

Colonial Legacy Of The Criminal Tribes Act 1871: The Trajectory Of The State –Led Stigmatization And Marginalization Of Nomadic Communities

Digvijay Singh Pathani

Assistant Professor

Department of Political Science

Uttarakhand Open University, Haldwani, India

Abstract: Nomadism, in the context of India, was a way of life for several communities. This itinerant lifestyle sometimes had an economic rationale, as in the case of transhumant pastoralists and traveling traders and craftsmen. At other times, it was a response to prolonged stressful events in history, such as long-drawn wars and famines. These communities, not bound to specific geographic locales, would often cross political boundaries of states.

The British colonial state in India often viewed these communities with suspicion. The colonial state's belief in the establishment of a strong, well-ordered state system with defined political boundaries clashed with the mobile lifestyle of such nomadic and semi-nomadic communities. In order to establish control over these communities and force them to adopt settled lifestyles, the British introduced the Criminal Tribes Act of 1871. This legislation made provisions for strict surveillance, control, and regulation of the movements of entire communities declared "habitually criminal." This led to the continued stigmatization and marginalization of these communities, who were vulnerable to brutal treatment by the colonial police.

After independence, with the repeal of the Criminal Tribes Act, these communities came to be known as "De-notified Tribes." However, they remained vulnerable to victimization by the state and police through the newly enacted Habitual Offenders Act of 1952. The long-term stigmatization by the colonial state led to continued marginalization of such communities even after independence. Considerable efforts are still needed for the effective social inclusion and welfare of these communities.

In this paper, we examine the trajectory of the stigmatization and marginalization of nomadic communities by the colonial state, as well as post-independence efforts toward their social inclusion and welfare.

INTRODUCTION: DEFINING NOMADISM

Nomadism can be described as a way of life characterised by mobility. It is often defined in several ways, but the central feature of nomadism is mobility as a part of the lifestyle of a community. Debate exists over the concept of 'pure' nomadism and the extent of mobility required for a community to be classified as nomadic. A more systematic definition of the phenomena of nomadism can be 'communities whose primary resource extraction strategy, be this animal husbandry, foraging, trade or servicing, is based on recurrent physical mobility'¹. Several different forms or typologies or strategies of nomadism can be observed like transhumant pastoralists who migrate with their flocks in search of greener pastures, hunter gatherer groups which might seasonally follow their prey populations and peripatetic groups which travel to ply their trades like iron-smiths, copper-smiths and itinerant merchants. All these strategies take advantage of a niche available in the societal ecology and often complement the needs of sedentary communities. We also see the adoption of nomadism by sedentary communities as a response to prolonged stressful events like wars and famines. Therefore nomadism apart from a lifestyle is also a strategy of survival adopted by several communities as a result of various social, economic, historical and political reasons.

NOMADISM IN INDIA: TYPOLOGIES

As we have noted nomadism as a category presents multitudes of modes and variations. Also nomadism and sedentism are not water tight compartments but ends of a continuum. Some nomadic communities like the pastoralist Gaddis, Van Gujjars, Rabaris might seasonally move camp from one place to another. Tribes practicing slash and burn (jhoom, podu) agriculture might stay at a place for year or two before the fertility of the patch of land they might be cultivating currently reduces to an extent that they are forced to move to a new patch. Similar economic reasons and need for new markets may force peripatetic craftsmen to move from settlement to settlement, case in point are the moving ironsmiths like Gadiya Lohars who move from village to village repairing agricultural tools of rural communities. Several of these communities though on the move for considerable periods of time do not see themselves as essentially nomadic. The Gaddi pastoralists of Himachal though on the move for considerable periods of time do not see themselves as essentially nomadic similar is the case of Raika/Rabari of Western India while on the other hand some like the Van Gujjars do have a self image of being nomads. This again confirms that when approaching nomadism as a concept we should not see sedentism and nomadism as a dichotomy but as a continuum².

There have been attempts at classification of these strategies of nomadic communities in India. A basic and simple categorization as given by Rao and Casimir (2001)³-

1. Pastoralists or animal husbanders- communities who are traditionally economically dependent on their livestock like Gaddis, Van Gujjars, Rabaris, Dhangars and Anwals.
2. Itinerant peripatetic craftsmen, peddlers, traders, entertainers – non food producing / extracting communities subsisting over sale of sometimes self produced goods other times provision of hereditarily learned services to sedentary societies - Gadiya Lohars, Nats and Banjaras.
3. Foragers or hunter-gatherers – dependent on subsistence strategy of gathering, foraging forest resources and hunting using various methods with traditionally little access to cultivable lands - Konda Reddis, Pardhis and Cholanayakas

Again it has to be noted that even among these categories are clusters as these are primarily resource extraction strategies they often overlap and one community can rely on two or more of the above strategies for sustenance, a sort of hybrid strategy⁴-

- i) Forager-Peripatetics who would extract forest resources for their own use as well for sale like the Birhor, Mankar and Korava.
- ii) Pastoralist-Peripatetics who do not own herds but sell their services of herding to settled clients like the Humli Khampas, Anwals and Pohol.
- iii) Agricultural-pastoralist a fairly common typology across several communities
- iv) Agricultural itinerant traders like the peasant traders of Ladakh.

