

DENOTIFIED TRIBES AND CRIMINAL LAW: UNVEILING DISCRIMINATION WITHIN INDIA'S JUSTICE SYSTEM

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ABSTRACT

This paper delves into the enduring struggles faced by Denotified Tribes (DNT) within India's criminal justice system, uncovering the persistence of discrimination despite the country's 75 years of independence. Focused on the intersection of law, history, sociology, and human rights, this study scrutinizes the disconcerting dissonance between the formal ideals of equality and the harsh realities experienced by DNT tribes.

Drawing from the Durkheimian theory, this paper begins by examining the historical evolution of the concept of the criminal class. It elucidates how DNT tribes were unjustly branded as criminals solely by virtue of their birthright, exposing the profound atrocities they have endured throughout history. The paper further traces the transition from the archaic "Criminal Tribes Act" to contemporary denotification and the introduction of the "Habitual Offenders Act," assessing the

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lingering impacts of these legal changes on identity and societal perceptions.

Moving beyond legal frameworks, the study explores the socio-economic vulnerabilities that often lead to higher crime rates among DNT communities. It underscores the state's responsibility in addressing these underlying issues, emphasizing the necessity of accountability in precluding punitive measures. Moreover, the paper critically examines instances of police atrocities against DNT tribes, highlighting the deep-seated biases that continue to perpetuate systemic discrimination.

The paper ultimately underscores the urgent need to reconcile the chasm between theoretical egalitarianism and the reality faced by DNT tribes within India's criminal justice system. By interrogating historical legacies, legal structures, societal perceptions, and state responsibilities, this paper provides a multidimensional analysis which seeks to foster a more equitable and just society for all.

Keywords: *Denotified Tribes, Criminal Law, Discrimination, Criminal Justice System, Societal Perceptions*

INTRODUCTION

Despite the passage of 75 years since India's Independence, Denotified Tribes (DNT) continue to grapple with

the deprivation of a dignified existence, a promise enshrined within Article 21 of the Constitution. Within the intricate framework of the criminal justice system, these tribes endure the weight of prejudice and stereotypes, disconnected from any foundation in scientific evidence, resulting in the perpetuation of societal discrimination.² Our collective efforts to secure the rights of Denotified and nomadic tribes, collectively referred to as DNT tribes, within a civilized and democratic society have faltered, exposing a disconcerting dissonance between formal egalitarian ideals and ground-level realities.

While the overarching legal system appears to radiate equality, this veneer belies a disturbing truth. At the grassroot, DNT tribes bear witness to stark brutality, human rights violations, and systemic discrimination, instigated by both the custodians of law and society itself. Despite constitutional promises of justice, their lived experiences evoke an uncomfortable paradox, demanding a closer examination of the system's efficacy and the urgency of redressal.

This paper aims to analyze the actual treatment inflicted upon these DNT tribes within the legal justice system in contemporary times.

² Susan Abraham, "Steal or I'll Call You a Thief: 'Criminal' Tribes of India" (1999) 34(27) *Economic and Political Weekly* 1751–53 <<http://www.jstor.org/stable/4408149>> accessed 30 July 2023.

HISTORICAL PROCESS OR EVOLUTION OF THE CONCEPT OF THE CRIMINAL CLASS

Denotified tribes endure discrimination and are unjustly branded as criminal tribes solely based on their birthright. This practice exposes the profound atrocities faced by these tribes, highlighting how their mere association with a particular community strips them of their basic human rights.

Applying the Durkheimian theory, crime is defined as any act that challenges a prevailing collective sentiment. Even when this collective sentiment is discriminatory, it is upheld by the prevailing system. Durkheim's theory asserts that a society entirely devoid of crime is implausible, and an increase in crime is indicative of a pathological state.³ The categorization of crimes is a judgmental process that designates certain acts and their perpetrators as criminals. In this context, when society deems an act criminal, individuals who commit that act are designated as 'bad criminals.'⁴

Development of the Concept of 'Criminal Group' in the Modern West

In the modern Western context, criminals were often viewed as biological degenerates. Early scientific explanations of

² Mukul Kumar, 'Relationship of Caste and Crime in Colonial India: A Discourse Analysis' (2004) 39 *Economic and Political Weekly* 1078–87

<<http://www.jstor.org/stable/4414739>> accessed 30 July 2023.

