

**DENOTIFIED, NOMADIC AND SEMI-NOMADIC
TRIBES: THE POLITICS OF MISRECOGNITION**

*Dissertation submitted to Jawaharlal Nehru University
in partial fulfillment of the requirements
for the award of the degree of*

MASTER OF PHILOSOPHY

GAUTAM BUDDHA RAI



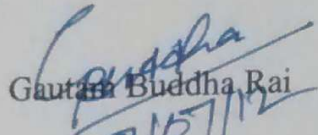
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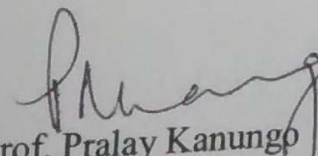
DECLARATION

I declare that the dissertation entitled '**Denotified, Nomadic and Semi-nomadic Tribes: The Politics of Misrecognition**' submitted by me to Jawaharlal Nehru University in partial fulfilment of the requirements for the degree of Master of Philosophy is my own work. This dissertation has not been submitted for any other degree of this university or any other university.

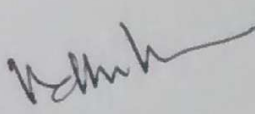

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27/07/12

CERTIFICATE

We recommend that this dissertation be placed before the examiners for evaluation.


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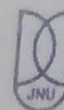
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To Rishi & Khushboo

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ABBREVIATIONS

CTA- Criminal Tribes Act, 1871

GOI- Government of India

NAC- National Advisory Council

CA- Constituent Assembly

CAD- Constituent Assembly Debate

TAG- Technical Advisory Group

DNTs- Denotified and Nomadic Tribes

BCC- Backward Classes Commission

OBCs- Other Backward Classes

STs- Scheduled Castes

SCs- Scheduled Tribes

NCDNSNT- National Commission for Denotified, Nomadic and Semi-Nomadic Tribes

TAG- Technical Advisory Group

HOAs- Habitual Offenders Acts

Chapter-1
Introduction

CHAPTER- 1

Introduction

In this study, the focus is on a group of people which was known as “Criminal Tribes” during colonial rule in India and since 1952 known as “Denotified and Nomadic Tribes” (DNTs) in post colonial India. The major thrust of this study is to investigate the relationship between the state and this group. The interest in exploring the relationship between the state, both in its colonial and post-colonial avatar, and this group of people, has emerged in the light of the recent increased initiatives on the part of the state vis-à-vis the DNTs. It is useful to investigate the processes of the state-building and the class formations which are closely connected with the processes of formations of the criminal social identity. The nomadic and peripatetic communities have history of criminalization by the modern colonial state ever since the advent of British rule in this subcontinent. The transformation brought about by the interventions of the colonial state in the condition of the social, economic practices is something which shows how the marginalization and dispossession of communities may lead to their classification as ‘criminals’. The attempt would be made to historically situate the relationship between the emerging structures of state and the simultaneous processes of criminalization of nomadic and peripatetic communities. The objective is to explore where these groups are placed on the continuum constituted both by criminal identity and constitutional identity. In fact, this is a study to look into the question as to whether this class of people has been attributed the right of substantive citizenship since the adoption of a new constitution after the transfer of power from British colonial rule. Since most of the studies have focussed so far on the disciplinary and repressive measures adopted by the colonial Indian state, it would be enriching to add this by looking at the post-colonial state from the perspective of constitutional justice. It has to be investigated as to what place they hold within the constitutional framework. This is to say that this study would examine whether the constitutional scheme properly recognizes these groups.

Against the backdrop of the increased clamour about the purported democratic upsurge of the lower castes and classes who have been historically denied any stake in

political power, it is quite relevant to see what has happened to this rung of political community formed on the basis of the principles of liberal constitution. A whole bunch of people consisting of vagabonds, vagrants, nomadic and semi-nomadic communities, itinerants and dispossessed constitute a class without any means of survival. The centralization of political power, with the arrival of modern state, by breaking and delegitimizing the primordial modes of authority, has been accompanied by the centralization of means of production. These processes had profound adverse impact on the means of survival of peripatetic and nomadic communities. In this attempt, I have tried to explain the correlation between the processes of dispossession from the practices and means of livelihood and the simultaneous process of criminalization of these groups.

The urgency of research with respect to Denotified, Nomadic and Semi-nomadic Tribes lies in the fact that the issues and concerns regarding these groups have not yet been addressed properly. These groups have become almost invisible in all the spheres of social, economic and political life. Their invisibility and silence are well configured with the intervention of colonial power. The 'silence' contains its own history and the politics which renders this a 'form of presence' in historical narratives. And it primarily represents the margins of history as neglected fact. The 'silence' proceeds as an integral part of the normal order of things. But an analysis of this silence is not possible unless it is fathomed within the broader outlines of historical narratives and the way they represent the varied subjects. At least, in one sense it can be said that the writing by colonial rulers, administrators and modern policy makers is representing and making them political subjects. What I roughly mean by a subject is a self subjected to a definite condition of social, economic and political relations, ascribing it a position in existing relations of power.

It is therefore important to trace the genealogies of their constant marginalization and negligence. The marginal social spaces that they inhabit must be interrogated to reveal the role of state in the constant production and reproduction of such margins. It is also equally important to find out the ways in which the state registers its presence in everyday life of these groups. This investigation would also allude to the consequences of the colonial culture and its effects in post-colonial India. The investigation of the relationship of Denotified, Nomadic Tribes with the State would not only expose the rationality behind their criminalization, but also illustrate

the politics underlying their constant inhabitation at the margins of the modern spaces and practices.

With the adoption of constitution after the departure of the British, the political discourse got changed. The post-colonial state was seen as an institution which was to perform a major role in programme of social transformation. Such social transformation was closely connected with nature of citizenship conferred upon the people. The rights to liberty, equality were supposed to be the foundation of the relationship between the citizens and the liberal state. It is however a matter of investigation as to what is the character of membership of these communities within the discourse of citizenship. How much claim could these groups make within the collectivity which was envisioned as “we the people”? These questions ask for answer because the promises of modernity- that is, liberty, equality and fraternity- can hide the malicious and oppressive aspects, as is the case with the colonial legacy of the Indian state itself. The critical scrutiny of relationship of the state with such groups would inform not only about the dealings of the state with the latter but also clarify the view as to whether the structures, procedures and institutions that were the hallmarks of oppression of the colonial state have eroded, and vanished or in fact got strengthened, even though they have expanded more convincing grounds of justification.

Methodological challenges

The paradox with this research, according to me, would lay in the vacillating methodological approaches that have been dwelt on in order to touch varied aspects of the complexity associated with this class of people. It will be noticed that the assemblage of variegated insights ranges from Foucaudian-derridian framework of power-analysis and deconstruction to the communitarian-egalitarian concern for proper recognition, constituting seemingly a methodological cocktail. In view of the shifting political landscape from effects of new power with the arrival of colonial modernity to the institution of political community based on constitutional justice, it could however be said that such uncanny vacillation would in fact be partly justified if we have to situate these groups in these shifting discourses. It would show how these groups have obtained their presence in the changing narratives of historical discourses.

Their 'trifling' presence in such discourses, I think, might necessitate such approach in order to be highlighted. The colonial-nationalist discourses of domination have constructed such historiographies in which the recovery of the autonomous subaltern is frustrating and almost impossible. However, these dominant discourses can be read against the grain in order to show how the silences, cracks in the archaeology of colonial knowledge demonstrate the persistence of resistance against the imposition of structures, procedures and institutions of hegemonic domination. One of the major institutions of such domination emerged in India, in a very specific form, is colonial modern state. In the course of its institutionalization, it not only defined its spheres of operation but also transformed the existing identities and spaces. This intervention of new power disturbed the existing order of things built around the existing modes of authorities. Such invasion was also simultaneously accompanied by a new configuration of social order based on the founding values of and corroborative to the emerging political authority.

What I want to work out precisely with such approach is to point out that these groups constitute the margins of each of these discourses. For the understanding of how the colonial power imagined the nomads and peripatetic communities, it would be illuminating to view the way the new power sought to institute a new social order. The colonial discourse constructed their criminal identity. With the emergence of constitutional framework since 1950, it will be quite illuminating to see how the new framework of politics decided the fate of these communities, despite the fact that the state had achieved its autonomy in terms of the institutionalization of its procedures, laws, institutions for its functioning. It is worthwhile to explore as to whether these groups have been properly given constitutional recognition for their constitutional identity. Moreover, the overall culture of politics produced in the course of colonial rule had far more effect than imagined. It will be quite interesting to see, in this context, as to how the culture of politics has impacted the life of these groups in post-colonial India, or for that matter, the aspirations of democracy.

The proper recognition of a social group is essential in democratic society. At the time of the founding of a political community based on constitutional morality, proper recognition of a group by the constitution is indispensable for the dignity and self-respect of the group in question. The proper recognition also decides the scheme of distribution of resources. Nancy Fraser elaborates the imbrications of two analytically

different forms- socio-economic and cultural- of injustices which need two different sets of remedies. “Redistribution” which primarily demands for the restructuring of the existing political-economic settings also presupposes an underlying conception of “recognition” in the form of at least ‘equal moral worth of persons’. Likewise, “Recognition” which primarily demands for the transformation in cultural norms, patterns of symbolic representation, interpretation and communication also presupposes some change in the redistributive patterns (Fraser 1995: 68-93). For any sense of dignity of anybody’s self, these, two aspects of justice, according to Fraser argues, needs to be realized. It is therefore quite necessary to view how the criminalized communities were recognized constitutionally. It would thus be investigated whether they have been given the rights of the citizens or have been denied of them.

Charles Taylor has argued that our identity is partly shaped by recognition or misrecognition by the others. He notes that a person or group can suffer real damage if they are misrecognized. Taylor conceptualizes “misrecognition” as “a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being” (Taylor 1994: 25). In the case of Denotified, Nomadic and Semi-nomadic Tribes, it is worthwhile to explore whether they have recognized or living a “reduced mode of being”.

Outlines of Chapters

In second chapter, effort has been made to question the criminal image even till today of these groups in the literature being produced anthropologically and ethnographically. The narratives of these sorts have largely dwelt on the theories of hereditary criminality. They have not even recognized the fact that the British rule was in fact the rule of new power, which had tremendous effect on the existing order of things. Their mindless colonial representations of nomadic and semi-nomadic groups have been subjected to critical scrutiny. This is how they have been given their place in annals of history and knowledge. It is therefore immensely imperative to deconstruct the image being constantly produced within the confines of colonial framework. In this same chapter, some efforts have been made to point out the linkages between criminality and the processes of formation of labour during the colonial rule, using the writings on the subjection of these groups. These groups were

sought to be settled by the colonial regime in name of their 'reclamation' and 'reformation'. But it is obvious that these processes were also marked by the transformation of these communities into labour force required by the growing agricultural and industrial production. It is interesting therefore to note in this particular instance the role of the state. The political economy of criminality of these groups suggests that the correlation between criminality and labour may go beyond this particular instance. Or in other words, the complicity of the state in such processes may ensure the condition required for the production of labour from the vulnerable communities.

This chapter also covers the debate surrounding the basis of the explanation of life-world of the communities and social identities. There have been a lot of contested debates as to whether the 'experience' of a person or a social group can be 'taken for granted' as the basis of explanation. This category of 'experience' also includes direct participation of observer in life of the observed. This debate actually implies the question of the authenticity of the explanation. The questions posed by Joan Scott suggest that the concepts and categories including the concept of 'experience must be subjected to historicisation. The historicizing process is required to explain the structure which produces a particular experience. Such historicising process is definitely required for explaining the experience of those whose histories have been appropriated by hegemonic discourses.

In the case of Denotified and Nomadic Tribes, it is more so because the ethnographic and anthropological accounts of 'experience' by direct participation of observers in life of these groups are highly enmeshed with the colonial imagination. One instance of the colonized memories of the children of settlement at Stuartpuram in Madras Presidency has been illustrated. These children had internalized the view that their forefathers were criminals; and they were also criminals by birth. Such view of their past was manifested in the recitation of the poems that had been composed by the custodian of this settlement. They had no knowledge of the resistance that their forefathers had offered to the colonial authority before being subjected to the settlement. The itinerant past based on petty trades and economic practices of their forefathers was present nowhere in their historic memories. Furthermore, it has been shown that the trends of looking at these groups as criminals have not yet stopped in ethnographic accounts. Although these accounts seek to express very sympathetic

view of their miserable life, mostly they don't try to historicize their own intellectual vision as well the constant production and reproduction of subjected life at the margins of the state. It is therefore an attempt to show that the presupposition of pristine and untouched by the presence of the state of the social space inhabited and habits performed by these groups is highly questionable, arguing that their life had ever since the colonial rule been subjected to severe surveillance and control.

In third chapter, the attempt has been made to shed light on the problem of 'legibility' and the modes of identification of criminal body. According to James Scott, modern state invariably seeks to make its population 'legible' in order to make it pacified and ordered. It has emerged as a very distinct form of institution, different from earlier forms of authority. It has to perform certain indispensable functions as a matter of its very existence. These functions, among others, include taxation, conscription, order, and prevention of rebellion. These functions for being efficiently performed require that the state must have the knowledge of the diverse aspects of the populations. The modern state has devised numerous political technologies such as census and survey in order to figure out the relevant properties of its inhabitants. Scott has illustrated that because of the perennial problem of the state to keep the populations in legible mode, it always views the wandering groups suspiciously as a threat; because these groups don't fit within its moral framework as taxable and controllable population groups. Moreover, they are also considered as a danger to propertied classes.

To explain how the colonial state strove to make the colonized Indians 'legible' so as to be configured within the framework of colonial social order, Bernard Cohn has brilliantly described the deployment of several political technologies. He says that the innovation of these modalities in colonial India generated the forms of knowledge which were essential for the operation of the colonial state. This process was also marked by the classification of population groups, giving them some fixed characteristics. He has mentioned that the groups considered within the colonial knowledge system as out of civic bonds were identified as criminals. They were basically nomadic and peripatetic communities.

Arguing almost along the lines of Cohn, Nicholas Dirks has shown how the enumerative, ethnographical, ethnological and anthropometrical practices launched by

the colonial power enabled it to order and pacify the subjected populations. He has characterized Indian state as an “ethnographic state”. The social reality which it constructed about the Indians was in fact, as he aptly calls, “castes of minds”. These practices constructed a notion of hereditary criminal tribes and castes based on some biological and physical attributes. In colonial classification and ordering, the so-called ‘criminal races’ were pitted against the ‘martial races’. This juxtaposition was fundamentally based on loyalty of groups to colonial state. Those disloyal had destiny to be categorized as ‘criminals’.

In this same chapter, an attempt has been made to map out the history of criminalization of nomadic, mobile populations ever since the inception of the British rule. The Thuggee campaign launched under the supervision of W. H. Sleeman has been elaborated nothing else than attempt of pacification of Indian subjects who posed a challenge to the expansion of colonial authority. In the course of its expansion, it has been described how the new power delegitimized and destroyed the existing structures of order built around the old form of political authority. These processes unleashed the influx of groups without any proper means of livelihood and fixity of identity. These all groups found their social identity as vagabonds, vagrants, etc. and thus seen as criminals by the colonial power.

In the latter part of this chapter, the development of techniques of identification of criminal body has been discussed. Michel Foucault has brilliantly illuminated by his formulation on the relationship between the evolution of modern penal code and identification of criminals. He has argued that, by replacing ‘torture’ with disciplinary techniques, modern power has sought to ‘cultivate’ a ‘self’ congruent with its perpetuation. Thus, it has focused not only on the ‘act’ of ‘crime’ defined in codes of law but also on the whole set of behaviours of the person in terms of his desires, sentiments, anticipated future development and disposition. These considerations have eventually evolved, according to Foucault, into a penal system in which a criminal body is identified in an anticipatory mode.

Techniques of identification of criminal body in India changed over time with the advancement of technologies. It has been discussed how the state adopted the practice of tattooing on the forehead of the alleged criminal, inscribing the name of crime, date and place in order to make his permanent criminality in public purview.

Such practice enabled the state to easily identify the criminal body across time and space. This technique was replaced by fingerprinting in last decades of nineteenth century. These techniques were applied on those who were declared 'Criminal Tribes'. These were the techniques which inscribed colonial power on colonized bodies to render them easily legible.

Later in this chapter, the process of sedentarization of nomadic and mobile groups has been briefly discussed in order to highlight the fact that this very process makes groups legible and identifiable since this assigns the groups in question a demarcated place. It has been elaborated here how the state developed an apparatus of identification in forms of registration, roll-call, and pass-system for movement out of settlement or village, so as to keep constant surveillance over these criminalized communities. This control of criminalized body how benefited the landlords has also been shed light upon.

In fourth chapter, the focus is largely on status given to these communities within constitutional framework. This chapter also deals a bit with the recent political development concerning government initiatives vis-à-vis issues and concerns pertaining to this class. It has be shown how these groups, in spite of being denotified in 1952, are still viewed as people with 'criminal tendency', not only by the society at large but also by the institutions of state itself. It has been demonstrated that the stigma of criminality has made them to suffer a lot until now. Their status as citizens is still far away and elusive even as politics based on constitutional framework has enabled several historically marginalized sections excluded from corridors of political power and resources. There is an attempt to highlight the point that this class of people has invariably been seen by the state as a distinct class, exploring some governmental documents including those of five year plans.

The committee which was constituted in 1949, headed by A. Ayyangar, has been discussed to show how its recommendations were fraught with colonial imagination of these communities. It viewed unquestionably that the persons from this background had 'criminal tendency' to commit crime. Although it recommended for denotification, which was eventually realized in 1952, it could not resist the attempts being made by provincial governments for enactment of other draconian laws such as Habitual Offenders Act aimed at controlling and oppressing this same class of people.

Consequently we now witness in everyday life how the flood of such laws has been oppressing and victimizing such dispossessed and abandoned groups.

Some lights on Constituent Assembly (CA) debates have been shed to highlight the point that the CA could not take up the issues and concerns of criminalized communities as much emphatically as it should have been, though it embodied high political and ethical principles and values which eventually got enshrined in the constitution. This lacuna on the part of CA was later pointed by one of the members, L.R. Naik, of second Backward Classes Commission (popularly known as Mandal Commission). In his dissent note to commission's report, he has elaborated the distinctiveness of this class which was not recognized in the overall recommendations of the commission. However, it has been shown that the CA, in remarkable contexts and with outstanding speeches of such members as Jaipal Singh and H.J. Khandekar, raised the problems of this section of society.

Further unfolding of this chapter brings in discussion the question of "recognition", or for that matter, "misrecognition". The conceptual frameworks, offered by Charles Taylor, Nancy Fraser, Iris Marion Young and Anne Phillips to understand the question of social and political identity, are enriching in this context. It has been quite starkly highlighted that proper recognition is indispensable for dignity and self-respect of a social group or a person. Misrecognition is therefore injurious to the self of a person or a community. It has been pointed out that the state is first and foremost institution which has to properly recognize a social identity. What a state does in this regard is that it confers citizenship to a person or community in a manner which properly recognizes the identity of the same. It has been illustrated how the Denotified and Nomadic Tribes are injuriously misrecognized by state. The stigma of criminality has perniciously rendered them invisible- socially, economically and politically- in all spheres of society. In the light of the fact that the concept of universal citizenship propagated by liberalism is being fundamentally challenged, it has been pointed out how the politics based on demands for 'presence' in decision-making bodies has emerged, thus theorizing the concept of citizenship quite differently.

The recent political development in terms of setting up of commission, committees and the recommendations thereof has been discussed to understand how state is

dealing with the political claims of this class. The introduction of a Private Bill in 14th Lok Sabha and its fate is also briefly dealt with. In summation, it has been argued that these communities have not been recognized as citizens. The recent attempt of the state to prepare a data about the socio-economic condition in Census enumeration has been seen suspiciously. It is so because the same sorts of political technologies had been used by colonial state to criminalize and oppress these sections. It has been argued that the state has developed such political technologies which can allow it to treat some classes as 'population groups' deserving certain welfare and security policies while denying them to share the sovereignty of the state which indeed makes them citizens. The concepts of civil society and political society, as have been conceptualized by Partha Chatterjee, well capture the political reality of the way the post-colonial Indian state deals with members within its territorial jurisdiction. The right to liberty and equality has been interpreted as the basic foundation of citizenship. And if the people are the locus of popular sovereignty, the denial of participation in how state operates its activities amounts to the denial of citizenship itself. It is thus shown how these communities are far away from such rights and thus they hold status much less than citizens. The state initiatives are more focused on converting the denotified and nomadic communities into some sorts of population groups rather than citizens.

It would be better to make clear one ambiguity clear at the outset. It would be noticed that the terms 'communities' and 'tribes' have been frequently used interchangeably. I would like to say that here focus is on the groups who had been declared 'Criminal Tribes' by colonial government and got eventually 'denotified' after transfer of power. Thus the groups who are central to this research are those who are now called Denotified Tribes or Communities and those who live nomadic and semi-nomadic life.

Chapter-2

Discursive formation of 'Criminal' Tribes in Colonial India

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Discursive formation of ‘Criminal’ Tribes in Colonial India

The focus of this chapter revolves around the narratives about those who were declared “Criminal Tribes”. The chapter will unfold in a mode which would highlight the ‘construction’ of this identity as a fact which emerged only with the interventions of colonial power. This power had tremendous consequences in terms of restructuring the social fabric, power structure as well as teleological imagination in India. The construction of the ‘orient’ by the colonial discourse has been briefly shed some light upon in order to reveal the matrix of the colonial imagination of a class who had subsisted through the social and economic practices in their nomadic and peripatetic life before being criminalized. In the course of the chapter, the relationship of criminalization and formation of labour has also highlighted to make it clear that the process of dispossession of these groups helped the emerging state consolidate its political economy based on increased agricultural and industrial production. The last section seeks to deal with the problematic of the anthropological and ethnographical kinds of explanations about the habits and life-world of these groups. It has been emphasised that the ethnographic narratives may be highly enmeshed into colonial interpretation of the activities of these groups. Moreover, it has been argued that the margins that they constitute should not be seen as a social space untouched by the presence of the post-colonial state. For, that space has already regulated, manipulated, produced and controlled by the constant presence, in so many forms, of the state. The major thrust of this chapter is to show that the social identity of “Criminal Tribes” is a construction of modern colonial power in its attempt to build a social order congenial for its own operation.

Criminal Tribes: Labelling the ‘other’

The formation of the collectivity such as ‘criminal’ tribes cannot be understood without comprehending certain imperatives of the modern state that have historically evolved. These imperatives involve the function of order-building in society. The forms of knowledge which are required for the operation of the modern state are closely connected with the question of criminality. The question of labelling certain

castes and tribes as ‘criminals’ can also not be seen in isolation from the processes of the formation of classes and imperatives of the evolution of the capitalist mode of production. The modalities that colonial state adopted to deal with the ‘other’ can also not be dissociated from the cataloguing certain castes and tribes as ‘criminals’. The pre-modern state had a different mode of displaying power. It was visible through theatrical displays, royal entries, coronations, funerals, and other rituals that guaranteed the continuation of power of the ruler over the ruled (Cohn 2009: 03). The perpetuation of this form of power was accomplished by the specialists such as historians, ritual performers, artists, artisans by holding various forms of knowledge. With the advent of the British raj, initially, in the form of the East India Company, and subsequently with the direct intervention of the British Crown, India encountered a modern form of power in its imperial, colonial form.

The evolution of the colonial state in India unleashed unprecedented political, economic, and social processes caused by the deliberate colonial policies, resulting into the formation of the modern spaces, institutions and identities congruent to the operation of the former. The modern state is a new kind of instrumentality, in the sense that it became involved more with doing things to its own society rather than to other states (Kaviraj 2010: 11). Through the manifold task of taxation, finance and social engineering, the state became an agency primarily concerned with the most fundamental arrangement of its own social settings, namely, the agency of reflexive social action (Kaviraj 2010: 11). It is thus in the capacity of the modern state to structure (and restructure) the social edifice of the society. The plasticity of the social world implies that it is ordered (reordered) as per the collective preferences by the people, though as historical beings (Kaviraj 2010: 13). Thus we can say that state in its contemporary form is central institution in arranging the power distribution and resources and shaping social identities of those in its territorial jurisdiction. The transformations unleashed by colonial modernity in India were overdetermined by the colonial situation. A situation defined as the conquest of the other people’s land, cultures and goods and the process of un-forming or re-forming the communities which inhabited the land (Loomba 1998: 08). The modern colonialism did not only extract tribute, goods and wealth from the countries that it conquered, it restructured the economy of the colonized according to the need of the capitalist mode of production in the western societies (Loomba 1998: 09). This process of colonization

was accompanied by institutions-building including state. In fact we can say that the state in its imperial form emerged as a central institution in organizing the process of colonization.

