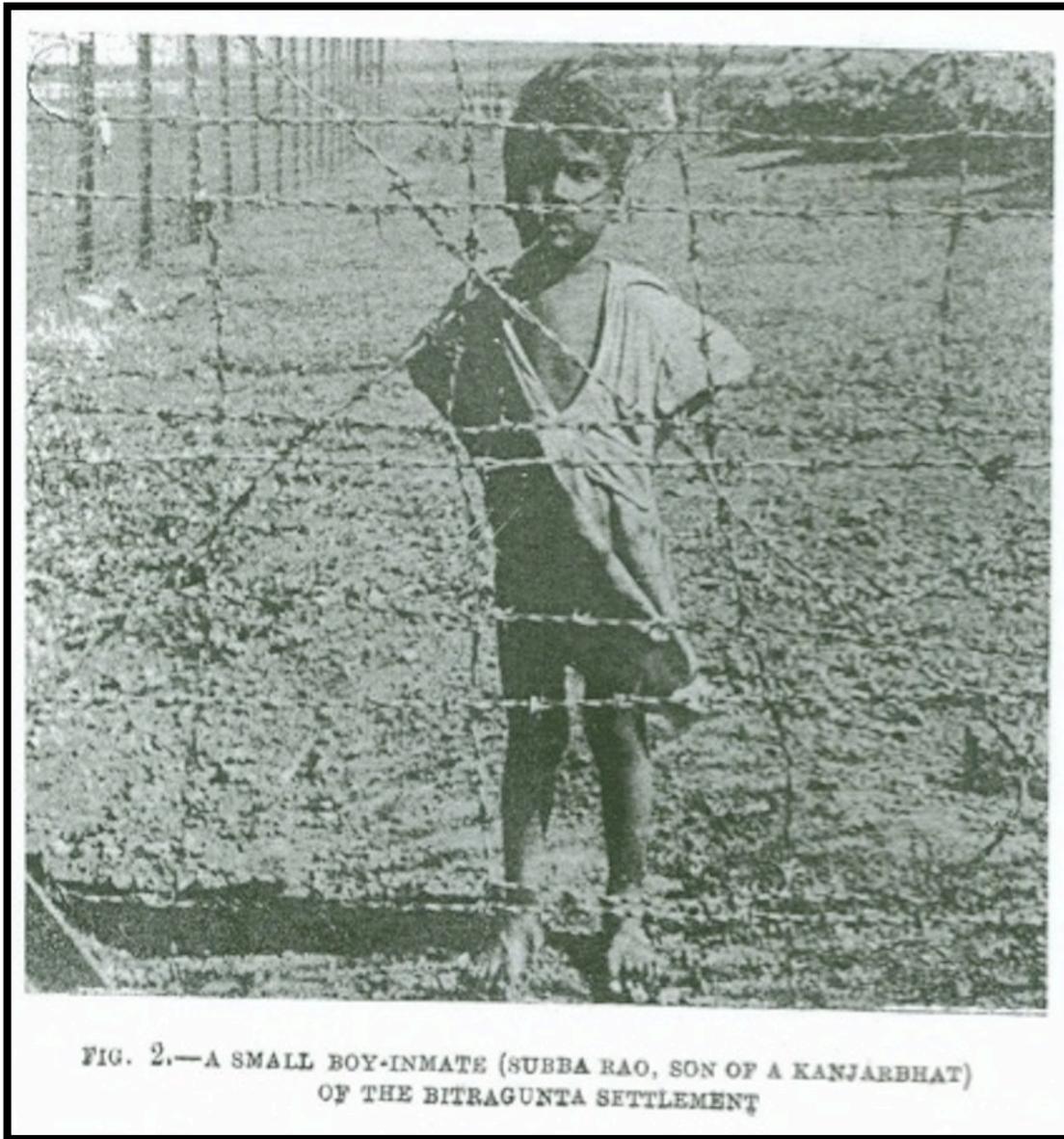


# Waiting for Freedom



## Recommendations from Regional Meetings on Nomadic and De-Notified and Semi-Nomadic Tribes in India

Organised by:  
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## **Acknowledgements**

The four Regional Meetings organised by Budhan Theatre and TANDA (TISS) to highlight the issues of NT-DNTs would not have been possible without the continued support and cooperation of many people. The resource persons for various meetings have provided a direction for constructive engagement and created a space for recommendations. They include Prof Ganesh Devi, Prof. R Siva Prasad, Prof. Kalpana Kannabiran, Dr. Murli Karnam, Dr. Kanjibhai Patel, Mr. Tarique Qureshi, Ms. Sneha and Ms. Jeevika Shiv.

