
CONSTITUTIONAL SILENCE AND THE NOMADIC QUESTION: A CRITICAL INQUIRY INTO THE HUMAN RIGHTS OF NOMADIC AND DENOTIFIED COMMUNITIES IN INDIA

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INTRODUCTION:

Denotified, Nomadic and Semi-Nomadic Tribes (DNT/NT/SNTs) are among the most marginalised communities in India. The Renke Commission estimated that these communities constitute nearly 10% of India's population, comprising around 10–12 crore people, with more than 1,200 DNT/NT/SNT groups officially identified. Historically, they were criminalised under the Criminal Tribes Act and branded as “hereditary criminals” during colonial rule. Although the Act was repealed in 1952, the stigma and surveillance continue through Habitual Offenders laws and discriminatory practices. Despite constitutional guarantees under Articles 14, 15, 19, 21, and 46, these communities continue to face denial of identity documents, education, housing, healthcare, livelihood opportunities, and protection from arbitrary police action. The absence of separate census data and a comprehensive legal framework has further deepened their invisibility and exclusion from mainstream society. This research critically examines the constitutional and human rights status of NT/DNT communities through constitutional analysis, judicial interpretation, international human rights standards, and ground-level realities in India.

BACKGROUND OF THE STUDY:

India harbours one of the world's most complex mosaics of itinerant and semi-itinerant population groups, broadly classified as Nomadic Tribes (NTs) and Denotified Tribes (DNTs). These communities—numbering approximately 150 million people across 1,500 distinct groups—have traversed the Indian subcontinent for centuries, sustaining livelihoods through traditional crafts, performing arts, animal husbandry, trade, and seasonal agriculture. The colonial encounter proved catastrophically transformative for these communities. The Criminal

Tribes Act, 1871 (CTA), enacted by the British colonial administration under Lieutenant Governor Sir Henry Davies, branded entire communities as 'born criminals', imposing systematic surveillance, forced settlement, and restrictions on free movement. The CTA was amended in 1876, 1897, and 1911 to expand its ambit, eventually covering over 160 communities across British India. This legislation represented one of the most egregious exercises of collective criminalisation in legal history, targeting communities not for acts committed but for inherited identity. Post-Independence India formally repealed the CTA through the Criminal Tribes Laws (Repeal) Act, 1952, 'denotifying' these communities—hence the appellation 'Denotified Tribes.' However, the Habitual Offenders Acts enacted by several State governments, including Andhra Pradesh (1948), Bombay (1959), Karnataka (1961), Tamil Nadu (1948), and Rajasthan (1954), perpetuated the colonial logic of criminalisation by targeting persons deemed habitually prone to offending.

CONSTITUTIONAL FRAMEWORK:

The Constitution of India, adopted on 26 November 1949, incorporates an elaborate framework of fundamental rights and directive principles. Article 14 guarantees equality before the law; Article 17 abolishes untouchability; Articles 15 and 16 prohibit discrimination on grounds of religion, race, caste, sex, or place of birth; and Article 21 protects life and personal liberty. The Fifth and Sixth Schedules confer special administrative protections upon Scheduled Tribes in designated areas¹. However, nomadic and denotified communities occupy a juridically indeterminate space. While some NT/DNT groups are listed under Scheduled Castes (SCs) or Scheduled Tribes (STs) in specific States, the majority remain outside these protective classifications. The National Commission for Denotified, Nomadic, and Semi-Nomadic Tribes (NCDNSNT)—constituted under the chairmanship of Justice B.S. Chauhan in 2015—estimated that only 30% of identified NT/DNT communities enjoy SC or ST status². The absence of a consolidated central enumeration, the non-inclusion in the Census as a separate category, and the failure of the State to confer a constitutionally recognised identity upon these communities represent a structural lacuna in the Indian constitutional order. They remain, in the memorable phrase of the Renke Commission (2008), 'the most neglected among the neglected'³.

¹ Constitution of India, 1950, arts 14, 15, 16, 17, 21, Fifth Schedule, Sixth Schedule. See H.M. Seervai, *Constitutional Law of India: A Critical Commentary* (4th edn, Universal Law Publishing, 2013) vol 1, ch 9.

² NCDNSNT (n 1) 18–21. The Chauhan Commission was constituted by Order dated 21 February 2014 under Section 3(1) of the Commissions of Inquiry Act, 1952

³ Renke Commission, Second Report (n 1) 1 ('the most neglected among the neglected'). The phrase encapsulates

INTERNATIONAL HUMAN RIGHTS DIMENSIONS:

At the international level, the rights of nomadic peoples intersect with a broad network of treaty obligations and soft law instruments.