Many such nomadic communities in pre-modern society would often complement the needs of settled societies. This is especially true of communities like the *Banjaras* (endonym *Ghormati*) who were involved in transportation and logistics in the pre modern era. The settled societies in India with their established caste norms often viewed these communities with suspicion due to their divergent norms. Many of these communities especially the forager gatherers and peripatetics were at the fringes of settled caste oriented mainstream society because of their mobile nature and divergent norms. The British upon their arrival with their colonial imagining of Indian Society as settled and agricultural saw these often mobile communities as a threat to their attempt of establishing a strong state system. They responded with various measures to control

and establish their authority over such communities with various executive measures and draconian legislations like the Criminal Tribes Act.

COLONIAL STATE AND NOMADIC COMMUNITIES IN INDIA

The establishment of the British colonial state in India happened during a period of tremendous turmoil. The political upheaval of the 18th century due to widespread disorder in the aftermath of the weakening of the Mughal Empire and the subsequent struggle for power led to tremendous disruption in the economic life. The recurrent and long lasting famines which had become a regular feature of life in the sub-continent in that era also led to increase of communities adopting a peripatetic lifestyle for survival. As we have noted earlier nomadism is primarily a strategy which has been adopted by various communities responding to various pressures in history.

Economic disruptions introduced by colonial state itself had led to considerable impact on the livelihood of many communities. The disruption of the traditional craftsmen industry of India by the colonial state is well known. Many of these destitute craftsmen were forced into agriculture as a means of sustenance. This led to tremendous pressures on the already over-burdened land resources. Many craftsmen also adopted the peripatetic-itinerant lifestyle which led to an increase in the nomadic populations during the 18th and 19th century.

The colonial state in its efforts to establish a strong state often found nomadic communities particularly challenging. The British had spent considerable efforts to pacify the war torn country-side after they assumed the control of the country. These included disarming often by force and pacifying military mercenary, auxiliary groups which had sprung up in the wake of weakening of central authority and the struggle of power among various claimants including the British. These included amorphous groups like Pindaris who had functioned as loose auxiliaries of several native princes, religious brotherhoods which during the century of turmoil took up arms against the British like the jogi, jangam, sanyasi and fakirs who were a part of the Sanyasi Revolts. The British also had to deal with the general decline in the law order due to political chaos. Highway robbers and dacoit gangs which were often termed as Thugs evoked a heavy British state response. The British erroneously associated many traditional nomadic communities with these elements.

Similarly there had been on the part of the colonial state's orientalist tendency to classify the natives in racialist terms. As has been observed by various scholars like Ranajit Guha that these categories were often merely colonial constructs much like the *martial races theory*, the criminal tribe term was attached by the British to 'any wandering groups, nomadic petty traders and pastoralists, gypsy types, hill- and forest-dwelling tribals, in short, against a wide variety of marginals who did not conform to the colonial pattern of settled agricultural and wage labor'⁵ (Arnold quoted by Major, 1999)

Some critics also point to the fact that these labels were not invented out of thin air and that the settled caste oriented societies often had a rather condescending view towards many of these communities which were at the margins of mainstream societies.⁶ The British were merely adopting and strengthening the already existing view of these communities among the settled caste oriented society.⁷

Dealing with challenges of such communities which were difficult to control the British colonial state came up with the Criminal Tribes Act. **Criminal Tribes Act** was draconian legislation passed by the British Government which declared some communities to be 'born criminals'. It declared that notified tribes (that is to say communities included in notification) were in effect habitual criminals. This sort of assumption of heritability of criminality was an expression of the prevalent racialist discourse popular in and among the European colonial powers of the time. In addition the Act mandated registration of members of these

communities by local authorities. This was done to affect a strict state of surveillance on nomadic communities and to curtail their movements.

The District Magistrate would notify the tribes under the Act and it was the Superintendent of Police who was responsible for the registration of the members belonging to said tribe. Even a record of their fingerprints was maintained. They were to report to the police periodically and could move only if issued passes. Thus active restrictions were placed on the movements of notified nomadic communities⁸.

In addition to this system of police surveillance the state also setup reformatory settlements to force settle such communities. There were strict punitive provisions for non-compliance. This Act was an attempt by the colonial state to curb a way of life which it had struggled to control.

According to some critics the landed and dominant caste communities were often firmly behind the British efforts to force settle such communities as they could benefit from cheap labour these forcibly settled erstwhile mobile landless communities would supply. Dr. Ramnarayan Rawat commenting on the operation of the Criminal Tribes Act as it was slowly extended to other areas of British India observes that the communities which came under its ambit were those which were already at the fringes of the caste hierarchy. This labelling had a considerable impact on these already marginal communities⁹. The stigmatization became a vicious circle which contributed to already existing narrative of their habitual anti-social behaviour.

