



## INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

---

Volume 3 | Issue 4

Art. 3

---

2024

# Marginalized by Law: The Historical and Contemporary Struggle of Denotified and Nomadic Tribes in India

Hitishaa Goyal

---

### Recommended Citation

Hitishaa Goyal, *Marginalized by Law: The Historical and Contemporary Struggle of Denotified and Nomadic Tribes in India*, 3 IJHRLR 59-69 (2024).  
Available at [www.humanrightlawreview.in/archives/](http://www.humanrightlawreview.in/archives/).

This Art. is brought to you for free and open access by the International Journal of Human Rights Law Review by an authorized Lex Assisto Media and Publications administrator. For more information, please contact [info@humanrightlawreview.in](mailto:info@humanrightlawreview.in).

---

# Marginalized by Law: The Historical and Contemporary Struggle of Denotified and Nomadic Tribes in India

Hitishaa Goyal

*Neerja Modi School, Jaipur, Rajasthan, India*

## ABSTRACT

*This article examines the marginalization of denotified and nomadic tribes in India throughout history, with a particular emphasis on how society and the legal system have treated them. These communities were initially singled out by the Criminal Tribes Act of 1871, a British colonial law that led to institutionalized discrimination by labelling them as "criminals by birth." The Habitual Offenders Act continues to stigmatize these communities after independence. In addition, their inconsistent categorization by the Indian government hurts their capacity to access welfare and legal recognition. Despite this, denotified tribes have fought against their marginalization through grassroots activism and political engagement. In order to address the many inequities these people face and to respect India's constitutional guarantee of justice and equality for everyone, this article underlines the need for inclusive development plans and significant legislative reforms.*

## KEYWORDS

*Denotified tribes, nomadic communities, marginalization, criminalization*

## INTRODUCTION

Despite its purported commitment to fairness, the law has frequently functioned as a tool of marginalization in the hands of the state. By its treatment of certain communities as inferior, less important or different from others, the law pushes them to the periphery of the established political order.<sup>1</sup> This marginalization can be intentional, aimed at maintaining socio-political hierarchies within society and reinforcing positions of powerlessness.

---

<sup>1</sup> Hightower, B., Anker, K. (Re)Imagining Law: Marginalised Bodies/Indigenous Spaces. *Int J. Semiot Law* 29, 1–8 (2016). <https://doi.org/10.1007/s11196-015-9454-5>.

The consequences of such legal marginalization are severe. As Agamben describes it, such an 'abandonment' by the law reduces people to 'bare life', unable to receive legal recognition.<sup>2</sup> Paradoxically, legal exclusion of communities further binds them to the law. Communities excluded by the law still remain forced to engage in a system that devalues their existence.<sup>3</sup> This power of the state extends beyond just legal structures. The state shapes and enforces social norms through the process of law-making.<sup>4</sup> Entire communities, therefore, find themselves mistreated and alienated from society as the law, and by extension, much of society fails to acknowledge their lived realities. It is precisely in such dire conditions that opportunities for contestation arise. Marginalized communities seek to challenge their exclusion by law-makers and enforcers, and reimagine their legal identity.

In India, one such marginalized community is the denotified and nomadic tribes. Also known as the 'Vimukta Jatis', denotified and nomadic tribes are those that were originally listed under the Criminal Tribes Act of 1871 that was passed under the British government. There currently exist about 313 nomadic tribes and 198 denotified tribes within India, comprising a total population of about 60 million.<sup>5</sup> Much of this community is stigmatized as criminals by law and society, and have been deprived of benefiting from numerous development programmes initiated in independent India.

---

<sup>2</sup> Christiaens, T. (2022). Agamben's 'bare life' and Grossman's ethics of senseless kindness. *Journal of European Studies*, 52(1), 36-53.

<https://doi.org/10.1177/00472441211072611>

<sup>3</sup> Liam, Gillespie. (2021). *The Laws of Inclusion and Exclusion*. doi: 10.1007/978-3-030-55470-5\_3.

<sup>4</sup> Lane, Tom (2023). *Law and Norms: Empirical Evidence*. *The American economic review*, doi: 10.1257/aer.20210970.

<sup>5</sup> Praveen, Kumar. (2021). *Contemporary Socio-Economic Challenges and Legal Intervention to Nomadic Tribal Community: A Case Study of Nomadic Prisoners in Bihar*: doi: 10.1177/23944811211020372.

This paper aims to analyze the historical marginalization of denotified and nomadic tribes in India, analyzing the impact of laws and subsequent social conditions from the colonial era to the contemporary period. In addition, it will also investigate how these communities are contesting their socio-legal exclusion by examining their current legislative demands.