- **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS** (ICCPR), ratified by India, guarantees freedom of movement (Article 12) and the principle of non-discrimination.
- **INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS** (ICESCR) ensures the right to an adequate standard of living (Article 11) and the right to participate in cultural life (Article 15)⁴.
- **UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES** (UNDRIP), though non-binding, recognises collective rights such as land rights, cultural identity, and protection from forced displacement.
- Additional protection is provided through the **CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION** (CERD) and the **CONVENTION ON THE RIGHTS OF THE CHILD** (CRC).
- **ILO CONVENTION NO. 169 ON INDIGENOUS AND TRIBAL PEOPLES** further strengthens the international legal framework by recognising the rights of indigenous and tribal communities to land, culture, and self-determination⁵.

EXISTING POLICY AND LEGISLATIVE RESPONSES:

India has taken several policy-level steps to address the nomadic question. The National Policy for Skill Development and Entrepreneurship (2015) includes DNT communities as a target

the double marginalisation — social and juridical — of NT/DNT communities.

⁴ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 12 (freedom of movement). India ratified the ICCPR and ICESCR on 10 April 1979

⁵ United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (13 September 2007). India voted in favour of the Declaration. See also Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) (CERD); Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) (CRC); ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, 27 June 1989, 1650 UNTS 383 (not ratified by India but applicable as customary international law in relation to indigenous peoples' rights).

group. The Dr Ambedkar Pre-Matric and Post-Matric Scholarship schemes have been extended to DNT students. The Ministry of Social Justice and Empowerment established a dedicated Development and Welfare Board for De-notified, Nomadic and Semi-Nomadic Communities (DWBDNCs) in 2019. The SEED (Scheme for Economic Empowerment of DNTs) Scheme was launched in 2022⁶. Notwithstanding these initiatives, no dedicated legislation comparable to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, exists for NT/DNT communities. The National Human Rights Commission (NHRC) has periodically flagged the continuing vulnerability of these communities to police excesses, arbitrary detention, and denial of welfare entitlements—yet legislative and judicial responses have remained tepid⁷.

STATEMENT OF THE PROBLEM

India's commitment to constitutional equality and its obligations under international human rights law stand in stark tension with the lived reality of nomadic and denotified communities. Despite the formal repeal of the Criminal Tribes Act in 1952, the constitutional architecture has not been deployed to its full normative potency to dismantle the structural exclusions these communities suffer. Several discrete but inter-connected problems constitute the research problem of this study:

- The absence of a uniform, constitutionally anchored definition of 'Nomadic' and 'Denotified' Tribes results in their exclusion from protective legislative frameworks and entitlement schemes.
- The continued operation of the Habitual Offenders Acts across multiple States perpetuates colonial patterns of criminalisation, contravening Articles 14, 19, 21, and 22 of the Constitution and Articles 9, 14, 15, and 17 of the ICCPR.
- The lack of domiciliary addresses and fixed settlements renders nomadic communities unable to exercise foundational constitutional rights—including the right to vote, access PDS entitlements, enrol children in schools, and obtain identity documents—thereby

⁶ Ministry of Social Justice and Empowerment, 'SEED Scheme: Scheme for Economic Empowerment of DNTs' (Government of India, 2022).

⁷ National Human Rights Commission, Annual Report 2021–22 (NHRC, 2022) ch 5 (Police Excesses and Marginalised Communities)

generating what may be termed 'constitutional homelessness.'

- The judicial branch has inconsistently engaged with the rights of nomadic communities, and the existing jurisprudence remains sparse, fragmented, and bereft of a coherent doctrinal framework grounded in transformative constitutionalism.
- International human rights norms—particularly those under ICCPR, ICESCR, CERD, CRC, and UNDRIP—have not been adequately domesticated into Indian constitutional interpretation with reference to nomadic communities.

The central research problem, therefore, is: How has the Indian constitutional and legal order engaged with the rights of nomadic and denotified communities, and to what extent does this engagement comply with or deviate from international human rights standards?

RESEARCH OBJECTIVES

1. To critically examine the historical trajectory of the criminalisation of nomadic communities in India, from the Criminal Tribes Act, 1871, to the present-day operation of Habitual Offenders Acts, and assess their constitutional validity.
2. To examine the international human rights framework applicable to nomadic peoples—including ICCPR, ICESCR, UNDRIP, CERD, ILO Conventions, and CRC—and assess India's compliance therewith.
3. To analyse the constitutional framework governing the rights of nomadic and denotified communities in India, identifying normative gaps and structural exclusions within the current legal regime.
4. To critically evaluate the jurisprudential development concerning nomadic and denotified communities in the decisions of the Supreme Court of India and various High Courts, and, based on this analysis, to propose a comprehensive legislative, judicial, and policy reform framework for the effective realisation of their constitutional and human rights.

