

BRANDED 'BORN' CRIMINALS:

RACIAL ABUSES AGAINST DENOTIFIED AND NOMADIC TRIBES IN INDIA

INFORMATION FOR THE CONSIDERATION OF THE
COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
IN REVIEWING
INDIA'S FIFTEENTH TO NINETEENTH PERIODIC REPORTS

February 2007

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The Resist Initiative International, a south asian human rights and democracy organization is extremely concerned by the failure of the Indian Government to safeguard the rights of Denotified and Nomadic Tribes (DNTs). It is an impossible notion to claim that a person can be born a criminal however DNTs are being branded at birth. The notion that these people are criminals from birth is so embedded in Indian society that harassment, racial discrimination, and prejudice seem to be standard practice without any accountability or justice being taken. There are laws to protect DNTs against persecution on the basis of their ethnic group but these are not being enforced.

History of so-called born criminals in India

The social category generally known as the Denotified and Nomadic tribes of India covers a population approximately of 60 million. Some of them are included in the list of Scheduled castes, some others in the Scheduled Tribes, and quite a few in Other Backward Classes. But there are many of these tribes, which find place in none of the above. What is common to all these DNTs is the fate of being branded as 'born' criminals.

The Denotified and Nomadic tribes make up about 60 million of India's population. There are 313 Nomadic Tribes and 198 Denotified Tribes. The names of the Denotified tribes in the state of Maharashtra, some of which are featured in this report, are Berad, Bestar, Bhatma, Kaikadi, Kankarbhat, Katabu, Lamani, Phase-Pardhi, Raj-Pardhi, Rajput-Bhatma, Ramoshi, Vadar, Waghari and Chhapparbandh. The Nomadic Tribes: Bawa, Beldar, Bharadi, Bhute, Chalwadi, Chitrakathi, Garudi, Ghisadi, Golla, Gondhali, Gopal, Helwe, Joshi, Kasi-Kapadi, Kolhati, Mairal, Masan-Jogi, Nandi-Wale, Pangul, Raval, Shikalgar, Thakar, Vaidu, Vasudeo¹.

¹ Motiraj Rathod (200) 'Denotified and Nomadic Tribes in Maharashtra'.

Traditionally the tribes wander and therefore have not integrated into Indian society, as well as being a tradition it is also due to the tribes not having any livelihood production.

India's Draft National Policy in Tribals does not include Denotified or Nomadic Tribes. The term 'Criminal Tribes' originates from the British colonial times. The British initiated the Criminal Tribes Act in 1871, referring to around 150 tribes for their so-called "criminal tendencies," giving the police wide powers to arrest them, control, and monitor their movements. The law in effect was that anyone born into one of the tribes, under this act, was seen as a criminal.

In 1952, the Indian Government withdrew the Criminal Tribes Act of 1871 throughout India and enacted 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 Denotified and Nomadic under the Habitual Offender's Act also negates the principle of the criminal justice system - innocent until proven guilty.

There is no political will to eradicate such on going racism and violations of the tribal people and therefore any initiatives to do so have no success. In the Five Year plan to rehabilitate the Denotified Tribes, the Indian Planning Commission made a stipulation of Rs. 3.5 crores to insure the resettlement of ex-criminal tribes and programs to assist them in integrating into Indian community life. Since the first Five Year plan there have been three more similar attempts to rehabilitate the tribes. However, the racist approaches to these initiatives continue and the outcomes have inevitably not been successful.

In the late 1990s, the government moved to abolish the Habitual Offenders Acts. The judiciary reviewed the custodial death cases of Budhan Sabar in West Bengal and Pinya Hari Kale in Maharashtra. In landmark judgments, the judges found the police guilty, punished

responsible police officers, and awarded compensation to survivors.² Although a significant incident for accountability by the State, it did not become a turning point in the lives of the DNT's. The decision did not change the attitude of the forces or the administration and no equality or respect for the DNTs were shown by society as remains today.

The Telegraph in July 31, 1998 reported on the reasoning behind the lack of progress on integrating the DNTs : "Madhya Pradesh Chief Minister Digvijay Singh today expressed concern over a series of recent robberies in Madhya Pradesh by Pardhi tribals, identified as having criminal antecedents. These tribes [*sic*], listed as criminal ethnic groups, have defied the efforts of the government to rehabilitate them. The CM said state projects to provide these people with education did not have any impact on their criminal instincts. Pardhis have "criminal antecedents," are "listed as [a] criminal ethnic group," and nothing the state does seems able to change "their criminal instincts." This article shows the brutality, racism, and prejudice towards the DNTs remains part of Indian culture.

The residual effects of 1871 Criminal Tribes Act are manifested in the wide range of atrocities perpetrated on members of these so-called "criminal" tribes by those whose prejudice has not subsided. Deep-seated discrimination has led to various types of horrific treatment of many of these tribes in different parts of the country. Many tribes booked under this Act are without the knowledge or awareness that the destruction of their lives and the situation they are in is due to the State and the non-tribal people.

Between 1979 and 1982, forty-two Lodha were mob-lynched without suspicion of crime but based on their tribal identity. Police have yet to take any action on any of the cases.

² Tarun Jain (Feb 2007) 'Defying labels, defining themselves'

Abuses against Denotified and Nomadic Tribes.