### **THE CRIMINALIZATION UNDER THE BRITISH**

While scholars argue that discriminatory attitudes against denotified tribes existed even during the pre-colonial era<sup>6</sup>, it was under British rule in India that they were institutionalized and enforced. The enactment of the Criminal Tribes Act of 1871 classified denotified tribes as ‘criminal’, and by extension, any people born into these tribes as ‘criminal by birth.’ This was borne out of the colonial belief that the existence of such nomadic communities posed a challenge to the British objective to order and control India<sup>7</sup>. Criminal tribes were perceived to be vagrants who existed outside civilized society both because of their wandering nature and their lack of specialization in a trade<sup>8</sup>. In addition, many nomadic pastoralists had risen up against the British during the First War of Independence in 1857.<sup>9</sup>

As a result, the Criminal Tribes Act mandated the registration, surveillance and control of these tribes. Any member born into a notified tribe had to register themselves at the age of 14. Adult male members of notified tribes

---

<sup>6</sup> See Major, Andrew J. (1999) State and Criminal Tribes in Colonial Punjab: Surveillance, Control and Reclamation of the “Dangerous Classes”, *Modern Asian Studies*, 33.3, 657–88 (p. 661); Yang, A. A. (Ed.). (1985). *Crime and criminality in British India* (Vol. 42). Tucson: University of Arizona Press; Peabody N. (2001). Cents, Sense, Census: Human Inventories in Late Pre-colonial and Early Colonial India. *Comparative Studies in Society and History*, 43(4), 819–850; Piliavsky, A. (2015). The “Criminal Tribe” in India before the British. *Comparative Studies in Society and History*, 57(2), 323–354. doi:10.1017/S0010417515000055.

<sup>7</sup>Angela, R., Riley. (2017). *Crime and Governance in Indian Country*. Social Science Research Network.

<sup>8</sup> Jessica, Hinchy. (2020). Conjugalities, Colonialism and the ‘Criminal Tribes’ in North India: *Studies in History*, 36(1):20-46. doi: 10.1177/0257643019900103.

<sup>9</sup> Japhet, S; Diwakar G, Dilip (2015). De-Notified Tribes and Criminal Stigma in Karnataka. *Journal of Social Inclusion Studies*, 1(2), 108–125. doi:10.1177/2394481120150206.

were required to report to the local police weekly.<sup>10</sup> Additionally, members of notified tribes faced special penalties that were much more severe than those that would have been faced by ordinary offenders accused of the same crime. The Criminal Tribes Act of 1871 accumulated arbitrary powers in the hands of local government officials who often misused them.<sup>11</sup> In many districts, this meant that a member of a notified tribe could be randomly picked up, tortured, physically harmed or even killed.<sup>12</sup>

Such a criminalization of nomadic communities was based on the British understanding of the Indian caste system. Colonial knowledge viewed Indian society as classified into fixed racial and cultural identities, instead of as made up of individuals. British colonial conceptions about Indian populations then categorized them into groups - castes, tribes and criminal tribes. This classification occurred on the basis of occupation. Forming this classification within the framework of caste, hence, produced the notion of 'hereditary crime'<sup>13</sup>. Caste was seen as 'the primary object of social classification and understanding' in the colonial 'ethnographic state'<sup>14</sup>. Notified tribes were seen as those who participated in crime as their caste occupation, and would continue to do so with every successive generation. Crime was therefore considered an innate characteristic of notified tribes, justifying the imposition of extensive surveillance over them.<sup>15</sup> According to Tolen 1991, 'the theory that certain people had an

---

<sup>10</sup> Radhakrishna, M. (1992). Surveillance and settlements under the Criminal Tribes Act in Madras. *The Indian Economic & Social History Review*, 29(2), 171-198.

<https://doi.org/10.1177/001946469202900203>.

<sup>11</sup> Radhakrishna, M. (1989). The Criminal Tribes Act in Madras Presidency: Implications for itinerant trading communities. *The Indian Economic & Social History Review*, 26(3), 269-295. <https://doi.org/10.1177/00194646890260030>.

<sup>12</sup> Susan Abraham. (1999). Steal or I'll Call You a Thief: "Criminal" Tribes of India. *Economic and Political Weekly*, 34(27), 1751-1753.

<http://www.jstor.org/stable/4408149>.