⁴ *ibid.*

criminality were predominantly focused on biological and physical factors, as argued by Manheim. Scholars like Cesare Lombroso and Ferri expanded the scope to include social, geographical, and psychological elements, alongside biological foundations, in their attempts to comprehend criminal behavior. Subsequently, social positivists introduced personality and other socially oriented approaches, while the discourse shifted towards examining the living conditions of various groups.

This transition was first evident in France and later found its way to Britain, evident in the formulation of the 1824 Vagrancy Act. However, from a contemporary standpoint, the division of individuals based on biological criminal traits seems inherently unscientific.⁵ During the industrial revolution in the Western world, the need to clear forests for capitalist exploitation clashed with the presence of forest tribes, leading to opposition. It can be argued that laws were formulated under the guise of biological traits and other theories to legitimize efforts aimed at civilizing these groups and curbing their opposition.⁶ But the question

⁵ Jay Joseph, 'Is Crime in the Genes? A Critical Review of Twin and Adoption Studies of Criminality and Antisocial Behavior' (2001) 22 *The Journal of Mind and Behavior* 179–218 <<http://www.jstor.org/stable/43853952>> accessed 18 July 2023.

⁶ Mukul Kumar, 'Relationship of Caste and Crime in Colonial India: A Discourse Analysis' (2004) 39 *Economic and Political Weekly* 1078–87 <<http://www.jstor.org/stable/4414739>> accessed 30 July 2023.

arises that, was criminal law an appropriate means of addressing these communities?⁷

UNRAVELING THE CRIMINAL TRIBES ACT: POST-INDEPENDENCE SHIFTS AND DENOTIFICATION

The notion of a 'criminal tribe' was not inherent to Indian history;⁸ it was introduced by colonial rulers in 1836 through the Thuggee Act⁹ and further solidified with the comprehensive Criminal Tribes Act of 1871.¹⁰ T.V. Stephens forwarded the thesis that, just as the caste system was a distinctive feature of Indian society, associating specific trades with castes, crime is also endemic to certain communities.¹¹ However, the premise that such prejudice is universally innate, and the subsequent state-

⁷ Jay Joseph, 'Is Crime in the Genes? A Critical Review of Twin and Adoption Studies of Criminality and Antisocial Behavior' (2001) 22 *The Journal of Mind and Behavior* 179–218 <<http://www.jstor.org/stable/43853952>> accessed 18 July 2023.

⁸ Anastasia Piliavsky, 'The 'Criminal Tribe' in India before the British' (2015) 57 *Comparative Studies in Society and History* 323–54 <<http://www.jstor.org/stable/43908348>> accessed 18 July 2023.

⁹ Radhika Singha, 'Providential' Circumstances: The Thuggee Campaign of the 1830s and Legal Innovation' (1993) 27 *Modern Asian Studies* 83–146 <<http://www.jstor.org/stable/312879>> accessed 27 July 2023.

¹⁰ K. M. Kapadia, 'The Criminal Tribes of India' (1952) 1 *Sociological Bulletin* 99–125 <<http://www.jstor.org/stable/42864482>> accessed 19 July 2023.

¹¹ Susan Abraham, 'Steal or I'll Call You a Thief: 'Criminal' Tribes of India' (1999) 34(27) *Economic and Political Weekly* 1751–53 <<http://www.jstor.org/stable/4408149>> accessed 30 July 2023.

sponsored criminalization it led to, bears the potential to wreak havoc upon humanity.¹²

It appears that this analogy was devised to legitimize unjust actions, yielding a false and preposterous basis. Applying statistical deductive logic to label certain tribes as 'congenital criminals'¹³ is a flawed approach. The legislation granted local governments the authority to petition the governor general to designate certain tribes as criminal tribes if they were deemed to engage in non-bailable offenses. Many of these tribes were migratory in nature, lacking a fixed abode, which also contributed to their denotification.¹⁴

However, the availability of discretion to officials contributed to arbitrariness in tribe selection for this act. This discretion often lacked a foundation in research or data concerning the tribes' criminal history. For instance, the classification of Banjaras as a criminal tribe occurred despite their limited involvement in criminal activities.¹⁵

¹² S. Vishwanathan, 'Suspects Forever' *Frontline*, *The Hindu* (8 June 2002) <<https://frontline.thehindu.com/other/article30245103.ece>> accessed 30 July 2023.