On January 30th 2007, the Forum for Fact-Finding and Advocacy filed a petition to National Human Rights Commission. Deba Paharia, was allegedly murdered in a remote village on January 6, 2007. In response, several men and 3 ladies were arrested and taken to Sundarpahar police station in Jharkhand on January 9 (the police contest this date and claimed that the arrests occurred on January 11). The men were allegedly physically assaulted, and witnesses confirm that there were tell-tale marks of police brutality on their bodies. The three female victims (all aged between 28 and 31) claim that they were illegally detained, and that during that detention they were subjected to torture, rape, that they were stripped and paraded naked around the police station, and that the police stole Rs.120 from them. The victims have identified the perpetrators as the officer-in-charge, Dipnarayan Mandel and another officer, Mahadev Oraon.

In 2006, the Government of Jharkhand initiated a scheme to form an armed police battalion comprising of primitive tribes. It was allegedly an attempt to rehabilitate the Paharias, one of the nine primitive tribes in Jharkland. It appeared to be a battalion of a special police force. Out of the 1.92 lakh primitive tribe population in the state, comprising as many as nine groups, as many as one lakh happen to be Paharias. Among all the primitive tribes in the state, there are only 101 graduates, according to welfare department officials³. Although supposedly a rehabilitation initiative, it derives from the fundamental basis of discrimination that these tribes were born with criminals or with criminal attributes. The Forum for Fact-Finding and Advocacy filed a complaint to the National Human Rights Commission on this issue. Without providing a chance for defending the case to Forum for Fact-finding Documentation and Advocacy, National Human Rights Commission dismissed the complaint. It is against the principle of cardinal principle of natural justice. The Government of India permitted the State Government of Jharkhand to form the tribal battalion on the basis of their ethnicity.

³ (The Telegraph Feb 2006)

According to the Indian Confederation of Indigenous and Tribal People (ICITP), 80 percent of the tribal populations live below the poverty level. In 1998, the National Human Rights Commission established a panel to investigate the condition of the country's 20 million denotified tribal people. During 2000, the panel prepared a report for the National Human Rights Commission on their condition, which recommended that the Habitual Offenders Act, aimed at the denotified and nomadic tribes, be repealed. At year's end, no action had been taken on this recommendation. According to the ICITP, more than 40,000 tribal women, mainly from Orissa and Bihar, have been forced into situations of economic and sexual exploitation; many come from tribes that were driven off the land by national park schemes. Special courts to hear complaints of atrocities committed against tribal people were to have been established under the Protection of Civil Rights Act, but this never was accomplished⁴.

In September 2006, a Bhil woman was attacked and raped by a Madhya Pradesh police officer while her brother-in-law was tied up and beaten after trying to protest her rape. After in incident, on arrival at the police station to report crime, the police harassed the pair and refused to file their complaint. The situation erupted and subsequently other Bhil tribal members, due to the inaction towards the perpetrators, fought with police.

The Tribal Welfare Research Institute, a Jharkhand government organisation, has undertaken an intensive survey of the Primitive Tribal Groups. In their reports, it was found that the two Pahariya groups in Pakur district have pledged for loans around 2,500 acres of precious agricultural land. The official survey by the institute has revealed that out of 22 districts, in 14 districts the Primitive Tribal Groups have taken loan of over Rs 1.4 crore of which only Rs 64 lakh have been disbursed by the banks. This loan amount was overwhelming especially when considering

⁴ (Country Reports on Human Rights Practices -Released by the Bureau of Democracy, Human Rights, and Labor March 2002)

that 80 per cent of the populations were making a living of less than Rs 600 per month. Only 1.09 per cent had an income of more than Rs 1,000. They belonged to Korwa tribe living in Garhwa district⁵.

In 2003, the government in Jharkhand aimed to acquire tribal land from the Paharias in order to pursue a coal-mining project in the region. The project breached the Land Acquisition Act and the Santhal Pargana Tendency Act, would have deleterious effects for over 50,000 tribal members.

In Madhya Pradesh, the impoverished status of many of the Bhil people has resulted in the International Labor Organization finding that they constitute a significant portion of bonded labor in the agricultural sector there. In perhaps the most publicized of these cases, the threat of submersion posed by the Narmada Valley damn project is borne primarily by the Bhil tribe. They are the primary inhabitants of the and in the Narmada Valley, having occupied it for centuries. The perception of the Bhil's as 'criminal' seems to render their rights unimportant in the eyes of the government and private enterprises, which seek to benefit from harnessing the resources of the region.

On August the 28th 2001 a Pardhi woman, after her sons were falsely arrested, ignited herself in protest in court. This incident led to merchants burning down over 100 homes belonging to Pardhi villagers.

These are only a few cases of violence and other atrocities that have been committed against the "criminal" tribes of the Paharia, Lodha, Pardhi and Bhil and other DNT's. There are more on record, which date back to before independence. The incidents demonstrating the difficulty many of these tribal members face in filing reports with the police, suggest that many more violations have occurred though have yet to be recorded. There are 60 million "de-notified" tribal members who are ostracized and

⁵ (*Hemendra Narayan (2006)* Still waiting for progress- Tribes at crossroads in The Telegraph India)

victimized, particularly by the police. The number of cases recorded however is only a small fraction.

Conclusion

DNT's are distinguished in relation to their ancestry, their race – this discrimination prejudices their benefit of many human rights – the right to life, liberty and security, the right to equality before law, and the right not to be discriminated against. It is also important that the specific human right violations made by state authorities, including police, against these tribes are accounted for by the State and the colonial view that DNTs have “criminal tendencies” are not used to scapegoat these victims or deny them justice to human right violations that they have suffered. There is also the need for adopting policy measures and ending the existing racial laws in India.

We respectfully ask the members of the Committee on the Elimination of Racial Discrimination to raise these issues with the government of India and ask concerted effort to end all racial discrimination against the Denotified and Nomadic Tribes by ensuring its commitment to international human rights standard and principles.