The construction of the 'orient' by the colonial discourse was diametrically in contrast with the conception of the 'occident'. Orientalism, as a body of knowledge about the non-westerners, produced and sustained over many generations in the west by the academicians, literary figures, government officials in the colonies in their records, ultimately became integral part of "western consciousness" and proliferated "from orientalism into general culture"(Said 1978.1995: 06). Orientalism is based on the "positional superiority" which puts the westerners in whole series of possible relationships with the orient without losing him the relative upper hand (ibid. 06). The whole colonial discourse seeks to construct an inferior 'self' of the orient congenial to the imperial interest. Edward Said argues that the conceptions constructed about the orient in the discourse of orientalism responded more to the culture that produced it than to its presumed object that was also the construct of the west (ibid. 22).

We therefore see that the story of colonial discourse in respect to colonized subjects is of asymmetrical relationships between the colonizer and the colonized. This asymmetry of power was the mediating force in the formation of modern colonial culture and society in India. One thing which intrigues in the formulation of Nandy is the continuity of the colonialism even with the departure of the colonizers. Defining colonialism as a shared culture, he argues that the colonial culture assumes a particular mode of managing dissent, by inducing the colonized. It seeks to achieve it through socio-economic and psychological rewards and punishments, in order to inculcate the colonized with new norms and cognitive categories (Nandy 2008: 03). But these kinds of tactics are always challenged; since they become the explicit signifiers of the oppressions and dominance (Nandy 2008: 03). The mark of the colonial rule on post-colonial India is indelible and largely unrupturous, in the sense that the structures and procedures of domination built during the colonial rule have remained largely intact. In fact, they have been strengthened to perpetuate the hegemony of dominant classes. They are also not in isolation from the formation of classes. The hegemonic culture, as the result of the colonial rule, in the post-colonial India, plays the role of the ideological apparatus for the formations of desires, sentiments, interests, norms for the whole society in an overwhelmingly

homogenizing manner. The structure of colonialism has contributed to the formation of such 'self' whose teleological destiny is in fact being 'European' (Chakrabarty: 1992). The idea of the 'Europe' as the universal Political subject of human history works as an apparatus of dominant power effects. It is still at the very centre of the constructions of the knowledge about the non-European. Without going much into the debate of what constitutes 'post' in the 'post-colonial', I would like to just point out that there is a wide range of scholars and writers who problematize the 'post-colonial' if conceptualized merely as the process of decolonization in the form of departure of the colonizers from their colonies. This prefix 'post', as Ania Loomba argues, complicates matters because it implies an 'aftermath' in two senses- temporal, and ideological (Loomba 1998: 12). She says that it is the ideological implication which critics of the term have found contestable. They argue that if the marginalities which have been caused by colonial rule have not yet been wiped out, it is rather premature to declare the demise of colonialism. To substantiate their argument in favour of such formulation, they point to the existing institutions, procedures, laws inherited from colonial rule which are still oppressive and largely define the state disposition vis-à-vis vulnerable social classes.

Here is the point to deal with the question of the people who actually suffered due to the colonial policies; yet they are still at the margins of the modern state as well as at the post colonial discourse. Ania loombo argues that the very term 'post-colonial' does not apply to the bottom of the social hierarchy, who are still 'at the far economic margins of the nation-state so that nothing is 'post' about their colonization (Loomba 1998: 13). It is absolutely true about the people who were categorized by the colonial rule as the 'Criminal Tribes'.

The labelling of a whole tribe or caste as 'criminals' was part of a large colonial project in Indian subcontinent. A history which has been written in colonial period has in fact made such tribes invisible- socially, politically, economically and culturally-in modern spaces and institutions. It is also horrible to note that the discourse constructed by the colonial ethnographers, officials, in order to control such people, also continues in post-independent India. There are so many authors who have extensively used the colonial documents and the authors thereof to justify that the people of these tribes are criminals by birth, without understanding the strategies of the British rule and its consequences on the Indian people. Even the government

report on the status of such tribes, which came immediately after the transfer of power in 1949, has also borrowed the language that the British rule had developed for such tribes. The writings in relation to criminal tribes, which were produced in 1960s and 1970s, dealt primarily with the socio-economic conditions and the causes of the temptation to commit crimes. These writings in fact seem to be just an extension of the perspective constructed by the colonial power.

Bhawani S. Bhargava (1949), in his book, *Criminal Tribes: a socio-economic study of the principal criminal tribes and castes in north India* presents a picture of a number of formerly criminal tribes of north India as if they held certain indelible attributes of criminality. He fails to explain the nomadic life of the tribes except arguing that the tribes defined as criminals became nomad due to not finding suitable habitations. He has extensively dealt with the organizational mode of the operation and the belief system of these tribes' alleged criminal activities and without explicating why their certain activities were categorized by the government as criminal activities. In fact, such studies are absolutely bereft of understanding of the effects of the interventions of the modern colonial state. Such pattern of writings about criminal tribes continues unabated in mid decades of the latter half of the twentieth century.

Y.C. Simhadri (1979), in his work, *Ex-criminal Tribes in India* has drawn heavily upon theories of criminal behaviour produced in the European context. He has even reached at the conclusion like this: "the criminal tribes, unlike the mafia, did not establish links with criminals with the other countries. There is, however, the possibility of this occurring in the distant future if not checked early. The existence of the criminals, as tribes as individuals, poses problems both for the nations and the local communities. A sociological study of surviving tribal behaviour can provide a 'basis' for rational planning to deal with problem and to assist the members of the criminal tribes in making a transition to some other better and useful way of life" (Simhadri, 1979: 04). This seems to me to be a terrible and unmindful interpretation of the condition of the criminal tribes and appears to be an art of victimizing the victim. This evidently smacks of dominant colonial interpretation produced over many decades. There is no criticality in the demeanor of the author to view the criminality ascribed to certain tribes as a powerful technique devised by the ex-colonial masters to systematically forbid the latter from access to their certain

primordial means of livelihood which were detrimental to the vested interests of the colonial power and sedentary castes and classes.

As I have often found in the writings of the various scholars, there is a statement, which is much quoted, by the then member for law and order commission, Mr T.V Stephens while introducing the Bill for Criminal Tribes Act of 1871. This statement was on the conception of the tribes who were going to be listed as criminal ones. Mr. Stephen says as follows:

“The special feature of India is a caste system. As it is, Traders go by castes: a family of carpenters will be carpenters, a century or five century hence, if they last so long. Keeping this in mind, the meaning of professional criminal is clear. It means tribes whose ancestors were criminal from time immemorial who were themselves destined by the usages of caste to commit crime and whose descendants will be offenders against law, until the whole tribe is exterminated or accounted for in the manner of the things. When a man tells you that he is an offender against the law, he has been so from the beginning, and will be so to the end; reform is impossible, for it is his trade, his caste, I may almost say his religion to commit crime” (Simandri 1979: 29).

This excerpt has been cited in Simhadri’s book with a complain that it has been grossly misunderstood by almost all Indian sociologists, writers, leaders (including Jawaharlal Nehru, who had, in a speech delivered in Nellore, Andhra Pradesh, in 1936, vehemently criticized the Criminal Tribes Act), and reformers. The meaning which implies in this statement of Stephens, according to Simahdri, is that the former sought just to link the *tribe to caste* which follows a traditional occupation given to its members at the time of birth. Instead of questioning such erroneous and deceptive conflation of caste and tribe, Simadri has upheld Stephens’ view. He has not made any attempt to expose the fault lines underlying such dangerous simplifications and consequently subjecting a large number of tribes to constant surveillance and control under proposed law.

Notwithstanding the traditional hierarchical structure of caste system, differences of castes and tribes identities were ossified with such colonial representation of social reality. They were what Nicholas dirks calls “the castes of mind”. This colonial imagination manifested itself in its all knowledge generation about the diversity of this subcontinent. The colonial project in India was unrealizable without knowing the Indian society. For knowing the society with its institutions and its customs, the colonial rule used the political technologies of the census and the

ethnographic surveys. Such colonial practices in turn produced by the late nineteenth century what Dirks calls “ethnographic state” (Dirks 2001: 16-17). This state had its own versions of understanding of customs, traditions of India. This state came into existence with the formation of various forms of knowledge about the society and its various institutions. Dirks thus provocatively claims that the ‘tradition’ of India in its standardized form has been constructed by the colonial rule itself. Under colonialism, Caste was ossified and became far more totalizing and far more uniform than it had ever been before (Dirks 2001: 13). Caste is not a static phenomenon. It has surreptitiously changed in fundamental ways by political struggles and processes.

Simahdri has referred to Lombroso’s formulations from his work, *L’Uomodeliquite*, published in 1976, to get theoretical framework for understanding the alleged deviant behaviour of ‘born’ criminal in India. He has approvingly borrowed the formulations from Lombroso which relate criminality with certain sorts of anatomic features, which are, moreover, hereditary. Lombroso’s school of criminal anthropology in Italy was quite influential in the last decades of nineteenth century. This school had the conception of ‘born’ criminals distinct from ‘occasional’ criminals. According to this school, ‘born’ criminals were more dangerous than ‘occasional’ ones and thus should be punished more rigorously than the latter (Laclau, Ernesto 2007: 35-40). It is notable that certain theories of criminality imported from elsewhere worked to stimulate the discussions about hereditary criminals even in post-colonial India. Here, it seems to me that the generalizations about the behaviours of the alleged criminal tribes were more bent upon the sorts of theories connecting race and criminality. The emergence of ethnology, the science of race, in nineteenth century, had played a central role in intellectual justification of the policy of regarding a whole tribe to be criminals.

The revolt of 1857 against the British rule was a landmark event in the history of colonial control. It had unsettled the understanding of the Raj about its subject populations (Dirks 2001). Thus such unsettling of the assumptions regarding the castes and tribes necessitated to have the social profile of the diverse populations. The revolt had forced the empire to carefully identify those social forces loyal to British rule and those inimical to it. The most formidable task to have arisen to the government was to have legibility of the constituents of the population in terms of fixed social behavioural attributes inscribed in the bodies of the latter. This seemed easy to attain

with keeping in mind the conception of a caste or tribe based on birth with hereditary profession.

The conception of 'Criminal Tribes' thus can be understood to have emerged in the diachronic history of the ethnographic state in its attempt to manage its subjects in order to pacify them. Those groups of people were loyal to the colonial authority were largely classified as 'martial races' and were deemed to be eligible to the recruitments into government services. The question of colonial order based on the categories devised with nuanced strategies to suppress, edit and marginalize everything that upset the founding values of empire is conceptually connected with constructions such as 'Criminal tribes'. There were numerous justifications for Expansion of Empire. One of those was the imputed barbarism of the Indian society. 'Criminal Tribe' in fact was one of the colonial constructions which symbolized the 'other' to the sort of 'self' that British Empire sought to strategically promote which was most conducive to amassing legitimacy to colonial social order. This colonial construction sought to delegitimise the earlier forms and structures of authority and power so firmly as to form the new bases for the legitimation of the new colonial modern forms and structures of domination and hegemony. 'Tribal' groups were seen as the most primitive people in the ethnographic accounts of the missionary and thus suitable for the kind of civilizing activities that the latter wanted to undertake (Dirks 2001: 175). There were certain activities such as hookswinging, animal sacrifices which had generated immense fascination among colonial anthropologists and missionaries. The understanding that there was close link between a caste or tribe and its hereditary propensity to indulge in predatory activities was based on the assumption of a hereditary profession where even crime was presumed as profession based on the inheritance. It was nevertheless a discourse which emerged significantly in middle of the latter half the 19th century in order to make colonial state strengthen its grip over the wide variety of populations.

The wandering, itinerant, and nomadic communities who had their traditional means of livelihoods were systematically transformed into dispossessed, vagabonds, through the policies of the colonial state. The communities who were engaged in petty trades, such as carrying salt, grain and such other goods, were seen to be inimical to the commercial interest of the British rule. These activities were criminalized so as to make the smooth growth of the business of the British traders and its dominant Indian

allies. Moreover, the alternative legal structure was dubiously intended to implicate the people from certain itinerant communities. The new order which was being instituted through colonial policies was likely to make these groups ‘wasted humans’, as Zygmunt Bauman calls it. The result of such modernisation process was inevitably bound to degrade and devalue the previous modes of ‘making a living’, and thus it could not but deprive their practitioners of their livelihood. Thus the *order-building* is inexorably connected with the dispossession of certain classes whose means of livelihood has been ruined by the new regime of power.¹

Criminality and Labour

The entire civilizing mission aimed at the institution of new system of code of ethics was basically an introduction of new form of power which had to fundamentally erode the existing primordial ways of life and social practices associated therewith. This new form of power- that is, the modern state- had to structure the possible fields of actions of its subjects.² It had to make its presence in the everyday life of the people. This form of power for its operation marked the identity of the individuals by classifying and categorizing them so as to keep them within the prescribed social order informed by the new code of ethics.

The emergence of criminal identity can be seen as the consequence of paranoia of the modern state towards those groups and categories of people who were not conforming to the kinds of social practices and behaviours deemed to be in tune with the sorts of social and political institutions coming as the structural outcomes of this new form of power. The process of dispossessing a wide variety of people from their means of livelihood primarily from their soil and primordial professions has been one of the fundamental characteristics of capitalist modernity. The people who were forcibly expropriated from their means of subsistence were turned *en masse* into beggars, robbers, vagabonds.³ These people were treated as criminals and stringent laws were passed against them right from the beginning of the sixteen century Europe. Thus the process of expropriation and consequently the laws against the expropriated

¹ Bauman, Zygmunt (2004). *Wasted Lives: Modernity and its Outcastes*, (Cambridge: Polity), pp. 5

² Foucault, Michel (1982). ‘The subject and power’, *Critical inquiry*, Vol. 8, No. 4, pp. 777-795

³ Karl Marx has extensively explicated as to how the process of expropriation has been accompanied by the process of criminalizing the dispossessed in his essay ‘*The bloody legislation against the expropriated, from the end of the 15th century. Forcing down wages by Acts of Parliament*’ in *Capital* Vol. 1.

has been seen not just only in European context but also in Indian context. The formation of such dispossessed identities as beggars, robbers, vagrants in western societies was integrally connected with the larger capitalist accumulative process resulting into the pauperization and bare existence of vulnerable classes.

The kind of control mechanisms such as pass system which was later introduced in India through the Act passed in 1871 was already in force in Britain to combat vagrancy- most notably the labour colonies.⁴ In Victorian England, class relations were encoded in spatial relations on the land as the colonies of the criminal classes were located in specific sections of the urban areas.⁵ With the arrival of the British rule in Indian subcontinent, we can find diverse instances of how the colonial power snatched from people their means of livelihood. And these dispossessed groups that were declared criminals had in fact offered resistance to the colonial rule by defying the kinds of colonizing social, economic, cultural practices that the British administration sought to institute. The groups that were notified as 'Criminal tribes' were the ones who did not well succumb to the rationalizing process unleashed by the new form of power. These categories of people appeared by their very alleged wandering nature beyond the civil bounds.⁶

The new form of civility introduced by the new form of power demanded the process of disciplining the bodies of the subject populations. The nomadic habits including their food types were assumed to be inferior and thus were token of criminality.⁷ The success of this process proved to be more daunting to the colonial power in relation to itinerant communities compared to the sedenterized ones. Thus we see that criminality as the field of action was largely the result of the emergence of the new power relations in society. The wandering communities- sannyasis, sadhus, fakirs, dacoits, goondas, thags, entertainers, herders, etc. - got the criminal identity in the new colonial configuration of power. In this configuration of power, we notice that the mode of life of the itinerant and nomadic communities became the site of exertion of colonizing efforts to make the former domesticated.

⁴ Tolen, Rachel J. (1991). 'Colonizing and Transforming the criminal tribesman: The Salvation Army in British India', *American Ethnologist*, Vol. 18, No. 1 pp. 113

⁵ Ibid.

⁶ Cohn, Bernard (2009). 'Colonialism and its forms of knowledge', (New Delhi: Oxford University Press), P.10.

⁷ Tolen, Rachel J. (1991). 'Colonizing and Transforming the criminal tribesman: The Salvation Army in British India', *American Ethnologist*, Vol. 18, No. 1, pp. 112

The people regarded as criminals by inheritance had indeed presented a challenge to mode of practices being endorsed by a new configuration of power under the emerging colonial social order. The formation of criminal subjectivity of certain sections in society was thus the outcome of the process of the governing by the colonial state with its efforts to restructure the social space and identities so as to ensure that it could achieve the legibility of its subjected populations. These groups were attributed criminal identity after having been disbanded mercenaries, getting their social activities ensuring livelihood criminalized. These groups were forced to settle down in demarcated areas so that they could be easily controlled through the mechanisms enacted with the sanctions of colonial laws. The movement of these nomadic communities was highly suspicious not only in the eyes of the British but also in those of landed classes in the countryside. The power to control these people was not confined with the functionaries of the colonial state but also extended to the persons from the landed classes in every village.

With the shift in the discourse of native criminality, we find that these people became the source of labour both for the services to the colonial administration and agricultural production for the benefits of the landlords. The shift in the discourse on criminality in the latter half of the nineteenth century from the 'incurability' to the possibility of 'reclamation' of these people was coincided by the necessity of the fulfilment of labour both in urban industries as well as in expanding agriculture. The transformation of the mode of life of these groups was forcibly ensured by the civilizing missions such as Salvation Army. There were varieties of coercive instrumentalities in the hands of those in charge of the reclamation settlements to force these subjected people to discipline themselves in accordance with the demands of the works to have been commissioned by the colonial authority. The techniques for the transformation of these communities from their alleged criminal propensities to hardworking, labouring moral subjects were embodiments of a combination of repressive and reformatory measures. These two kinds of measures were clubbed together in the Act passed in 1871. With this kind of combination of measures, the new form of power not only sought to define the space and body of the condemned but also thereby tempted to ensure their legibility for the congeniality to the institutionalization of colonial social order.

The ideal subject whom the colonial power could project in front of the criminal tribes in order to make the latter useful, from the preview of taxable population, was a hardworking peasant in countryside. Such shift in dealings with these alleged dangerous classes is starkly tangible in the light of the fact that the discourse on criminality was getting highly influenced by the utilitarian liberals who had the belief in the reformation of such groups of people into loyal profitable working subjects. However, this transformative vision was nevertheless fraught with the difficulties caused by the local configuration of power. There were several instances in which we find how the landholders used the labour of these people to enhance the productivity of their land instead of allowing them to possess the landholdings. It was made possible by the increased vulnerability of these communities caused by the punitive measures enshrined in the Act of 1871 and the responsibility of controlling and notifying them entrusted to the landholders. We thus notice that the formation of criminal subjectivity through the insertion of state machinations had very strong class component. Nagam (1990) has given a good account of the vulnerability of some criminalized tribes in North India, in which he has rigorously explicated the power relations operating at the local level between the landholders and the criminal tribes. The most intriguing fact that he brings into light is that even the alleged criminal activities of these communities were directly advancing the landowners' fortunes instead of those of the former. As a result, as he details, these communities were even being forced to indulge in criminalized activities since the booty accruing therefrom was being largely cornered by these custodians of enacted law.

The CTA 1871 was in fact the culmination of ongoing discourse on native criminality in colonial India. The haphazard measures were already in operation to control these communities. The practice of charging the landholders of controlling the wandering communities by the provincial governments in 1860s had been acknowledged in the report submitted by Major Sleeman to Government of India. Sleeman had suggested in his report that if the power was delegated in the hands of landholders in the districts infested with wandering tribes to control the latter, the petty crime would be soon exterminated.⁸ The attempts for the formal promulgation

⁸ Major, Andrew J. (1999). 'State and Criminal Tribes in Colonial India: surveillance, control and reclamation of the dangerous classes, *Modern Asian Studies*, Vol. 33, No. 03, pp. 657-688.

of the communities as criminal were first undertaken in Punjab and North West Provinces (hereafter NWP) in British India.⁹ These states had already implemented many of the measures stipulated in the Act of 1871. This Act incorporated an entire apparatus of repressive and reformatory power techniques- registration, roll-call, the pass system, agricultural settlements, reformatory camps, workhouses, and the separation of children from their parents. Both kinds of power techniques designated to control the hereditary criminals were in operation aimed at disciplining the criminal body suited to the colonial interest. By the time this act was passed, discourse on criminality had taken such a turn that the measures adopted in the aforesaid Act were suggestive of the shift in colonial interest itself. The utility of the labour in the form of these groups had started to be well understood in the official circles. The reformatory aspect of the disciplinary measures was largely supposed to be the Christian morality to have been assigned to and to be by groups like missionaries.

The Salvation Army (SA) was the prominent among them which worked as one of the leading organizations for the state project of colonizing and transforming the alleged criminal communities. The Army, though was primarily intended to inculcate 'civic' values in its targeted people, was based on the signs and practices of a military order. And a military hierarchy was replicated in a ranking of lieutenants, commissioners, captains, and cadets. Such sort of emulation happened a bit latter in the functioning of the Army when some initial rifts with government officials concerning their modes of operation and dress codes got settled. Initially, the Army functionaries sought to imitate such typical indigenous attires as 'turban' and 'dhoti' and walking barefoot. Such novel presentation of self by the SA might have upset the sensibilities of the government officials¹⁰. The British authority in India could not tolerate any form of divergence from their established system of codes of conduct-cultural, social, and physical- which they had established as the rulers over the Indian subjects as the ruled.¹¹

⁹ Radhakrishna, Meena (2001). *Dishonoured by History: 'Criminal tribes' and the British colonial policy*, (New Delhi: orient Longman), pp. 27.

¹⁰ Tolen, Rachel J. (1991). 'Colonizing and Transforming the criminal tribesman: The Salvation Army in British India', *American Ethnologist*, Vol. 18, No. 1, pp. 114

¹¹ Cohn, Bernard [(2009). 'Colonialism and its forms of knowledge', (New Delhi: Oxford University Press), P.111

It is therefore evident that the concern of the colonial power for the construction of such political subjectivity that might secure the perpetuation of hegemonic power was so paramount that they could not tolerate the violation of the stipulated codes of conduct even by its own functionaries involved in whatsoever practices. There were directives from the supreme government to these states, even prior to formal enactment of CTA, to make the landholders responsible for surveillance over the movement of allegedly criminal classes.¹² The subjection of the colonized bodies required the strict enforcement of repressive laws. As one of the legal members of viceroy's council, who left a significant mark on Criminal Tribes Act, 1971, James Fitzjames Stephen saw the role of law in disciplining and controlling the subjected populations in these following terms:

The establishment of a system of law which regulates the most important part of the daily life of the people constitutes in itself a moral conquest more striking, more durable and far more solid, than the physical conquest that rendered it possible. It exercises an influence over the minds of the people many ways comparable to that of a new religion. Our law is in fact the sum and substance of what we teach to them. It is, so to speak, the gospel of the English, and it is a compulsory gospel which admits of no dissent and no disobedience. (Henry Schwarz 2010: 81-82).

The vision of law was intended to control the everyday life of the subjects. In other words, it was a strong instrument to colonize the body and the whole social life of the people. This function of law was designed to produce a moral subject which could be regulated with reasonable coercive means. The law was embricated thus in a cultural form supportive to the institutionalization of the practices, procedures and institutions of the colonial state in Indian. The Salvation Army had mission in this respect. In the changing discursive narratives regarding the criminal tribes, the Army found a major role of disciplining and transforming the nomadic and peripatetic communities into law-abiding subjects. The 'in corrigibility' of their inherent criminality needed to be diluted in order to propound that they could be transformed into useful labour for agriculture and industry. It is quite interesting to note that this shift in the demeanour of the colonial power coincided with the necessity of political economy of the colonial state. The state required the enhancement of the productivity

¹² Nigam, Sanjay (1990). 'Disciplining and Policing the 'criminals by birth', Part 1- The making of a colonial stereotype – The criminal castes and tribes in *North India*', *Indian Economic & Social History Review*, 27: 131.

of the agriculture and industry in order to increase its own revenue. The kind of body it required for this objective was not only a subjected body but also a productive one.¹³ Michel Foucault has meticulously described the processes and mechanisms which are applied to manipulate, shape and correct the operations of the body so as to increase its utility by making it obedient and disciplined. Foucault calls it a docile body.¹⁴ This body is the outcome of the political investment of the power. The nomadic and peripatetic communities which were declared Criminal Tribes were forcibly sought to be settled down.

