

Criminal Tribes & The Raj: An Ideology of Control in Colonial India

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Abstract: *‘Criminal tribes’, born criminals or ‘Denotified Tribes’ represent a concept etched onto the minds of people at the time of British rule, varnished over with legislation and preserved for considerable period. The arbitrary categorisation was first made by the company raj in 1871 and this dubious status reigns even today, reducing them to one of the most neglected elements of Indian society. In India in the late 19th century there existed several wandering groups akin to gypsies of Europe. There were travelling magicians, traders, cultivators, pastoralists and forest dwellers. Their so called rootlessness caused severe headache for the authorities. Not only did their wandering existence reinforce an economy the East India Company was attempting to replace with settled agricultural production, but these wanderers might well have proved themselves indistinguishable from roving bands of thugs. Their desire to feel in control of this floating population encouraged the production of official stereotypes like criminal tribes. They have taken recourse to theories of criminology and social control prevalent in the western world, to justify the passing of the Criminal Tribes Act 1871, branding for the first time some tribes as a whole, as criminals. Therefore, in a nutshell, in this essay an effort has been made to find out the philosophical justification/rationalisation of this notorious act and its operation.*

Keywords: Criminal tribes, the Raj, East India Company, Nomads, Criminal Acts under colonial rule.

Introduction

Nomadic communities the world over have always been considered to be more criminal than not, and their ‘restlessness’ or constant movement is

considered a troublesome feature by members of sed-entary societies. The relationship between itinerant and sedentary communities has become more problematic in modern times. The more the itinerant communities get marginalised to the main sphere of society because of transformative processes, the more they become suspect from the point of view of the sedentary society they interact with. In real terms, their increasing marginality simply compounds the already existing prejudices against them. In Europe, gypsies became gradually marginalised to the established system with the processes of industrialisation. While mobility and ambulatory practices were treated as a criminal activity in Europe, but in India the phenomena reached its zenith when mobile and nomadic groups like street entertainers, mendicants, traders, prostitutes etc. were treated as 'hereditary criminals' or in the official parlance as 'Criminal Tribes'.

'Problematic' Nomads

The word 'nomad' is derived from Greek *nom des* meaning "those who let pasture herds". In fact in the Western world, the notion of 'wanderlust' and gypsy entertainers who indulged in playing music at village feasts and fairs as well as fortune telling, come closest to the imagery of a nomad. An unsettled, un-disciplined, aimless, vagrant and thrifty lifestyle as well as unpredictable movements characterized mobile communities, which persist till today. Further, the nomads' superior knowledge of the world acquired during extensive travels is seen to endow them with greater mental resources and a potential for greater manipulation of others. A mobile and unregulated lifestyle was also associated with guerrilla warfare and the 'hit and run' tactics of the nomads and vagabonds, along with other such mobile communities. Moreover, the mobile populace was resistant to proselytizing missions and the Christian missionaries couldn't achieve any success especially with the pastoral nomads (Philips 2001: xv). Besides, they could not be taxed and always escaped the scourge of war or any natural calamity like epidemics or drought and famine. Increasingly, street entertainment provided by acrobats, singers, dancers, tight-rope walkers and fortune-tellers were seen to be threat to public order (Radhakrishna 2001: 11) since they attracted large crowds during their performances. The Empire was also apprehensive of the 'regimes of circulation' (Markovits et al. 2003) formed by ambulation where besides material goods, other non-material aspects like ideas, skills and rumors circulated freely (Guha 1999). Already the colonial state was beset with a sense of great fear of a second Mutiny which would have brought the Empire on its knees.

Most importantly, the nomads' lack of property, and supposed, lack of due regard for others' property, is seen to be a threat to the established order (Mayall 1988). Their independence from rigid norms and constraints of sedentary societies is found equally objectionable. In fact, itineracy is seen as a possible escape route for the so-called outcasts and refuse of sedentary societies - if one is an itinerant, it is probably because he or she was not acceptable to the sedentary society. There have been other charges against gypsies, or migrants or nomadic people: they are escaping from the law, or simply fleeing from hard work of any kind. In agriculture-based societies, the men resent their escaping the hard work of ploughing and tilling, and the women that, or the harder labour of housekeeping and child rearing. In short, itineracy is not seen as a chosen way of life, but as an aberration of some sort. In fact, their very marginality to the established system is suspected to stem from a deliberate rejection of that system, and this offends the established members of sedentary societies. It is worth emphasising here that many of the above prejudices are not held so much by the local people, but by the local authorities. In the Indian case, these would mean the British administration, the police establishment, the high caste sections and the village landlords¹. More grievances were added to the standard list of charges against itinerants by the Indian authorities: their lack of predictability of movements implied a potential lack of control; their shifting abodes meant shifting loyalties to different patrons, and so they were seen to be perennially disloyal; the impossibility of taxing them, or raising any kind of revenue out of them, unlike their sedentary counterparts was probably a major irritant to the administration. In addition, for the keepers of social morality, their lack of visible social institutions implied complete disorder in their community life. Their absence of loudly articulated norms of morality implied absolute licentiousness.

