries (SSRPD)*, vol II(VI) (Deccan Vernacular Translation Society 1909) 145-173.



new *buzqs* allowed the Bhils to harness greater resources of the plains for their community. While pre-colonial polities allowed these manoeuvres, the colonial state saw them as transgressions and put them down with an iron hand.

## V. LAW AND THE COLONIAL SOVEREIGN

We now shift our focus to the domain of law, a realm of abstraction and universal principles, which purportedly works as a regulatory mechanism that restrains the powers of those who govern and protects the rights of the governed. Through a historiographical survey, this article has tried to track the complicated career of colonial rule of law as evident in the passage of numerous exceptional legislations. At this juncture, it would be instructive to look at the process of law-making in early colonial India. After all, who had the power to legislate for the colony?

It is important to note that the violence and injustices carried out by the East India Company upon natives became a matter of serious concern in Britain and resulted in the assertion of parliamentary control over the affairs of the Company.<sup>64</sup> The Regulating Act of 1773 vested the power of legislation in the Governor General and his Council.<sup>65</sup> The Council consisted of four members. The Act also granted the Governor General supervisory authority over the presidencies of Madras and Bombay. The Supreme Court in Calcutta was established by this Act to restrain the colonial government's exercise of power in Bengal. The Pitts India Act of 1784 reduced the number of councillors to three, tightened the control of the Governor General over Madras and Bombay, and made him the effective ruler of British India.<sup>66</sup> The Governor-General's council now had the power to make laws and regulations in British India. These were authoritarian orders passed in secrecy and were not made public. The Supreme Court alone had the right to veto laws passed by the Governor-General's Council. The Court was given the general power and responsibility to ensure that the Company's exercise of power in India was in conformity with the spirit of the laws of England. The Court's primary function in the colony was to maintain the inviolability and sanctity of person and property.<sup>67</sup>

As Mithi Mukherjee has pointed out, British India witnessed a conflict between two competing discourses of sovereignty during the period between 1774-1833. The Supreme Court as the

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<sup>64</sup> For a general survey of this period, see Sekhar Bandyopadhyay, *From Plassey to Partition: A History of Modern India* (Orient Blackswan 2009) 75-82. For the impeachment trial of Warren Hastings, see Nicholas Dirks, *The Scandal of Empire: India and the Creation of Imperial Britain* (Permanent Black 2006).

<sup>65</sup> Bandyopadhyay, *From Plassey to Partition* (n 64) 77.

<sup>66</sup> *ibid* 78.

<sup>67</sup> Mukherjee (n 2) 57.

representative of King-in-Parliament claimed sovereignty in the colony whereas the Governor General's council claimed sovereignty as state necessity'. The Supreme Court deployed the discourse of justice in the colony and demanded accountability from the servants of the East India Company. For the Company Government in India, preservation of the state was the cornerstone of the discourse.<sup>68</sup>

This conflict was finally resolved by the Charter Act of 1833. The Governor-General's Council was converted into a legislative body and a fourth legal member was introduced in the Council. This fourth member happened to be Lord Macaulay, who prepared the Draft Penal Code in 1837. The legal member was introduced as a substitute to the sanction of the Supreme Court. The Court was made subordinate to the Council and the Charter Act of 1833 gave the latter the power of sovereign legislation. Earlier, the King-in-Parliament had the right to amend laws made in India. The Charter Act of 1833 took this power away while allowing home authorities in London to retain the power to disallow laws in India. Thus, the power of positive legislation was left in the hands of the East India Company's Government in India.<sup>69</sup> The Indian Legislative Council was formed only later, by the Charter Act of 1853. As far as the operation of the Governor-General's Council was concerned, the only difference between the old Council and the new legislative body (formed under the Charter Act of 1833) was that the discussions concerning lawmaking could no longer simply be authoritarian orders passed in secrecy but had to be made public.<sup>70</sup>

The Governor-General's Council now enjoyed the sovereign power of legislation. The combined executive and legislative power of the Council further accentuated the authoritarian character of the East India Company Government. As Mukherjee points out, the concept of the 'will of the people' and the legislative principles of universality, equality, and liberty were conspicuous by their absence in this first legislative body created in colonial India.<sup>71</sup> The Indian Legislative Council formed later under the Charter Act of 1853 had the same features.<sup>72</sup>

A brief overview of the law-making process presented above makes it evident that the executive enjoyed supremacy in the colonial administrative apparatus, even as the Supreme Court and the evolving judicial system in the colony can be said to have heralded the beginnings of the modern

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<sup>68</sup> *ibid* 58-59.