The purported objective of settlements was to 'reclaim' and 'reform' the alleged criminal tribes and castes. This was in fact the first step to subject them to the disciplinary techniques. The 'settlement' as demarcated and constrained space allowed those in charge to keep constant surveillance over the whole activities of the criminalized groups. It was envisioned in the colonial project that these deviant groups could be reformed and reclaimed through labouring and moral endowments under strict measures of physical coercion stipulated in CTA. These groups were first restricted to perform the practices which would traditionally secure them livelihood. The whole variety of petty traders such as those who used to carry their merchandise on the back of animals and supplied the villagers with variety of items like salt, forest produce and so on were criminalized. The communities that entertained the public through performing arts like music, dancing, singing, storytelling and acrobatics were also brought under the cover of CTA. Not only these communities but also those that entertained the public with the help of performing animals such as bears, monkeys, and snakes were declared criminals in the Act in question. The process of criminalization was thus the strong weapon in the hands of the colonial functionaries to bring these groups under the stringent forms of disciplining and policing under the settlements.

There are numerous instances to show that these groups were in the first place forcibly settled down by giving land in charge of any managing agency such as Salvation Army.¹⁵ It was stipulated in one of the rules of the CTA that the settlers in agricultural settlements were to carry out the entire task to bring about improvement

¹³Tolen, Rachel J. (1991). 'Colonizing and Transforming the criminal tribesman: The Salvation Army in British India', *American Ethnologist*, Vol. 18, No. 1 pp. 107

¹⁴ Foucault, Michel (1991). *Discipline and Punish: The Birth of the Prison*, (London: Penguin), PP. 136

¹⁵ Radhakrishna, Meena (2001). *Dishonoured by History*, pp. 102

in the land or cultivate the crops as might be instructed by the manager.¹⁶ If settlers rebelled against such enslavement, the ‘compulsory gospel’ could be used by the agency in charge. Land could be reclaimed by the colonial state in several ways. For instance, a group of Koravars with families was first forced by the police harassment to complete some unfinished tank work. They were then declared criminal tribe after the completion of the tank work and thus were moved into a settlement (Meena Radhakrishna 2001: 101).

There was also another aspect to the ‘settlement’ process in Madras Presidency. This initiative produced resentment among the landlords. They agitated against the allotment of land by the government to these groups. The reason behind such agitation was that the swamp land that they could hold was being given to managing agency in charge of the settlements. The landlords were not against the criminalization of these groups; for, it would provide them easy control over these populations to use as bonded labour for their own land. They used the Hindu religious card to cordon the missionaries who were involved in this process of reformation and reclamation (Radhakrishna 2001: 105).

Another significant aspect which has been brought to light in this process by Meena Radhakrishna is the conversion of factories into settlements. She has highlighted the fact that this tactic was used to give the power to the manager of the factories as the manager of the settlements. By holding the power qua the manager of the settlement, the factory manager exploited as maximum as possible these criminalized groups without any fear of legal entanglement.¹⁷ This was in fact a form of slavery where people were forced to work for the factory production. The conversion of factory into settlement also assured the factory owner that the criminal tribe labourers could never be allowed to escape from the factory premises. It suggests that the state was quite active in criminalizing the vulnerable communities in order to transform them into productive labour required for the expanding agriculture and industry. It is also apparent that even though the avowed objective of the Salvation Army was to reclaim these groups from alleged criminality, the groups were never considered be reclaimable, as Booth- Tucker, Special Commissioner of Salvation Army in India and Ceylon from 1907 to 1909, who had authored *Mukti Fauj, or Forty*

¹⁶ Ibid. pp. 100

¹⁷ Ibid. pp. 108-109

Years with the Salvation Army in India and Ceylon, viewed criminality as identity marker. This view held that they had always been criminals and always would be, and thus needed to be kept in eternal surveillance and control.¹⁸

The most important aspect of the process of criminalization of the nomadic, peripatetic communities which is often missed out is the resistance that they offered to their subjection. For instance, the resistance offered by the Yerukulas settled at Stuartpuram in Madras Presidency has been highlighted. After the failure of agricultural settlement, Yerukulas- both women and men- were employed in Indian Leaf Tobacco Development Factory (ILTD). They organized themselves by forming union against the exploitation in the factory. There was a prolonged strike in 1938. The striking workers were fired on. The management “used the workers’ criminal tribe antecedents to justify the firing” (Radhakrishna 2001: 141).

Interrogating the ethnographic narratives

Most of the knowledge about the criminalized communities has been produced in anthropological and ethnographic genre. Apart from this, they don’t have any substantial presence in critical historical writings. The writings about the aspects of life of these groups have been presented as firsthand account based on the close observation in field work. This mode of writings assumes, in some sense, a privileged position, claiming to be based on authentic ‘experience.’ The founding of explanation on ‘experience’ has been subject to vigorous conceptual analysis and its fallacies have been sought to be exposed. There is a brilliant account by Joan Scott (1991) as to how the conventional historical understandings of evidence have been challenged by those writings which claim to base their claims on the ‘evidence of experience.’ This form of narratives has emerged in the wake of the articulation of the voices and lives of those who had been omitted, silenced or overlooked in the past in dominant historical narratives. The fundamental thrust of these writings has been to account for what is comprehensible as transparent objects, though overlooked. This comprehensibility is claimed to be obtained by the experience. This experience is both that of the others as well as of the historian who learns to see and highlight the lives of those others in her writings (Scott, Joan 1991: 776).

¹⁸ Schwarz, Henry (2010). *Constructing the Criminal Tribe in Colonial India: Acting like a Thief*, (Oxford: Blackwell), pp. 88

Here, the foundation of the knowledge is based on experience articulated by the historian with the capacity of comprehension of transparent objects. Scott notes that such engagement for documenting the experience of others, silenced, by the historians of difference has been both highly successful as well as limiting. Successful in the sense that while complying with the parameters of the disciplinary framework, they have questioned the old narratives once new evidence are found. The limit emanates precisely from the kind of appeal to “experience as uncontestable evidence and as an originary point of explanation” (ibid: 777). As she argues, the studies so oriented in their epistemological approach lose the possibility of critically scrutinizing the assumptions and practices that excluded the difference in the first place.

With this approach, the identities of those whose experience are documented are treated to be self-evident. Approaching the questions in this fashion, as she notes, in fact, situates the resistance and agency outside their discursive formation, thus decontextualizes them. This is in some sense imputing individuals with reified agency. When the experience becomes the uncontested bedrock of narrating histories and life of people, the questions about the “constructed nature of experience, about how subjects are constituted as different in the first place, about how one’s vision is structured- about language (discourse) and history are left out.”¹⁹

If an ‘experience’ has been denied to be articulated and represented, it implies the workings of repressive structures and ideology lurking behind it. If ‘experience’ is taken as ‘self-evident’, these structures and supporting ideologies succeed to escape from the critical intellectual scrutiny. Viewed in this term, we easily understand particular subject informed by specific experience; but, we often fail to understand how it has been constituted relationally. Then identities, experiences and concepts and categories are taken, wittingly or unwittingly, presumed to *ahistorical* formations. They entail some kind of metaphysical dimensions. It is therefore required that if we have to unravel the underlying repressive mechanisms and the totality of the system that produces such ‘experience’, we need to see ‘experience’, identities and representative concepts and categories as historical formations in discursive mode. Then we have to see individuals not as those who have experience, but as subjects who are constituted through experience. With this approach, experience does not

¹⁹ Scott, Joan W. (1991). ‘The Evidence of Experience,’ *Critical Inquiry*, Vol. 17, No. 4, pp. 773-797.

remain merely something which becomes the basis of explanation. Rather, it becomes something which we seek to explain. Experience then becomes something about which knowledge is produced. To think about experience in these terms is to historicize it as well as to historicise the identities that it produces (Scott 1991: 780). It is this historicizing process which subjects all explanatory categories including 'experience', often taken for granted, to critical scrutiny. It is thus accepted the discursive character of 'experience'.

It is quite reasonable to test the ethnographical and anthropological kind of writings from such standpoint of historicity of the narratives produced purportedly with the 'experience' of the life-world' by the person who document it. The critical scrutiny based on historicizing process is necessitated in the context of such writings, especially because the narratives, in ethnographic documentation about the groups at the fringes of historical representation, often view the spaces and institutions inhabited by the latter as entirely pristine and unmediated by the procedures and institutions of the state. Such view in fact dehistoricizes the spaces and institutions, regarded as the margins of the state; and thus it renders the production, reproduction and constitution of the margins as *ahistorical*. In the case of the writings on so-called criminal tribes, the historicization seems to be indispensable in order to reveal some of most elementary aspects of the presence of the state in different forms in everyday life of the criminalized communities. However, the understanding of state at the margins can be quite different from the dominant notion of state as a rationalized administrative institution with mechanisms of coercion and punishment. The construction of the subject, "Criminal Tribes", itself is a discursive formation. This formation came into being with the effects of colonial power. The spaces and institutions inhabited by these groups were among the first which were subjected to the interventions of the state. The notion of 'crime' that evolved involving these groups is itself the effect of the modern colonial state. It is therefore logical that the social, cultural practices as well as institutions held by the groups designated as criminal tribes cannot be interpreted as *natural* and without the mediation and influence by the presence of the state. If seen without the presence of the state, it would also render *ahistorical* character to the social space inhabited by these groups.

Veena Das and Deborah Phoole have provided double aspects of the notion of state to understand its functionality even at its territorial and social margins. The

notion of state seen in terms of rational-bureaucratic arrangement of political organization is not much helpful to understand its presence at the margins. They therefore purpose to view it in terms of how the practices and politics of life in these areas are shaped by the political, regulatory and disciplinary practices.²⁰ One among the three definitions of margins, they conceptualized it as spaces, forms and practices through which state is continually both experienced and undone through its through the illegibility of its own practices, documents and words.²¹ The state conceptualized in these terms entails that the people at the margins of the state experience the presence of the state through their interface with different forms of practices which seek to build order and pacify the populations. With regard to the tribes which were notified as criminal tribes, it is quite obvious that the state played a very significant role in shaping and modifying the social, cultural practices of these groups. Their whole life was colonized. These are the groups who were the first among those subjected to ethnographic profiling.

As Das and Phoole argue, ethnography is unique in the sense that it provides a different perspective on the sorts of practices that seem to undo the state at its territorial and conceptual margins.²² This formulation connotes that the margins of the state can be better understood with the participation in the spheres of social that are not easily intelligible through the disciplines other than ethnography. It is quite understandable what Das and Phoole are saying. However, the narratives produced in most of the writings until recently in this mode on the criminalized communities are highly deceptive and misleading. The narratives don't contextualize the discursive nature of the formation the category called 'Criminal Tribes'. Nor do they acknowledge the fact that the life condition they are attempting to explain had already been colonized with deep and focused interventions of the state.

For instance, the study of Bhavani S. Bhargava on criminal tribes is one such example. His book²³ is entirely bereft of any critical engagement with the socio-economic conditions of these groups. The conceptual framework used to analyse the

²⁰ Das, Veena and Deborah Phoole (2004). *Anthropology in the Margins of the State*, (New Delhi: Oxford University Press), pp. 3

²¹ Ibid. 9-10

²² Ibid. pp. 4

²³ I have focussed on his book (1949), *The Criminal Tribes: A socio-economic study of the principal criminal tribes and castes in Northern India* published by the Universal Publishers Ltd, Lucknow.

observation through participation by fieldwork is deeply mired into colonial imagination about these groups. The notions of ‘social environment’ and ‘heredity’ have been uncritically and unmindfully used to justify the criminal tendency among these groups, which needed to be reformed. He says that the ‘social environment’ and ‘heredity’ are the major factors for the criminal activities of these groups (Bhavani Shankar Bhargava, 1949: 49). He uses these categories unproblematically. He doesn’t heed to the fact that the very ‘social environment’, that he is talking about, is shaped by the oppressive and disciplinary strategies of the state vis-à-vis the criminalized communities. The habitats of these groups have been projected as though they were untouched by the procedures and institutions of the state. This elucidation is being made here of the case study which was undertaken more than six decades ago only to convey the point that the narratives about the life of these groups are still largely articulated from the conceptual framework bereft of the effects of modern colonial power. For instance, the ethnographic documentation of these groups by the Anthropological Survey of India under its ambitious project, *People of India*, is a case in point.

An extremely illuminating example of how even the memories of criminal tribes were colonized has been mentioned by Meena Radhakrishnan. She has elaborated the case of the children of Yerukulas, a criminal tribe in Madras Presidency, settled in Stuartpuram. These children are reciting poems in the condemnation of their forefathers’ criminal past while praising the Salvation Army for reforming them.²⁴ These poems are part of the records of the Salvation Army. These songs were composed, as Radhakrishnan notes, immediately after Yerukulas were settled at Stuartpuram by the British government. They recite one of the poems thus: “Come listen to me for a moment or more, for I am a ‘crim’, yes, I am a ‘crim’; there are records against me, yes, more than a score, I belong to the criminal kind. I live most by plundering other men’s goods, for, I am a ‘crim’, yes, I am a ‘crim’....”²⁵

This poem was taught by the Salvation Army involved in the campaign of ‘civilizing’ and ‘reclaiming’ tribes and castes with alleged ‘criminal tendency’, in collaboration with colonial state. This poem shows how the historic memory is bereft

²⁴ Radhakrishna, Meena (2000). ‘Colonial Construction of a ‘Criminal’ Tribe: Yerukulas of Madras Presidency,’ *Economic and Political Weekly*, July 8-15. pp. 2553-2563.

²⁵ *Ibid.* pp. 2560.

of any past beyond artificially constructed history by the colonial power. From this example, it can be argued that the state is very much at the centre of the construction of 'self', which is devoid of comprehension of the workings of oppressive structures and ideology of the colonial power. It also informs us with the sense that the historical and anthropological narratives- whether documented or oral- about groups such as criminal tribes must be explained in the light of the fact that the criminal subjectivity is a discursive formation; and the criminal subject in its typical form is the outcome of the colonial condition. The ethnographical narratives if don't discuss the relationally constituted criminality of the criminal tribes in relation to the colonial modern state, it would be highly presumable that they would treat the life and practices of the criminal tribes as pristine and without the presence of the state, in whatsoever form.

Manners and habits are not unstructured social phenomena. They have sociogenetic and historical character. Explaining the civilizing process in the context of Europe over long period of time, Norbert Elias has given a fantastic empirically informed interpretation of the relationship between structure of civilized behaviour and the organization of the modern states.²⁶ He has demonstrated the inexorable link between the emergence of the modern state as the sole legitimate coercive force and the whole apparatus which shapes the individual, the modes of the social demands, the prohibitions which mould his social make up, and the kinds of fear, shame, decency that play a part in his life. The civility and political power have thus been shown to be mutually reinforcing each other and unleashing the mechanisms of social protocols and internalization of self-restraints.

In India too, the formulations of Elias are quite relevant and helpful in explaining the historical construction of criminal habits and manners with the inception of colonial modernity. The consolidation of the institutions of colonial state was accompanied by the civilizing process. Consequently we find that a whole bunch of manners, habits and behaviours were regarded as 'uncivilized', 'barbaric', and 'criminal'. These constructs were the outcome of the growing structuration of civil behaviour as demanded for the institution of the authority of the colonial state. It is precisely in this context that the stiring of the habits, manners and activities of those

²⁶ Elias, Norbert (1994). *The Civilizing Process: the History of Manners and State Formation and Civilization*, translated by Edmund Jephcott, (Oxford: Blackwell), pp. xiv-xv.

who were declared criminal tribes would be well comprehended. The anthropological and ethnographical account of the habits and manners need then to be informed about the historicity of their modification and formation in incessant intersections with the evolving apparatus of modern state. Judged with such theoretical underpinnings, the margins represented by these groups can be understood in its dynamics, being constituted, reconstituted by the presence of state in its attempt for ever-lasting concern for order-building.

It is quite appalling to notice that, until now, the unique perspective offered by the ethnography in accounting for the experience of the silenced and excluded is still mired in colonial conceptual framework. Even the most recent works, despite their sympathetic views towards these groups, lack the critical intellectual rigour, and thus fall prey to the arguments derived from those who wrote almost six decades ago dwelling on framework embedded in colonial ethnographical accounts.

For instance, Birinder Pal Singh refers uncritically to the accounts about the Bauria tribe provided by British officials and other ethnographers and anthropologists. They are still being projected, by such unmindful referencing, as ‘much addicted to crime’, ‘notorious for committing daylight robberies in the past’ and now adapted to ‘less violent forms of crime’.²⁷ Describing past economic activities of Bauria, it has been said that ‘they were also known thieves who would steal grains and cattle and sold them in other areas’; and ‘this used to fetch them good price and them become less vulnerable to the police’.²⁸ Talking about the social disposition of Bauria tribe, he notes that earlier some types of ‘deviant behaviour’ witnessed were ‘rape, fighting, murder, theft etc’.²⁹

Likewise, the Gandhila in Punjab, declared by the British a criminal tribe, have been described as to have had the ‘deviant behaviour of eve-teasing, quarrel and theft’. In fieldwork, the respondents from this community stated, as quoted, that ‘we don’t pluck even mustard leaves for *sag* from a field without the permission of the former’. However, this response has been explained by the ethnographer as thus: “it may be due to their categorization as a criminal tribe by the British that they now

²⁷ Singh, Birinder Pal (edit.) 2010. ‘*Criminal Tribes of Punjab: A Social-Anthropological Inquiry*’, (New Delhi: Routledge), pp. 2-3

²⁸ Ibid. pp. 17

²⁹ Ibid. pp. 18

want to prove that they are not criminal”.³⁰ It is an exemplary to note how the subject is constituted, how the vision of the observer is structured, which conceptual language has been deployed to explain the experience of both the observer and the observed in order to capture the social reality. This is an instance which signifies how deeply entrenched the colonial imagination has been in conceptual framework used to delineate ethnographic experience.

In the case of ‘Nats’, who were declared criminal tribe, and still bear the brunt of atrocities, lynching and incarceration, the explanation is that ‘theft’, ‘marrying outside one’s own caste’ are considered some of the most virulent vices among them.³¹ Furthermore, the description about the life of Sansi, is that in certain areas of Sangrur and Gurdaspur, ‘some families are still associated with crime’. When found involved in crime activities, as the author claims, their common ‘refrain’ is: ‘we want to lead a normal life with dignity but the police is not letting us to do so’.³² What does this ‘refrain’ connote? It seems that the ethnographer who is documenting the narratives of persons from this group is not convinced with the logic of persons. Nor does he seem to historically ground the relationship between this group and the institutions of state such as police. It also demonstrates how state is present in everyday life at the margins.

It seems, from above all narratives, that social order has been treated as *natural* and *normal* while the activities of these groups as deviant and abnormal. Such narratives in fact perpetuate the image of these communities as constructed by the colonial rule. The fragility of narrating ethnographically the life of such communities as these, without any documented history except in the annals of the state used to demean and repress, lays in the fact that if the very identity is not viewed in discursive mode, informed by the presence of the power, it would not be helpful to understand how the margins is consistently produced and reproduced.

It is quite obvious from above explication that criminality which was assumed in regard to nomadic communities was not questioned. In fact, the colonial

³⁰ Kaur, Malkit (2010). “Gandhila”, in Birinder Pal Singh (edit.), *‘Criminal Tribes of Punjab: A Social-Anthropological Inquiry’*, (New Delhi: Routledge), pp. 100.

³¹ Kumar, Deepak (2010). “Nat”, in Birinder Pal Singh(edit.), *‘Criminal Tribes of Punjab: A Social-Anthropological Inquiry’*, (New Delhi: Routledge), pp. 108.

³² Bhatti, H. Singh (2010). “Sansi” in Birinder Pal Singh(Ed.) *Criminal Tribes of Punjab: A Social-Anthropological Inquiry*, New Delhi: Routledge, pp. 124-125

imagination of criminality of these groups still continues in post-colonial India. The anthropological and ethnographical accounts are still full of such imagination of these groups. Such accounts do not analyse the effects of colonial power on the life of these groups and the changed notions of criminality brought about by this power.

Chapter-3

*Empire embodied Deviant: Looking at Criminality in
Colonial India*

CHAPTER- 3

Empire embodied Deviant: Looking at Criminality in Colonial India

In this chapter, I will examine the problem of modern state in relation to its subjects. This is the problem of 'legibility'¹ which it seeks to obtain of its subjects. This problem is, as James Scott argues, a perennial one, which State invariably tempts to address in the course of its operation. I would, dealing with this question, try to highlight one more aspect in this chapter. I would like to point out that in this practice of making its populations legible, the state actually forms their identities as well. This is to say that the activities and practices of modern state, in its attempt to make people legible, ordered and pacified, involve the processes of identity formation. In this attempt, I will focus on identity of some groups of people who were known as "Criminal Tribes" through the practices of colonial state in India. Such formation took place in its course of making people legible, pacified and ordered. Those people mostly consisted of nomads, itinerants, vagabonds, and dispossessed. The criminalization of such groups is inexorably bound up with institutionalization of practices and procedures of Indian colonial state. It would be explicated here as to how the body of the 'criminal' was regarded as deviant during the setting of new standards of 'normal' by the modern power in form of colonial state. The later part of this chapter will also examine the colonial imaginations of race, crime and the techniques which developed for the identification of criminal body.

State and the problem of legibility

State is one of the basic institutions in a modern society. With the emergence of modern form, it has required a different mode of its operations and organization of its activities. To put it rather simply, State has become more concerned with structuring and restructuring the fabric of its own society. This has happened understandably because of its own compulsions. These compulsions are in the form of functions that

¹ The problem of 'Legibility' of Modern State has been extensively discussed by James Scott in his work, *Seeing like State: How Certain Schemes to Improve the Human Condition have failed* (1998). He has used this concept in the sense of making profile of individual through documentation of relevant social, economic, cultural and other properties by the state.

it has to perform. Among the basic functions which are supposed to be the *raison d'état* of its existence are those of taxation, conscription, order, and the prevention of rebellion. The performance of these functions has indispensably required the knowledge about the populations. And thus we find that the modern state has devised and developed, in the course of time, varieties of modalities and instrumentalities in order to map the distinct profiles of its subjects.² In doing such profiling, it in fact arranges its subjects into certain power relations. This is to say that the modern state orders the people. This ordering entails bringing people in relations in ways with the state.

In this chapter, an attempt would be made to figure out the process of criminalization of certain tribes since colonial rule, who have been living their life nomadically at the fringes of society. In its efforts to colonize the land and people, the colonial power sought to ensure the 'legibility' of colonial subjects. In this process, it constructed a form of collectivity called 'criminal tribes'. The formation of such social identity was the result of state's constant striving for ordering the colonizing society and its inhabitants.

James Scott claims that 'the legibility of a society provides the capacity for large scale social engineering'. The state does involve mapping not only of its populations but also its geographical space as well. He notes that the very figuring of populations and geographical terrains implies certain forms of knowledge and control which eventually results into narrowing of vision in order to bring into sharp focus the limited aspects of an otherwise far more complex and unwieldy reality.