At another level, there were more problems. Since they always collected a large interested crowd around themselves - and were quite a large crowd by themselves - their presence made the local authorities nervous. The British administration was increasingly inclined to favour forms of recreation which could be supervised by themselves, and would not precipitate what they called 'disorderly and riotous behaviour' on part of the spectators. It is worth mentioning here that in England, all laws relating to the gypsies were to protect the settled communities from itinerant ones and never the other way around (Mayall 1988: 180). Large-scale harassment of these communities by members of settled communities was a common feature in Europe. It is worth pointing out at this juncture, the ambivalences and contradictions in the attitude of sedentary communities to itinerant

ones. These are symptomatic of the latter's simultaneous usefulness and marginality to the established systems, they have to interact with. They were, in fact, romanticised in imagination, especially in English fiction and poetry in the case of the gypsies (ibid: 87). This was for their independent spirit, their dark attractive looks (or bright clothes and jewellery as in the case of the Indian 'banjaras'), their supposed healthy outdoor life. In general, there was a lot of romance and adventure associated with their travels. However, when confronted in reality, there was fear and dread and they were shunned, if not despised. In fact, a number of English ladies in their leisure time in India drew banjara men and women in a romanticised light, while their law-making menfolk made them out to be ferocious criminals. (Banjaras were also declared criminal tribes by the British administration²). So the important point is that the very nature of the relationship between these two different systems, and the gaps in knowledge of each others' real ways of living will lead to myth-making on both sides. Unfortunately, we know little about the myths, that the itinerant people have about sedentary societies. At any rate, as far as sedentary societies are concerned, there is an overarching discomfort, a suspicion regarding itinerants which degenerates into seeing them as established criminals.

Conceptual framework of 'criminals by birth'

In the Indian context, the concept of a 'hereditary criminal-class' remained important and attractive for a long time. This was probably for the reason that, this view allowed deflection of enquiries into the causes of crime, and allowed for stringent, arbitrary measures of control. The important point to emphasise here is that, the investing of some sections with hereditary criminality was different in the case of India and England. In India it was based not on the notion of genetically transmitted crime, but on crime as a profession practised by a 'hereditary criminal caste'. Like a carpenter would pass on his trade to the next generation, hereditary criminal caste members would pass on this profession to their offspring (quoted in Nigam 1990). In England, a hereditary criminal implied one who had inherited criminality through the genes of a parent or an ancestor. In India, then, the concept of hereditary crime never really got linked to biological determinism. This happened not because of genuine advance in the field of genetics, but because the Indian caste system seemed to adequately explain to the British administrator the phenomenon of daunting criminality of at least a section of Indians. Clearly, there was a genuine need in these circles to find an explanation for criminality of such large numbers of people in society. By

calling the trait here-ditary, the problem was rendered not amenable to resolution or intervention.

The British realized soon enough that in order to rule India, it was necessary to have knowledge of the native language to issue commands, collect taxes, and maintain law and order besides creating other forms of knowledge about the people they were ruling. In this connection Gauri Visvanathan remarks, 'the state had a vital interest in the production of knowledge about those whom it ruled' as well as 'a role in actively processing and then selectively delivering that knowledge... in the guise of "objective knowledge"' (Visvanathan 1989: 29). For David Arnold, it was the 'travelling gaze' which aided the British in developing an epistemological base of the land and its people. It is worth noting that the colonial concern to know India began with the desire to understand local forms of landholding and agrarian management in the 1770s.

It is worth pointing out here that there was the additional input into notions of criminality by the then developing discipline of Indian anthropology as well. This discipline addressed itself to the study of particular sections of the Indian population, mostly indigenous 'tribal' communities and itinerant groups, and contributed in a very substantial way to the conceptual outline of a criminal in the popular mind. By focusing on bizarre or exotic ritual aspects of the social lives of such communities, and at the same time also on their differential anthropometric measurements, the discipline managed to draw the fine line between a civilised and barbaric individual.

It was Cesare Lombroso, an Italian anthropologist, who sought to discover the causes of crime by examining the characteristics of Italian prisoners, and reached the conclusion that most crime is caused by discernible physical characteristics of an individual (Jenkins n.d.: 129-131).