<sup>69</sup> *ibid* 65.

<sup>70</sup> *ibid* 39, 64-65.

<sup>71</sup> *ibid* 70.

<sup>72</sup> *ibid*.

system of justice.<sup>73</sup>

While a comprehensive survey or critique of the colonial administrative apparatus and its implications for the colonial modern state are beyond the scope of this article, it may be helpful to draw upon historical works that have shed light on the overriding powers of the executive in the colony. Two citations are in order here, one for the Company period and the other for the post-1857 period. The Revolt of 1857 led to the transition from Company rule to the rule of the British Crown.

In an insightful article, while commenting on Warren Hastings' Judicial Plan of 1772, Rahul Govind writes, "while the system of courts established in 1772 is familiar to every undergraduate student in Indian history, the supremacy of the President and Council and its control is scarcely alluded to in such pedagogy."<sup>74</sup> To take an example from the post-1857 period, Radhika Singha examines the "bad-livelihood sections" of the Code of Criminal Procedure (Sections 109-110) and shows how summary judicial powers wielded by the executive head of the district were incorporated into the Code. She argues that codification was reconciled with executive discretion and questions whether this was a case of 'over-legislation'.<sup>75</sup>

#### **VI. SPECIAL LEGISLATION FOR TRIBAL AREAS: THE EXCLUDED AREAS ACT OF 1846**

The supremacy of the executive in governance, its discretionary authority, and its control over the legislature, as outlined in the preceding section, assume special significance in tribal areas. The Excluded Areas Act of 1846 brings these features of colonial governance in sharp relief. Before we turn to this special legislation, a brief account of special and protective legislations in other parts of tribal India is in order.

Kumar Suresh Singh has pointed out that the areas of tribal concentration were enclaved to "reclaim to civilisation" the tribes who had often rebelled or were difficult to pacify.<sup>76</sup> The concept of protection of the tribes as an ethnic community developed in these enclaves.<sup>77</sup> Further, he outlines the main features of the protective system of administration – paternalistic rule of district

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<sup>73</sup> Eric Stokes, *The English Utilitarians and India* (Clarendon Press 1959).

<sup>74</sup> Rahul Govind, 'The King's Plunder, the King's Justice: Sovereignty in British India, 1756-1776' (2017) 33 *Studies in History* 151, 169.

<sup>75</sup> Radhika Singha, 'Punishment by Surveillance: Policing "dangerousness" in colonial India, 1872-1918' (2015) 49 *Modern Asian Studies* 241.

<sup>76</sup> KS Singh, 'Colonial Transformation in Tribal Society in Middle India' (1978) 13 *Economic and Political Weekly* 1221, 1225.

<sup>77</sup> *ibid* 1225.

officers, keeping tribal areas out of the operation of the regulations, laws, etc. that were alien to the tribal ethos and undermined it, laying down a set of simple rules to settle disputes, restricting the jurisdiction of the courts that enforced normal laws.<sup>78</sup> There were other features such as special agrarian laws, and the regulation of the entry of outsiders into tribal areas.<sup>79</sup>

For the purposes of this article, we focus only on the paternalistic system of administration. The protection of the tribes as an ethnic community and concern about tribal ethos is an aspect of these legislations that is outside the scope of this article, as the Excluded Areas Act of 1846 is silent on these points. The special administrative system came to be known as the Agency system. A British Agent was appointed to look after the tribal population. K.S. Singh cites at least four examples of the Agency system – the Bhil agencies in Khandesh to pacify the Bhils (1825), South-West Frontier Agency in Chotanagpur (1833), Agency in the Meriah tract (1839-65), and the Agency in Ganjam (1839).<sup>80</sup> The Act of 1846 that appointed a British Agent in the *Mavasi* (hill) tracts of Khandesh and Ahmadnagar, and exempted them from Bombay regulations was thus part of a series of special legislations passed in the first century of British rule in India.

The proliferation of emergency legislation leading to the creation of non-regulation tracts was a long-drawn process. Also, many of these tracts were brought under the regulations at different points in time. Moreover, in some areas, general regulations were in operation while the territory continued to be a non-regulation tract in official parlance. The Scheduled Districts Act of 1874 was passed to establish order in this seemingly chaotic terrain. The Act was designed to consolidate prior legislations pertaining to non-regulation tracts.<sup>81</sup> All prior legislations were repealed and these areas were now covered by the Act of 1874. The Excluded Areas Act of 1846 was one of them.<sup>82</sup>

It needs emphasising that the genealogy of the Act of 1874 is somewhat complex and is tied together with the history of the princely states of India. The question of sovereignty and the legal position of the native states of India came up for discussion in the context of this Bill.<sup>83</sup>

We now turn to Act XI of 1846. As discussed earlier in this article, the hill chiefs, mostly tribal but a few Rajput chiefs too, had enjoyed partial autonomy since the British conquest of this area. The

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<sup>78</sup> *ibid.*

<sup>79</sup> *ibid* 1226.