<sup>13</sup> Kamble, R. A., Kumar, R., & Roy Chowdhury, A. (2023). 'Ostracized by law': The sociopolitical and juridical construction of the 'criminal tribe' in Colonial India. *History and Anthropology*, 1-21. <https://doi.org/10.1080/02757206.2023.2204866>.

<sup>14</sup> Dirks, N. B. (2001) *Castes of Mind: Colonialism and the Making of Modern India*. Princeton, NJ: Princeton University Press.

<sup>15</sup> Kapadia, K. M. (1952). The Criminal Tribes of India. *Sociological Bulletin*, 1(2), 99-125. <https://doi.org/10.1177/0038022919520203>.

inborn propensity for crime implied that nothing, other than overt control, could prevent them from acting on such propensities'<sup>16</sup>.

Through the Criminal Tribes Act, the British created a new legislative classification of the 'criminal tribe'. This was accepted as an authentic marker of identity due to the hegemonic role of the colonial state in knowledge production at that time.<sup>17</sup> In turn, such a categorization was adopted even by Indian subjects. Branding these communities as criminals meant that they were ostracized, both socially through the stigmatization of their social status and role, and also economically, through the denial of job opportunities that forced them further into performing lower-caste roles. In doing so, notified tribes were pushed to the margins of the state.

Even when the Criminal Tribes Act of 1871 received backlash both internationally and domestically, further amendments only reinforced the marginalization of these so-called criminal tribes. In an attempt to rehabilitate these communities, the Criminal Tribes Settlement Act of 1908 established settlements for their reformation<sup>18</sup>. Between 1910 and 1930, 73 such settlements were created across the country, including in Bijapur, Sholapur and Bombay. In Bijapur, children of many notified communities were forcibly taken away from their homes to work at the large-scale industrial project there.<sup>19</sup> Scholars describe these settlements as prisons - many were often surrounded by barbed wire compounds, and enforced humiliating provisions on their inmates such as restrictions on when they

---

<sup>16</sup> Tolen, R.J. (1991), Colonizing and transforming the criminal tribesman: the Salvation Army in British India. *American Ethnologist*, 18: 106-125.  
<https://doi.org/10.1525/ae.1991.18.1.02a00050>.

<sup>17</sup> Robb, P. (1997). The Colonial State and Constructions of Indian Identity: An Example on the Northeast Frontier in the 1880s. *Modern Asian Studies*, 31(2), 245–283.  
<http://www.jstor.org/stable/313030>.

<sup>18</sup> Radhakrishna, M. (1992). Surveillance and settlements under the Criminal Tribes Act in Madras. *The Indian Economic & Social History Review*, 29(2), 171-198.  
<https://doi.org/10.1177/001946469202900203>.

<sup>19</sup> Gould, W., & Lunt, A. (2020). Labour and Penal Control in the Criminal Tribes 'Industrial' Settlements in Early Twentieth Century Western India. *Studies in History*, 36(1), 47-70. <https://doi.org/10.1177/0257643019900081>.

could attend to basic bodily functions<sup>20</sup>. In doing so, the colonial state created marginal spaces, where they held notified tribes without their will as marginalia. The settlements represented both the physical but also the symbolic 'edges' of a society from which notified communities had been separated.

## **POST-COLONIAL SCENARIO**

As India gained independence from British rule on 15th August, 1947, re-establishing Indian society required a vision for its future<sup>21</sup>. One such aim was outlined in its Constitution, where the Indian state committed itself to achieve 'equality of status and opportunity' for its people. This was accompanied by the explicit acknowledgement that Indian society was driven by 'elaborate, valued, and clearly perceived inequalities'<sup>22</sup>. The members of the Constituent Assembly agreed upon the idea of compensatory discrimination, supported by a framework for constitutionally-guaranteed quotas and other preferential politics, for 'the weaker sections of society'<sup>23</sup>. To do so, the answer to the question of the definitions of disadvantage had to be provided. The category of the 'criminal tribe' was not included in the legal framework of collective rights that were established in the Constitution.<sup>24</sup> And in its exclusion of denotified tribes from the boundaries of disadvantage, the postcolonial state rendered criminal tribes 'undeserving' of state intervention to remedy past discrimination<sup>25</sup>. From its inception, the post-colonial state relegated

---

<sup>20</sup> Milind Bokil. (2002). De-Notified and Nomadic Tribes: A Perspective. *Economic and Political Weekly*, 37(2), 148–154. <http://www.jstor.org/stable/4411599>.

<sup>21</sup> Nicole Lillibridge, The Promise of Equality: A Comparative Analysis of the Constitutional Guarantees of Equality in India and the United States, 13 *Wm. & Mary Bill Rts. J.* 1301 (2005), <https://scholarship.law.wm.edu/wmborj/vol13/iss4/7>.