'Legibility' and 'simplification' are interrelated phenomena. The act of measurement to obtain legibility is marked by the play of power relations. Scott, in his study, seems to be concerned with the danger of the process making population legible since it is based on the process of simplification which renders classification, enumeration, and categorization of subjects possible. The major objective of state behind these projects is largely driven by the concern to achieve objectivity and fixity

² Modalities and instrumentalities have been used here to denote the remunerative techniques such as Census operations, ethnographic surveys, historiography which the colonial Indian developed and used in order to generate several forms of knowledge. These forms of knowledge were used to make the subjected Indian people legible to colonial state so that it could pursue its colonial project. Bernard S. Cohn has elaborated these modalities in his work, *Colonialism and its forms of Knowledge*.

about social, economic attributes of the ruled so that it can do its essential functions properly. The State therefore charts out strategies to standardize the tools of measurements. In his elaboration, Scott acknowledges the fact that assumptions and propositions underlying such mapping of nature and space are largely embedded in utilitarian convictions. He thus argues that the interventions of state in nature and space render them manipulated in such a way that the utility of the latter could be well realized. Driven with such impulse, the very marking out of flora and fauna signifies the underlying utilitarian convictions of usefulness and uselessness of plants and species. For instance, “plants that are valued become ‘crops’, the species that compete with them are stigmatized as ‘weeds’ and the insects that ingest them are stigmatized as ‘pest’. Thus trees that are valued become ‘timber’, while species that compete with them become ‘trash’ trees or ‘underbrush’. The same logic applies to fauna. Highly valued animals become ‘game’ or ‘livestock’, while those animals that compete with or prey upon them become ‘predators’ or varmints” (Scott 1998: 13). New measurements introduced by the modern state subdued the locally contextualized and historically specific measurements used by the peoples in their respective regions in organizing their day to day life (ibid: 27). In its attempt to order and classify both the natural and social spaces, the State has always tried to sedentarize the “people who move around” (Scott 1998: 01). As Scott claims, the nomadic, vagrants, homeless and itinerant people have always been a thorn in the side the State. Apart from other contemplations, the concern, here, of Scott is to expose the fragility of such rationalized endeavours of State basically when it tends to embark on to do so in order to implement some well administratively conceived and drawn plans. He examines so many states’ welfare policies across several regions to show the problem enshrined in simplification for ensuring legibility of different segments of society. Though Scott’s study is primarily concerned with debunking the claims of such highly administratively conceived rationalized and centralized planning of policies, it indeed sheds light on the way in which the modern state deals with its subjects.

The colonial rule in India is a significant intervention in social structure of this subcontinent. Right from the beginning, the British rule had started devising instrumentalities and modalities to map out the Indian subjects and geographical terrain. These modalities and instrumentalities were informed by the social theories based by the experiences in western societies. However, as Bernard Cohn notes, the

projects of state-building in India and Britain- documentation, classification, legitimation, and the institutions therewith- were a two-way process, constituting a single field of investigation (Cohn 2009: 04). With their arrival in India, the British entered into a new world which they tried to comprehend using their own forms of knowledge and thinking. The possibility of governing the conquered territories was only attainable for the new power if it could equip itself with the facts regarding culture, economic and social relations and existing forms of authorities. The very legibility then became the central concern of the colonial rule. It, then, had to embark on devising investigative modalities and instrumentalities in order to know India. The assumption of right to collect revenue in Bengal after the treaty of Allahabad in 1765, one of the most formidable tasks for the British was to have the knowledge of exact owners of the lands and the appropriate means of collecting tax. This was, however, also the period when the functionaries and agents of colonial rule were in quest for textual understanding of this subcontinent. They started translating the texts- religious, administrative- available in Sanskrit, Arabic, and Persian into English. Bernard Cohn has illuminated about the earlier attempts of colonial officials to decipher how the society was organized and previous authority was exercised. Such endeavours were intended to figure out the values, moralities and local power relations, regulating all spheres of people. The knowledge of the native languages was felt indispensable since the new authority had to make its command effective over not only the members holding the British authority in India but also the Indian subjects.

However, the colonial ‘forms of knowledge’³ that were being produced by the new authority were the forms that sought to represent the Indian social reality in desired form. The facts of this space did not match with those of the aggressors. But the techniques that were under the process of designing and experimenting assured the bearers of new authority that they would comprehend the unknown and the ‘other’. The empirical mode of investigations based on certain modalities had started intensifying after the mid-nineteenth century. The ‘social facts’ that were being constructed in the process of knowledge formation were themselves constructing a new social, political, and cultural reality, operationalizable within a new settings of moral framework. The social reality that was being formed was itself upsetting and

³ This phrase I have borrowed from Bernard S. Cohn’s work, ‘*Colonialism and its forms of knowledge*’ (2009). In this work Cohn has elaborated the knowledge which the colonial power produced in forms of Ethnology, Anthropology, Ethnography, Historiography, Census surveys and so on.

reordering the existing social, economic, and political configurations. The tremendous transformation that was caused by the colonial rule in search for legibility also affected the social identities of colonized Indians.

The modalities that were developed to measure and control the activities of people were transforming social identities of varied groups of people. There were several modalities⁴- historiographic, observational, survey, enumerative, museological, surveillance- to have evolved in the course of expansion and deepening of the roots of new form of power. These modalities played significant role in conceiving and representing the people and their life world. The enquiries in search of discovering local customs, social practices and histories in order to find the definite assessment of land revenue produced colonial version of histories on a district-by-district basis.⁵ Cohn (2009) observes that this version of histories involved the ideological framing of the nature of Indian civilization. This was not only the production of histories but also the construction of the discourse for legitimizing the British's civilizing mission in India. This was the power of colonial rule which appropriated the past of the ruled and became its representative.

The British colonial rule won at least two significant battles- territorial and epistemological. The forms of knowledge that they were generating became the means of making territorial as well as social spaces legible to the state. These forms of knowledge thus profoundly enhanced the capacity of the state in terms of performing its functions including controlling subjected Indians. These modalities were also used to give concrete form to history of British's eventual victory by constructing memorials and sacred places.

The Census operation launched at large scale since 1881 to visualize the people in numbers to attain certain level of certitude in a strange land enumerated not just the name of each person but also included basic information about his age, occupation, caste, religion, literacy, place of birth, and current residence. The information generated by the series of census significantly helped the empire to understand as disparate issues as caste system, the religions of India, fertility, morbidity, domestic organization, and economic structure of India. With such census

⁴ These modalities have been discussed by Cohn (2009) in '*Colonialism and its forms of knowledge*' pp. 3-15.

⁵ Cohn, Bernard (2009). *Colonialism and its forms of knowledge*, pp. 5-6.

operations, what were fundamentally created were the social categories by which India was ordered for administrative purposes.⁶ The British assumed that they had derived basic sociological facts about different kinds of people through enumeration. Cohn claims that, though it achieved the sociological categories, the census project unquestionably also objectified social, cultural, and linguistic differences among the peoples of India. However, there is another aspect of the effects of the census operations as well. The categories that the British rule could formulate on the basis of the information provided by the census had their own autonomous effects resulting into transforming the existing state of affairs. This was a kind of simplifying things in order to make them intelligible so that they could be properly ordered and administered. Out of these modes of investigations emerged certain disciplines such as ethnology which were assigned the status of being 'sciences'.

Constitution of new political authority had started shaping a new social order. This new emerging social order was under the process of formation with constant insertion of new notions of authority marked by the resistance of those who were not willing to confirm the same. Surveillance modality was developed in order to cope with the challenge posed by those representing the dissent to this desired colonial social order. Freitag (1991) notes that the landed and sedentary segments of Indian society were not as much resistant to demands of emerging social order as the nomads, itinerants, and mobile populations were. This is to say that the very nomadic life was against the principles and values of organization of modern state. The legal system which was being installed in the process largely manifested 'an amalgam of sedentary south Asian values and British priorities'.⁷ The state saw the wandering groups of people as out of the bounds of the settled civil society. The social groups such as sanyasis, sadhus, fakirs, pastoralists, herders, acrobats, snake-charmers, and other entertainers were viewed as the danger to the kind of moral social order which was most congenial for the colonial rule and its interests. The British therefore constructed instrumentalities to control these groups corroborated by a particular form of knowledge of their alleged inherent criminality. This was at least in one sense a result of the quest for knowing these sections of society and consequently ordering them in the spectrum of new colonial social order. In 1835, the thuggee and dacoity

⁶ Ibid. pp. 8.

⁷ Freitag, Sandria B. (1991). 'Crime in the social order of Colonial North India', *Modern Asian Studies*, Vol. 25, No. 2, pp. 229

department was established as part of the modality to collect information about these groups and suppress them. This involved primarily the informers, who turned state's evidence, and acted not only as witness but also as informants on the "culture" of these "dangerous classes".⁸ This mode of identifying criminals was in fact part of the larger discourse informed by characteristics of the development of modern criminal justice system.

Michel Foucault has meticulously discussed the nature of the judgement about 'crime' and 'offences' in the modern penal justice. The judgement passed to punish a criminal, Foucault argues, is not only confined to the 'crime' and 'offences' as codified in the laws, but envelopes much more than that. It is also passed on 'the passions, instincts*effects of environment or heredity* (emphasis added).⁹ The object of punishment has been expanded with the considerations of his social relations, his future development, the possibility of his rehabilitation, and reclamation. Here one point needs to be emphasized is that such kinds of calculations were in conformity with the emerging bourgeois social order in western industrializing societies since the emerging legal structure became increasingly repressive of the poor.¹⁰ The law was concerned not only with the offences themselves but with its greater role in shaping emerging social order by bringing within the confines of the demands of the latter to those who were seen as its potential threats. The role of punishment was aimed not only to inflict pain to the body as the consequence of the act of offence but also to direct his 'self'¹¹ in a way congenial to the institutionalization of the norms and principles of the new social order.

The 'crime' thus was viewed not only in term of committing one prohibited act but also in term of the prospective behaviour of once criminalized individual. The logic lying behind the notion of 'criminal tendencies' and the marking certain groups therewith is that the patterns of behaviours embodied in life of some persons or groups must be disrupted in order to attain the subjected bodied in a new order of things. Acting as per the norms and standards of different, outgoing regime of power

⁸ Cohn, Bernard (2009). 'Colonialism and its forms of knowledge', pp. 10-11

⁹ Foucault, Michel (1991). *Discipline and Punish: The Birth of the Prison*, (London, Penguin) pp.17

¹⁰ Freitag, Sandria (1991). 'Crime in the social order of Colonial North India', *Modern Asian Studies*, Vol. 25, No. 2, pp. 228

¹¹ Instead of using 'soul' which Foucault has opted for, I am using 'self' as Foucault has used it in his analysis of "cultivation of self" in *The Care of Self: The History of Sexuality (1990)*.

was seen with suspicion and intolerable. The whole edifice of penal justice which has developed in the last 200 years demonstrates that it is based on a combination of ‘knowledge of offence, knowledge of offender, knowledge of law.’¹² The power of judging had started being shared by so many professionals, apart from the judges themselves, in the ‘epistemologico-juridical’ formation. The status of being ‘scientific’ knowledge of certain discourses inevitably made them part of the judging process. Foucault is of the view that such calculations which have invaded in judgement punishing the criminal is not so much aimed at inflicting pain to the body.

The colonial state in India came into being, as Dirks calls, as result of ethnographic practices. The practices such as ethnology, anthropometry, which emerged as scientific discourses during nineteenth century significantly, moulded the colonial policies. The native criminality which became phenomenon was formed within the framework of such practices and policies. Foucault’s claim that the power of assessing criminality has fragmented among several forms of knowledge-bearers can be analysed in the context of India where state formed a particular form of criminality based on the knowledge furnished by the practices like ethnology, anthropometry, anthropology. There were a large number of marginal groups who were brought under the imperial gauge through the process of collective criminalization. Their criminality was conceived as inherent emanating from their particular descendants, racial background or physical complexion. Notion of criminality based on such grounds was thus discursive formation, encompassing in it the state’s concern for legitimation and desire for a particular kind of legal and moral subject. With the advance of the fortune of East India Company in the last decades of the eighteenth century, the British had started devising mechanisms to enforce their laws. There were some regulations which were brought in Warren Hastings’ regime had the postulates incriminating the whole family or village members for the crime committed by an individual. In the subsequent discussion in this chapter, it would be illuminating to shed light on how the colonial state criminalized certain marginal groups treating their activities as ‘extraordinary crime’. The notion of such ‘crime’ was closely connected with the emerging connections between property, authority and colonial interest. Such laws with accompanying disciplinary techniques were desirous of forming the legal boundaries to define who deserved the protection of law and who

¹² Foucault, Michel (1991). *Discipline and Punish: The Birth of the Prison*, pp.19

would be out of any legal status abandoned for any kind of repression. In 1830s, the “discovery” of “thuggee” was in fact the consequence of the legal demarcation defining those who were supposed to be the big danger to the social order conceived by the colonial state. The wandering communities largely constituted the discovered groups deserved to be repressed by the special instrumentalities. The emergence of ‘thuggee’ as the object of colonial repression was a discursive formation taking place in a particular phase of the development of colonial social order. The very notion and nature of ‘crime’ was fundamentally altered in the process of setting a new standard of conscience collective expected for the new power regime. The boundary between the legitimate and thus allowed, on the one hand, and the illegitimate and thus forbidden, on the other, was redrawn in new configuration of power.

Modalities¹³ and the Formation of Native Criminality

The concept of ‘crime’ or ‘offence’ is not a static one. An act which could be normal in one moral order may turn into a pathological one in another order. Michel Foucault is of the view that, with the development of the modern penal system, there is ‘substitution of objects’ - displacing some kinds of offences while bringing new ones. He, for example, points out that blasphemy has lost its nature as a crime with the decline of religious authority.¹⁴ However, he argues that the division between ‘the permitted and the forbidden has preserved certain constancy from one century to another’. The intervention of new power with the advent of British rule significantly altered the notion of crime and criminality. There were a wide range of practices which had legitimacy of certain kinds were regarded by the British as the manifestations of barbarianism and savagery. With the ethnographic accounts and records of missionaries, it came to attention to the British that practices, such as human sacrifice, animal sacrifice, were being entertained by certain castes and tribes. The reporting of such practices caused much anxiety among both missionaries and colonial administrators. The Tribes like Konds in central India and Todas in south India came into spotlight for their alleged barbarous and outrageous practices. These tribes became a matter of such discourse only when the British penetrated into the mountainous territories inhabited by the former. It is, however, as Dirks notes, notable

¹³ As has been already explained, the Modalities denote the Political Technologies such as Census operations, ethnographic surveys and ethnological, anthropological and anthropometrical techniques.

¹⁴ Ibid. pp. 17

that the subsequent ethnographic accounts did not highlight the point that the colonial rule used such practices as animal and human sacrifices to justify its violent and ruthless expansion and deployment of repressive measures of administrative control over tribal groups.¹⁵ In his brilliant accounts about the history of constant evasion by the hill people of zomia region of Southeast Asia from the control of state, James Scott has argued that on close inspection, such terms as “barbarian” and “primitive” mean “ungoverned” and “not-yet-incorporated”.¹⁶

We can see that the modalities such as ethnography worked as instruments of expansion of domination of the new form of power. Gyan Prakash notes that the reformist attempts introduced new forms of domination even as they questioned as varied practices as animal sacrifice, the burning of widows. The power relations were at work in classifying and acting upon the people who were declared as ‘criminal tribes’.¹⁷ The idea of criminality was basically an effect of new power relations. Colonial notion of criminality was thus a manifestation of demarcation of the boundaries between the desirability and undesirability of certain social, cultural, and religious practices in order to consolidate colonial power. Durkheimian perspective on crime consists of ‘any kind of act that offends certain very strong collective sentiments’¹⁸. An act if goes against the norms set by the conscience collective is designated as criminal act and the person to have done so as criminal person. This perspective views crime in statistical terms, e.g. rate of suicide, rate of divorce, etc. dissenting with this view, as referred to by Mukul Kumar (2004), Canguilhem views crime in terms of defiance with the normativity of society, arguing that the distinction between normal and pathological is consequential only if seen from the perspective of the normativity of the society.¹⁹ For instance, ‘social banditry, as has been conceptualized by Eric Hobsbawm, was not an illegal act in particular social and political structure. It was a form of resistance against the rich peasants in agricultural society. Thus, the act like social banditry was within the moral order of the peasant

¹⁵ Dirks, Nicholas (2010). *‘Castes of Minds- Colonialism and the making of Modern India’*, (New Delhi-Orient Longman), pp. 174

¹⁶ Scott, James (2009). *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia*, (New Heaven and London: Yale University Press), pp. x-xi

¹⁷ Prakash, Gyan (1992). ‘Post-colonial Criticism and Indian Historiography’, *Social Text*, Vol. 31/32, pp. 9-10

¹⁸ Kumar, Mukul (2004), ‘Relationship between Caste and Crime in Colonial India- A Discourse Analysis’, *Economic and political Weekly*, Vol. 39, No. 10, pp. 1078

¹⁹ *Ibid.* pp. 1079

society. Social bandits, though defined by the State as criminals, spring from, represent, and are protected by peasant communities beset by crises of livelihood and oppression.²⁰ They nevertheless made distinction between the social bandits and robbers. There was the existence of a moral economy of the poor in order to define socially acceptable and non-acceptable criminals. The notions of criminality which emerged in the discourses produced by the Scholar-administrative officials in colonial india during nineteenth century significantly reflected the ways the group criminality was being narrated in industrializing west. The early nineteenth century in the west witnessed the emergence of the discourses revolving around dangerous classes and criminal classes. Initially, theories which were applied to understand the social behaviour of the sections at the bottom of the social hierarchies were concerned with desire to establish the relationship between criminal acts and physiological characteristics of a person. The criminals were regarded as biological degenerates demonstrating a particular set of physical characteristics. Until the middle of the nineteenth century the relationship between skull, brain and social behaviour was explored to explain group criminality. This genre of discourses about criminality was the result of the influence of the biological determinism of Lombroso and Ferri.

In France, the efforts had started to count the numbers of nomads, vagrants in first half of the nineteenth century with an aim to identify them with a particular name. By late 1820s, France had developed a system of records to have profile about such groups in statistical terms. In Britain, the emergence of the concept of dangerous classes indicated the apprehensions of the burgeoning bourgeoisie towards the dispossessed, vagabonds, wandering classes. This resulted into the enactment of Vagrancy Act of 1824, addressing the concerns of capitalist classes for their private property and political order (Kumar 2004: 1080). The laws which were successively passed targeted the people consisting of migrants, gypsies, itinerants. These people had something in common- moving from one place to another, involved in menial and casual work, begging. The street-performers, street-sellers, and prostitutes had also been subsumed under the purview of such Acts (Radhakrishna 2001: xv). The very *nomadic* character of their life was against the prerequisites of social order based on the sedentary life. These wandering groups were propertyless and thus viewed as

²⁰ Scheinder, Jane, Peter Scheinder (2008). 'The Anthropology of Crime and Criminalization', *Annual Review of Anthropology*, Vol. 37, pp. 355

disregardful to the property of the settled groups. The very modelling of these acts had the assumptions that these groups constituted one whole class of people posing threats to the social order being instituted by surging propertied classes. These people were regarded as idle not interested in honest work and could prey upon the properties of the sedentary society. The growing enclosure of the land by the landlords in Britain generated the possibility of the act of poaching. This act was defined as a criminal act in provisions of the black laws passed during late eighteenth and early nineteenth century.

Thuggee: Construction of a suspect community

The notions of crime and criminality in British India were part of the discursive formation informed by the combination of the conceptions about crime in western societies and experience of British in India. The notions of ‘group criminality’ that had emerged in the industrializing western societies, targeting the marginal and pauperizing sections at the lowest rung of the social hierarchy, enabled the colonial imagination of the native criminality in India. The notion of criminal and dangerous classes was created along the baselines provided by the notions of race, caste, and tribe. However, caste, tribe, and race had been often interchangeably used in administrative circles in colonial attempts to foreground the characteristics of native criminality.

The “discovery” of ‘Thuggee’ in the early decades of nineteenth century was a serious attempt on the part of the colonial power to conceptualize the nature of the native criminality. One of the most significant aspects of the knowledge the British assumed to have achieved was that the defining trait of the Indian society was the caste-system. The thugs were presumed to be a caste with its peculiar religious rituals and criminal occupation based on secret network of operation of activities. Crime was started being viewed in administrative circles as a hereditary occupation like other occupations in the caste-system. The British saw the caste-system as an archaic and static mode of social organization, featuring hierarchical order, occupation and social immobility. Such kind of initial assumptions about the mode of social organization helped the British formulate their strategies of controlling territory and populations.

The concrete manifestation of founding crime on some social collectivity can be traced right from the codification of rules in the last decades of eighteenth century.

Under the governorship of Warren Hastings, there was regulation decreed in 1772. Article 35 of this regulation stipulated that the punishment for an individual offender might be extended to his family and village.²¹ It was also stressed that the standards of evidence for punishing professional criminals would be different from those applied for occasional criminals. Public ‘notoriety’ of persons and groups of people was widely justified grounds, as promulgated by the Company, to punish the thugs and their associates. Furthermore, the section x of regulation xxii passed in 1793 held that the persons arrested on the suspicion that they were ‘notorious robbers’ ‘vagrants’ or ‘disorderly and ill-disposed persons’ could be detained until he could provide security for his good behaviour.²² Even though guilt of the commission of a specific act could not be proved, a suspect could be still kept detained.²³

A suspect identity itself was a construction of the colonial power in its attempt to capture the sign of the threat to its authority. The construction of mistrusted identity of a group or a person is found to be based on the rupture supposedly represented by the latter in the taken-for-granted fabric of social life. A suspect, either a population or a person, represents an object of suspicion, circumscribed by “a bundle of definitions, procedures, and rights, but, consistent with broad opposition between trust and distrust” (Cole and Lynch 2006: 39). It is obvious from the extraordinary legal innovations by the colonial power that the rupture required to mark a suspect in taken-for-granted social life was systematically constructed. The intervention of colonial power had altered the notions of trust and mistrust in its attempt to consolidate its own authority. In fact, the very social life of Indian subjects was being ordered and pacified. The machinations which had been devised to mark the criminal had largely enjoyed uninterrupted due to its both territorial and epistemological victory. We can therefore find that the law was not meant to provide its protection for any suspected groups or persons but rather severed its boundaries abandoning the criminalized at the hand of the growing claim of sovereignty of colonial power.

It can be well understood that the rules being codified to define a ‘criminal’ had presuppositions regarding his group identity, way of life and social relations. These

²¹ Singha, Radhika (1998). *A Despotism of Law- Crime and Justice in Early Colonial India*, (New Delhi: Oxford University Press), pp. 169

²² Lloyd, Tom (2008). ‘Thuggee, marginality and the state effect in colonial India, circa 1770- 1840’, *Indian Economic & Social History Review*, Vol. 45, pp. 208

²³ Ibid.

rules defined the grounds of being potential criminals rather than defining the act of the crime or offence itself. The changing power relations in countryside with the intervention of colonial power regarding right to possession of land and collection of land revenue had caused such a situation in which the colonial authority had to assert its sovereignty over the subjected population. The constitution of the identity of a criminal is viewed by some scholars as emanating from development of a new form of social, economic and political relations marked with the growing presence of the colonial state. The last decades of eighteenth century had witnessed acute level of famines in particularly Bengal which was being administered by the British. This was the period when the reports of increased cases of dacoity and robbery had been recorded. This was also the period when the Company administration had worked out a permanent settlement regarding land possession and revenue collection with the *Zamindaars* (big landholders). Having delegated the economic responsibilities to *Zamindaars*, The Company set itself out to transform its character from a trading company to state having authority to deliver judgement over civil and criminal matters.

The failure to force the Islamic legal officials under Mughal administration, to make them implement article 35 of regulation of 1772 convinced the British in 1810 to dispense with the *Fatwas* (legal ruling) of the former.²⁴ The thuggee Act of 1836, which was passed to exterminate the supposed fraternity of stranglers under the direction of W H Sleeman, provisioned that any person if proved to be belonging to any gang of thugs, before or after the passing of this Act, either within or outside the territories occupied by the East India Company, would be liable to be punished to life imprisonment with hard work.²⁵ The law was not much more concerned with the act of crime but with the danger posed to the sort of social order it wanted to institutionalize. Throughout the whole campaign to purge the thuggee, it was never defined who actually a thug was. The mechanisms devised to provide evidence in support of convicting a person as a thug were also based on the accomplice-turned-witness. The accused-turned-approvers were used as the reliable means of information to provide the evidence for the conviction and prosecution of the other accused. It is interesting to see that the process of state-building was concerned not only with the

²⁴ Ibid.

²⁵ Singha, Radhika (1998). *A Despotism of Law*, pp. 168.

compliance of its laws by the subjects and the identification of the criminal but also equally with building the notions of loyal and disloyal subjects to the state. The extraction of the information from among the accused and turning those ready to collaborate with state-builders into loyal subjects was the initial process of the colonial state to develop a body of knowledge about its governed.²⁶ The modalities which had been developing in the course of dealing with crime manifested that dominant structures could not allow anything opposed to its founding values of colonial social order. They had to edit, marginalize, sideline, and suppress everything which did not fit into the body of that order. The laws meant to maintain public order were at the same time defining the 'public' and the 'order'. This was the process to identify the deviance not in conformity with the new notions of authority introduced by the British. This was possible only by acquiring some grounds of permanency of deviant attributes confirmed by scientific knowledge. The capturing of the imagination of a criminal body was not feasible for the British without simultaneous construction of the relationship between criminality, on the one hand, and race, tribe, caste or such associationality, on the other. The discourses about caste, tribe and race which emerged in the latter half of nineteenth century India were in dialogic mode with construction of the notion of criminality.