<sup>80</sup> *ibid.*

<sup>81</sup> Legislative Department Proceedings, File No 23/117, December 1874, Digitized Public Records, Legislative, National Archives of India (NAI) 2 <[indianculture.gov.in/archives/scheduled-districts-act-1874](http://indianculture.gov.in/archives/scheduled-districts-act-1874)> accessed 3 March 2024.

<sup>82</sup> *ibid* Schedule V, 56-64.

<sup>83</sup> *ibid* 30.

threat of tribal rebellion loomed large in these semi-autonomous principalities and Kuar Vasava's rebellion signalled the need for a change in governing strategies. This was achieved through the Act of 1846, which was "An Act for the exemption of certain Territory in the Province of Candeish and the Zillah Ahmednuggur from the operation of the General Regulations".

The Act provided that:

I. ...from and after the First day of February 1847, so much of Appendix A, of Regulation XXIX of 1827 of the Bombay Code as declares the Villages contained in the schedule annexed to this Act, and the lands attached thereto (being parts of the Purgunnahs of Nundoorbar, Sooltanpoor and Kookurmoondah in the Province of Candeish and Zillah Ahmednuggur) subject to the Regulations established for the administration of Civil and Criminal Justice in the Bombay Presidency, be repealed.

II. ... the administration of Civil and Criminal Justice, the Superintendence of the Police and the collection and Superintendence of the Revenues of every description within the said portions of Territory shall vest in such Agent to the Governor of Bombay as shall be appointed by the Governor of Bombay in Council.

In the Schedule annexed to the Act, the list of villages belonging to seven *Mavasi* (hill) chiefs of Khandesh and Ahmadnagar were included. Kuar Vasava along with Oomed Parvi (two chiefs bearing the same name), Bikna Parvi, Khatia Bhil, Raja Parvi, and Gunpat Singh (a Rajput chief) were brought under the purview of the Act.

This legislation placed the hill chiefs under the direct administrative control of the Agent, a British Officer, appointed by the Governor in Council, and excluded them from the Bombay Regulations of 1827. The decision of the Agent was to be final regarding civil and criminal cases in the territories so excluded. The Agent was bound by the rules laid down by the Governor in Council and was to forward those cases he deemed necessary to the Sadar Diwani and Sadar Foujdari Adalats where they would be tried under the due process of law.

## VII. CONCLUSION

The paternalistic control of the British Agent and the formulation of exceptional rules/laws now to be administered in these territories put the chiefs at one remove from the due process of law while

bringing them under the purview of the same if the officer-in-charge so decides. The picture that emerges is one of a paternalistic form of rule in these areas supported by exceptional laws laid down solely by the highest executive in the Bombay Presidency, while the law courts in British India would continue to be the final arbiter of justice.

To put things in perspective, we now turn our gaze to the northeast. While a large body of work on this region, some of which has been cited earlier in this article, has argued for the concept of 'layered sovereignty' and the resilience of tribal autonomy and culture, the similarity in governance practices between the northeast and the tribal heartland is striking. In a comprehensive survey of colonial rule in the northeast, Yengkhom Jilangamba has shown how military operations and the support of princely states and chiefs of the hill-tribes were used to control vast territories.<sup>84</sup> The British made clear distinctions between friendly and unfriendly, independent and dependent hill tribes, and played one against the other. In 1823, the entire area from Cachar and Sylhet in the south to the Sikkim country in the north was placed under David Scott, the Agent to the governor General. Jilangamba underscores the political necessity of making a distinction between dependent and independent chiefs.

We conclude on a note where we emphasise the political necessities of colonial rule that left their characteristic stamp on law and governance. There is a need to look at tribal India afresh with a view to bring some of these processes into sharp relief.

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<sup>84</sup> Yengkhom Jilangamba, 'Frontier Regime and Colonial Rule' in Neeladri Bhattacharya and Joy L. Pachuau (eds) *Landscape, Culture, and Belonging: Writing the History of Northeast India* (Cambridge University Press) 179.