<sup>22</sup> Narasimha, P. S. (2024). Justice for the Marginalized in a Constitutional Democracy. *CASTE/A Global Journal on Social Exclusion*, 5(2), 302-313.

<sup>23</sup> Galanter, Marc. (1991) *Competing Equalities: Law and the Backward Classes in India*, Oxford University Press.

<sup>24</sup> Gandee, S. (2020). (Re-)Defining Disadvantage: Untouchability, Criminality and 'Tribe' in India, c. 1910s–1950s. *Studies in History*, 36(1), 71-97. <https://doi.org/10.1177/0257643019900089>.

<sup>25</sup> Bishen, A. (2023) *Compensatory discrimination: Is a theory of social construction of*

denoted tribes to a marginal identity.

For the postcolonial state, the criminal tribe was both a subject of control and rehabilitation. And its attitude towards criminal tribes was characterized by a paradox as the nation's new leaders had to balance their desire to reject certain aspects of their colonial past with the need to retain elements, particularly those related to law and order, deemed essential for state governance<sup>26</sup>. After investigations in 1949 and 1950, the Criminal Tribes Act Enquiry Committee released a report that recommended the repeal of the Criminal Tribes Act of 1871<sup>27</sup>. It was significant in its argument against the hereditary origins of crime, contributing that the involvement of certain members of criminal tribes in crime was due to economic, social and political factors. The Committee's report also suggested that the Union Government 'make a liberal contribution not exceeding 50% to the State Governments' for 'concessions similar to those granted to Harijans, Adivasis and other backward classes.'<sup>28</sup> In addition, the government should conduct 'a complete survey of the conditions under which these people live, in order to determine the specific measures that should be adopted'<sup>29</sup>. These recommendations were not implemented.

On 31 August 1952, the Government of India repealed the Criminal Tribes Act. In its place, different states implemented their own Habitual Offenders Act. Gandee describes the freedom granted to the now denotified tribes as 'conditional, contested and often incomplete'.<sup>30</sup> The Habitual Offender Act

---

target population in public policy possible in India? Indian Public Policy Review.  
<https://ippr.in/index.php/ippr/article/view/166>.

<sup>26</sup> Bajrange, D., Gandee, S., & Gould, W. (2020). Settling the Citizen, Settling the Nomad: 'Habitual offenders', rebellion, and civic consciousness in western India, 1938–1952. *Modern Asian Studies*, 54(2), 337-383.

<sup>27</sup> 612 Resolution No. 22/1/49-Police-I. Report of the Criminal Tribes Act Enquiry Committee (1949-50), p. 1.

<sup>28</sup> 634 Report of the Criminal Tribes Act Enquiry Committee (1949-50), p. 105.

<sup>29</sup> 634 Report of the Criminal Tribes Act Enquiry Committee (1949-50), p. 100-101.

<sup>30</sup> Gandee, S. E. (2018). *The "Criminal Tribe" and Independence: Partition, Decolonisation, and the State in India's Punjab, 1910s-1980s* (Doctoral dissertation, University of Leeds).

in many states carried forward the stigma created by the Criminal Tribes Act, treating the denotified communities still as offenders. Members of denotified tribes were routinely arrested in the name of maintaining public order, and did not receive adequate legal representation. Preventive police registers implemented surveillance and recording of their activities. As per the Madras Restriction of Habitual Offenders Act, 1948, settlements were also used by the Chief Commissioner to dispatch any offenders. Many of these settlements had been established during the British colonial rule. As Dilip D'Souza describes, 'the Habitual Offenders Act of 1959 was essentially derived from the repealed CT Act. That it was conceived, consciously or not, as a replacement for it.'<sup>31</sup>

After independence, denotified tribes also found themselves divided among the categories of scheduled caste, scheduled tribe, other backward classes or not at all in different states.<sup>32</sup> This categorization neglected to follow a pan-Indian approach, leading to large regional discrepancies.<sup>33</sup> This has led to a difficulty in accessing reservations or welfare schemes availed under caste certifications. Some communities are not covered by any of the three SC, ST, or OBC categories, leaving their status in many states unknown. There has been no census of denotified and nomadic tribes.

The Indian government has repeated much of the marginalization of denotified tribes that had taken place under the Britishers. However, since that marginalization now originates from a postcolonial independent government supposed to represent the Indian nation, it renders denotified tribes as second-class citizens in their own country, as they are far from

---

<sup>31</sup> D'Souza, D. (2001). *Branded by law: Looking at India's denotified tribes*. Penguin Books. 80-81.