Ms. Meghali Senapati, faculty, TISS Guwahati Campus, was instrumental in organising the Eastern Regional Meeting in Guwahati also in South India meet we thanks to Mr. Moon of Martin Institute who extended his support in a very short notice to hold two days meeting. When we were struggling for funds to organize Northern India meet in Rajasthan, Mr. Nileshbhai Patel of Bhasha Research and Publication Centre came forward and helped us to organize meeting in Karninagar Seva Samittee in a very short notice. How can we forget Mr. Bhandariji of Karninagar Seva Samiti who was unwell and operated on the day we organized meeting in his institution but then also his wife Mataji taken care of all participants very well. The mobilization and coordination of the regional meets would not have been possible without the active participation and proactive attitude of Mr. Deekonda Narsinga Rao, Mr. Mohd. Kalam, Mr. Madan Meena, Mr. Bharat Vitkar, Mr. Dheeman Bhattacharya and specially Mr. Suwarnakumar. The enthusiastic volunteers including Mr. Seamoon, Mr. Mushtaq Ali and Mr. Allonga ensured the background support needed for each regional meet. We also extend our acknowledgement for Media houses that published news about our DNT consultations in all regions.

The Budhan Theatre and the TANDA team have been the backbone that has ensured the successful completion of each of the Regional Meetings. Lastly, the motivation behind all our efforts – the NT-DNT communities, who have shown tremendous courage, have shared their communities' and personal stories of persecution, violations and abuses and have been the driving force behind the recommendations and strategies that these regional meets have produced.

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## **Waiting for Freedom:**

# Recommendations from Regional Meeting on Nomadic, De-notified and Semi-Nomadic Tribes in India

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### **Background**

The development and rights of Nomadic, Denotified and Semi-Nomadic Tribe (NT-DNT and SNT) are long standing issues in the Indian political arena. In Indian history, even after independence, this section of society is continuously exploited by the society and the system. Due to the community identity as ‘Ex-Criminal Tribes’, these communities faces social exclusion in rural as well as urban areas, and their developmental issues have been neglected by the system. It is found that except Maharashtra, Tamilnadu, Rajasthan and Karnataka, none of state has a state level commission or department exclusively for NT-DNT and SNT

Stela Adler said that ‘The Theatre was created to tell people the truth about life and the social situation’. We have already learned from French revolution that theatre is not just an artistic way to express issues but it has power for social and political change. Budhan Theatre adapted this powerful form to fight for the Constitutional rights of NT-DNT and SNTs, which are deprived since independence.

Dr. Ganesh Devy founded Budhan Theatre Society in 1998 with the inauguration of Chharanagar community Library in the Chharanagar, Ahmedabad.<sup>1</sup> Soon after setting up the community library, the Chhara youth started theatre to address issues of De-Notified Tribes through theatre art and made their first play called ‘Budhan’ based on Budhan Sabar’s custodial death in West Bengal (Annexure – 1). The play was performed widely and Budhan Theatre got recognition and acceptance from society. The play has impacted the perception of people’s towards on DNTs. This inspired the Charra youth to produce many more plays. In the last 15 years, Budhan Theatre has produced 43 plays on various issues of Nomadic and De-Notified Tribes and created a nationwide awareness about this most neglected section of society. Through theatre, Budhan

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<sup>1</sup>An area in Ahmedabad inhabited by Charras, a De-Notified Tribe, facing societal and institutional harassment and discrimination.

Theatre has reached out to a cross-country audience and in 2007, was invited by the United Nations to speak about India's Nomadic and De-Notified Tribes. Budhan Theatre is the only theatre group in the country, which is a fully community-based theatre group working for the development of the community and larger sections through theatre.

According to Dr. Ganesh Devy, on 14<sup>th</sup> of Jan 2006, he along with Smt. Mahasweta Devi and Mr. Uday Narayan Singh, IAS met the Prime Minister, Dr. Manmohan Singh at his invitation, at his residence, to discuss issues of NT-DNTs. At the request of Dr. Devy and Smt. Mahasweta Devi, Dr. Singh agreed to appoint a National Commission on NT-DNTs. On 25<sup>th</sup> January, 2006, the UPA I government announced the formation of the National Commission for DNTs, NTs and SNTs to study the problems and recommend schemes for these neglected sections of society. Mr. Balkrishna Renke was appointed as Chairperson of the Commission with two other members. The Commission submitted its report to the government after three years. At the request of Dr. Devy, PMO also appointed a Technical Advisory Group (TAG) to advise the Commission to prepare the report. The TAG prepared a report and submitted to the Commission but the Commission's response to this report was not very positive. India's DNT leaders wanted the Commission to submit its report as soon as possible as there was provision for allocation of resources in the Eleventh Five Year Plan. Unfortunately, the Commission submitted its report in 2008 to the Ministry of Social Welfare, and a historical opportunity was missed.