Lombroso further advocated that since physical characteristics could be determinative of the likelihood to commit crime, preventive measures should be adopted in order to protect society from the crimes of these born criminals. He claimed that the method and amount of punishment should differ according to whether the concerned criminal is a born criminal, an occasional criminal or a criminal by passion. He further claimed that, the born criminals and the 'criminaloids who have become habitual criminals' should be 'set at liberty again only after extraordinary proof of reformation'. Some criminals ought never to be liberated. He was thus one of the first advocates of the controversial indeterminate sentence, which stressed that while no man should be imprisoned unless it is clear that his freedom is dangerous to others, once imprisoned, he should not be freed until the danger has ceased.

In furtherance of his stance, he stated, now, just as men came to recognize a century ago, contrary to the beliefs of the Middle Ages, that insanity did not depend upon free will, we must now recognize that neither does crime itself depend upon it. Crime and insanity are both misfortunes; let us treat them, but defend ourselves from their blows. At one stage, Lombroso even went on to claim that gypsies were born criminals, as they bore the necessary characteristics and their lust to wander and live life through carrying out 'con' jobs was just a reflection of this. This controversial theory was by no means unsupported. There are several fellow theories. For instance, Lamarck believed that traits learned by one generation could be passed on through heredity to the next and American criminologists such as Loring Brace and Henderson applied the theory to such behaviors as criminality, drunkenness and laziness. If parents were involved in these behaviours, then their children would most likely be as well. In fact, this precipitated many countries to attempt sterilisation of those persons believed to be carrying criminal traits. Some theorists even suggested that certain persons are drawn by a congenital impulsiveness to commit crimes. It was these popular theories that the British used to justify the creation of criminal tribes in India. These notions also resulted in the treatment of criminal tribes in much the same way that the insane were treated- through preventive measures like the indeterminate sentence. The supposed higher rates of criminality among these groups were attributed completely to their natural propensity to committing crimes and no alternative explanations were even considered.

It is important to mention that, the Salvation Army also considerably helped public perception of the criminality of groups, with which they worked. In fact over a period of time they were able to define with some authority, for administrations all over the world what constituted criminality, and in different social contexts, even pointed out who these criminals were - paupers in England, tribals or gypsies in India, aborigines in Australia, New Zealand or North America and so on. Salvation Army had been working with released prisoners in India a few years before the Criminal Tribes Act was instituted, and this organisation was taken very seriously by the government - its officials had evolved categories of criminals like incorrigible, habitual, hereditary, ordinary, worst character, would be good, won't be good, badmash, nekmash and so on in what they called 'crimdom', and differential treatment was suggested for varying degrees of Indian criminality in a potential 'cure'. The treatment had to be punitive, deterrent, preventative or curative (Radhakrishna 2000). In any case, the general point to emphasise here is that the category of a criminal tribe was

not a sudden development - different stands of social and political opinions and considerations had been shaping the general category of an Indian 'criminal' for several decades.

India in the 19th century in India was marked by great political and administrative upheavals. Ranajit Guha has already mentioned that, there were not less than 110 known instances of these protests and sporadic rebellions in a spread of 117 years ranging from Rangpur *dhing* to the Birasaites *ulgulan*. These rebellions, protests, revolts, uprisings, insurrections were staged by tribal communities and rural masses, and were directed against the exploitative agricultural and forest policies of the Empire. Thus, late 19th century was a turbulent and trying period for the British policy makers in India. In the mother country too, increasing crime rate, vagrancy, poverty, unemployment, alcoholism and ailing health of the population was showing an unprecedented leap. The Empire was under threat from all sides. There was great moral pressure from the colonies to put a halt on this socio-economic menace from spreading further and castrate the possibility of any sign of discontent in the near future. It was in these circumstances that the late nineteenth century in India witnessed a unique kind of formation as never seen before. In order to control the mounting threat perception and contain the crisis from escalating further, the Crown embarked on a 'regime of surveillance'. The colonial state was creating and establishing the 'effect' of a 'despot' and subsequently turned the colonial state into a 'panopticon'³. The Revolt of 1857 was a turning point in the career of the British Empire as the baton of rule was handed down to the Queen by the East India Company. It was the beginning of 'direct rule'. C.A. Bayly speaks of a parallel system of information gathering system by the Empire which he calls '*information order*' (Bayly 2006), where the entire state acted as a panopticon and everyone kept a watch on everyone else and passed on the information to the concerned higher authorities. Gautam Chakravarty (2005) is of the opinion that, this interest in surveillance was necessitated by the fact that the "British empire grew by some 4,700,000 square miles between 1874 and 1902; an expansion that stretched national resources but created in the process new, extra systemic, methods of conflict management" (Chakravarty 2005: 157). The first half of the 19th century in India was a whirlpool of political and administrative upheavals including a jungle of legislations, rules and regulations, that had far reaching ramifications both for the Empire as well as for her most prized colony. Some of them like the *Indian Evidence Act*, *Female Infanticide Act*, *Indian Penal Code (IPC) of 1862* and *Criminal Procedure Code (CrPC) of 1861*, *The Criminal Tribes Act of 1871* etc.