¹³ Charles A. Ellwood, 'Classification of Criminals' (1911) 4 *Journal of Criminal Law and Criminology* <<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1044&context=jclc>> accessed 30 July 2023.

¹⁴ Ajay Dandekar, 'Invisible People, Inaudible Voices: The Denotified Tribes of India' (2014) 41 *India International Centre Quarterly* 90–96 <<http://www.jstor.org/stable/24390752>> accessed 30 July 2023.

¹⁵ Michael Jackson, 'The Sentencing of Dangerous and Habitual Offenders in Canada' (1997) 9 *Federal Sentencing Reporter* 256, 261 <<https://doi.org/10.2307/20639999>> accessed 24 July 2023.

"The implementation of these acts led to various cruel practices by those in power, resulting in executions and the forced separation of parents and children, all under the guise of reformatory objectives.¹⁶ In instances of committing a crime, the initial sentence was one year of imprisonment, followed by several years for subsequent offenses. Remarkably, even minor infractions like petty theft could lead to life transportation.¹⁷ It raises a poignant concern: when the severity of punishment surpasses the gravity of the crime, the concept of retribution metamorphoses into vengefulness.¹⁸

These communities weren't passive recipients of such harsh treatment. Many rose in rebellion, notably during the 1857 uprising against foreign rule.¹⁹ In response, the government retaliated vehemently against these labeled 'criminal tribes,' a response driven by anger and the desire for retribution.²⁰

Pressure from Indian leaders advocating against discrimination and a growing global awareness of human rights eventually led to amendments in the act in 1911, 1924, and 1944.

¹⁶ M Gandhi, *Denotified Tribes: Dimensions of Change* (5th edn, Kanishka Publisher 2008).

¹⁷ Susan Abraham, "Steal or I'll Call You a Thief: 'Criminal' Tribes of India" (1999) 34(27) *Economic and Political Weekly* 1751–53 <<http://www.jstor.org/stable/4408149>> accessed 30 July 2023.

¹⁸ Andrew Oldenquist, 'An Explanation of Retribution' (1988) 85(9) *The Journal of Philosophy* 464, 478 <<https://doi.org/10.2307/2026803>> accessed 30 July 2023.

¹⁹ Susan Abraham, "Steal or I'll Call You a Thief: 'Criminal' Tribes of India" (1999) 34(27) *Economic and Political Weekly* 1751–53 <<http://www.jstor.org/stable/4408149>> accessed 30 July 2023.

²⁰ *ibid.*

These amendments aimed to mitigate the act's provisions.²¹ It can be argued that these changes were influenced by the pressure exerted by both Indian leaders and a global community that increasingly championed equitable and liberal principles.²²

The Transition from 'Criminal Tribes' to 'Denotified Tribes'

Following India's independence, a government-appointed commission delved into the merits of the existing act, leading to a recommendation for its repeal. As a result, the Nehru government repealed the act in 1952.²³ Subsequently, these tribes came to be recognized as denotified tribes. During the same period, the Habitual Offenders Act was introduced based on recommendations from the Ayyangar Committee.²⁴ Unlike the prior act, this legislation pertained to individuals rather than entire communities.

²¹ B. P. Singh, 'Denotified Tribes or Vimukt Jatis of Punjab' (2010) 40(2) *Indian Anthropologist* 71–77 <<http://www.jstor.org/stable/41920128>> accessed 15 July 2023.

²² Keith Laybourn, 'The Rise of Labour and the Decline of Liberalism: The State of the Debate' (1995) 80(259) *History* 207–226 <<http://www.jstor.org/stable/24422523>> accessed 18 July 2023.

