

De-notified Tribes and the role of Police

(special focus on experiential perspective with examples)

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Authored By:

Rachana Dhaka

Program Officer,

Centre for Criminology and Justice,

TISS, Mumbai

and

Vikas Dhaka

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Contents

S. No.	Chapters.....	P. No.
1.	Introduction.....	03
2.	The concept of Criminal Tribes.....	04
3.	Reasons behind labeling.....	05
4.	Issues Faced.....	05
5.	DNTs and Human Rights.....	10
6.	Opinions of certain National or International Institutions.....	11
7.	Suggestions.....	12

8. Conclusion.....13

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Introduction

Our paper mainly concerns with the first hand experiences from the field while working with certain De-notified Tribal communities who want to lead a normal life but time and again the concept of criminal tribes comes in their way to progress and hamper their freedom unnecessarily.

During their field work, researchers here have gone through many hard realities prevailing in our society that we are generally not aware of. Those were the things which left so many questions in front of them in all the capacities they could think for eg. as a human being, as a member of this so called rationale but thoughtless society, as a social worker and as a lawyer, hence the authors would put the questions here along with the prevailing situations as there is no direct solution for any of them, therefore even though there are measures suggested by them as per their opinion but the issue is even deeper rooted then we can think of it, hence we need to think over it together and work collectively for the effective remedy.

In this paper researchers have also tried to mention the concept of Criminal tribes, its historical back ground, reasons behind labeling, DNTs & Human Rights, opinions of national or international institutions and tried to look at some ways to solve the problem.

The concept of Criminal Tribes:

We are all aware about the concept of Criminal Tribes. The categorization of ‘Criminal Tribes’ is an extreme example of the use of labels by Britishers for exerting power. The Criminal Tribes Act came into force, on 12 October 1871 in northern India, and in 1911 became applicable across India. Under the act, ethnic or social communities in India which were defined as “addicted to the systematic commission of non-bailable offences” such as theft were systematically registered by the government. Since they were described as ‘habitually criminal’, their movements were restricted and controlled; adult male members of such groups were forced to report weekly to the local police. Unfortunately they are still bound to report in the same way at many places in states like Rajasthan, M.P., Maharashtra etc.

At the time of Indian independence, there were around thirteen million people in 127 communities who faced constant surveillance, search and arrest without warrant if any member of the group was found outside the prescribed area. The Act was repealed in August 1949 and former “criminal tribes” were denotified in 1952, when the Act was replaced with the Habitual Offenders Act 1952 of Government of India. Today, there are around 313 Nomadic Tribes and 198 Denotified tribes of India, yet the legacy of the Act continues to haunt the majority of 60 million people belonging to these tribes, especially as their notification over a century ago has

meant not just alienation and stereotyping by the police, civil society and the media, but also economic hardships.

Reasons behind labeling

Though allegedly the law was created to bring into account groups like the Thugs which were successfully tackled in previous decades, and give the authorities better means to tackle the menace of ‘professional criminals’, many scholars believe, however, that this was also done due to their participation in the revolt of 1857, and many tribal chiefs were labelled traitors and caused constant trouble to the authorities through their frequent acts of rebellion.

There were various reasons for labeling them as criminals. The National commission for Denotified, Nomadic and Semi-nomadic Tribes (NCDNST), constituted in 2005, reported in 2008 that the forest laws that came into force from the mid 19th century “deprived a large number of communities of their traditional rights of grazing, haunting and gathering, and shifting cultivation in specific areas”. The new laws criminalized their very source of livelihood. When the forests were cleared for the commercial use by Britishers and those who refused were declared as criminals. Also they lost their livelihood with arrival of the road and railway networks. All those who resisted the Britishers or any landlords were notified as criminal.

Issues faced

The situation after 68 years of Independence is the same there are many such incidents we know about them that people belonging to such communities are being booked by the police

unnecessarily under the false charges like theft or burglary or grievous hurt or at times even the charges like murder are there. Most of the times they die under police custody and many of the families had such stories when I visited the villages of Pardi communities in the Usmanabad District of Maharashtra they used to live their lives like that only and most of the major male members of every family have faced some or the other such cases. Those young kids who were able to go out of the village for their studies do not visit their homes for years and have left speaking their native language out of fear of police. Here, even more ridiculous part of the story was that they are not allowed to leave the area without the police permission and they have to report to the police station on the timely basis which may differ from a month to two as per the police station incharge.