National Advisory Council (NAC) headed by Smt. Sonia Gandhi recommended to Government of India on 16<sup>th</sup> May 2012, measures to be taken by the central Government ministries to address the development challenges concerning Denotified and Nomadic Tribes (DNTs). (NAC:2013) The NAC however, ruled out the recommendation of giving Constitutional benefits such as reservations (as per the Third Schedule of the Constitution) and to appoint a Statutory National Commission on DNTs, NTs and SNTs, along the lines of the SC and ST Commission.

After the Renke Commission report was submitted, the DNT movement got scattered. There were plenty of reasons such as Government ruled out third schedule for reservation benefit to the NTs, DNTs and SNTs, Statutory Commission for NTs, DNTs and SNTs and many others important recommendations. Some of us felt that the movement should be revived till the NT-DNTs and SNTs get their rightful place under the sun. Renewed efforts were made leading to the first Western India Regional Meeting on NT-DNTs on September 1-2, 2013, at the Gujarat

Vidyapeeth, Ahmedabad. The Meeting witnessed good discussions on many issues related to NT-DNTs and at the end of the meeting; Dr. Devy coordinated a meeting with Dr. Vibha Das, the then Chief Secretary of the Ministry of Tribal Affairs. On 25<sup>th</sup> September 2013, some DNTs leaders also met Dr. Das to press for their demands. In the meanwhile, we met some key activists such as Mr. Harsh Mandar and Mr. Yogendra Yadav of Aam Aadmi Party. On 24<sup>th</sup> September, 2013, we met Dr. Usha Ramanathan, member of the High Profile Committee appointed to draft DNT policy by the government. Dr. Ramanathan showed keen interest to understand the policy inputs from community leaders and she suggested us to send her our inputs to help frame the policy. We took this as a historical opportunity and decided to organize regional meets across India to discuss with community leaders and understand their demands.

### **About NT-DNTs in India**

The Nomadic and De-Notified Tribes (NT-DNTs) in India were once proud, self-fending and capable communities who have been reduced to one of the most marginalised, excluded and invisible communities, due to the historical and systematic injustices committed against them both during the colonial period and in independent India. They are socially distressed, economically broken and politically excluded (Bokil, 2002). NT-DNTs had a wandering tradition to fulfil their livelihood needs. The nomadic way of life gave many of these communities' livelihoods and in turn provided entertainment and products to settled communities. The legislation put forth by the British robbed these communities of their way of life and livelihood and the remnants of the same legislation in the present time continue to stigmatise them and violate their human rights. The colonial mindset and misunderstanding of Indian caste system of British led to the introduction of Criminal Tribes Act, 1871 (D'Souza, 1999). Many academicians have cited other reasons for the introduction of CTA besides the misreading of the Indian caste system by the British. The nomadic communities threatened the colonial administration particularly in the wake of mutiny and other armed resistance against the colonial rule. The DNTs were known for their bravery and fighting spirit. They had waged battles against Mughals and the British, also known as the Thuggi rebellion, and it was not easy to defeat them. The British government in India enacted the Criminal Tribes Act 1871 to suppress their rebellious spirit (Bokil, 2002). The nomadic communities' peripatetic way of life was also seen as a threat to the settled-rooted life that depended on classification and bringing

order to the native lifestyle of the Indians as envisaged by the colonial rule. The British were fixated on smooth running of the colonial administration and all their stringent laws including the CTA were designed towards this end (EPW, 2007). The CTA also provided opportunity to the British to herd NT-DNTs into settlements and extract hard and cheap labour from them in factories, quarries and plantations (EPW, 2008).

Close to 130 communities, mostly nomadic, were notified by the British government as “criminal tribes” through this notorious piece of legislation called the Criminal Tribes Act, 1871.<sup>2</sup> While this Act was amended from time to time, the plight of these 'so-called' tribes - now statutorily renamed 'De-Notified Tribes' has worsened over the years. The possible benefits of the repeal of the Criminal Tribes Act in 1952 was short lived, when the Habitual Offenders' Act was passed by various states, thus opening up precisely the same avenues for mal-identification and persecution as the Criminal Tribes Act of 1871 (CTA) (EPW, 2008).