²³ Ajay Dandekar, 'Invisible People, Inaudible Voices: The Denotified Tribes of India' (2014) 41 *India International Centre Quarterly* 90–96 <<http://www.jstor.org/stable/24390752>> accessed 30 July 2023.

²⁴ *ibid.*

It's worth noting that the 'born criminal'²⁵ principle, which had been previously associated with certain communities, was theoretically discarded with these changes. However, the practical manifestation of this rejection might not have entirely shifted at the social level.²⁶

Navigating Identity and Rights: Denotified Tribes in India

As a culturally and socially marginalized group, members of the DNT tribes find themselves vulnerable to the labels historically imposed by the state apparatus – labels that have borne 'negative' connotations such as 'criminal tribes' and 'denotified tribes.'²⁷ These specific designations not only demarcate and segregate these communities but also contribute to their discrimination. I believe that assigning a category name that is intrinsically linked to criminal activities casts an unwarranted negative perception on them within society. Even the term

²⁵ Marvin E. Wolfgang, 'Pioneers in Criminology: Cesare Lombroso (1835-1909)' (1961) 52(4) *The Journal of Criminal Law, Criminology, and Police Science* 361, 391 <<https://doi.org/10.2307/1141263>> accessed 30 July 2023.

²⁶ Michael Jackson, 'The Sentencing of Dangerous and Habitual Offenders in Canada' (1997) 9 *Federal Sentencing Reporter* 256, 261 <<https://doi.org/10.2307/20639999>> accessed 18 July 2023.

²⁷ Meena Radhakrishna, 'Urban Denotified Tribes: Competing Identities, Contested Citizenship' (2007) 42(51) *Economic and Political Weekly* 59–64 <<http://www.jstor.org/stable/40276878>> accessed 30 July 2023.

'denotified,' while indicating a transition from being labeled as criminal, retains echoes of their past branding.²⁸

Among the denotified tribes were groups like Nat, Banzara, Irula, Pardhis, Kanjars, and Tadvis, constituting approximately 198 tribes and accounting for 10% of the Indian population. These communities, characterized by their nomadic nature, lack permanent settlements and often fall victim to both the harshness and corruption within administrative and legal systems.²⁹ Engaged in occupations often deemed undignified, such as slaughtering and scavenging, they grapple to sustain their livelihoods.

Justice Ravindra Bhat of the Supreme Court acknowledges the disproportionate impact of the criminal justice system on Denotified Tribes (DNTs).³⁰ Despite the principles enshrined in India's preamble and constitution, discriminatory practices continue, thanks to legislations like 'The Habitual Offender Act (1952)'. Notably, bodies like the National Human Rights Commission (NHRC) in 2004, the National Commission to

²⁸ Susan Abraham, "Steal or I'll Call You a Thief: 'Criminal' Tribes of India" (1999) 34(27) Economic and Political Weekly 1751–53
<<http://www.jstor.org/stable/4408149>> accessed 30 July 2023.

²⁹ Sunil D. Santha et al, 'Migration, Vulnerability and Urban Livelihoods in Climate Change, Livelihoods and Health Inequities: The Vulnerability of Migrant Workers in Indian Cities' (2015) International Institute for Environment and Development, 11–29
<<http://www.jstor.org/stable/resrep01310.10>> accessed 15 July 2023.

³⁰ The Print, 'Justice Ravindra S Bhat Highlights Disproportionate Impact of Criminal Justice System on Denotified Tribes' (The Print, 31 August 2022)
<<https://theprint.in/india/justice-ravindra-s-bhat-highlights-disproportionate-impact-of-criminal-justice-system-on-denotified-tribes/1110373>> accessed 30 July 2023.

Review the Working of the Constitution (NCRWC) in 2002, and the United Nations Committee on the Elimination of Racial Discrimination (UNCERD) have recommended the repeal of the Habitual Offender Act of 1952.

DNT Tribes, Dominant Caste, and Untouchability

Even in contemporary times, the belief in the existence of biological criminogenic traits lingers in society, with traces observable even among law-enforcing authorities. Authorities subjected DNT individuals to pathological examinations in an attempt to identify differences that could legitimize their classification as a 'criminal class.'³¹ However, these efforts often failed to align with the desired result sought by the dominant caste.