At the time of field work at Baitul and Harda Districts of M.P. the researcher had found that just because a particular person belongs to a DNT community the so called main stream people keep them as a bonded labour, and if they try to escape then they are booked by the police under some false charges. Most of them already have charges of cutting woods from the reserved forests, which are in fact cut and illegally sold by the forest officers only, but there is none who can listen to their plight.

Back in Rajasthan what issues the researchers have found are in detail-

- The major DNT community here is Banwariya, others are known as Bhand, Giwaria, Sansi, Dakot, Bhopa, Kanjaria, Nut etc. and one common thing is that they find themselves inferior to others as the outside society treats them and you will rarely find them having eye to eye contact while talking. The reason according to them is that they do not have any such right or right to sit at the chair in front of any member of the mainstream society, they do not have right to study or claim any right for themselves like others.
- Communities like Bhopas are traditional singers, Bhands are Bahurupias who perform several roles and entertain others, and Nuts are talented in the performing arts but none of

them are considered as artists rather they are looked down as beggars or considered thieves or criminals.

- Giwarias sale many small-small household things, Kanjaria are involved in the camel breeding and sale-purchase business, Dakots worship Lord Shani and perform last rituals of humans, Sansi dispose off the dead bodies of animals and keep the environment clean, thus they do the most important things and save us from so many diseases but none looks at them with respect. Even the police also keep questioning them without any suspicion also.
- Banwarias are also one of the communities which are found in the large number at the Sikar District, the researchers have found that there are very few people who allow them to have the basic things like water and fire woods or cowdungs etc. otherwise the situation is so miserable that they are not allowed to take even drinking water from a public tap at graveyard also, this was the age old conflict between villagers and DNTs near Balaran which researchers could manage to solve after convincing the villagers and police personals of the area. In this fight many community members have been beaten up several times by the nearby villagers.
- Last year researchers found that even those who are in the same reserved category means treated at the same platform in the eyes of law i.e. SC, also try to suppress and exploit them just because they belong to the DNTs which were once recognized as a criminal tribe. There was a case soled by the researcher that the mainstream SC member was Sarpanch of the village and sold his land to one of the Banwaria family, and after taking money from them he did not register it in their name, in turn he asked the villagers nearby to trouble them and they didn't allow them to take water or firewood from the public places, so that they leave the place and police was also not ready to listen the matter, since last two years.
- Now most of the Banwarias are daily wage workers at the farm lands, or construction sites but they are cheated everywhere and bound to work even below the minimum wages.

Paper Titled- De-notified Tribes and the Role of Police

- At the time of Note-bandi they were either paid in the currency of old Rs. 500 / 1000 notes or were remained unpaid till date, in want of evidence and being a daily wage labourer.
- Many farmers or construction owners do not keep them at work unless someone from mainstream takes guarantee for their good behavior and hard work.
- The situation is that the better they work the more they get exploited.
- If there is any question raised about misbehavior or less wages, by any of Banwaria then they have threat that next time none will give them work and the news becomes so widespread that the one who questions his family is almost sidelined by all the employers.
- In case their kids go to school, they are treated differently and looked down, hence the Banwaria kids get the feeling of being inferior to others and finally stop going to school or their parents do not send them because they get threats from one or the other whose kids study in the same school.
- Even teachers of the schools are less interested in these kids due to the label of a criminal tribe and if they take interest then parents of mainstream community kids threat them to send their kids to school, hence every thing gets spoiled and all the benefits for school going kids are of no use even if they are included in the SC list.
- Banwarias are the first ones who are raided or enquired every time any incident covered under IPC provisions takes place like theft or mischief of any kind or robbery or fight or any communal tension or murder or any thing where there are no suspects of any crime.
- In August, 2016 there was an incident of communal tension in our town but half of the police force was keeping watch over settlements of Banwarias rather than the real culprits, which were well known to all in the area who belonged to Brahmin and Muslim communities. Also there were orders from the SP office to keep watch on all the Banwaria and Banjara settlements and every major male family member had to give their IDs along

with one passport size photograph. And all the details about the family members and their occupation and area of settlement were asked.