aimed at tinkering with the local customs and practices while also codifying criminal laws and identification techniques. Of all the laws and regulations that were injected into the body politic the Criminal Tribes Act (henceforth CTA) of 1871 bore great significance.

Legal Response of the Raj

The CTA redefined the notion of crime, criminals, criminology and tribes and led to a completely new identityformation for certain groups and communities in India. According to the Act, there was a strong belief by the colonial government that, certain groups were “addicted to the systematic commission of non-bailable offences” and that these groups existed since ancient times. This Act was first applied to Northwest Provinces, Oudh and Punjab and later in 1911 a revised version was applied to the whole of India which included the Bombay and Madras Presidencies. The CTA can be seen as a watershed in the popular understanding of criminality, crime and henceforth the so called ‘criminal tribes’. Introducing the Bill of the 1871 Act, T.V. Stephens, a member of the Law and Order Commission said that, “They are destined by the usage of caste to commit crime and their descendents will be offenders against law until the whole tribe is exterminated or accounted for in the manners of the thugs ... people from time immemorial have been pursuing the caste system defined job positions: weaving, carpentry and such were hereditary jobs. So there must have been hereditary criminals also who pursued their forefathers profession” (D’Souza 1999: 22-26). It should be borne in mind that the CTA of 1871 along with few other ‘modalities of identification/information’ like the Census and Fingerprint technology was born to have an effective political surveillance, colonial subjugation and sedentarization. The ostensible purpose of the 1871 Act had been to suppress ‘hereditary criminal’ sections of the society (Radhakrishna 2001). It also helped the state to separate supposedly ‘delinquent’ from ‘honest’ subjects. In turn, it conferred a specific social identity upon such groups, thereby socially stigmatizing them (Bhukya 2007). Sanjay Nigam has contended that, the category of criminal tribes was a ‘colonial stereotype’ fashioned to justify the punitive ‘disciplining and policing’ of sections of the population, that were unwilling to accept the new moral order that the British sought to impose on rural society. David Arnold has observed that the Criminal Tribes Act was used against ‘wandering groups, nomadic petty traders and pastoralists, gypsy types, hill and forest dwelling tribals’, in short against a wide variety of marginals who did not conform to the colonial pattern of settled agriculture and wage labour. It was supposed

that particular types of crime were associated with particular skills which are specific to these tribal groups (Major 1999).

The CTA provided for:

- Designation of a group as a ‘criminal tribe’;
- Registration of all members of tribes who were deemed criminal tribes;
- Once registered, it was mandatory for all members to report themselves to the police or designated authorities at fixed intervals;
- It was necessary for them to notify the police of their place of residence, intended change of residence or any absence or intended absence from residence;
- The Government was authorised under the Act to restrict any member of a criminal tribe, or a tribe as a whole, to movements in a specified area, reside in that area and leave the area only with permission in the form of a pass even if it was only for a few hours or for a laudable/innocent purpose;
- If any of these rules were contravened, stringent punishments could be imposed. For a minor offence like inadvertently walking out of a settlement one could be whipped. The punishment increased proportionately with the gravity of the offence spanning from imprisonment for one year on a first conviction, to imprisonment for three years and a fine of upto Rs.500/- for more than two convictions (Jenkins n.d.:125-126).

The Act was amended in 1873 on the recommendation of the Police Committee and provided for enhanced punishments. The Government also felt that criminality among these groups was a function of association⁴ and hence provisions were made for the separation of children between the ages of 14 and 18 from their parents and placing them in reformatory settlements. This was in consonance with theories of ‘born criminals’ or ‘bad breeding’ which were popular at the turn of the twentieth century. These claimed that, a person’s inherited make-up could make him/her inherently flawed and this, coupled with parental influences, could lead to

poor outcomes. Therefore, this act of separation was widely supported and did not find much opposition, in spite of the fact that the children were not well schooled or given the chance to develop capabilities. Until 1908, the offenders were usually put in prison. However, this only increased their own poverty and placed their families in great depravation. The Salvation Army had been experimenting with criminal tribes in prisons and managed to convince the British Government that, criminal tribes could be reformed and made to deviate away from their lives of crime by placing them in settlements. Hence, the Criminal Tribes Settlement Act of 1908 was enacted. The crux of this Settlement Act was that, now even persons suspected of living by crime could be brought under its purview. They could be registered and their movements supervised. All those who had been convicted of crime could be placed in settlements, where they were taught to do work and their children were forcibly schooled.