Instances of mob lynching by the dominant class in modern times further underscore the entrenched perception that DNT tribes are irredeemable and warrant extermination.³² A poignant case study surfaces from the 1984 carnage³³, where out of the 3000 Sikhs killed, a significant number belonged to the

³¹ Wayne J. Vilemez, 'Social Class and Criminality' (1977) 56(2) *Social Forces* 474, 502 <<https://doi.org/10.1093/sf/56.2.474>> accessed 18 July 2023.

³² Sanjay Kolekar, 'Violence against Nomadic Tribes' (2008) 43(26/27) *Economic and Political Weekly* 569–71 <<http://www.jstor.org/stable/40278917>> accessed 18 July 2023.

³³ Meena Radhakrishna, 'Urban Denotified Tribes: Competing Identities, Contested Citizenship' (2007) 42(51) *Economic and Political Weekly* 59–64 <<http://www.jstor.org/stable/40276878>> accessed 28 July 2023.

Banjara community before converting to Sikhism³⁴. Numerous instances illustrate how the dominant class restricts DNT individuals from engaging in dignified work.³⁵

It appears that this discrimination is not merely a result of their lower numerical strength, but also due to their widespread presence across the territory. Unlike the dominant classes, they struggle to amass a significant vote bank, rendering their demands largely unaddressed by the government.

Despite their historical separation from the caste system³⁶, these marginalized tribes found themselves labeled anew due to their impoverished economic status and society's unfavorable perception. They were assigned the symbol status of 'criminal tribes,' positioned as stratified lower castes burdened with the stigma of criminality. Consequently, they often face even harsher treatment than untouchables.³⁷

³⁴ Sujota Gothoskar, 'Police's Continued Victimisation of 'Denotified' Tribal Communities Can No Longer Go Unchallenged' (The Wire, 13 December 2017) <<https://m.thewire.in/article/politics/polices-continued-victimisation-denotified-tribal-communities-can-no-longer-go-unchallenged>> accessed 18 July 2023.

³⁵ Dilip D'Souza, 'Kiran Bedi's Slur against 'Cruel Ex-Criminal Tribes' Proves That Age-Old Prejudice Is Still Alive' (Scroll.in, 3 August 2016) <<https://scroll.in/article/813139/kiran-bedis-slur-against-cruel-ex-criminal-tribes-proves-that-age-old-prejudice-is-still-alive>> accessed 18 July 2023.

³⁶ Sanjay Kolekar, 'Violence against Nomadic Tribes' (2008) 43(26/27) Economic and Political Weekly 569–71 <<http://www.jstor.org/stable/40278917>> accessed 18 July 2023.

³⁷ *ibid.*

DNT Tribes and Police Atrocities

Involvement of denotified tribes often leads to police investigations that bypass established protocols. Members of denotified tribes, such as the Pardhi community, have persevered against prejudice and police violence over years of stigmatization and persecution, even culminating in tragic suicides as acts of protest against injustice.

Instances of the improper exercise of authoritative power in practical scenarios are abundant, and a few are delineated below:

- a. In West Bengal, police were implicated in the deaths of 42 members of the Lodha community.
- b. A distressing incident involved police stripping a woman of her sari, ultimately leading to her demise.³⁸
- c. Unsubstantiated arrests for theft resulted in merciless beatings leading to fatalities³⁹. These people are considered 'beasts of the field' unable to "get rid of their turn of thieving".⁴⁰

³⁸ S. Vishwanathan, 'Suspects Forever' Frontline, The Hindu (8 June 2002) <<https://frontline.thehindu.com/other/article30245103.ece>> accessed 30 July 2023.