- Also whenever there is any such tension they are always asked to report in the police station nearby in person and if they want to leave the place for work then they are supposed to report to the Police otherwise in case of being caught they are beaten up or money is extorted from them.
- Even more ridiculous fact we find every day while travelling in the buses we find that Banwarias are not allowed to sit on the seats.
- They have such a fear of police that even if any one in civil dress asks them for any documents describing himself as a police personal, they will give all the documents to him without any question.
- Many times even females are booked and beaten up by police without any basis. Last month such incident happened when a group of drunk young people beaten up a Banwaria couple and then the police on round took this couple into custody and without any enquiry from any of the parties they beaten them up, extorted some money and left and this couple is not ready to make any complain against the police.
- Some years ago, as per the Banwaria community members, they used to hide from people and police, because others look down upon them. They used to eat Titar, Bater, rabbits, deer etc but gradually killing them became an offence and they were booked for it now they started keeping cow and camels but then they were booked under the Bovine Animal (Prohibition of slaughter and Regulation of Temporary Migration or Export) Act, 1995 and camels were stolen by villagers around and complains were never registered due to the outside threats and not support from police. Now they are somehow managing to get some work and earn some livelihood otherwise they have to catch poisonous reptiles to eat.

Paper Titled- De-notified Tribes and the Role of Police

- The forest department is also getting strict towards them these days and do not let them settle down at its land on the other hand the village Panchayats are not allowing them to settle them down or gather any vegetation products from their lands. This way their lives are being even more vulnerable than ever before and police is always there to threaten them, upto the extent that most of their original documents are at the police station.
- There are cases came to the researchers where police personals have misled them for child marriages or second marriage during the lifetime of the first one or burying the wife along with the dead body of her husband.
- They are not allowed to burry their dead bodies at Kabristan since they are considered Hindus, and not allowed in Shamshan because they do not burn it and not allowed anywhere else because that is not the place for this purpose, now where to go??
- Schools, education and a Government job are far beyond their dreams, till now they are not even ready to accept the fact that they are equal to others and the Public Servants are their to assist them in implementing the welfare schemes and taking measures for their safety and settlement. They generally avoid going to any Government department thinking what if the officer gets angry at them then they will be thrown out from here and they don't have any place to stay.
- The responsible authorities who conducted base line surveys in 2011 for the count of BPL families and those who are landless, have left such families out of the list and therefore there are problems in getting houses or lands or BPL cards for them.
- The shocking thing about police was found on the day when the authors went to meet the SP and DSP of the area and both of them had first line to say that “Madam, they are criminals, do not interfere in our work, its part of the peace keeping process, so better you do not take their favour and not talk about their rights, since they do not have any, you just complete the research and leave the matter on us since they are nuisance to the society”.

- This way everyone from the civil society to Police, Govt. officers, or any other stake **holder**, has its role in making their lives miserable just by labeling them as “criminal” that too without any proof. The after the study of the Habitual Offenders act and the list of the ex-criminal tribes, the police department holds negative opinion about them and it is as dangerous as was shown in the words of great police officers Mrs Kiran Bedi “ex-criminal tribes are known to be very cruel. They are hardcore professionals in committing crimes. Rarely caught or convicted.” Whereas the fact is that they are mostly caught under false charges hence no conviction but many times they succumb to injuries caused under the Police custody. Also, because of all such cruel treatment, though very few of them, indulge into criminal activities for their livelihood in want of work.
- One more thing is found that when ever they are caught by the police they are hardly asked for any explanation, rather police directly starts beating them up. Though now some villagers are coming up in their support therefore some police persons also understand the fact and try to solve the matter fairly.

DNTs and Human Rights:

- Humanity is the basis of human society and on this criterion human rights have been declared. The Human Rights which cannot be enforced due to backwardness of a community are meaningless and worthless. It is not possible to protect human rights of all when we declare someone a criminal by birth, since there is no rational basis behind that.
- The reason is obvious, mere declaration and passing of resolutions about human rights are not enough, the guarantee for the enforcement of these rights is equally essential.
- The Preamble to the Indian Constitution of India speaks of justice, socio-economic and political and of equality of status and opportunity.

- Article 14- everybody is equal before the law and has the right of equal protection of the laws, whether he may be rich or poor.
- Article 21- No person should be handicapped in his life or personal liberty due to his poverty or incapability of approaching a court of law for protection of law defending his rights legal as well as constitutional.
- Article 28- State to secure a social order for the promotion of welfare of the people.