The rationale behind placing them in reformatory settlements was for their 'moral' correction. However, very little of this was ever seen. Those settled were separated from their children and lived in glorified concentration camps, which were effectively centres that generated free labour for government projects and did nothing to contribute to their reformation. The work in the settlements included repairing roads, mending tank bunds, clearing drains, planting and cutting crops and other activities as necessary. The justification was that this process would contribute to economic correction. Moral correction was an objective that was simply dispensed with. Apart from being free manual labour, the basic living conditions in the settlements were appalling. They received miniscule wages for work, lived under draconian rules and regulations and had terrible sanitary conditions, a complete lack of freedom and abject poverty. This was a perfect example of a paternal, patronising government at its best, arrogating to itself the power to notify a community criminal, presuming that it could reform such a notified community and that it knew what to do with the children of that community, abducting them from their parents. The authorities in charge of the settlements also greatly abused their position. Permission to leave the settlement always came at a price. The officials habitually resorted to fraud and bribery and sometimes even instigated these people to commit crimes. If it was alleged that a person in a settlement committed a crime, they would be whipped or abject themselves to more arduous labour. Hence, their view of work was largely as a punishment and thus taking up honest work outside a settlement was still foreign to them. The Salvation Army, which ran a large number of the settlements, forced a number of conversions to Christianity. Following conversion several persons were left disappointed,

as they did not reach the desired goals that Christianity had promised them. But persons who converted to Christianity were given many privileges to serve as an incentive, and this created discrepancies and ill-will between those in the settlements.

Conclusion

It is generally through the process of law, that social stigma is sought to be removed. However, the CTA was an exception to this rule. It serves as an apt example of a piece of legislation that created an adverse label and attached it to persons who henceforth lived stigmatised, marginalised lives, effectively segregated from society as a whole. It is acknowledged that a criminal record attached to any person will serve as a means of marginalisation, but this Act ensured that even persons in a group who had never committed a crime could have their movement significantly restricted, accompanied by a societal sanction of their criminal potential. From the commencement of the CTA, they rose to the status of official guinea pigs—the first to be rounded up by the police for any crime committed in the vicinity. With the presumption of their criminal tendencies being taken virtually for granted, it became impossible for them to prove their innocence. Prior to the commencement of the CTA, these groups were primarily nomadic and their means of livelihood were non-sedentary. With the onset of industrialisation and other forms of development, many of them lost a large part of their traditional occupations. This was especially true for those who were travelling traders and salesmen who could not match the competition of goods being transported by road or rail. Many of them were reduced to abject poverty and turned to crime for survival. Those that followed other occupations such as fortune-telling and performance of magic were already distrusted. Hence, general notions of their criminality were already floating around society and were exacerbated only by the process of development and the CTA, which built notions of their inherent criminality. When India gained independence in 1947, there were close to 128 tribes numbering 3.5 million, amounting to 1% of the total population of India, who were branded as criminal tribes (Major 1999). In 1952, they were given the status of Denotified Tribes or *Vimukta Jatis* by the government of India, but although the legal status was changed but the social status of criminality remains intact and was fossilized with the passage of time.

Notes

1. The local people must find the nomads quite useful for the unusual wares they bring periodically. Their various skills of waving mats or making baskets or playing musical instruments, and more dramatically in the case of acrobats or dancers, make them a colourful and interesting presence, in all probability providing relief and diversion from the monotony of daily routine.
2. Banjaras were a community of grain merchants, who can be traced back, even under the Delhi Sultanat. They were a numerically larger community operating on a much larger scale traversing a larger geographic area. For the same reason, they escaped the criminal tribes act for a longer period being relatively less vulnerable.
3. Originally used by Jeremy Bentham to designate his idea of an ideal prison, the term 'panoptican' was later expanded by Michael Foucault to designate a kind of surveillance so intrusive and penetrating that, there is no differences between public and private.
4. They found justification in several psychological theories, such as those advocated by Locke. Locke considered that a child came into the world as a 'tabula rasa' a blank slate. The child's experiences in the world determined what was written on the slate and shaped the person he became. This view saw the child as essentially passive in the developmental process and the environment as the active agent.

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