³⁹ *ibid.*

⁴⁰ Dilip D'Souza, 'Kiran Bedi's Slur against 'Cruel Ex-Criminal Tribes' Proves That Age-Old Prejudice Is Still Alive' (Scroll.in, 3 August 2016) <<https://scroll.in/article/813139/kiran-bedis-slur-against-cruel-ex-criminal-tribes-proves-that-age-old-prejudice-is-still-alive>> accessed 18 July 2023.

d. Custodial deaths occurred due to police fabricating evidence to depict situations as accidental.⁴¹

e. A regrettable instance involved the wrongful conviction and death penalty for six denotified tribe's members; though rectified in 2009, it took 16 years to address the error.⁴²

Amidst these troubling circumstances, it is evident that stereotypes against Denotified Nomadic Tribes (DNTs) permeate various facets of society, including the police, media, and even some judicial circles. Most instances of atrocities go unreported, and only individuals of exceptional courage seek recourse through the judiciary. The potential for biases within the judicial system poses further challenges for these communities striving for justice.

“There is a stereotype against Denotified Nomadic Tribes (DNTs) in police, media, society, and even some judges”.⁴³ All the atrocities are not reported and only exceptionally courageous people knock on the door of the judiciary in exceptional situations. If the court would have biases against these people, which these people first need to rebut, then it will be difficult for them to live a just life.

⁴¹ *ibid.*

⁴² Imaad Hasan, 'Denotified 68 Years Ago, 'Criminal' Tribes Still Fight Stigma, Poverty' (The Outlook, 30 August 2020) <<https://www.outlookindia.com/website/story/india-news-denotification-68-years-ago-on-this-day-ex-criminal-tribes-still-fight-stigma-poverty/359558>> accessed 30 July 2023.

⁴³ Bhangya Bhukya, 'Unveiling the World of the Nomadic Tribes and Denotified Tribes: An Introduction' (2021) 56(36) Economic and Political Weekly (Engage) <<https://www.epw.in/engage/article/unveiling-world-nomadic-tribes-and-denotified>> accessed 30 July 2023.

DNT People and State Responsibility

The prevalence of high crime rates among DNT tribes can be attributed to a complex interplay of factors, prominently including pervasive poverty, limited employment opportunities, challenging living conditions, low levels of education, and enduring social injustices. These elements collectively perpetuate an environment wherein the control exerted by these communities over these conditions remains minimal. Notably, these are domains where the state bears a certain degree of responsibility. Yet, instances of the state's failure to effectively address these underlying issues abound.

When the state's efforts fall short of curtailing these adversities, it often resorts to punitive measures as a display of taking action against crime. Paradoxically, one underlying cause of crime can be traced back to the state's inability to preemptively address it. Acknowledging the state's responsibility in this context does not imply direct culpability for the crimes committed, but rather underscores the significance of accountability and the state's forward-looking obligation.⁴⁴

⁴⁴ Alice Ristroph and Lindsay Farmer, 'The Definitive Article' (2018) 68(1) *The University of Toronto Law Journal* 140–65 <<https://www.jstor.org/stable/90019661>> accessed 18 July 2023.

CONCLUSION

In conclusion, this study illuminates the enduring challenges confronted by Denotified Tribes (DNT) within the intricate fabric of India's criminal justice system. It underscores the disconcerting gap between the formal ideals of equality and the harsh realities experienced by DNT tribes. The analysis reveals the deep-seated discriminatory roots embedded in the criminalization of these communities, perpetuating enduring stereotypes and societal biases. Despite legal reforms and denotification, DNT tribes continue to grapple with persistent discrimination, police atrocities, and socio-economic vulnerabilities.

The multifaceted examination presented in this paper serves as a compelling call to action, urging policymakers, legal scholars, and society at large to reassess their understanding of DNT tribes and actively work towards dismantling discriminatory practices. Concrete steps such as specific policy interventions, legal reforms, and societal awareness initiatives are urgently needed. By acknowledging the state's responsibility and advocating for comprehensive reforms, a more equitable and just society can be envisioned.

This research contributes significantly to the scholarly discourse on marginalized communities, inviting further exploration and discussion on the intersection of law, history, and human rights within the context of India's criminal justice system.

The urgency of addressing these challenges is underscored by the disjuncture between the formal guarantees of equality and the lived experiences of DNT tribes, reinforcing the imperative for transformative change.