The authors could discuss a few but there are many more constitutional and legal rights to protect their human rights.

Opinions of certain National or International Institutions

National Human Rights Commission, in February, 2000 recommended repeal of the Habitual Offenders Act, 1952.

In March 2007, the UN's anti-discrimination body Committee on the Elimination of Racial Discrimination (CERD), noted that “the so-called denotified and nomadic which are listed for their alleged ‘criminal tendencies’ under the former Criminal Tribes Act (1871), continue to be stigmatised under the Habitual Offenders Act (1952) (art. 2 (1)), and asked India to repeal it and effectively rehabilitate the denotified and nomadic tribes. According to the body, it only gives the notified tribes a new name i.e. *Denotified tribes*, hence the stigma continues and so does the oppression, as the law is being denounced on two counts, first that “all human beings are born free and equal“, and second that it negates a valuable principle of the criminal justice system – innocent until proven guilty.

The Government had constituted a National Commission for Denotified, Nomadic and Semi-Nomadic Tribes headed by Shri Bal Krishna Sidram Renke. it mentioned that the De-notified Tribes (DNTs) have been at the peripheries of the society for a long time. While benefits of reservations, scholarships etc. were available to SCs/STs/OBCs, no such welfare schemes are

available for the welfare of these DNTs i.e. those who are not covered under SC, ST or OBC and those who are covered under these lists are also not able to reach to the benefits because they are not even able to reach till that platform due to the label of being criminal tribe attached with them.

Suggestions:

- They are still recognized as criminal tribes by the Police as well as the so called main stream society. We need to change the curriculum and repeal the Habitual offenders Act to get rid of the discriminatory law.
- The researchers have found that majority of the respondents live below poverty line; almost all of the respondents are illiterate. Hence we need to send their kids to school and try to make sure that they are not discriminated against and not compelled to leave school.
- There is lack of awareness about various government facilities for educational and economic upliftment. Hence we the general public as well as police can do this and also can make them aware about their rights and duties of the Police and other Public servants, so that their feeling of inferiority can be reduced. This way they will be empowered to raise their voice for their cause and understand the difference of right and wrong.

Paper Titled- De-notified Tribes and the Role of Police

- They have seen a shift from traditional occupation towards other local occupations like daily wage work etc, we can the civil society, Police and NGOs can take the responsibility to make sure that they will get full payment of their work.
- These communities still suffer from untouchability, which needs conscious efforts.
- Only conscious efforts can bring positive changes here, because the law created the negative things but now those practices are so deep rooted that it cannot be removed just by repealing laws.
- Police needs to be more sensitive in the matters related to these communities, so that their fear can go away and if police will take action against those who call them criminal.
- Police personals also need to change their attitude towards these communities because none is born criminal.
- It is a must to understand, accept and spread the fact that they also owe Human rights by virtue of being Humans and they also owe the same rights as the so called mainstream people are enjoying.
- We need to respect them for their struggle against injustice since ages and we need to learn from them as to how to live in harmony with nature, they have far better knowledge about the changes in nature and weather patterns.
- We can contribute in their welfare by respecting them for the art they owe and can help them in earning their livelihood in the field of their talent and choice. We need to recognize their art and culture.

Conclusion:

Thus, at the end the author would like to conclude in these words that though we have many constitutional provisions, government policies, other laws and statutes to treat every one equally and for the upliftment of all the communities but still there are many loopholes and we need to remove them with little more efforts like spreading awareness and review of the working of Criminal Justice System, up-gradation of Legislative, Judicial and Constitutional infrastructure, for the effective implementation of welfare benefits and elimination of social and structural discrimination against such communities, by designing the program in accordance with the basic realities of needy ones along with the basic changes like removal of repealed laws from the police curriculum and making people aware about the realities of lives of these communities so that the baseless discriminatory practices can be stopped.

We the people of India are all equal and we all know this but this is high time now when we must start practicing it in our behavior. Because when we call a whole community a criminal tribe, just by virtue of a bias law, then we diminish the strength of our constitution, which should not happen since constitution is the fundamental document of the Indian Justice System and this way we make mockery of the Criminal Justice System. We need to understand, accept and solve the problem as early as possible.