

Nomadic, Semi-nomadic and De-Notified Tribes (NT-DNTs)

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During India's II UPR cycle in 2012, several recommendations were made to India related to protection and promotion of the rights of tribals and Indigenous people. However, the issue of protection and promotion of the rights of Indian De-notified and Nomadic Tribes (DNTs) did not find any explicit reference of any kind during the review process of India's human rights record. The British colonial rulers initiated the Criminal Tribes Act in 1871, referring to around 150 tribes for their so-called "criminal tendencies". What is common to all these NT-DNTs is the fate of being branded as 'born' criminals. The stigma of the criminal label follows them to this day. The Indian Constitution does not recognise the De-notified or Nomadic Tribes. India's Draft National Policy on Tribals does not include De-notified or Nomadic Tribes.

In 1952, the Indian Government withdrew the Criminal Tribes Act of 1871 throughout India and enacted the Habitual Offender's Act. Both the Criminal Tribes Act and the Habitual Offender's Act negate the universally proclaimed principle that "all human beings are born free and equal". The listing of these De-notified and Nomadic Tribes under the Habitual Offender's Act also negates the fundamental principle of the criminal justice system – the presumption of innocence before being proven guilty.

On 9th March 2007, The UN's Committee for the Elimination of Racial Discrimination directed India to repeal the Habitual Offenders Act and to rehabilitate the de-notified tribes. The National Human Rights Commission of India has also issued orders to the state governments to repeal HOA 1959 immediately, however the Act still prevails in most States in India leading to the continued suffering of marginalised communities.

NATIONAL LEGAL FRAMEWORK

The De-notified and Nomadic Tribes are a heterogeneous community that have been classified based on the occupations they follow such as Pastoralists, hunter-gatherer and nomads like the Dhangars, Kuruba and Pardhi communities, Sellers and providers of services and goods like the Ghisadi, stone dressers like the Wadar, transporters and salt traders like the Banjaras, Entertainers (acrobats and jugglers like the Dombaris and Nats, snake charmers and religious performers and astrologers (Joshis the astrologers, Masanjogis- performers of crematorium rituals, Gosavis the sanyasis).

De-Notified Tribes are communities who were 'notified' as being 'born criminal' by the British Government under a series of laws starting with the Criminal Tribes Act (CTA) of 1871. These laws were enacted as crime was considered a 'hereditary profession' and the enactment of the law and its entry into the working of police training as well as in the public arena slapped the brand of being 'born criminals' on the entire population of these communities. After Independence, this Act was repealed in 1952, and the communities were 'de-notified', hence the name. In 1959, the independent government of India replaced the

CTA with the Habitual Offenders Act (HOA). Due to their tainted history as Criminals these tribes again came under State scrutiny and suspicion and became scapegoats for the police. The enactment of the HOA empowered the police to investigate habitual offenders without warrant which resulted in abduction, interrogation, illegal detention, custodial deaths and largely false arrests of de-notified tribes.

The Indian Constitution does not recognise the De-notified or Nomadic Tribes. It confines itself to the Scheduled Castes, the Scheduled Tribes and the Backward Classes. The affirmative action program of the State is based on socio-economic backwardness of the settled communities; it has failed to include specificities of nomadism, stigmatization and criminalization within its ambit. Even though a large number of these Tribes and Communities are in the lists of SCs, STs and BCs/OBCs, but they are deprived of advantages of the government affirmative action programmes. About 16 percent (9 communities) of Nomadic tribes and 3 percent (2 communities) of De-notified communities do not fall into the existing constitutionally designated categories – SC, ST or OBC.

CHALLENGES

Forced marginalization due to criminalization of traditional occupations of NT-DNT

Subjected to systematic abuses due to denial of civil political rights

ISSUES AND IMPACTS

As per the Renke Commission Report, 2008 there are nearly 1500 nomadic and semi-nomadic and 198 De-notified tribes, comprising a population of 150 million NT-DNT people in India. The commission found that their main occupations were acrobatics, puppetry, singing, dancing, acting, snake charming, showing tricks with monkeys or bears, hunting, fortune telling, brewing liquor, begging, making handicrafts, and fishing. Many of these, however, have become criminal offences with the enactment of legislation such as the Wildlife Protection Act, the Prevention of Cruelty to Animals Act, the Environment Protection and Biodiversity Conservation Act, the Drugs and Magic Remedies Prohibition Act, and the Prevention of Beggary Act. Shorn of their traditional sources of livelihood and with nothing else to fall back on, they beg, rag-pick, sell themselves into prostitution, vend traditional craft items on the streets, and push their children into child labour.

The non-recognition of the NT-DNT communities in India has led to denial of citizenship rights, social protection and affirmative development action programs. Human rights situation of NT-DNT is deplorable. They are subjected to atrocities everyday by the police, civic and revenue administration, and the citizens of the country. Media is one of the major enhancers of stigma wrongly attributed to them while reporting crime in their daily columns.