The 'Thuggee' was supposedly one of the first great crimes in India unearthed by the British. It was however the effect of the new regime of power which eventually dismantled the existing configuration of authorities diffused around the local rulers. The "discovery" of this phenomenon, whose codification and overthrow had been undertaken at a great scale, was the founding moment for the study of indigenous communities.²⁷ The Anti-Thuggee Campaign expanded over one decade starting in 1830s and formally declared to have ceased to exist in 1839. It was nevertheless the beginning in 1840s of the expansion of the scope of notion of criminality which engulfed a wide range of wandering and peripatetic groups in the following decades. The groups as disparate as *Gosain*, *Jogi*, *Bairagi*, beggars, peddlers, and gamblers were regarded as suspect communities. Sleeman who had led the Campaign against the Thuggee described the religious mendicants as the group of people 'who infest

²⁶ Lloyd, Tom (2008). 'Thuggee, marginality and the state effect in colonial India, circa 1770- 1840', pp.222

²⁷ Brown, Mark (2002). 'Governance, Crime and Company Raj', *British Journal of Criminology*, Vol. 42, 81-82

every part of India, subsist upon the fruits of all manner of crime' (Lloyd 2008: 230). With the new arrangement of the land revenue system, as the result of the permanent settlement, the number of the people without any stable means of subsistence escalated. The phenomenon of the 'men on road', apart from the other reasons, was stimulated by the destruction of the local regime of power. The groups who had been rendering their service as mercenaries or of other kinds suddenly found themselves without any means or patronage for their existence. With the establishment of the paramountcy, after war against pindaris in 1817-18, the colonial power forced the local rulers to disband the militia and armies (Brown 2002: 84). The intervention of the British far deep into the countryside disturbed the local decentralized political structure uprooting numerous groups as the process of centralizing and consolidation colonial authority. Apart from the famine migrants, seasonal labourers, those like grain-transporters, medicine men, cattle-dealers, basket-weavers, entertainers, who provided services to the settled population, and those like hunters, wood-cutters, pastoralist, who subsisted in the forest ecology- at the margins of cultivated areas, the disbanded and abandoned ex-servicemen in mercenaries and militias composed a 'floating population' which required an administrative category, at the behest of the new power, in order to control them.²⁸

The official typologies of criminal tribes or of criminal cult were the outcome of such considerations.²⁹ The development of such typologies was effective sign of monopolization of authority and violence by colonial state. The diversity of group identities was exposed now to be gauged by the instrumentalities being developed by the Company rule. The trends of these categories to classify groups of people demonstrated the growing efforts of the British to know their subjects. Mark Brown (2002) notes that 'after around 1839 much less was heard about new thug groups and more of the idea of communities habituated or born crime' started to grow. As has already been mentioned, the criminality was being constantly conceptualized along the notions of caste, tribe and race. The seriousness of the administration to explore the relationship between occupation and criminality increased in the middle of nineteenth century after the growing influence of scientific discourse on the social scientists. Earlier, the assumption between the crime and occupation was based on the

²⁸ Singha, Radhika (1993). 'Providential Circumstances: The Thuggee Campaign of the 1830s and Legal Innovation', *Modern Asian Studies*, 27, pp. 103-104.

²⁹ Ibid.

taken for granted understanding of the Indian social order ascribing certain caste and tribes as criminals. However, the understanding was disturbed in the mid-1850s with certain shaking developments, specially the mutiny-revolt of 1857. By this time, the colonial administration had generated certain mechanisms and practices, especially with the working of Thuggee and Dacoity department, to embark on the expedition of reading and knowing more closely the Indian society in its totality with the newly emerging scientific modes of inquiry.

Race, Crime and Colonial rule

However, the taxonomies (categories resulting out of classification) which emerged to know the segments of society were highly permeated with the racial assumptions. The avowed scientific strategies which intended to firm up the foundation of the state had their grounding in racial moral conviction of the time largely motivated by the contemporary evolutionists. It was the time when the ethnology, anthropology and anthropometry were called upon to decipher the complexity posed by the diversity-cultural, social, and linguistic- of Indian subjects. The application of these so-called 'sciences' was based on the belief that the knowledge produced by these investigative modes would substantiate and legitimate the state's mission. The Indian could be easily ruled by the knowledge generated by these investigative modes. These investigative modes resulted into the construction of the social polarities informed by the conviction of existence of the superior and inferior races. The evolutionary race theories based on inequality of human races championed the ranking of human types. It was argued that the higher races represented by the Europeans 'are inherently more qualified for both political and individual liberty than the lower'³⁰ it were such assumptions lurked behind so-called sciences which marked the formation of taxonomies. The bodily attributes such as cranium were ascribed roles in deciding as to who could be clubbed together as morally and politically superior and thus trustworthy to the state and vice versa. The deployment of anthropometry in gathering information meticulously was based on the colonial assumption that types of physique were indication of individuals' proclivity to certain patterned social behaviours. Based on such so-called 'scientific' assumption, these new investigative modes sought to classify and name people into different categories. The criminality was understood to

³⁰ Bayly, Susan (1995) 'Caste and Race in the Colonial Ethnography of India', in Peter Robb (edit.), *the Concept of Race in South Asia*, (New Delhi: Oxford University Press), pp-179.

be the outcome of type of physique- if measured and classified would be consequently controllable. It is significantly noteworthy to keep in mind that all the physiological characteristics were marked with the notions of superior and inferior. The distribution of these physiological attributes between two social poles- one 'criminal' and other 'martial'- was mediated by the centrality of racial concerns. Moreover, the construction of these taxonomical polarities was also informed by the concern regarding loyal and disloyal subjects. The 'martial' races were thus so constructed as to signify their loyalty to the state whereas the 'criminal' races were so constructed as to symbolize the rebellion against the colonial state. The construction of the body of the 'Criminal' marked the formation of a state emerging out of a number of modalities. Using the modalities to 'know' India to name, class and to number its castes was to "fragment a complex and dynamic society and to draw strategic grains from its atomised constituent elements- recruiting the martial races, pacifying and subduing the criminal castes, dividing Brahmans from non-Brahmans in the new era of representative constitutional politics"(Bayly 1995: 165-166).

The strategic construction of these categories was to finally help state in managing its activities. The people who were categorized as criminal tribes deserved only severe forms of surveillance and control. The state used the categories of castes like monylending, agricultural, or 'martial' as the basis for transactions such as land transfers, regulation of rents, and recruitment to the armed forces. The initial forms of classification in the censuses of 1865, 1872, and 1881 were based on Brahmanic theory of division of populations into Brahmans, Kshatriyas, Vaishyas and Sudras. It could not, however, effectively serve the administrative purpose. The census in 1891 was therefore primarily based on occupation criteria. Susan Bayly (1995) explains that notions of caste, tribe, race and nation emerging out of the ethnographical accounts of Ibbetson, Walter Elliot, Hunter, from regions ranging from Bengal, Punjab to South India, were interchangeably used and were in their formative stage in colonial imagination. The understanding of these notions varied from one region to another as per the descriptions of the accounts given by the ethnographers-officials. However, as Bayly emphasises, the racial perspective dominated the ways in which the Europeans as well as Indians understood and debated the characteristics of what

we now call social identities within the wide ranging schemes of caste, tribe, race, and nation.³¹

The ethnographic accounts by Walter Elliot about certain castes and tribes of south India, as Dirks delineates, are full of the concerns of new power regarding the challenged posed by the inherited occupations and autonomy enjoyed by the latter. The caste like Kallars in south India were regarded by Elliot as “predatory tribes who have established themselves on the hills or other places difficult of access, where they enjoy considerable degree of independence,...establishing petty principalities for themselves and levying blackmail from their peaceable neighbors”(Dirks 2010: 175). Such account in fact disregards the existing forms of political authorities in local configuration of power. The Kallars were providing service as watchmen in Puddukottai at the time when British sought to control the region and its taxation system. Their legitimate extraction of levy in return for service was interpreted as illegitimate coercive extortion by the British. Dirks (2008) notes that the British did not see any distinction between legitimate right of protection and less legitimate forms of expropriation and terror.³² We can thus argue that the modalities like ethnography were not only constructing the social really structured in a different form of power but also simultaneously facilitating the way for the arrival of the colonial power by providing appropriate taxonomies³³. Or, in other words, we can say that the taxonomies so constructed were the effect of the new power itself. The institutions and functions organized around the existing political authorities if clashed with the requirements of expansion of the colonial power were attacked with all available means- including investigative modes- at the hands of the latter. The Kallars were later listed as hereditary criminals under Criminal Tribes Act passed in 1871 and extended in 1911 to cover Madras presidency.

The anthropometrical devices developed as part of ethnological and anthropological explorations during the closing decades of nineteenth century were part of the quest of the British rule to taxonomically order and pacify the colonial subjects. Two major institutions- military and police- of colonial power formulated

³¹ Ibid. pp. 215-216

³² Dirks, Nickolas (2008). *The Hollow Crown- ethnohistory of an Indian Kingdom*, (New York: Cambridge University Press), pp. 205

³³ Taxonomies denote the colonial categories that were constructed by colonial power in order to achieve order.

their policies of different sorts keeping in mind the knowledge being produced by such investigations. In the aftermath of mutiny-revolt, the recruitment policy in military took a significant turn. It was said that there were some castes and races that had the 'martial' qualities and deserved the favour in recruitment in military whereas there were others with suspicious character and consequently needed to be unfavourably and coercively dealt with. The very martialness of favoured castes and races had been ethnologically and anthropologically constructed keeping in mind primarily their supposed trustworthiness towards the colonial state. Such kind of construction of loyalty was invariably associated with accompanying colonial imagination and construction of the native criminality. In case of Madras presidency, for instance, some groups whose members had got favourably recruited before mutiny were later systematically phased out in the wake of revolt of 1857 and eventually declared 'criminal'- a category as opposed to 'martial'.³⁴ We can sense how profoundly loyalty to the new power had the impact in classifying and imputing with definite physiological characteristics. It can be said that the investigative modalities invested with new power were systematically constructing the 'criminal' deviant in their taxonomical schemes. It was not only the new conception of crime that was introduced by the imperial power but also the new conception of the subjected body required under the desired colonial social order. The boundaries of moral, social, cultural and loyal demarcated by and acceptable to imperial power were simultaneously marking out the image and the body of the criminal deviant. The so-called scientific techniques were in fact the means of instituting the colonial power by providing suitable taxonomical arrangements. The application of anthropometry in measuring and classifying criminal castes and tribes was indeed an endeavour of the power to ensure the legibility of the alleged criminal deviant. In search of legibility of the criminal body, we can see that the new power discovered and upheld genetic and hereditary grounds of criminality in scientific taxonomical schemes. The rationality lurking in name of scientific discourses was indeed rationalizing the desperate attempts of colonial power to control and subdue an alien cultural and geographical landscape. The people who were being criminalized in this process were in fact deifying such rationalization and its justifications. The criminality formed in this process was a signifier of resistance to have been offered by the subjected groups to

³⁴ Dirks, Nickolas (2010). *Castes of Mind- Colonialism and the Making of Modern India*, pp. 180.

the imperial power. The totality of the matter lies in the fact that the new power was consolidating its own means of production, violence and restrictions on movements of people. In doing so it was also at the same time labelling groups to mark their social identities in the social spaces and institutions formed through its interventions. The phenomenon of criminalization of castes and tribes collectively on the grounds of heredity, occupation, and genetics shows how the process of simplification for mapping the populations and territories implies the elements of arbitrariness on the part of power. The enactment of Criminal Tribes Act, 1871, was at least in some sense the culmination of the objectification of knowledge about groups brought under the clutches of repressive and disciplinary means to justify the new domination. Classification, Naming are modes of objectification of things and people. This is how the state seeks to make its people and territory legible to itself. It can be said that in this process the state draws the boundaries between legitimate and illegitimate forms of social spaces and identities. If we view the criminalization of social identities by the colonial state in nineteenth century, it makes feel that those who already vulnerable in the existing order of things were more prone to be seen as criminals. It was actually part of the larger process of subjecting existing order of things to the terms and conditions set by emerging new power relations in society. Thus the criminality of certain groups during late nineteenth century can be viewed in the marginality of latter in both existing and emerging power relations in society. The groups such as nomads, peripatetic communities, vagrants, petty trading communities and pastoralists who formed the marginal spaces and identities in the existing power relations were the ones who were the object of the discourse of native criminality. It is often argued in anthropological investigations that the modern state has not well engaged with its margins formed by those who don't have their histories. But in this case, we can argue that the state is very much at the process of the defining and transforming its margins. The relationships between the castes were much more complex than that derived from textual understanding in anecdotal and religious terms. The beginning, around mid-1850s, of purportedly scientific investigations of Indian social structure, in order to build a rationalized apparatus of the state, resulted, by the end of nineteenth century, into the formation of taxonomies claimed to be representing social reality. The rationality that had its own history in different epochs in Europe to order and classify the constituents of nature had started to be applied in measuring and classifying human beings from the eighteenth century.

Identification of 'criminal' body

The scrutiny of identity of an individual has been an integral part of the modern state. The pre-modern state was largely unconcerned with particular information about an individual in the sense that the forms of knowledge, authorities and their distributions among different institutions and social groups was not as much centralized as has happened with the birth of the modern state. The emergence of this institution as the sole authority to use legitimate coercive power over other institutions and subjects has been accompanied by the process of centralization of information about the latter. Apart from other concerns, the identification of the individual for various purposes in the function of the state has been at the core of such knowledge centralization. With the centralization of 'means' of production in the process of the formation of the bourgeois society through industrialization, urbanization, etc, synchronized by the concentration of 'means' of violence in the hands of state, modern state has also centralized in its hands 'means' of restrictions on movements of individuals. In other words, the state has monopolized the *authority* to mark the legitimate and illegitimate movements within and beyond its territorial boundaries.³⁵ The process of state-building is inextricably linked with the regulation of the means of movements of the populations. The regulation of the movement also contributes to constituting the very *state-ness* of the states.³⁶ The state needs constant supplies of resources for its production and reproduction. It is in the sense that the functions supposed to be the rationale of the existence of the modern state to perform presuppose the constant flow of human as well as material resources. It has constantly sought to institutionalize the mechanisms and procedures in order to keep the flow intact. The process of identification of groups and individuals in a very institutionalized form is profoundly important. The identification and marking of individuals have been at the heart of the controlling the movement of subjects/citizens as well as that of interlopers by the state. The state has done it in a very institutionalized and systematic manner by introducing diverse forms of documents, papers and files in order to render individuals a legible identity under the range of the state's sight.

³⁵ Torpey, John (2000). *The invention of the Passport: Surveillance, Citizenship and the State*, pp. 4-5, (Cambridge: Cambridge University Press).

³⁶ *Ibid.* pp. 6

Though the techniques of identification have tinkered over time and have been made more sophisticated in each successive attempt, the principle has remained almost intact: that is, the person's body is used against his or her own identification as evidence.³⁷ Torpey (2000) notes that the identity, inscribed through administrative documents, ultimately allows an individual eligible access to and move into certain spaces. It has been the history of the state- building to mark the bodies of subjects with some fixed signifiers in order to be easily identified and tracked. The colonial rule in India had adopted means of identification of subjects. We can view this as the effort of the modern state in its colonial form to generate resources and condition of its survival. The criminal communities that emerged in colonial discourses can thus be seen as the result of the process of the identification. The modern power sought to make the subjects in their distinctiveness as much as possible, especially to those who seemed to be outside civil bonds demarcated and preserved by the former. However, the application of techniques of identification was largely universal dimension. The imperative of the modern state to keep its territorial boundaries protected and populations well ordered and distinguished from interlopers has always made it to have institutionalized mechanisms of identification. These mechanisms containing information of diverse kinds also inscribe the identity of the subjects of the state. The techniques such as tattooing, photographing of criminals, fingerprinting, and anthropometric measurements were the initial endeavours during the whole nineteenth century to have been deployed by the modern state. The colonial rule in India tried to settle those communities which were designated as criminal communities. The very process of sedentarization could be read as the process of making mobile populations settled and thus identifiable. The emergence of new social, economic relations, and contractual and legal obligations made it imperative for the colonial state in India to identify and verify the identity of individuals in more precise manner than ever before.³⁸ With the expansion of the activities of the state involving land proprietors, land transfer records, delivery of services like those associated with post-office, railways, and the knowledge of the identities of individuals or parties involved was one of the basic requirements for the state to operate. The development of economic and communication infrastructure in nineteenth century India eroded the grip of

³⁷ Ibid. pp. 17

³⁸ Singha, Radhika (2000). 'Settle, Mobilize, Verify: Identification practices in colonial India', *Studies in History*, 16, 2, N. S. pp. 154-155.

village notables over the labour provided mostly by marginalised communities while increasing the fear of the colonial government of enhancing scope for the alleged criminal communities to commit crime on a larger scale and frequency.³⁹

There were several communities such as Mallahs (Boatmen community most settled along river bank in North India) which were criminalised on the ground that they were demanding some short of undue share from the goods in name a customary practice called *dasturi*.⁴⁰ The social flux caused by the mobility as the consequence of the increasing integration of Indian commodities and labour with the international market made it indispensable for the colonial rule to have proper identity of the colonial subjects. The political technologies which appeared, as have been mentioned above, played significant role in identifying criminal body. Until 1849, the political technology of tattooing prevailed in marking the criminal body. It was abandoned thereafter with the emergence of new and more effect techniques. The body was viewed as the most effective sight for identification. The forehead was the place where the name of the crime, date and place of commission of crime were inscribed. Based on the conviction that bodies are fixed and immutable entities, political technique of tattooing rendered the criminal body identifiable across time and space. This was also an inscription of new power on the body of the criminalized colonial subject.⁴¹ It was an attempt to make the criminal legible in the public sphere emergent as the result of the colonial intervention. In his description of development of identification techniques in European societies, Cole notes that the registers that recorded the name, place of birth complexion, stature and county and judge of conviction also included a single column to mention “marks” on the body of convicted person.⁴² It was an effect of the medico- legalists who endorsed the idea that “peculiar marks upon the body are a very important, perhaps the most reliable means of identification” (Cole 2001: 11-12). By the mid-nineteenth century in Europe, the permanent bodily markings had been recognised as better indicators of identity of the criminals.

³⁹ Ibid. pp. 159

⁴⁰ Ibid. pp.160

⁴¹ Anderson, Clare (2004). *Legible Bodies: Race, Criminality and Colonialism in South Asian*, pp. 2

⁴² Cole, Simon (2002). *Suspect Identities: A history of Fingerprinting, and Criminal Identification*, (Harvard: Harvard university Press). pp. 11

In India, as Singha (2000) mentions, the use of tattoo on the body of the all those convicts who had been sentenced to life imprisonment had been extended in 1795 by the company administration. It was not only to prevent escape of the prisoners from the outdoor gang-work which was normal practice but also to stigmatize the colonial criminal body. This is why the mark of sentence was inscribed on the forehead of the convicted instead of on the back or arm.⁴³ Such inscription was not only marking the criminal body and thereby making it legible but also enforcing and instituting the penal authority and judicial procedures in India. This was consequently asserting the sovereignty of the colonial power over both people and territory in this subcontinent. Anderson (2004) notes that *godena* (tattooing) was not just a penal sign but was also a mark of a general identity of being offenders or prisoners on an individual body.⁴⁴ It was also a surveillance strategy. The prisoners who were convicted to transportation sentence were subjected quite strictly to the marking with this penal sign. It helped the British administration to control the convicts. Initially, its application was extended even to those convicts who were convicted as forgers, perjurers who would serve a limited term of sentence. In 1817, through a regulation, it was decided that only the persons convicted to life sentence or transportation would be tattooed. For, those who had to serve a limited term of sentence in the cases of forgery or perjury if tattooed on the forehead were almost denied to be integrated into the society because of the decimated opportunities of employment by virtue the stigma caused by permanent mark of criminality. This was also because the British authority had to face the challenge in exactly detecting the escaped prisoners sentenced to transportation or life imprisonment. According to Singha, another method of producing a visible mark of the criminality was through flogging on the back. This punishment was considered particularly appropriate for so-called the low born habitual offenders and routinely imposed on 'criminal tribes' in order to enforce their confinement to a locality.⁴⁵

By the end of first half of nineteenth century, the tattooing as a political technology lost its appeal due to several reasons and considerations. Though it was less costly and effective, the mark on the forehead was gradually felt to be abrasive and detrimental to the process of the integration of the once convicted into society.

⁴³ Singha, Radhika (2000). 'Settle, Mobilize, Verify: Identification practices in colonial India', pp. 166-167

⁴⁴ Anderson, Clare (2004). *Legible Bodies*, pp. 15

⁴⁵ Singha, Radhika (2000). 'Settle, Mobilize, Verify: Identification practices in colonial India', pp. 172

Cole notes that this technique had two major drawbacks- visibility and irreversibility.⁴⁶ In European cases, the courts reserved this form of branding only to alleged incorrigible offenders. It was also decided that the branding would be made on private part of the body rather than on the forehead so that criminal record could not be public but visible if the convict was stripped before the court.⁴⁷ In India, the tattooing was finally abandoned in 1849. The advent of fingerprinting as a political technology made its applicability in a wide range of activities of government to ensure the identities of individuals. Singha has elaborated the case of planters of indigo and the labourers in Bengal during the last decades of the nineteenth century where the problems emerged due to the frauds being committed in the terms of the contracts with the latter. The planters used to force the labourers to grow indigo which the latter were unwilling to do because of the less income by such cultivation in the face of falling international prices. To make contract effective, Herschel initiated the process to take the fingerprints of all sorts of people in Nadia and in 1877-78 introduced this in Hughli to authenticate all signatures and marks on bonds and transactions in the registration department.⁴⁸ It signifies how important identification of people and groups in dealings of the colonial state was. The innovation of the Bertillon system in late 1870s combining descriptions and photographs with sets of anthropometric measurements was aimed to bring accuracy in identification of criminals. This system was first devised in Paris for the identification of the offenders. However, as Anderson notes, the system became more inaccurate than was first assumed because of the reliance on the human agency in recording bodily signs and its failure in resolving the problem of mutability of the body.⁴⁹ This problem was largely sought to be resolved through the introduction of the fingerprinting in the decades to come. It replaced the arduous task involved in the recording measurements through the anthropometric practices. The fingerprinting tied more closely the individual identity with his body than any other previous political technique. The success of experiment of this technique in India allowed the British to apply it in their own country.

⁴⁶ Cole, Simon (2002). *Suspect Identities: A history of Fingerprinting, and Criminal Identification*, (Harvard: Harvard university Press), pp. 07

⁴⁷ Ibid.

⁴⁸ Singha, Radhika (2000). 'Settle, Mobilize, Verify: Identification practices in colonial India', pp. 177

⁴⁹ Anderson, Clare (2004). *Legible bodies*, pp. 3

The notification of certain tribes and castes under Criminal Tribes Act (CTA) was also a very strategic move by the state to compel wandering and peripatetic communities to live a sedentarized form of life and thus allow the former to have the legibility of these populations. The mechanisms and procedures provided in the Act were designed to keep the body of a person from such groups always within the range of the sight of surveillance of the state. There was provision in this act that only on the basis of 'reason to believe' that a community is addicted to systematic commission of non-bailable offences, it could be listed under CTA. The surveillance mechanisms were also so designed as to subject the mobility of the groups impossible. With this Act, the power of the village headmen, who were invariably landlords, increased in terms of both recommendations for listing a group in under the Act and being responsible for surveillance over such groups under their respective territorial domains. The identification of such marginalized groups as hereditary criminals was based on the colonial notion of the moral subjects of new power. These groups did not fit into the kind of social order the new power was craving for. A bunch of procedures and identification techniques such as pass system, roll-call, registration, etc was placed in work in order to keep these criminalized groups under the colonial gaze. The very process of sedentarization contained the implication that the mobility of these groups without any means of legibility at the behest of the colonial power would cause alleged danger to the authority of the state. It was provisioned in the Act that a group could not be notified and registered until and unless there was made some provision of the means of their livelihood in the process of settlement. However, such provision was never given any serious attention and even deleted from its new version which came in 1911 extending to cover more regions and encompassing a lot more people under the fold of the Act.⁵⁰The designed framework of control was make the criminalized groups always confined in the specified settlements. If a member wanted to go outside the designated village to another village, he had to get the certificate of some pass type from the headman or the police station in charge of that village. He had to produce this pass to the headman of the arrived village to prove his identity. What does it connote? It simply demonstrates that the person of such criminalized group could never be allowed to be free from the constant surveillance of the state. The state could never give any space for a person to escape from the definite track of

⁵⁰ Radhakrishna, Meena (2001). *Dishonoured by History*, pp. 45-64

his movement. It was also envisaged in the Act that if the person failed to produce such identification certificate, he would be punished by a sentence of some period of imprisonment and penalty. As Radhakrishnan points out, a person of a household from such community had to register his presence before the police station at eleven o'clock in the night and three o'clock in the morning in order to assure the state that they were living in their designated confinement. It was good mechanism for the state and its collaborators to keep these groups in constant surveillance. Such severe surveillance and control also allowed the landlords to make these populations to work in their agricultural fields. The whole body of a criminalized was thus rendered to a kind of procedural visibility and control. And defying such procedure automatically ensured the severe punishment for the criminalized body. Moreover, the fingerprinting was extended to the member of CTA. The 1911 CTA empowered the district magistrate to take the fingerprints of any registered member of a criminal tribe at any time.⁵¹ If a member refused to provide his fingerprint, he was liable to a punishment of six month imprisonment or penalty of 200 Rs or both. We can hold a view that such machinations of the state were so designed to keep the criminalized groups in a very definite and accurate mode of identification. We can also have the sense of how the new power sought to create multilayered strategies of controlling these groups.