RESEARCH QUESTIONS:

1. How far does the legacy of the Criminal Tribes Act, 1871, continue to inform the

contemporary operation of Habitual Offenders Acts, and are such laws constitutionally sustainable under Articles 14, 19, and 21 of the Constitution of India?

2. Does the existing constitutional framework adequately recognise and protect the distinct identity and rights of nomadic and denotified communities, or does it perpetuate structural exclusion and normative invisibility?

3. How far is India in compliance with international human rights obligations under instruments such as the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and UN Declaration on the Rights of Indigenous Peoples in protecting nomadic and denotified communities?

4. To what extent have the Supreme Court of India and the High Courts developed a constitutional doctrine to address the marginalisation of nomadic and denotified communities, and what reforms are needed to ensure equality, dignity, and social justice for them?

HYPOTHESIS:

The absence of a comprehensive legislation specifically addressing nomadic and denotified tribes has contributed to their continued marginalisation, and an effective legal framework could significantly improve their socio-economic and legal status.

REVIEW OF LITERATURE:

Meena Radhakrishna, *Dishonoured by History: 'Criminal Tribes' and British Colonial Policy* (Orient Longman, 2001)⁸. This landmark monograph offers the most comprehensive historical account of the Criminal Tribes Act and its social consequences. Radhakrishna's work demonstrates how colonial law transformed mobile communities into 'hereditary criminals,' a thesis directly relevant to the present study's historico-legal inquiry. The work informs the study's background chapter and research problem formulation.

Dilip D'Souza, *Branded by Law: Looking at India's Denotified Tribes* (Penguin India, 2001)⁹— D'Souza's journalistic-academic synthesis provides ground-level narratives of

⁸ Meena Radhakrishna, *Dishonoured by History: 'Criminal Tribes' and British Colonial Policy* (Orient Longman, 2001). ISBN: 81-250-2080-4

⁹ Dilip D'Souza, *Branded by Law: Looking at India's Denotified Tribes* (Penguin India, 2001). ISBN: 0-14-029984-X.

DNT communities post-independence, revealing the persistence of stigma and administrative exclusion. His findings are corroborated by this study's field research design and inform the empirical methodology.

Sandeep Chachra- “The Stigma and Challenge of Having No Fixed Address: Rights of Denotified, Nomadic and Semi-Nomadic Tribes in India” published by ActionAid India, critically examines the historical marginalisation, lack of identity documents, landlessness, and continued social stigma faced by nomadic and denotified tribes in India¹⁰.

Renke Commission (Second National Commission for Denotified, Nomadic and Semi-Nomadic Tribes), *Report* (Ministry of Social Justice and Empowerment, Government of India, 2008)¹¹— The Renke Commission Report is an indispensable policy document providing data on community enumeration, welfare gaps, and legislative recommendations. This study engages critically with its findings, assessing the degree to which its recommendations have been implemented.

Idate Commission (National Commission for Denotified, Nomadic and Semi-Nomadic Tribes), *Report* (Ministry of Social Justice and Empowerment, Government of India, 2018)¹² — The Idate Commission Report is a significant follow-up policy document that undertakes a comprehensive review of the socio-economic condition, state-wise identification, and welfare status of Denotified, Nomadic, and Semi-Nomadic Tribes in India. The report is particularly important for its extensive field visits, community surveys, and policy recommendations aimed at social inclusion, legal recognition, and targeted welfare schemes. This study critically examines the findings of the Idate Commission and evaluates the extent to which its recommendations have been implemented in recent government policies.

The Press Information Bureau (PIB)¹³- press release on Nomadic and De-notified Tribes highlights recent government initiatives such as the SEED scheme and confirms that the

¹⁰ Sandeep Chachra, ‘The Stigma and Challenge of Having No Fixed Address: Rights of Denotified, Nomadic and Semi-Nomadic Tribes in India’ (ActionAid India, 9 January 2025)

¹¹ National Commission for Denotified, Nomadic and Semi-Nomadic Tribes, *Report* (2008) (Renke Commission). Published by the Ministry of Social Justice and Empowerment, Government of India.

¹² National Commission for Denotified, Nomadic and Semi-Nomadic Tribes, *Report* (2018) (Idate Commission). Published by the Ministry of Social Justice and Empowerment, Government of India.

¹³ Press Information Bureau, Government of India, *Welfare Measures for Denotified, Nomadic and Semi-Nomadic Tribes* (Mar. 2023)

National Commission for Denotified, Nomadic and Semi-Nomadic Tribes identified 1,235 communities across India.

The Hindu (2024)¹⁴- reports that the National Human Rights Commission stressed the urgent need to implement the Idate Commission Report to ensure legal protection and welfare measures for nomadic, semi-nomadic, and denotified tribes in India. The article highlights ongoing social exclusion, the lack of identity documentation, and the need for policy reforms, such as the repeal of the Habitual Offenders Act and the establishment of a permanent commission for these communities.