CHALLENGES

Social and economic exclusion based on the study by National commission for Semi-nomadic, Nomadic and De-notified Tribe, (Renke commission, June, 2008) in 11 states

Police atrocities faced by DNT and Nomadic Communities due to the 'Stigma of being 'Born Criminals'

ISSUES AND IMPACTS

Around 50% of DNT and 61% of Nomadic Communities do not possess Caste Certificates. Around 47.8% DNT and 60% of Nomadic Communities do not possess Birth Certificates. Only 23% DNT and 6% Nomadic communities report possessing BPL cards. Around 76% DNT and 33.7% Nomadic Communities still practice open defecation. 58% of children among DNT and 49% among Nomadic communities are engaged in economic activities, instead of attending schools. About 25% of DNT families and 60% among Nomadic communities do not get wage employment for all seven days. None of them reported getting employment through NREGP/ PMGSY and old age or widow pensions. About one third of families of Nomadic community and one fourth of DNT do not possess any type of ration card. About 89% of DNT and 98 % of Nomadic and semi-Nomadic communities reported that none of the families in the community own land. Majority (81%) of DNT did not know the status of their residential locations. Only 11% of the Nomadic communities and 8% of DNT have habitations on public land. Tents/informal settlements (57%) are the most common type of habitation where communities reside in poor living conditions. They are deprived of basic amenities, such as toilets, water, electricity, etc. Among DNTs, 4.5% said that their traditional occupation had been bonded labour. About 16% of the DNTs and 9% of the Nomadic communities' women reported sexual harassment by other castes. About 37% Nomadic and 23% DNT are affected by Forest Conservation Act. Other Acts affecting the community are Wild Life Protection Act 1972, Habitual Offenders Act, Anti Beggary legislation (Bombay Prevention of Begging Act, 1959 adopted by different States).

About 8% of DNTs and 4% of the Nomadic community families faced police action in one year. It is important to note that 88% of women from Nomadic communities have faced investigation. According to the figures 7.5% of DNTs and 8.9% of the Nomadic community men faced arrests and 26.3% of DNTs and 48.6% of the Nomadic community men faced crime related enquiries. Around 20.8% of DNTs and 2.8% of the Nomadic community women faced Physical harassment. Around 10.5% of DNTs and 0.9% of the Nomadic community women faced verbal abuses. The official estimates have been provided by the Renke Commission but due to the criminal stigma the actual number of cases of police atrocities, illegal detention, harassment, forced labour and sexual violence are much larger and mostly go unreported since the police refuse to register their cases.

RECOMMENDATIONS

The Habitual Offenders' Act, 1952 is similar in spirit to the repealed Criminal Tribes Act of 1871 and should be abolished as a first step towards de-criminalisation of DNTs and prevention of atrocities by police.

Systematic enumeration and classification of DNTs should be done as a first step towards identification of persons belonging to DNT communities.

Amendments should be made to laws have criminalised the traditional professions of the NT-DNTs. These include the Wildlife Protection Act, the Prevention of Cruelty to Animals Act, the Environment Protection and Biodiversity Conservation Act, the Drugs and Magic Remedies Prohibition Act, and the Prevention of Beggary Act.

Formulate a social protection framework which focusses on access to entitlements, land, housing livelihood, education and health of NT-DNT Communities.

Efforts should be made to engage civil and police administration in the implementations of development and welfare programmes for DNTs as a way of understanding their vulnerabilities rather than focusing on their criminality.

Conduct a nation-wide survey of NT-DNT settlements whether temporary or permanent to formulate a suitable shelter programme for houseless NT-DNTs.

Initiate rehabilitation programmes for the community members of the NT-DNTs who are forced into criminal activities and promote alternative viable livelihood options with suitable skill development and training through National Scheduled Castes Finance and Development Corporation and National Backward Classes Finance and Development Corporation.

Take steps to prevent women and girls of these communities falling prey to trafficking, bonded labour and child labour after eviction or displacement from the forests.

REFERENCES

Bharat Dogra, "Need for a Just Deal for Denotified and Nomadic Tribes", Mainstream VOL XLV, No 31, 21 July 2007.

Radhakrishna Meena, 2001, Dishonoured by History: Criminal Tribes and British Colonial Policy, Orient Longman, Hyderabad.

Barge, S. (2013), "The Stigma & Invisibility of the Denotified Tribes (DNTs) in India". Germany: Lambert Academic Publishing.

Bokil, 1999, 'Facing Exclusion: The Nomadic Communities in Western India', Paper presented at the Asia-Pacific Regional Conference of IFSW at Brisbane, Australia (September 26-29).

National Commission for Scheduled Tribes: A Handbook, 2007, Government of India.

Report of the Renke Commission (2008) to the National Commission for Denotified, Semi-nomadic and Nomadic Tribes.

Recommendations regarding Denotified, Nomadic and Semi-Nomadic Tribes, National Advisory Council (NAC), Government of India; 2011.

Motiraj Rathod, "Denotified and Nomadic Tribes in Maharashtra", The Denotified and Nomadic Tribes Rights Action Group Newsletter. 2000.