<sup>32</sup> Radhakrishna, M. (2007). *Urban Denotified Tribes: Competing Identities, Contested Citizenship*. *Economic and Political Weekly*, 42(51), 59-64. <http://www.jstor.org/stable/40276878>.

<sup>33</sup> Baxi, S. (2022). *The Denotified and Nomadic Communities and the Challenges to Substantive Citizenship*. In: Behera, M.C. (eds) *Tribe, Space and Mobilization*. Springer, Singapore. [https://doi.org/10.1007/978-981-19-0059-4\\_12](https://doi.org/10.1007/978-981-19-0059-4_12).

realizing much of the benefits of citizenship.

## **CHALLENGING MARGINALIZATION**

Community leaders like Dakxin Chhara of Gujarat and B. K. Lodhi of Uttar Pradesh have become particularly prominent figures. Chhara, who is a member of the Chhara community, has published 120 fiction and nonfiction films for Budhan Theatre, a theater group<sup>34</sup>. The theater uses audio-visual modes such as plays to raise awareness about the conditions of denotified tribes.<sup>35</sup> In the late-1990s, activists like Mahasweta Devi<sup>36</sup> and G. N. Devy launched a national movement for the human rights of these communities.<sup>37</sup> This was the first-time denotified communities mobilized on a large-scale across India. To meet their demands, the Indian government set up the 'National Commission for Denotified, Nomadic, and Semi-Nomadic Tribes' in 2006.

Another strategy used to assert their rights by the community is on the political arena. The community interacts with strong existing political parties in order to negotiate their rights. In April 2014, a delegation from Nat, Mahavat and Sapera communities met Narendra Modi during his campaign in Allahabad for the Lok Sabha Elections. They demanded reservations from the Bharatiya Janata Party, with the goal of demonstrating 'that DNTs are not born criminals, they are humans with real emotions, capacities, and aspirations.'<sup>38</sup> In 2017, the Nat community in Bundelkhand demanded a temple for their deity. This demand pushed

---

<sup>34</sup> Singh, R.S. (2021) Criminalisation and political mobilization of nomadic tribes in Uttar Pradesh, *Economic and Political Weekly*.

<sup>35</sup> Hasan, Imaad ul (2020): "Denotified 68 Years Ago, 'Criminal' Tribes Still Fight Stigma, Poverty," *Outlook*, 30 August, <https://www.outlookindia.com/website/story/india-news-denotification-68-years-ago-on-this-day-ex-criminal-tribes-still-fight-stigma-poverty/359558>.

<sup>36</sup> Devi, M. (2003). *Chotti Munda and his arrow* (G. C. Spivak, Trans.). Blackwell Publishing.

<sup>37</sup> Krishnamachari, S. (2018) Dr. Devy speaks on dialects and the importance of mother tongue, *The Hindu*.

<sup>38</sup> Dainik Hindustan (2014): "Ghumantoo Samudayon Ne ki Arakshan Kee Maang," 5 May, Allahabad.

for religious equality, as the upper-caste community already had a large temple in their locality.<sup>39</sup>

Communities in a position of marginalia find themselves with the responsibility placed on them to demonstrate their value to society in order to challenge their marginalization. This happens through having to approach, engage with, and even challenge those in positions of authority despite the community's vulnerability. Denotified tribes in India, similarly, have had to navigate social prejudices and systemic barriers in order to assert their rights and dignity.

## **CONCLUSION**

The historical development of denotified and nomadic tribes in India shows a trend of continued marginalization due to societal attitudes and legal structures. Even in the postcolonial state, the categorization and control of the colonial state has persisted, forcing denotified tribes to the periphery of society. Denotified tribes, however, have fought against this marginalization by organizing politically and engaging in grassroots activity. Going ahead, official institutions and civil society must work together to address the marginalization of denotified and nomadic tribes. To break down long-standing barriers and guarantee genuine inclusion, comprehensive legal reforms, focused welfare initiatives, and inclusive development plans are essential. India can actually deliver on its promise of justice and equality for all of its residents by acknowledging the worth, autonomy, and contributions of denotified tribes.

---

<sup>39</sup> Baxi, S. (2022). The Denotified and Nomadic Communities and the Challenges to Substantive Citizenship. In: Behera, M.C. (eds) *Tribe, Space and Mobilization*. Springer, Singapore. [https://doi.org/10.1007/978-981-19-0059-4\\_12](https://doi.org/10.1007/978-981-19-0059-4_12).