The criminality discussed in the colonial discourse can be regarded as the effect of the new power, striving to systematically render a person or a group not succumbing, or not willing to do so, to the desired social order being brought about by the latter. The construction of deviant criminal body was thus largely a result of the process seeking to form loyal and moral subject of the new power, seen in the form of those who fell to the economic and social relations caused by the effect of such power. The mode of the life a vagrant or a nomad was in sharp contrast to the kind of life the new power sought to base upon. We thus see that the groups who were already at the margins of the existing power structure of society were pushed into almost the condition of invisibility in the new structure of power. We there also see that the criminal deviance was systematically constructed in the course of the institution of new power in the form of colonial state. The so-called sciences in fact derived their objectivity and validity within the parameters of the new power itself. These

⁵¹ Anderson, Clare (2004). *Legible bodies*, pp. 168

discourses were not bereft of the impulses of the power. And they were indeed the forms of the power itself. The construction of the criminal deviant is thus the result of the operation of the new power and its attempt to pacify and order the existing society based on different rationality and social relations. The marginality took a different form and level since the state sought to institute a different form of structure of dominance. It also formed a peculiar form of subalternity specific to this subcontinent. It made the silenced more silenced than ever before. It made the unrepresented in the existing mode of structure of power more unrepresented in the emerging forms of spaces and institutions, especially in regard to those who were classified as criminal caste and tribes. Their construction as deviant by the new power brought with it a new form of social stigma attached with their very social identity.

Chapter-4

The Politics of Misrecognition

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The Politics of Misrecognition

This chapter will examine the approach adopted by the Indian state in response to aspirations of numerous sections of the political community emerged after adopting the constitution in 1950. There is a shift in the concern from identification of ‘suspect communities’ to attempts to recognize certain groups, historically depressed and marginalized, as deserving some form of preferential treatment. This is, however, not to deny the fact that a democratic and constitutional state does not indulge into the practice of constructing certain populations as ‘suspect’. This is to highlight the point that there may be some sections in such a political community whose invisibility into the public spheres can signify the limits of functioning democracy and constitutionalism. In this chapter, I will examine the constitutional identity of Denotified, Nomadic and Semi-nomadic Tribes through engaging with Constituent Assembly debate. Later, it will also try to explicate the continuance of their stigmatization. In the last part of this chapter, I have tried to situate these groups in the schemes of welfare and democracy and sought to draw a picture of their political identity.

The groups who were classified as ‘criminal tribes’ (which in fact included both castes and tribes) are now gaining some attention in the state discourse of social welfare. There are some categories such as de-notified tribes (DNTs), nomadic tribes (NTs), which are now surfacing in academic discourse, a bit, and the policy initiatives of the state to refer to the same groups who were notified as criminal tribes by the colonial rule. The visibility of some new political categories to mark the distinct form and level of marginality of people has also shown that the fissures among the existing constitutional categories are being sought to be politically foregrounded. The end of the British rule in India marked the beginning of the process of establishing new rules and modes of regulating and using the state machinery. The most evident phenomenon of the shift was the constitution of Constituent Assembly (CA).

Constituent Assembly debates

The political community was formed on the basis of the acceptance of a constitution as a *modus vivendi*. The constitution was seen as the embodiment of the liberal egalitarian principles designed to ensure that a socialist fabric of society would be realised in reasonable course of its operation. The constitution laid down the principles of equality, justice, liberty and fraternity after democratic deliberation in the constituent assembly by the representatives of the people. A society deeply mired into hierarchical structure and people suffering so many forms of inequalities, discrimination and stigma was intended to be subjected to the new constitutional norms and principles so as to be transformed into an egalitarian society. The state was thus turned into first and utmost agency of social transformation, which had in its historical formation chiefly been an agency of oppression of the subjected people. The ambivalence caused by such repressive history of the state' apparatuses and the modes of power operating through the existing order of things was eventually thought to be resolved through the democratic mechanisms devised constitutionally for the control and regulation of state. It was believed that democracy as legitimizing instrument would invariably keep the state power in check. The provisions of fundamental rights of the citizens in the constitution ensured demarcated the limits of state. The cornerstone of new political community laid down by the constitution of India included the voices for those who had been historically silenced and nowhere in the existing forms of social spaces and institutions. The dignity of every citizen was equally valued regardless of caste, religion, language, place of birth. This was in fact a historic moment since the people with their diverse histories, cultures and memories had agreed to co-exist based on certain political and ethical values enshrined in the constitution.

The state-building in India took a slightly different turn in that the political ideals of the constitution required a democratic and ever-negotiating process in the course of the following decades. It was said that the constitution was made by the representatives of the people. It has been argued that the representatives articulated in the constitution essentially what the people had aspired for regardless of the debate as to logical valid relationship between the representative and the represented. Some critics have said that the constituent assembly was not a body of politicians directly elected by the people. They thus suspiciously viewed the constitutional contours

largely to have been shaped by liberal-bourgeois vested interests. However, those, who say that the constitution is the embodiment of the aspirations of all sections of society, believe that the ideals of social revolution set in the constitution make such debate irrelevant as to who made the constitution.¹ They view constitutional text without any specific authorial marker, arrived at through the political contestations and claims in the preceding decades right up to the transfer of power.² After a long period of public reasoning, the political document in the form of constitution set the terms of the character of politics and public institutions. The provisions in constitution of safeguards, in the form of reservation in jobs in public sector and political representation in legislative bodies, for the vulnerable sections against historic injustice, envisioned a democratic, just, polyphonic, and egalitarian public and political institutions and spaces. These were the provisions which went beyond the promises of liberal justice at the time of founding a democratic society.

The constitutional categories of Scheduled Tribes (STs) and Scheduled Castes (SCs) represented those people who had historically been denied any claim in existing forms of political power. It guaranteed their dignified and rightful symmetrical presence and visibility in institutions, and spaces of public concern. This was the recognition of unequal capacities, perpetrated by historical social discrimination, in access to public resources and goods as a matter of right. The constitution, we can thus say, tried to provide the normative and political framework for building democratic and just basic social institutions. The constitutional categories of SCs and STs signified a rupture in the historical process of recognition in the sense that the marginality and deprivation of the people signified by these constitutional markers had been consensually and politically foregrounded. The emergence of these categories in the constitutional and political discourses at least marked some form and level of visibility for making rightful claims. They marked out the bases of how the contours of self-respect and dignity would be conceptualized in specific historical and social condition of India. It can be said that the constitutional morality necessitated for binding up an otherwise diverse histories of experience. At such a historic moment, it is quite significant to see what happened with those who had been notified as 'Criminal Tribes' by the colonial rule.

¹ Bhargava, Rajeev (edit) 2008. *Politics and Ethics of Indian Constitution*, pp. 1-40

² Nigam, Aditya (2004). 'A Text Without Author: Locating Constituent Assembly Debate as Event', *Economic and Political Weekly*, Vol. 39, No. 21, pp. 2107-2113.

Not quite markedly, the category of Denotified and Nomadic Tribes (DNTs), however, has figured consistently to show a different level and kind of social hierarchies. The constitution had already been made and implemented, with constitutional categories of Scheduled Castes (SCs) and Scheduled Tribes (STs), before the denotification eventually took place in 1952. There was no any scheduled list included in the constitution thereafter to recognise the specific character of the historical oppression meted out against the nomadic and semi-nomadic communities. We nevertheless find few but remarkable contexts in which the term “Criminal Tribes” surfaced in historical debates of Constituent Assembly (CA) of India. This was the moment when the representatives of the people were engaged in public reasoning to draft a constitution for a political community, ensuring rights and claims of diverse sections of Indian people. In such moment, any remark made by any representative in debates on any issues is historically significant. The debates in Assembly formed a discourse in which the figuration of a particular class of people makes it connected with the concerns of the time.

On 19th December 1946, in the debates on the objectives resolution to have been introduced by Jawaharlal Nehru on 13th December 1946, the seasoned political leader, Jaipal Singh, sagaciously remarks that he was speaking on behalf of “millions of unknown hordes.....of unrecognized warriors of freedom”³. These unrecognized people, according to him, are known as “Backward tribes, Primitive tribes and Criminal tribes and everything else”⁴. The mention of a category of criminal tribes distinct from other categories was made. The mention of this category of people in that speech has been accompanied by a sarcastic urge by Jaipal Singh that “what my people require...is not a safeguard as pundit Nehru has put it..... We don’t ask for any protection. We want to be treated like any other Indian”⁵. He, showing his visionary trust, claimed that, despite the whole history of his people being one of “continuous exploitation and dispossession”⁶, he was ready to repose his faith in the mooted Objectives Resolution submitted by Jawaharlal Nehru. The repose of such faith in

³ CAD, Vol. I, Thursday, 19th December, 1946. URL: <http://164.100.47.132/Issnew/constituent/vol1p9.pdf>, Accessed on 18th June, 2012.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

resolution was guided by understanding of a historic moment of nation-building when the sense of histories needed to be reconciled.

The debates on the provisions for the freedom of speech and freedom of movement have been marked by remarkable intellectual engagement of the members of Constituent Assembly. The restrictions on such freedoms for the sake of ‘public order’ or ‘morality’ were subjected to critical scrutiny with the anticipations that such provisions might allow in future the flood of repressive laws, and thus killing the very spirit of these rights. On 2nd December 1948, in the context of such democratic deliberation, H.J. Khandekar, warned about the dangerous consequences of allowing such scope of restrictions, referring, among others, to the case of Criminal Tribes Act, under which, as he enlightens the members of Assembly, “ a person is considered a criminal from the moment of his birth”⁷. His fear has absolutely proved to be true as, even though the so-called criminal tribes were denotified in 1952, they have been kept under the same kinds confinements through various Acts passed in the course of time since the implementation of the constitution, including the influx of Habitual Offenders Acts (HOAs)⁸ in almost every state. The reference to the criminalized communities in this context was made in fact to remind about the structures, institutions, procedures and culture of colonial legacy of the Indian state, which could be preserved and perpetuated for the vested interest of the few against the democratic aspirations of the people. However, nothing specific is deliberated here as to the constitutional status of criminalized communities.

During the closing days of Constituent Assembly, on 21th November 1949, in debates concerning issues, *inter alia*, of the representation of STs and SCs in jobs and legislative bodies, H.J. Khandekar, remarks as to what constitution has given to the so-called “Criminal Tribes”. He reflects on proposed draft of the constitution as saying “but there is no freedom of movement for one crore of unfortunate people of this country. That is, the criminal tribes. *Nothing is said about them in this*

⁷ CAD, Vol. VII, Thursday, 2nd December 1948. URL: <http://164.100.47.132/LssNew/constituent/vol7p18.pdf>, accessed on 19th June, 2012.

⁸ The Habitual offenders Act (HOA) was passed by the central government immediately after adoption of constitution. This act had the same victimising provisions as those of CTA. Most of the state passed their own Habitual offenders Act between 1952 and 1959 targeting the same class of people. Although the HOA in free India assumed the individual as habitual offender rather than whole communities, its very assumptions are largely drawn from the CTA. The very notion of criminal tendency inherent in habitual offender is something which resonates the colonial imagination of criminality of Vagrants and Nomads.

constitution (added emphasis is of mine)”⁹. A member exclaims, “So-called Criminal Tribes!”¹⁰ Khandekar, in turn, immediately responds, “yes, so-called Criminal Tribes”¹¹. It seems that, although there was unquestionably consensus to get rid of the existing Criminal Tribes Acts, there was not much deliberation about the future of this category of people subjected to extreme forms of oppressions, injustices and discrimination. The democratic deliberations seem to be not as much attentive to the issues of nomadic and semi-nomadic communities as it should have been. Keeping in mind the historic moment, it can be safely argued that, in spite of the great political and moral ideals envisioned in the constitution by the CA, the interests and concerns of this class were perhaps not emphatically and starkly highlighted and articulated.

As regards the composition of Constituent Assembly, it has been widely acknowledged that it was a representative body of the people composed of the representatives of various sections of society, for drafting a constitution embodying the aspirations of all sections in the future political society. The politics and ethics that it endorsed proved to be emancipatory for some those sections who had been historically excluded from corridors of political power and subjected to forms of oppression and humiliations in traditional social structure. The structure of politics persistent today in Indian has been largely shaped by the dialogue between the constitutional settings and the political assertions of variety of groups through the mechanism of electoral democracy. In this process, the state has sought to negotiate with the claims of participants for justice, equality and rights. Against this backdrop, how can we read now the statement made by Khandekar, on 21th November, 1949 where he remarked that “nothing” has been said about Ex-Criminal Tribes in the constitution?

It is worthwhile to mention here a remark about the makers of constitution, made by L.R. Naik, in his minute of dissent to the report of Backward Classes Commission¹² headed by B.D. Mandal. Naik, referring to groups with “stigma of criminality”, with “stigma of nomadism”, has pointed out that the status of these

⁹ CAD, Vol. XI, Monday, 21st November, 1949. URL:

<http://164.100.47.132/LssNew/constituent/vol11p7.pdf>, accessed on 19th June, 2012.

¹⁰ Ibid.

¹¹ Ibid.

¹² This Commission is widely known as Mandal Commission, as it was headed by Bindeshwari Prasad Mandal.

people “should have been postulated by the founding fathers of our constitution as in the case of the Scheduled Castes and Scheduled Tribes for the purpose of specification. Things that are obvious need no proof”¹³. This remark was made in late 1970s at a time when there was a churning of political upsurge of plebeians in this country demanding their due share in power and resources.

Stigmatization and Misrecognition

What happened to the criminalized communities when India got independence on 15th of August 1947? It was the day which marked the end of subjection of the colonized Indians by the British. This end heralded the laying of the foundation of a new nation representing all sections of Indian society. This was the time to ‘imagine’ the conception of what was consisted in by the idea of a ‘nation’. Where were these groups located in the imagination of such idea? The notion of free and equal citizenship got the prominence with the adoption of the constitutional framework. Then, did the state accord the citizenry status to these communities? How has the alleged criminality of these groups been viewed both by the post-colonial state as well as the general public? These are the questions which persistently come up if we closely observe the contemporary status of all sorts- legal, political, economic, and social- of these social groups.

In 1949, a committee¹⁴ headed by A. Ayyangar was constituted by the central government to look into the matters of these groups and furnish recommendations about the fate of the latter in the post independent India. How injurious to the dignity of these people it would have been especially when their liberty had be kept suspended while the rest of the people were engaged in tryst for their destiny. These groups of people were ultimately de-notified on 31th August in 1952, ‘only’ when the committee had submitted its report with recommendations. It meant that the freedom of these groups from the legal clutches of colonial rule was contingent upon the recommendations of a committee which had to consult, before the submission of

¹³ Report of Backward Classes Commission (1980), Vol. III to VII, second part, (New Delhi: GOI) PP. 229-230

¹⁴ The Criminal Tribes Act Enquiry Committee was constituted in 1949 under the Ministry of Home Affairs vide their Resolution No. 22/ 1/ 49, 1949. The terms of reference was to enquire into the working of the Criminal Tribes Act and to make recommendation for its ‘modification’ or repeal. This committee consisted of A. Ayyangar (Chairperson), A. V. Thakkar, K. Chaliha, V. N. Tiwari, Sardar Gurbachan Singh, J. K. Biswas and P.C. Dave (Secretary).

report, with various stakeholders including police officials and state governments. The assumptions lurking behind the de-notification were almost the same as those perpetuated by the colonial power. The report is fraught with the notion of the 'criminal tendencies'. It assumed that the people could be 'reclaimed' if they were provided 'honest' sources of living.¹⁵ It stipulated in its observations that though all the members notified tribes and castes were not criminals, there were 'hardened criminals' in such groups.¹⁶ The 'criminality' was still perceived in terms of group affiliations. The association of criminality with the wandering groups by the colonial power for its own vested interest was not fundamentally questioned in this report. What we see in this report is that the notions of crime constructed by the colonial power were appropriated by the custodians of post-independent India. The language that had evolved in the course of time until the withdrawal of British rule about criminalized groups was eventually borrowed by the new leadership of this country. The language of civilizing and reclaiming, which had become the basic force in dealing with these groups, instead of more coercive language, in the last decades of the colonial rule, could not be given any critical scrutiny. Moreover, it is interesting to see that almost all provinces, in their suggestions to the enquiry committee, insisted that they would not oppose the repeal of Criminal Tribes Acts passed during the colonial rule unless new Habitual Offenders Acts (HOAs) in their respective domains were allowed to be passed. The committee itself has pointed out such demands to have been raised by the Provincial governments. However, the committee had nowhere in its report questioned such demands, on the grounds that there was no any space for such laws in a democratic country. It had in fact endorsed the enactment of such laws. The various states immediately after the independence enacted HOAs, repealing the force of the criminal tribes act, but bringing the same groups under their surveillance clutches. It shows the nature of the status that these groups were ascribed by the post-colonial state. It was anything but not equal on par with other groups in line with modern citizenry. Their recognition was anything but less than even as formal citizens.

The suspicion of the state machinery as well as the so-called sedentarized and civilized general public towards these groups of people persists unabated till today.

¹⁵ Report (1949), Criminal Tribes Act Enquiry Committee, (New Delhi: Government of India), pp. 81.

¹⁶ *Ibid.*

There have been found recurring patterns of harassment and atrocities meted out both by police and rest of society against these groups. After the de-notification in 1952, they are called 'De-notified Tribes' (DNTs). The very half-hearted recognition by the post-colonial state introduced an enduring stigma with the social identity of such groups.¹⁷ How can the denial of the status of being citizens be interpreted? Irving Goffman (1963) has described the process of stigmatization of a person or a category of people by imputing an attribute supposed to be defiling to the persons or groups who hold it. In the case of criminalized communities in India, the construction of criminality as an attribute of a social group was the result of the larger project of stigmatization and inferiorization of subjected populations by colonial power. The suspension of Rights accruing from being members of a political community based on a constitution, in the form of the restrictions, surveillance and punishment to have been provisioned in the new laws, can indeed be read as the continuance of the stigmatizing and atrocious assumptions to have been historically constructed in regard particularly to wandering communities. The conferment of status of a full-fledged citizenship, as we view in the contingency of de-notification upon the recommendations of a committee, at the time of the independence, was based on the notion of a kind of normality of the subjects. Such normality was the bedrock to decide who deserved the state patronage and constitutional protection as citizens.

The social identity of DNTs has been formed through the misrecognition by the state. And this misrecognition has gradually become part of the general consciousness of the 'public'. The 'public' in principle is supposed to be composed mainly of citizens sharing common social space, embodying the principles of equality of access and the liberty of public reasoning in order to sustain itself as a common good.¹⁸ This public is largely neither available nor accessible to the communities called DNTs; for, the formation of this common good is a modern construct and its configuration has historically developed on the constant process of exclusion of certain social groups including DNTs. Charles Taylor has argued that our identity is partly shaped by the recognition or, misrecognition of the others. He notes that in this

¹⁷ This was stigmatizing in the sense that the notion of criminality introduced by the colonial state in relation to these group was upheld unquestionably. The very enactments of HOAs signify the intention of post colonial state of not letting these groups to have same liberty as other fellow members of society.

¹⁸ Rodrigues, Valerain(2009). "Untouchability, Filth, and the Public domain", in Gopal Guru(edit), *Humiliation: Claims and Contexts*, pp. 108- 112.

process of recognition, a person or group can suffer real damage if they are misrecognized. It is important to note that the “non-recognition or misrecognition...can be a form of oppression, imprisoning someone in a false, distortive and reduced mode of being”.¹⁹ The dialogical process of recognition can be injurious to the social identity of a person or group of people if the “the people or society around them mirror back to them a confining, or demeaning, or contemptible picture of themselves” (Taylor 1994: 25). In the case of DNTs, the stigma of criminality has been so deeply institutionalized that the very social existence of these groups has been denied. The current state of affairs in regard to Denotified and Nomadic Tribes is largely due to the negligence on the part of the post-colonial state. The political- economic and cultural injustices specific to them have not been addressed.

Nancy Fraser elaborates the imbrications of two analytically different forms- socio-economic and cultural- of injustices which need two different sets of remedies. The politics of “redistribution” which primarily demands for the restructuring of the existing political-economic settings also presupposes an underlying conception of “recognition” in the form of at least ‘equal moral worth of persons’.²⁰ Likewise, the politics of “recognition” which primarily demands for the transformation in cultural norms, patterns of symbolic representation, interpretation and communication also presupposes some change in the redistributive patterns.²¹ For any sense of dignity of anybody’s self, these, two aspects of justice, according to Fraser argues, needs to be realized.

The Denotified and Nomadic Tribes are the victims of both maldistribution and misrecognition. They are located at the outer fringes of the active economic transactions, constituting the bulk of landless labourers and nomadic populations. Some groups are appallingly at the verge of extinction due to starvation. They are still seen as people with criminal bent. They hold very demeaning and degrading place in

¹⁹ Charles, Taylor (1994). “The Politics of Recognition”, in Amy Gutmann (ed). *Multiculturalism: Examining the Politics of Recognition*, Princeton: Princeton University Press, pp. 25.

²⁰ Fraser, Nancy (1995). ‘Redistribution to Recognition? Dilemmas of Justice in a ‘Post-Socialist’ Age’, *New Left Review*, Vol. 212, July-August, pp. 68-93.

²¹ *ibid*

the cultural and symbolic representation.²² Their destitution is inextricably interlocked with their cultural misrepresentation and they mutually reinforce one another. The persistence of such mutuality is produced and reproduced even by the state's documentation undertakings.

For example, one of such state's projects is *People of India* under Anthropological Survey of India. This project, launched in 1985 has produced a series of volumes on communities, describing their social, economic and cultural practices and activities. The narratives delineating diverse life worlds of thousands of communities in so many ways remind the *People of India* by H. H. Risely during colonial rule. Even though couched in terms of empowerment, the descriptions about certain communities associate them with criminality.²³ Such representation of groups reminds how the colonial anthropology sought to construct correlation between community and criminality. Unfortunately, this still continues in the name of documentation purportedly for empowerment purposes. Laura D. Jenkins points out the fact that volumes, on SCs and STs, more consistently note alcohol consumption practices than do the volumes on all other communities. In case of those communities who are now known as DNTs (though there is no such category in these volumes), the narratives in these volumes include uncritically their alleged criminal past. For instance, Barwar, a community in Uttar Pradesh, has been described as "violent" community with "thieving" activities in the past.²⁴ The reference sources of such representation are the works of colonial officials and ethnographers. It is quite appalling to note that these communities are being represented, in the process of knowledge production, in a very demeaning, degrading and stigmatizing manner without any sense of dignity for the same. This is in fact institutionalization of stereotypes which have become integral part of state's imagination of this section of political community.

Interestingly, stigmatizing representation of DNTs has often been part of the concerns for the social uplift of the same. Ratna G. Ravenkar, while accounting for

²² The autobiography of Lakshman Gaiwad, *Uthageer* (2000), has brought at the fore the fact that, despite their de-notification, the Ex-criminal Tribes are still forced to conceal their identity in order to avoid harassment.