POST INDEPENDENCE DE-NOTIFICATION AND CONTINUED STIGMA

The provisions of the oppressive acts like the Criminal Tribes Act did not escape the prying eyes of many nationalist leaders critical of the colonial hegemony in India. Jawaharlal Nehru in 1936 commenting on the unfair provisions of the Act called it 'monstrous' and a 'negation of civil liberty'¹⁰.

Addressing the Constituent Assembly H J Khandekar representative from the Central Provinces in Berar observed¹¹

'But unfortunately there are ten million people in India who, without any fault on their part, are described as criminal tribes from their very birth. Hundreds of thousands of men and women in India were declared as criminal tribes according to the current law. To deprive them of their rights they are declared so. No matter whether they are criminals or not, from their very birth, they are made criminals. Some provision to abolish this law must be embodied in this Resolution. I hope the mover will realize it and provide some safeguards for this Class in the Resolution'

In 1947 in the Bombay Presidency a commission under the chairmanship of B G Kher was constituted to look into the case of Criminal Tribes.

Subsequently the Criminal Tribes Act was repealed first in Madras Province due to the efforts of leaders like P Ramamurthy, U M Thevar and P Jeevanandam.

When Criminal Tribes Act was finally repealed across India it led to decriminalization of some 2 million people. These tribes now de-notified came to be known by the nomenclature De-notified tribes or Vimukta Jatis (*freed tribes*). The stigma of being labeled criminal however persisted and so did the brutalization by the police under the garb of the newly passed Habitual Offenders Act 1952.

The cause for the continued state led marginalization of the de-notified communities has been succinctly explained by G. N. Devy as 'Their persecution continues, and indeed has worsened through legislation such as the Habitual Offenders Act (HOA) and the Prevention of Anti-Social Activity Act (PASA), the very nature of the police training and, more importantly, thanks to the general indifference and distrust of citizens towards them.'¹²

The identification and nomenclature of these tribes also created several problems. Many different terms were used to describe tribes that had been victims of the Criminal Tribes Act such de-notified tribes, vimukt , janjati, nomadic and semi-nomadic tribes in different states. The tribes which came within the purview of the Criminal Tribes Act which was in operation for three quarters of a century included a wide diversity of groups. This problem of various nomenclatures sometimes led to non- inclusion of some of these groups in the state sponsored schemes for affirmative action for weaker sections. They also suffered from missing out on government sponsored social security initiatives, health, education and other development programs due to the lack of fixed habitation and mobility. In addition a long history of being ill-treated by the state created among them apprehension them towards the government.

Central Government constituted the **National Commission for De-notified, Nomadic and Semi-Nomadic Tribes** (NCDNSNT) under the chairmanship of Balkrishna Sidram Renuke to improve the living conditions of the De-notified Tribes. Its terms of reference included suggesting economic interventions, identify problems and suggest programs for health, education and development of the De-notified tribes.

The Renuke Commission observed that de-notified and nomadic tribes constituted about 10 percent of the country's population. Most of them were included in the Scheduled Castes, Scheduled Tribes and Other Backward Classes Lists but many were not able to claim benefit of the support and affirmative action programmes run by the government due to lack of awareness. The Commission suggested that the list compiled by it be sent to the States so that they can include such tribes in their own lists to preclude any exclusion. Further it suggested state lists of such communities be rationalised as many communities names appeared twice in the State lists these duplications were also deleterious to the efforts to reach the real beneficiaries.¹³

These recommendations were considered and implemented by many state governments which started the process of better inclusion of many De-notified tribes in their state lists to avoid their exclusion from the development programs and affirmative action initiatives.

Again in 2014, the Central Government constituted the Idate Commission to look into the problems faced by the De-notified, Nomadic and Semi-nomadic Communities. The Idate Commission in its reports recommended the listing of the unlisted members of the De-notified, Nomadic and Semi-nomadic Communities (those not included in any list) in the OBC list. It also recommended the enhancement of the legal safeguards for the said communities by adding a third schedule in the SC/ST (Prevention of Atrocities) Act, 1989. It also recommended the establishment of a permanent commission for the De-notified, Nomadic and Semi-nomadic Communities. Further it recommended the proper survey to be conducted to estimate the true population of the De-notified, Nomadic and Semi-nomadic Communities.

The above recommendations of the commission are being considered by the Government. Many of the state governments have acted on the recommendation of the previous commissions in order to ensure better inclusion of the De-notified, Nomadic and Semi-nomadic Communities in their social security initiatives and affirmative action programs.

The long legacy of the Criminal Tribes Act continues to act as a hurdle in the development and social inclusion of many De-notified, Nomadic, and Semi-nomadic communities. The de-notification after independence did not reduce their marginalization; instead, it perpetuated it through other means. Only through targeted policies can the benefits of government programs reach this vulnerable section of society, which has historically been a victim of both hostility and neglect by the state and the mainstream.

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