People's Union for Civil Liberties (PUCL), *Branded Criminals: A Report on the Denotified Tribes of Rajasthan* (PUCL, 1997)¹⁵— This civil society report provides systematic documentation of Habitual Offenders Act abuses in Rajasthan, offering empirical support for the study's constitutional challenge to these statutes.

PROBLEMS FACED BY NT/ DNT'S IN INDIA:

- Absence of separate census data and lack of proper identification
- Continuing social stigma and discrimination
- Extreme poverty, landlessness, and dependence on unstable traditional occupations
- Very low levels of literacy and high school dropout rates due to frequent migration and lack of educational facilities.
- Lack of identity documents, leading to exclusion from welfare schemes.
- Frequent police harassment, arbitrary detention, and human rights violations reported in several Government and Commission reports.
- Lack of permanent housing, access to drinking water, sanitation, and basic healthcare facilities.

¹⁴ The Hindu, Protection of Nomadic Tribes: NHRC Stress on Need for Implementation of the Idate Commission Report, Jan. 20, 2024

¹⁵ People's Union for Civil Liberties (PUCL), *Branded Criminals: A Report on the Denotified Tribes of Rajasthan* (PUCL, 1997)

- Double marginalisation of women and children belonging to nomadic and denotified communities.
- Absence of a specific constitutional category or comprehensive legislation comparable to protective laws available for other marginalised groups.
- Weak implementation of the recommendations made by Government commissions, resulting in continued socio-economic vulnerability.

JUDICIAL DECISIONS

State of Kerala v. N.M Thomas¹⁶- The Supreme Court upheld special relaxations for SC/ST employees, holding that true equality allows affirmative action for disadvantaged groups. The judgment emphasised that equality does not mean identical treatment for all and reinforced the State's duty under Article 46 to promote social justice and protect weaker sections.

State of West Bengal v. Anwar Ali Sarkar¹⁷ — held that arbitrary state action violates Article 14 of the Constitution. The Supreme Court struck down the West Bengal Special Courts Act, 1950, because it gave uncontrolled powers to the government to select cases for special trials without reasonable classification. The case established the doctrine of reasonable classification under the right to equality.

Francis Coralie Mullin v. Union Territory of Delhi¹⁸— The Supreme Court ruled that life is not limited to mere animal existence but includes necessities such as adequate nutrition, clothing, shelter, and facilities for reading, writing, and expressing oneself. The case strengthened the concept of human dignity and socio-economic rights under the Constitution.

Budhan Choudhry v. State of Bihar¹⁹— The constitutional validity of special provisions relating to habitual offenders under Article 14. The Supreme Court held that reasonable classification is permissible if it is based on intelligible differentia and has a rational nexus with the object of the law. The case is significant in analysing the constitutionality of the Habitual Offenders Acts, as it clarified that laws targeting specific groups cannot be arbitrary or

¹⁶ (1976) 2 SCC 310; AIR 1976 SC 490

¹⁷ AIR 1952 SC 75

¹⁸ (1981) 1 SCC 608

¹⁹ AIR 1955 SC 191

discriminatory.

Olga Tellis v. Bombay Municipal Corporation²⁰ — It recognised the right to livelihood as an integral part of the right to life under Article 21 of the Constitution. The Supreme Court held that eviction of pavement dwellers without providing alternative means of livelihood would violate their fundamental rights. The case is directly relevant to nomadic and denotified communities, as it protects their right to pursue traditional occupations and live with dignity.

National Legal Services Authority v. Union of India²¹ — Landmark recognition of the right to identity; transgender rights; expansive reading of Articles 14, 19, and 21 relevant to nomadic identity rights.

CONCLUSION:

The constitutional promise of justice, liberty, equality, and dignity remains profoundly incomplete so long as nomadic and denotified communities continue to exist at the margins of India's legal and political order. Though the repeal of the Criminal Tribes Act, 1871 formally ended colonial criminalisation, its legacy survives through Habitual Offenders laws, discriminatory policing, administrative invisibility, and the continued denial of identity, livelihood, and social protection to NT/DNT communities. This enduring exclusion reflects a deep constitutional silence surrounding the nomadic question. Ultimately, this study seeks to transform that silence into recognition by developing a jurisprudence of “nomadic constitutionalism” grounded in dignity, substantive equality, anti-stigmatisation, and social justice, ensuring that the Constitution becomes not merely a document of promises, but an instrument of inclusion, empowerment, and restorative justice for some of India's most neglected and historically marginalised communities.

²⁰ (1985) 3 SCC 545

²¹ (2014) 5 SCC 438