²³ Jenkin, Laura Dudley (2003). 'Another "People of India" Project: Colonial and National Anthropology', *the Journal of Asian Studies*, Vol. 62, No. 4, pp. 1154.

²⁴ Singh, K. S. (edit.) 2004. *People of India: Uttar Pradesh*, Vol. XLII, Part. I, (New Delhi: Manohar), pp. 104-111.

the process of denotification of these groups by the union government and the initiatives taken by the state of Bombay soon after the independence, suggests absurdly that, “As denotified Communities were mainly criminal by occupation, it is of utmost importance that their cultural patterns be changed” (Ravankar 1971: 239). And, furthermore, “they should be convinced of their futile *antisocial habits* by means of *education*” (added emphasis is of mine).²⁵ What does such explanation of culture and habits of these communities demonstrate? It simply demonstrate that you can talk about these groups in much patronizing terms to show that you are very much sympathetic to their plight while holding denigrating and dehumanizing views about them. Ravenkar is suggesting that their cultural pattern be changed. It must here be reminded that it was these groups’ life which was subjected to ruthless colonization. It was their social and economic activities which were viewed as the challenge to the colonial culture and social order. It was their ‘self’ which presented a challenged to the task of the colonial power to cultivate such ‘self’ as necessitated for the institutionalization of colonial social order. The demand for the change in culture indeed alludes to the fact that they are being still regarded as deviants. Their social activities to organize life at the margins of society are still suspiciously marked as criminal activities. The mechanics operative to cultivate such moral ‘self’ as to secure conformity to established political power are largely informed by the inheritance of colonial culture. When such demand is made by the so-called modernized and disciplined segments from the people living their life at the ever-being-produced marginal spaces through the modern practices, it is coercion and violence in the matrix of civility that embrace the nomadic and semi-nomadic communities. The prisoners of colonial culture, as Indians mostly are, can think nothing other than demanding for the change of ‘antisocial habits by the means of education’. The unconscious anchorage into colonial culture becomes clear when a scholar makes such suggestion: “As criminality is considered to be a sort of revered profession by these communities (referring to DNTs), resident schools should be advocated for them (the children of DNTs)”²⁶. And thus “the community as a whole would be weaned away from hereditary criminality in future” (Revankar 1971: 241). Such a framework

²⁵ Revankar, Ratna G (1971). *The Indian Constitution- A case Study of Backward Classes*, (Cranbury: Associated University Press), pp. 239

²⁶ Revankar, Ratna G (1971). *The Indian Constitution- A case Study of Backward Classes*, pp. 241

is deeply influenced colonial approach about the life of such groups as denotified tribes.

It is this language which holds the power and oppresses those who seem to be signifying the 'other'. In case of the DNTs, their very silence and subjection has been caused by the language of the civility itself. The language of civility in form of education, in such specific intellectual formulation, is the reminiscence of the character of Salvation Army during British rule. It is nevertheless the general approach of so-called civilized society towards the Denotified and Nomadic Communities. The suggestion of residential schools, like other facilities which are deemed to be offered to the DNTs, with the view that "if children remain with their parents and brought up in a traditional environment, they are likely to be influenced by the plague of criminality"²⁷, signifies the character of political economy of the welfare schemes that are sought from the state on the behest of the denotified communities. However, the story of the benevolence of the state is of different kind which will later be dealt with. Here, it is enough to say that the mechanics of the misrecognition and thus stigmatization of the DNTs operate in so many forms and at different levels.

The permeability of the attitude of imputing the wandering and nomadic groups with 'criminal tendency', despite their guise of sympathetic approach towards the same, marked the pattern of suspicion in the reports that were prepared during the process of de-notification of these communities. Dilip D'Souza has provided a good account of the recommendations of Antrolkar committee²⁸ which was working in state of Bombay in 1949 to recommend about the problems of criminalized communities. The report of this committee, though concerned with Bombay state, was influential in final repeal of Criminal Tribes Acts in all parts of India. The recommendations were concerned to suggest ways and means of the uplift of de-notified tribes. The committee suggested strongly for the housing, education all other facilities for the well- being of the de-notified tribes (D'Souza 2001:67-75). However, these recommendations were accompanied with the notion implying that there might be some hardened 'criminal tendency' among some of the members of these groups.

²⁷ Ibid, pp. 241-242.

²⁸ This committee consisted of N. G. Joshi, G.K. Chitala, Abdul Latif Haji Khan, K. B. Antrolkar, Fulsimhji B. Dhabhi, C. S. Devadhar and K. M. Munshi.

One of the recommendations suggested that if a person from the de-notified tribes was produced before the magistrate for the second offence against property and person, he would be handed over to experts in psychoanalysis, criminology to ascertain as to whether ‘the crime committed by him is a result of criminal tendency which can be checked and directed to useful channels or of a criminal tendency which has become hardened and become a habit of the accused’.²⁹ It also recommended that the moral education through ‘*bhajans*’, ‘*kirtans*’ lectures should be given to de-notified tribes.³⁰ These suggestions signify that the treatment was still aimed at ‘reclaiming’ and ‘reforming’ a person’s inbuilt tendency to commit crime.

The colonial rule wanted to have industrious moral subjects- a condition necessitated for the sustenance of the exploitative political economy. The prescriptions of such morals by the committee indicates the kind of nation and moral subjects was being imagined by those who had been trusted with the task of giving a democratic and egalitarian shape to social and political institutions. It also exposes the perceptibility by the state of these groups with criminal antecedent. D’Souza (2001) has remarkably surveyed the contemporary invisibility of de-notified tribes across several regions of India to shed light on how these people have been subjected to extreme forms of atrocities and violence in their everyday life even after more than sixty years since independence. He has pointed out several instances of killings of members from these communities committed with all impunity. The killings in police custody and lynching of members by ‘public’ are regarded as normal happenings. The very normality of everyday life of society and state repressions subsumes such brutalities against de-notified tribes (D’souza 2001:158-159). It is largely because of the misrecognition of these communities perpetrated by the post- colonial state. This misrecognition has caused tremendous sufferings in terms of social, economic and political exclusions for DNTs. Even democratically elected governments and its political leaders don’t have the sensibility required to fathom the extreme form of marginality of this class in society. In recent time, the then chief minister of Madhya Pradesh in 1998 was reported in *The Telegraph* as saying: ‘the projects to provide these people with education did not have any impact on their criminal instincts’ (as cited in D’Souza 2001: 03). Such statement denotes that the failure of DNTs to live up

²⁹ D’souza, Dilip (2001). *Branded by law- Looking at India’s Denotified Tribes*, pp. 69-70, (New Delhi: Penguin)

³⁰ Ibid. 74

to the expectations of the rest of the society is seen as the result of their alleged criminal past. But it is worst kind of insensitivity towards these condemned if seen in the light of the fact that they face so many forms of discrimination and harassment.

Meena Radhakrishnan has brought out the case of the harassment that the children of DNTs face in their life. She has mentioned the case of the children of Banjara community (a DNT), inhabiting at the outskirts of Delhi. She has noted that the local power configuration, largely tilted in favour of dominant castes, does not allow these children even to attend schools. They are forced not to pursue education since the dominant castes view it as danger to job opportunities to their own children.³¹ The parents of these children, to avoid the risk of being vagabonds, seek to train them in those skills which ensure the employability in informal sector in order to somehow generate the means of survival. It seems in fact that the equalizing effect of political democracy has not yet touched that level of social hierarchies represented by this class. They are still at the outer edge of the social constituencies required for the operation of electoral democracy as a mechanism of legitimizing and sharing the state power. The political leverage of negotiation for justice, rights, which is intrinsically provided by electoral process, is still nowhere visible in sight so far, as they have been largely left unenumerated in the successive census operations since independence. It is quite paradoxical in regard to this class of people that, prior to the withdrawal of colonial rule, the state sought to have each and every details in so many ways about the life of these criminalized communities, in order to keep them under stringent surveillance and control, while the post-colonial state has not even sought to have them as part of general population as is achieved through decennial census operations. This irony with the social identity of this sort is attributable to the way the parliamentary politics has functioned since independence. This social constituency largely appear still to be unaddressed by the demands of the constitutional principles and by the logic of political democracy. The persistence of the stigma of being treated as criminals can be understood at the level of politics where this stigmatized section doesn't have any resource to claim to have their share in political power. This inaccessibility also circumscribes them from redefining political identity.

³¹ Radhakrishna, Meena (2007). 'Urban Denotified Tribes: Competing Identities and Contested Citizenship', EPW, December 22, PP. 61-62.

Welfare, Modernity and Democracy

The post-colonial state has consistently maintained a record about the decriminalized communities as deviants in several forms, even as the status of the latter has always been kept as less than that of citizens. However, the forms of administrative records have proved defacing rather than foregrounding the social identity of Denotified and Nomadic Tribes. There has always been a persistent discourse about the distinctiveness of this category of people since the time of denotification right up to present.

Democracy has played a vital role with respect to disadvantaged sections in India since independence. Though constrained by confines of particular form of modernity, it has largely got the character of ensuring dignity and self-respect for the historically excluded groups in working in course of time. As Ashutosh Varshney notes, although it is quite uncertain whether or not economic inequalities have gone down, social inequalities certainly have, in the operation of democracy.³² The emergence of politics based on caste, with the surge of the lower castes, first, in South India soon after Independence, and latter in North India in late 1980s, has marked a turning point, as it indigenized the character of democracy.³³ The formation of the Backward Classes Commission in late 1970s by the central government, largely dominated by politically insurgent plebeians, marked the decisive attempt by the OBCs to have their institutional presence in public and political institutions through quota in public sector jobs and education. The presentation of this category of people was not as much homogeneous as the report sought to represent. In that very report, the minute of dissent attached by one of its members, L.R. Naik, reveals the fissures and tells a different story about a different class of people, less fortunate than other better off backward castes. Instead of having just one homogeneous common list of socially and educationally castes and classes, Naik suggested two lists- one for “Immediate Backward Classes,” and the other for “Depressed Backward Classes.” Naik’s view about the ‘Immediate Backward Classes’ was that this class of people, if given the chance and encouragement, would definitely obtain social mobility.

³² Varshney, Ashutosh (2000). ‘Is India Becoming More Democratic? *The Journal of Asian Studies*, Vol. 59, No. 1, pp. 20

³³ *Ibid.* pp. 7

The assumption underlying such view was that these castes and classes had 'numerical strength' and had made their presence felt in the caste hierarchical society.³⁴ The other category of people which he called 'Depressed Backward Classes' brought together those castes and classes who were 'incapable to make such a dent in the near future.'³⁵ This latter class of people, unlike 'the Immediate Backward Classes,' as Naik claims, had been denied the intermingling with the society. He notes that the segregation and prohibition has been imposed on this segment of society on account of the stigma of traditional occupations, stigma of criminality and nomadism. He says that they are generally, among others, 'ex-criminal tribes, nomadic and wandering tribes, earth diggers, fishermen, boatmen, salt-makers, shepherds, barbers, basket makers...and begging communities.'³⁶ He regrets in his dissent note, expressing that the non-recognition of these groups as the lapse on the part of constitution-makers, has resulted in "serious constraint in establishing an egalitarian society based on justice."³⁷ He has made one observation with respect to the relationship between these sets of classes of people, saying that the 'Immediate Backward Classes' were 'fast developing the tendency' to repeat the ill-treatment, they themselves had been victims of at the hands of the upper castes, against what he called 'Depressed Backward Classes.'³⁸ The non-recognition of this class was seen because of no-existence of these groups in democratic political process. The political pressure through political mobilisation which is required to influence the process of democratic negotiation in the political process for recognition from the state was not present during this phase of upsurge of lower castes.

The above mention of dissent note of Naik has been made just to highlight the point that the class, bereft of any degree of self-respect, dignity and right-bearing citizens, registered its presence in the politics for social justice. However, it seems that their political foregrounding in the report was not based on solid specific grounds on which different classes and castes have suffered injustices and discrimination. The inclusion of as variegated groups as dominant peasantry, landless agricultural labourers, nomadic communities in one common list was in fact a kind of exclusion

³⁴ Report of Backward Classes Commission (1980), Vol. III to VII, second part, (New Delhi: GOI), PP. 229

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid. pp. 230

³⁸ Ibid.

for the communities whom Naik called ‘Depressed backward Classes’. It is nevertheless a document which signifies a distinct level of social hierarchies largely inhabited by dispossessed classes without any effective constitutional and legal safeguards. The Lokur committee constituted in 1965 has also suggested that “it would be in the best interest of these communities if they are taken out from the list of Scheduled Castes and Scheduled Tribes and treated exclusively as a distinctive group, with development schemes specially designed to suit their dominant characteristics”.³⁹

It becomes quite difficult to figure out the socio-economic existence of DNTs since the data with each caste or tribe or other religious distinctions are available only till 1931 census. However, this category of people has always been marked out as distinct group in different administrative documents, particularly in those of planning commission. Their ‘otherness’ can easily be detected by observing the way they have figured and refigured in successive documents of planning commission. It is quite surprising to note that the language of identification of this class of people, among others, in these documents resembles that of colonial scepticism.

In 9th five year plan (1997-2002), for the “empowerment of the socially disadvantaged groups,” including SCs, STs, OBCs and Minorities, the government’s “research, evaluation and monitoring,” required the studies of “problem groups,” among others.⁴⁰ The “problem groups” is, as Jenkins reminds us, a running thread from H.H. Risely to present in state’s identification practice with respect to nomadic and peripatetic communities in order to mark them as suspects.⁴¹ In 10th five year plan (2002-2007), despite its avowed acceptance of non-availability of data, it is nevertheless bygone conclusion in the document that the “social deviants,” that is, “vagrants,” “beggars,” “sex workers,” among other social groups, “come in conflict

³⁹ See, <http://www.indlaw.com/guest/DisplayNews.aspx?63EFBDC9-6A37-465C-93E4-D60847D8B2D0>, accessed on 21th 2012. This suggestion of Lokur committee is also mentioned by the Technical Advisory Group constituted by the Union government in 2006 to look into the matters of Denotified, Nomadic and Semi-nomadic Tribes.

⁴⁰ 9th Five Year Plan, Vol. 2. URL: <http://planningcommission.nic.in/plans/planrel/fiveyr/9th/vol2/v2c3-9-1.htm>, accessed on 21th June 2012.

⁴¹ Jenkin, Laura Dudley(2003). ‘Another “People of India” Project: Colonial and National Anthropology’, *the Journal of Asian Studies*, Vol. 62, No. 4, pp. 1153-54.

with law”.⁴² These are the social deviants who “resort to petty criminal activities.”⁴³ The act of identifying the dispossessed and stigmatized as ‘suspect’ and deemed to be prone to commit crime is an incessant process in practice of modern state. The category of suspect communities including DNTs is getting, as it definitely appears, expanded over and over again incorporating more and more vulnerable communities and groups of people.

The 3rd five year plan (1961-66) used the category, “Denotified tribes” under chapter titled as “Development of backward classes.” Apart from Denotified tribes, this chapter also includes “Scheduled Castes” (SCs), “Scheduled Tribes” (STs) and “Other Backward Classes” (OBCs). In this particular part of the plan, the concerns regarding the ways the well-being of different disadvantaged sections would be achieved through the state’s intervention by means of welfare policies. It is argued that the denotification of so- called Criminal Tribes in 1952 marked a “fundamental change” in the approach toward Ex-criminal Tribes from “surveillance and punishment” to “correction” and “assimilation into the wider society”.⁴⁴ But it fails to convince how it is a “fundamental change” from the approach adopted by colonial rule by introducing the policies of “reformation” and “reclamation” while holding the oppressive means of control and punishment, in the light of the fact that the repeal was accompanied by the enactment of Habitual offenders Acts in almost every states, targeting the same people. And what are the defects this class of people are enmeshed with which it suggests for “correction”? Moreover, this plan stipulates also some institutionalized stereotypes about Denotified Tribes, as it notes that “as a rule they are also inadequate as cultivators, and age-old attitudes take time to change.”⁴⁵ The state does not seem to be very keen to guarantee certain rights to this section as citizens. Rather, this planning document suggests that for the success of its policies, it is essential that “voluntary workers and organizations should be given a larger role.”⁴⁶ And more interestingly, its scepticism culminates in the suggestion that special efforts

⁴² 10th Five Year Plan, Vol. 2, Chapter. 4.3. URL: http://planningcommission.nic.in/plans/planrel/fiveyr/10th/volume2/v2_ch4_3.pdf, accessed on 21th June, 2012.

⁴³ Ibid

⁴⁴ 3rd Five Year Plan, Chapter 34. URL: <http://planningcommission.nic.in/plans/planrel/fiveyr/3rd/3planch34.html>, accessed on 21th June 2012.

⁴⁵ Ibid.

⁴⁶ Ibid.

would be required for close study of “attitudes of different section among Denotified Tribes.”⁴⁷ Having acquainted with the point of view offered in this document with respect to Denotified tribes, it can be safely said that it was the “attitudes” of state which had not changed in relation to this group. Even though the state was making plans for the provisions of some well-being of this group of people, the language running in the concerns makes it quite clear that the image of the branded was still kept same as constructed by the British.

In successive plans, the policies, though infrequently, have been formulated for well being of Denotified Tribes as ‘targeted groups’. They are however of altogether different nature. They don’t have character of rights as citizens since they are just the necessary, as it seems, political techniques, to manage the populations and keep it in order. In this series of plans, the 11th five year plan acknowledges at least one fact that, although the Criminal Tribes Act, 1871 was repealed soon after independence, persons belonging to these communities “are still viewed by society as habitual offenders.”⁴⁸ But it does not take about the perpetuation of the laws that treat the persons from such communities as habitual offenders and give the licence to the police of brutal forms of harassment and atrocities against these communities. In the short note on Denotified, Nomadic and Semi-nomadic Tribes, separate from descriptions of the policies and programmes for SCs, STs and OBCs, it has been mentioned that the specific needs of these groups should be addressed to. Quite understandably, it seems that, although they are being consistently considered as distinct class of people, the policies and programmes being designed to be formulated and implemented are just to pay lip service to their problems without treating them as part of citizenry. Another confession in this plan document is that “these groups still continued to be marginalized and their specific needs even today are neither adequately understood nor catered to.”⁴⁹ This plan document also promises to set up “mobile” school of “high” quality for the children of Denotified, Nomadic and Semi-nomadic communities.⁵⁰

⁴⁷ Ibid.

⁴⁸ 11th Five Year Plan, Chapter 6. URL: http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v1/11v1_ch6.pdf, accessed on 21th June 2012.

⁴⁹ Ibid.

⁵⁰ Ibid.

In 12th five year plan's approach paper, the government of India has yet again reiterated, as it were, its commitment to social equality. It has been said in this that Denotified, Nomadic and Semi-nomadic communities "have been deprived of development benefits, as there is no exclusive programme designed for them."⁵¹ However, it has been assured that efforts will be made to formulate programmes suitable to them. It is worth mentioning here that the development which has been referred to here by plan documents has itself been the process of systematic marginalization and deprivation of these communities. The modern development has directly destroyed the means of livelihood of this section of people. And this process still remains the same if seen from the perspective of the constant dispossession and pauperization of the vulnerable communities.

One example for illustrating the case of dispossession and marginalization resulting out of the process of development is the Mallahs community⁵² of North India. The Mallahs had been notified as Criminal Tribes by the colonial rule.⁵³ They were primarily a fishing and riverfaring community. With development of the modern infrastructure like Grand Trunk Road, Farraka barrage, have adversely affected the means of livelihood of this section. Fishing was also banned by the colonial government in Ganges River.⁵⁴ These developmental processes have systematically marginalized the Mallahs. In his study of contemporary status of Mallahs, Assa Doron notes that the development process has varying impacts on different communities and it has marginalized the Mallahs. He has sought to show that the Mallahs are still not allowed to fish in the river since the implementation of Ganga Action Plan.⁵⁵ The ban is justified by the priestly class in Banaras because they consider it as *Jiv hatya* (killing animals).⁵⁶ The marginalization and deprivation can be seen as the processes unleashed by the activities of both colonial and post colonial state. It can therefore be seen that Mallah community has suffered in the process of development. It is by no

⁵¹12th Five Year Plan, Approach Paper. URL: http://planningcommission.nic.in/plans/planrel/12appdrft/approach_12plan.pdf, accessed on 22th June 2012.

⁵² They are known with other several names as well like Nishads, kewat. They are concentrated mostly along the bank of the Ganges River running through parts of Eastern Uttar Pradesh and Bihar.

⁵³ Jassal, Smita Tiwari (2001). 'Caste and the Colonial State: Mallahs in the Census,' *Contributions to Indian Sociology*, Vol. 35, No. 3

⁵⁴ Ibid.

⁵⁵ Doron, Assa (2010). 'Caste Away? Subaltern Engagement with the Modern Indian State,' *Modern Asian Studies*, 44, 4, pp. 764-765

⁵⁶ Ibid. pp. 765

means a particular case with a single community. The Castes and Tribes who have been suffering the stigma of criminality today are in fact the adversely affected groups in the process of development. So, when a document which regrets that the people of such background have not got anything from development, it must be reminded that such development has taken place at the cost of depleting and taking away the livelihood resources of such communities. As for the social benefits of development is concerned, the DNTs have never been part of the domain of the politics, by virtue of their extreme marginality and treatment of the political technologies as the object of criminal policy, which decides their fate in society.

Elusive gains under Independent State: Questioning Misrecognition

Then, how can the state's initiatives, vis-à-vis the purported well-being of Denotified and Nomadic and Semi-nomadic communities, while keeping them at the fringes of its institutions, be conceptually deciphered? It is extremely important to understand the pretensions of state of having conferred universal citizenship to all members who live in its territorial jurisdiction, in the light of the fact that it has gradually developed such structures and technologies which, most often in name taking care of its members, denies some classes from sharing its sovereignty. The concept of 'citizen' carries ethical connotation in its relation to the state. The modern nation-state theoretically derives its legitimacy from people, the locus of popular sovereignty. The idea of popular sovereignty based on the notion of people implies the participation of the citizens in the sharing of sovereignty of state in juridical-political sense.⁵⁷ The standing of citizen in relation nation-state is invariably defined in terms of rights conferred on the former by the latter. The basic contours of rights in modern state have been fundamentally conceptualized in terms of the ideas of liberty and equality. This framework of rights has been regarded to be the condition of being an equal and free member of a 'people'. This is the status of a member in a political community which makes his an active citizen, keeping accountable the state in its affairs. The participation in the sovereignty of state is fundamental to the political identity of the citizens. If such status is denied to a member, it not only alters the identity of the same, but also signifies a different mode and organization of functioning of the state.

⁵⁷ Chatterjee, Partha (2004). *The Politics of the Governed: Reflections on Popular Politics in the Most of the World*, (New Delhi-Permanent Black), pp. 34

There has emerged a new mode of exercise of modern state power which can keep its members under control through variety of security apparatuses while being quite concerned with well being of the latter. Michel Foucault has given a brilliant interpretation of the political technologies of modern state which state has gradually developed since 18th century onwards to manage its affairs and people. This is a paradigm of power analysis which provides insights to understand how the state can manage its members by identifying, classifying, and enumerating in to different population groups. The concept of ‘population’ has emerged to describe the reality of how state tends to treat its members merely as subjects requiring of its some pastoralist grace. The concept of ‘population’ does not carry normative connotation, as the concept of citizen do. Unlike the concept of citizen, the concept of population is entirely empirical, descriptive, shaped through statistical techniques such as censuses, sample surveys and so on.⁵⁸ The operation of this concept falls under the domain of policies of state seeking to address the members as its ‘target’ regarding certain concerns such as health, education and so on. On the contrary, the operation of the concept of citizen falls under the domain of politics.⁵⁹ This characteristic of the contemporary regime of power has been described by Foucault as “governmentalization of the state”.⁶⁰ This regime of power achieves legitimacy not by the participation of citizens in the matters of state but by claiming to provide for the well-being of the population.⁶¹ In the specific context of India, Chatterjee (2004) provides two discrete separate spheres of application of these concepts. One is *civil society* and the other is *political society*. The civil society is the sphere whose members are regarded as citizens and thus are allowed to enjoy equal rights including to participate in the matters of the state whereas the domain of political society is marked by the application of the concept of populations, linked with governmental agencies, pursuing policies of security and welfare, bereft of any claim to participate in the sovereignty of the state.⁶² Chatterjee claims that every member of society is citizen of civil society, possessing equal rights, if seen in terms of the formal structure of the state as has been given by the constitution. However, as he argues, most of

⁵⁸ Ibid.

⁵⁹ Ibid, pp. 37-38.

⁶⁰ Foucault, Michel (1991). “Governmentality”, in Burchell Graham, Colin Gordon and Peter Miller (eds). *The Foucault Effect: Studies in Governmentality*, pp. 103

⁶¹ Chatterjee, Partha (2004). *The Politics of the Governed*, pp. 34

⁶² Ibid, pp. 37-38

Indians are not regarded as proper citizens as by the institutions of the state.⁶³ It doesn't mean that state does not have any kind of reach to the population groups. State can treat them as population groups. And thus can bring them under certain political relationship with the state. But this relationship cannot be with the character enshrined in the normativity of the constitutional framework worked out in hope of achieving promises of bourgeois modernity. Political society, as has been conceptualized by Chatterjee, is the domain which makes it clear that the state can maintain its legitimacy by negotiating with certain claims of population groups without regarding them as proper citizens.

In the light of above theoretical formulations informed by the existing political reality of India, the political and constitutional status of Denotified, Nomadic and Semi-nomadic Communities seems to be quite fragile. Most recently, some political developments regarding the activeness of the state to address the issues and claims of these groups provide the context of locating the standing of the latter in such theoretical paradigms in order to explicate the story of their visibility in modern social and political institutions and spaces.

It is a phase in Indian politics when new social groups are coming up, demanding justice and proper recognition from the state. Apart from Denotified, Nomadic and Semi-nomadic Communities, there are numerous other groups such as Women, Religious Minorities, Dalit Muslims, Dalit Christians, Gays, Lesbians and so on, who are now politically asserting for their rights. They are thus challenging the existing boundaries of social justice, as has been designed by the constitution.⁶⁴

In the wake of such political churning, the Government of Indian constituted a National Commission for Denotified, Nomadic and Semi-nomadic Tribes (NCDNSNT) in 2003 which was reconstituted on 14th March 2005. However, all its three members, Balkrishna Sidram Renke (Chairperson), Laxmibhai Kalidas Patni (Member) and Laxmi Chand (Member-Secretary) were appointed only on 6th February 2006.⁶⁵ The terms of reference set by the government was 'to specify the economic interventions required for raising the living standards' of these groups 'by

⁶³ Ibid.

⁶⁴ Verma, Vidhu (2012). *Non-discrimination and Equality in India: Contesting boundaries of Social Justice*, (London: Routledge), pp. 1-21.

⁶⁵ See, <http://ncdnsnt.gov.in/notification.pdf>, accessed on 23th June 2012.

asset creation and self-employment opportunities'. The commission was also allowed to recommend measures required 'to utilize the existing channelling agencies set up for the economic development of SCs, STs and OBCs for extending an economic development package to these groups' and 'identify programmes required for their education, development and health'.⁶⁶ This Commission ultimately submitted its report on 2nd July 2008 to government with 76 recommendations including separate 10% reservation in jobs and political representation in representative bodies by creating a separate category for DNTs through constitutional amendment.⁶⁷ However, it was reported that the recommendations did not find the favour of government as it was argued that the commission had exceeded the terms of reference and had gone to suggest amendments in constitution. It was said that the idea to create a separate constitutional category for DNTs was not sound as most of these groups were already part of lists of STs, SCs and OBCs.⁶⁸ The Commission reportedly urged the government to set up a permanent commission on the line of the National Commission for scheduled Castes and Scheduled Tribes. It emphasised that a community-based census enumeration be conducted to gather specific data about the socio-economic conditions of these groups.⁶⁹ This commission had estimated the population of the groups approximately 11 crores of the total population of India.

Meanwhile, in 2006, the Government of India set up a Technical Advisory Group (TAG) with almost the same terms of reference as that of the NCDNSNT. This advisory group came up with a voluminous report with a set of recommendations. The recommendations are largely concerned with the issues which are being perennially discussed and debated in respect to the Denotified, Nomadic and Semi-nomadic Tribes. The major suggestions are aimed at tackling the issues of health, education and the safeguards against the atrocities. The report contains other useful and politically charged prescriptions in order to deliver justice to the social classes which are almost invisible and abandoned by both state and society. This, first of all, attacked the persistence of Habitual offenders Act and demands the immediate repeal

⁶⁶ See, <http://ncdnsnt.gov.in/Gazette.pdf>, accessed on 23th June, 2012

⁶⁷ *Times of India*, Sep. 23, 2008. URL: <http://timesofindia.indiatimes.com/india/Quota-for-denotified-tribes-impractical/articleshow/3515570.cms?inttarget=no#.Tqknj9Egtqw>, accessed on 23th June, 2012.

⁶⁸ *Ibid*

⁶⁹ *India Today*, Sep. 23, 2008. URL: <http://indiatoday.intoday.in/story/Govt+proposes+to+expand+reservation+list+of+SC/1/15907.html>, accessed on 23th June 2012.

of this Act. Even the United Nations' Committee on the Elimination of Racial Discrimination, in its 70th session, expresses concern that this Act is extremely stigmatizing for the denotified and nomadic communities and thus strongly recommends the repeal of it.⁷⁰ If we view report of TAG in its summation, it is quite clear that the denotified and Nomadic Communities have been presented as distinct class. The suggestions in their entirety have sought to restore the dignity of these groups. It has demanded political as well job reservations for the DNTs.⁷¹ As these groups do not get protection under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the report has recommended such Act for DNTs. In a more recent Draft recommendations submitted by a working group constituted by National Advisory Council (NAC), apart from other suggestions, it has been recommended that the rights of nomadic communities who have been relocated from forests should be given land titles while implementing the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.⁷² It has however nowhere mentioned such legislative means as other reports have done for the reservation in jobs and political representation.

In a very interesting political development, in December 2008, a Private Bill was introduced in Lok Sabha, seeking all kinds of preferential treatment as given to STs and SCs by the constitution.⁷³ This Bill sought to introduce a new category through amendment in the constitution for achieving constitutional status. Although it appears that the members of the representative body were sympathetic to the cause of the denotified and nomadic tribes, the Bill was asked to be withdrawn with the assurance of Minister of Social Justice and Empowerment, Meera Kumar that the necessary steps would be taken to address the issues and concerns of this class of people.⁷⁴ The debate on this Bill highlights at least one point that even the claims of groups in search of justice have been hierarchized in the process of democratic

⁷⁰ Report on India of Committee on the elimination of Racial Discrimination, seventieth session, 19th February-9th March, 2007, United Nations. URL:

<http://www2.ohchr.org/english/bodies/cerd/cerds70.htm>, accessed on 23th June, 2012.

⁷¹ See, <http://www.scribd.com/doc/933435/TAG-Report>, accessed on 24th June, 2012

⁷² Draft Recommendations of Working group on Denotified and Nomadic Tribes, NAC. URL: http://nac.nic.in/press_releases/dnt_draft.pdf, accessed on 24th June, 2012.

⁷³ See, http://164.100.47.132/LssNew/Debates/cdatedet_nls.asp, accessed on 24th June 2012. This Private Bill was introduced by one member, Haribhau Rathore, Member of Parliament, in 14th Lok Sabha, from Yavatmal, Maharashtra, on 19th December, 2008.

⁷⁴ See, <http://dnt.co.in/files/privatebill2.pdf>, accessed on 24th June, 2012.

negotiation. It seems that the lower house though fully sympathetic to nomadic people however regarded the latter deserving only for some means of well-being but not acceptable as active citizens. There are several other groups including women who are struggling in hierarchized and exclusionary structures of public and political institutions in attempt to transform them.

The question of representation of groups in decision-making bodies has become central to contemporary democratic politics. There is a wide range of debates regarding the logical connection between articulation of 'interests' and 'ideas' in a deliberative democratic politics. These debates have emerged in the wake of disillusionment with the promises of universal citizenship offered by liberalism in representative democracy. The debates also involve the question as to how 'interests' or 'ideas' can take the political and public character. Such debates too involve the questions of how the 'representative' is linked with the 'represented' in a liberal representative democracy. Indeed, what essentially needs to be 'represented' - whether 'interests' or 'ideas', or, both. These debates bring at the centre of modern political theory the complexities associated with the 'grounds' of representational claims and distribution of resources, particularly in a political society marked by wide range of social and cultural identities. In this whole paradigm of theoretical considerations, the link between 'identity' and 'interest' has been deeply explored. It has marked a shift in the politics from 'Ideas' to 'Presence'.⁷⁵ Since the assumed identity of the representative with the represented, in terms of former's claim of representing the interests of the latter in a manner responsive to them, it is being staunchly argued by variety of marginalized and excluded groups that political representation must be based on their experience. It has accelerated the demands for institutional representation of diverse experiences, embodied in forms of social groups, in the form of bodily presence in decision-making bodies. It is based on the notion that the popular control and political equality are defining characteristics of democracy.⁷⁶ Since control is a function of presence in order to influence political decisions which affect the life of a group, the Presence of that group is therefore indispensably required.⁷⁷ As Phillips notes, political representation is fundamental to ensuring

⁷⁵ Phillips, Anne (1995). *The Politics of Presence*, (Clarendon- Oxford), pp. 5.

⁷⁶ *Ibid*, pp. 26

⁷⁷ *Ibid*, pp. 30

political equality. And inequality in political participation means inequality in political influence.⁷⁸

In almost every report for recommendations, it has been pointed out that the State doesn't have relevant data about DNTs in order to treat them even as separate population group, let alone as citizens. It is quite paradoxical with denotified and nomadic communities that the political technologies such as census and ethnographic surveys which were developed and used to control and criminalize these groups are now being projected to be the instruments of their emancipation. The extreme level of destitution and silence of nomadic and denotified communities is something which characterizes the kind of inclusion that these groups are being pushed into. The census operations are based on the notions of "residence" and "address", being among the foundations of the modern state. During the decennial census operation of 2011, there were numerous reports of the refusal by the census enumerators to register the names of members from nomadic and denotified communities. The reason cited in these cases by enumerators for not counting DNTs was that the latter live in 'Tents' and 'Huts' and have no 'permanent residence'.⁷⁹ The communities have not been included in successive censuses since 1931. Supreme Court in a petition issued notice to the registrar-general and the census commissioner, directing them to ensure the enumeration and classification of the nomadic and denotified communities in the second phase of the census operation 2010-11.⁸⁰ The NAC, while asking the central government to focus on enumeration and classifying the DNTs in socio-economic caste census 2010-2011, had expressed that the definitions of "residence" and "address" should be made flexible so that peripatetic and nomadic groups were not left out of the census data.⁸¹ These developments have been pointed out here just to shed light on the processes which are now making the communities legible but in a different sense. These processes, with their all complexity, are in some sense

⁷⁸ Ibid, pp. 32

⁷⁹ The Indian Express, Ahmedabad, April 25, 2010. URL: <http://www.indianexpress.com/news/nomads-denotified-communities-in-state-complain-of-exclusion/610974/0>, accessed on 25th June, 2012.

⁸⁰ The Hindu, New Delhi, February 6, 2011. URL: <http://www.thehindu.com/news/national/article1162623.ece#.Tpazii12SiE>, accessed on 25th June, 2012.

⁸¹ The Telegraph, Calcutta, April 24, 2012. URL: http://www.telegraphindia.com/1120424/jsp/nation/story_15411379.jsp#.T-qgwwVSLxE, accessed on 25th June, 2012.

enabling the post-colonial state to expand its sources of legitimacy regardless of the relationship these processes are building up between the state and its inhabitants.

Most of the nomadic people even don't have the identity cards required to avail some social services offered by the state. It is quite enigmatic to decipher the current dynamics in the relationship between this class of people and the post-colonial state. It can nevertheless be said that the state is still trying to make the denotified and nomadic communities such population groups whom it can deliver some services of well being rather than entitling them with the rights as citizens. The laws such as Habitual Offenders Act are still persistent, treating the same class, among others, as criminals. With the concern of care for these classes, the attempt for renewed enumeration of these groups may in fact be seen as the construction of a new layer and form of 'target groups'. Through such processes and policies, the nomadic and denotified communities are being brought into certain kind of political relationship marked with the non-participation into the affairs of the state. Since majority of millions of these communities lack official documentation, they are not considered as a strong voters' lobby.⁸² They don't constitute a political force in political process connecting organized interests with the institutions of the state. The denotified and nomadic communities are still lynched by people and hounded, harassed and incarcerated by the police. There is no legal protection for this class of people against atrocities. Nor are there debates about the issues inflicting these groups in so-called 'mainstream' media and public discourse. We can ask a question: what have democracy and modernity done to this class of people? The modernity with its colonial culture and institutions proved to be devastating to the very social identity and dignity of this class of people. The promises- liberty and equality- of modernity have proved to be elusive and largely deceptive to these nomadic and peripatetic communities. Their silence and marginality have multiplied and multilayered with the multiplication of the regime of powers. As regards democracy, it seems that it has worked in post-colonial India within certain confines, largely defined by bourgeois culture and interests. The most cherished value of democracy is equality measured in social, economic and political terms. If this value penetrates into a deeply hierarchized social and economic order with the help of political equality, that is, 'one man one

⁸² Our Own or the Enemy? *Economic and Political Weekly*, Vol. XLV, No. 2. URL: <http://www.epw.in/editorials/our-own-or-enemy.html>, accessed on 24th June, 2012.

vote, it unleashes tremendous transformative effects if not constrained by the structural limits of the state. These limits emerge primarily when the institutions of the state themselves shape their activities largely under influence of the interests of dominant classes. The historical marriage of liberalism with democracy has actually given much space for the capitalist classes to structurally keep the latter with minimal effects. This is one of the major reasons that, in political culture, the tension between democracy and capitalist modernity has been widely acknowledged in circles of those who believe in radical transformative agenda. In India, the post-colonial state has its own colonial baggage of oppressive structures, procedures and instructions coupled with the pervasive colonial culture largely in name of modernity. Such legacy has ostensibly been largely utilized by those whose class and caste interests fell in tension with democratic aspirations. Such state of affairs makes aspirations of democracy quite constrained. Its search for dignity to the marginalized is often seen as a threat to the project of modernity.⁸³ The denotified and nomadic communities are not, right now, even in position to use, in such political scenario, the instrument of democracy to restore their dignity and self-respect.

The recent pro-activeness of the state vis-à-vis these communities cannot thus be seen uncritically. The initiatives are more inspired by the desire for expanding the base of legitimacy of the state than by any serious attempt to accept these groups as full citizens of the same. They are increasingly being transformed into ‘target groups’ for some social and economic policies of the state. This is not intended to bridge the distance between these groups and the participatory connections with the state. Such gap is likely to be filled by such initiatives with the non-governmental kinds of organizations and associations, delivering some welfare services, enveloped in rhetoric of rights, equality, justice, freedom and dignity.

⁸³ Chatterjee, Partha (2004). *The Politics of the Governed*, pp. 41

Chapter-5

Conclusion

CHAPTER- 5

Conclusion

At the core of this research was to explicate the nature of the relationship between Denotified and Nomadic Tribes (DNTs) and colonial and post-colonial Indian state. Against the backdrop of the picture drawn by elaboration in preceding chapters, what becomes starkly clear is that the state, in the process of its institutionalization and operations, has produced the conditions which have rendered nomadic and peripatetic communities invisible, occupying margins of modern social and political institutions and spaces. The very organization of modern state found itself in sharp tension with the nomadic life of social groups. The centralization of political authority, aimed to be exercised on both people and territory, necessitated that that such groups somehow be brought under surveillance of the same. Ever since the advent of colonial rule in India, the nomadic life was seen suspiciously and sought to be controlled by criminalizing them. The new power, in order to organize itself, subjected the bodies, the physical and social spaces to confirm its foundational values. The diachronic history of relationship between the modern state and the nomadic communities informs that the political economy of the former has invariably eroded the means of livelihood of the latter. The very social and economic practices that ensured the survival of these groups were criminalized, thus rendering the latter transformed into vagabonds, beggars, dispossessed, and indentured labourers. For example, the peripatetic communities which were engaged in trading salt from coastal areas to inland lost their means of livelihood when they were prohibited by the colonial government from doing this trade. Likewise, the fishing communities lost their source of survival when they were prohibited from fishing as has been demonstrated the case of Mallahs in Banaras. It can be said that modern developments were antithetical to their very social existence and identity of nomadic and peripatetic communities.

The colonial Indian state, through its remunerative, ethnological, anthropometrical, ethnographical projects produced a system of knowledge about the colonized. These forms of knowledge were in fact the effects of power themselves. This system of knowledge constructed a social reality which mirrored more the colonizer than the colonized. Thus, the construction of “Criminal Tribes” by the colonial state was the

result of the threat posed by the former to the repressive authority of the latter. It was the consequence of the resistance to the kind of 'self' the colonial state intended to cultivate in order to institute its authority. Furthermore, it was the result of the non-confirmation to the new structure of the 'normal' which the new power strove to get internalized. This was basically the manifestation of efforts of the state of ordering and classification in which those who were seen to be hardly 'governable' or unengulfable within unfolding colonial project were given such criminalized identity.

This construction was a discursive formation as part of the whole project of the new power about the 'orient'. The construction of 'orient' resulted out of the process of 'othering' the unknown. The process was marked however by the asymmetry of relations between the 'occident' and the 'orient'. This is to say that the former was invariably projected as universal subject and superior to the latter. In this process of inferiorization and subjugation, the construction of criminal social identity of nomadic communities might be regarded as a definite 'other' as against the moral subject deserving the protection of colonial laws.

In search of making the body of the criminal legible to its sight, the state devised numerous techniques. Tattooing, fingerprinting developed in colonial quest to easily identify the suspect. The techniques advanced over time, replacing one by the other. This advancement signified the deepening and expansion of colonial power into dark landscape of bodies and territories. Apart from these techniques, the operation of the state, involving numerous practices, also formed the interfaces where the identity of a person or group could be rendered a suspect one.

The colonial power had multiple objectives through process of sedentarization of nomadic communities. It not only allowed the colonial state to control these groups easily but also extract from them useful and controlled labour for agriculture and industry. The very criminalization and restriction on movement had made these groups enslaved. Their labour was exploited by both landlords and industrialists with the complicity of the state. So, it can be said that the criminalization had a functional aspect which made the nomads and dispossessed the labourers. This process was facilitated by the civilizing mission. The civilizing process was aimed not only at transforming these groups into useful labour, but also at making them moral subjects of colonial state. This process was not a seamless one. These groups offered

resistance to the authority in the process of colonization of their nomadic body and social and cultural practices.

With the transfer of power after withdrawal of British rule from India, a significant shift took place. There was a change in considering the role of the post-colonial state in relation to people. The colonial state was an oppressive institution designed and developed to serve the interests of colonizers and their collaborators. In the changed context, the role of state was viewed quite differently. It was thought that it could be an institution of social revolution, in an extremely hierarchical social structure, if equipped with radical transformative principles and values of politics. Such view implies that the state power was seen to be regulated and managed through democratic mechanisms and by reposing the sovereignty in the hands of the 'people'. The first manifestation of this vision was the constitution of Constituent Assembly (CA). It was a body of representatives entrusted with the task of drafting the principles and values of the cornerstone of a new 'nation'. The constitution which eventually came up embodied the ideals and principles of a liberal and egalitarian society. It became the source of power of the post-colonial state in its Political vision. It was indeed a political document of *modus vivendi*, bringing together different histories, memories and cultures on the basis of certain agreed principles. This imagined a political community whose members were entitled with the right to liberty and equality. And the state was supposed to be the guarantor of these rights.

Scheme designed of justice in the framework of this constitution went beyond its liberal notion. This is to say that the people who had been historically silenced and suppressed in hierarchical structure of society were given constitutional safeguards through preferential treatment. The constitutional categories of SCs and STs signified the recognition of historical injustice.

In the light of such constitutional developments, it is quite unfortunate that the issues and concerns of the criminalized communities was not adequately addressed in Constituent Assembly debates, as it is evident from the speech of H.J. Khadenkar who, during the last moment of CA had said that 'nothing' had been said in the constitution about these nomadic and criminalized communities. Later, the dissent note of L. R. Naik in Mandal Commission illustrates the point quite clearly. It can be said that these groups are still misrecognized from the perspective of constitutional

justice. They are still viewed as communities with criminal bent not only by the society but primarily in imagination of the state itself. The proof of it is the flood of draconian and repressive laws ever since the time of implementation of the constitution. It is quite worthwhile to note the remarks made by Khandekar, while informing the CA about Criminal Tribes Act. He had anticipated the possibility of enactment of such laws, repressing the vulnerable and marginalized, in the name of 'public order' or 'morality'. The concern had been expressed about the constitutional provisions which could ambiguously provide the basis of such laws against the rights of the citizens. It was something which alluded to the use of repressive institutions of the state which had enough developed during its colonial phase. Moreover, the power produced its own culture to sustain its hegemony. The social and political institutions which emerged in the course of colonial rule produced in forms of hierarchies and inequalities the worst victims of these are the nomadic and denotified communities. Their invisibility from modern spaces and institutions is perceptively not incidental. It is accumulative consequence of their being systematically cornered on the fringes of such spheres through the processes of modern developments. This is why the margins that they inhabit and social and cultural practices that they perform could be understood only if they are placed properly in their historical formations and modifications in the course of time. It is also equally important to read the ethnographical and anthropological accounts about the life of these communities; because the colonial construction of these groups as hereditary criminals has pervaded these accounts and continues till today in several forms.

In the light of the recent political developments vis-à-vis Denotified and Nomadic Tribes (DNTs), one thing which seems to be clear is that they have been marked as a distinct category of people, though not recognized constitutionally. These groups are mostly scattered across SCs, STs and OBCs. But the recognition of these communities in terms of these categories has not addressed to the problems and concerns related to the social hierarchy that they now constitute. The recommendations of NCDNSNT and those of TAG have largely sought to address the misrecognition of these communities. Their insistence on the political representation in legislative bodies and specific preferential treatment in jobs and education is well understandable, keeping in mind their consistent historical exclusion from these bodies and spaces. It could be

seen as fundamental strike on the way they have been constantly misrecognized. They also seek to question the very politics that has always kept them misrecognized.

However, it is quite paradoxical with the political fate of these communities in the context of post-colonial India. This is to say that the political technologies which had been devised and used to oppress and control these groups during colonial time are now being projected as the instruments of their emancipation. The specific census of social-economic conditions of these groups launched by the union government, purportedly in order to formulate welfare policies for them, has also a quite different story to tell about the growing character of functionality of modern state. As Michel Foucault has conceptualized, the 'governmentalization' of state is growingly transforming the mode of legitimation of sovereignty of the state.¹ Sovereignty, having its locus in 'people', is losing its participatory character as a consequence of modes that the state has developed to 'govern' the 'people'. The quintessential and sparkling dimension of citizenship is to share sovereignty of state by participating in its affairs. This is the ethical dimension of being a member of a sovereign people too. This is what makes state accountable to the people. And, moreover, the guarantee of liberty, equality and fraternity of all citizens will be well ensured through such notion of citizenry. This paradigm of citizenship, to have been assumed in the promises of modernity, has been narrowed and obscured through the process of 'governmentalization of state'. This process, in a specific sense, depletes the participation of citizens in the affairs of state while holding the rationality that they should be taken care of in pastoralist sense, as Foucault calls it. This turns citizens into mere 'populations' based on some empirical calculations, devoid of any claim of participation in affairs of state. Against the backdrop of such growing character of disposition of state, the treatment of Denotified and Nomadic Tribes (DNTs) by the Indian state as citizens largely appears to be elusive. The recognition of these groups seems to be given in near future only as 'population groups', deserving certain schemes of social welfare. Their invisibility in public sphere is political, resulting from their inability to organize themselves in a political force in order to make their claims effectively in the process of decision-making. It is because of the marginality

¹Foucault, Michel (1991). "Governmentality" in Graham Burchell, Colin Gordon and Peter Miller (edit.), *The Foucault Effect: Studies in Governmentality*, (Chicago: the University of Chicago Press), pp. 87-104.

and the level of hierarchy they hold and represent. The notions of 'people', 'nation' and 'citizen' don't have any meaning for this class as for numerous other groups.

The historical trends, found through this study, with respect to relations among class, criminality, power and dispossession allow some level of theoretical abstraction. It was found that the people who were resisting against their dispossession and erosion of means of livelihood were viewed as threat to authority and treated as criminals. The people who constituted a class without private property were seen a threat to the propertied classes and thus seen as 'suspects'. It would therefore be quite relevant to see whether such correlations exist in post-colonial India and whether the effects of oppressive structures and institutions of colonial rule have been tranquilized.

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