The De-Notified Tribes continue to suffer the stigma of being “born criminal” or “habitual criminal” and face social isolation and acute poverty. Majority of them are landless and illiterate. Marginalisation continues to characterize their nomadic experiences; phenomena such as urbanization and environmental conservation policies have contributed to the increasing the impoverishment of these communities. In turn, the growing poverty has contributed to high rates of malnutrition, illiteracy and landlessness amongst these communities (Bokil, 2002). The nomadic tribes in the global scenario face livelihood crises and are compelled to live on the margins of society.

NT-DNTs who once were an important part of the agrarian society, have lost their livelihood with the changing modes of production and legislative changes introduced by the British. Traditionally, these communities did not have land and with their traditional skills becoming outdated in the market, they were left with no option but to live a sub-human existence. NT-DNTs had many traditional occupations. Some among them were pastoralists and hunter-gatherer nomads (shepherds and small game hunters like the Dhangars, Kuruba and Pardhis), providers of community services (blacksmiths like the Ghisadi, stone dressers like the Vadars, transporters and salt traders like the Banjaras, roof-thatchers like the Chapparband) and entertainers (acrobats

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<sup>2</sup>National Advisory Council, Working Group on Denotified and Nomadic Tribes.

and jugglers like the Dombaris and Nats, snake charmers like the Madaris) (EPW, 2008). Many among NT-DNTs have had a close relationship with nature. Pre and during the colonial period, some of the NT-DNTs were engaged in processing, sale and transfer of many vegetative and natural products. Their itinerant lifestyle provided these products and goods to settled communities. Many of these itinerant communities were source of entertainment and relaxation for settled communities. These entertainers, acrobats, magicians were an integral part of the village life providing them with ritual and cultural needs of entertainment, rumours, news and knowledge (EPW, 2007). The NT-DNTs were woven into the fabric of the village economy yet were distinct from the settled communities.

The NT-DNTs share a distinct cultural identity within themselves. Each of the tribes has its own language, apparel, culture and traditions. However, there are many common features among them such as the system of *JatPanchayat*(caste-based local governance system), matrilineal structure of society, practice of nature worship, etc. (Rathod 2000). These communities are reservoir of rich culture, untold stories and knowledge besides being one of the most marginalised communities in India.

In India, according to the Ayengar Committee,<sup>3</sup> there are one hundred and twenty seven notified as criminal tribes, who were later De-Notified after the repeal of the CTA on 31August, 1952 (TAG report 2006). The colonial rulers saw the nomadic way of life as a threat to their effective colonial administration (EPW, 2007). The colonial rule looked at the nomadic communities with contempt, suspicion, high-headedness and complete disregard of the value they brought to the Indian societal organisation. There are series of report published by British officials and their narration on these nomadic communities gives an insight on how they looked and understood these communities. One such book, '*The underworld of India*' was written by a British Army officer, *Lieutenant General George Mac Munn*. In a chapter in this book on criminal tribes and class, he wrote, '*[T]hey are absolutely the scum, the flotsam and jetsam of Indian life, of no more regard than the beasts of the field.*' T. V. Stephens, a British official of the time, said while introducing the CTA bill, '*... 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).The

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<sup>3</sup>Constituted by R. N. 22/1/49—Police-I, Dt. 28.9.49

British rule not only gifted the tag of criminality to these communities but also misinterpreted the caste system in context of these communities. The British also destroyed their traditional occupation with introduction of the new market economy, commercial exploitation of forests, and the transportation and communication networks. Though after independence, these communities were De-notified from the tag of criminality, the old act was replaced by the Habitual Offenders' Act by the 'Criminal Tribes Enquiry Committee' in 1952 and the injustice against them continued through the implementation of this act (Abraham, 1999).

Even today the tag of criminality attached to DNTs and nomadic way of life of NTs leads to suspicion about them in the minds of the people. DNTs get stigmatized as criminals even today (Dogra, 2007). These communities lack access to proper health and educational facilities. They have not been included in the Census of India and a case regarding the same is still pending in the Supreme Court of India (Venkatesan, 2011). Since they lack basic documents like voting card, ration card, caste certificate, etc., their citizenship entitlement cannot be established (Bokil, 2002). Politically and socially, they are treated as outcasts. Their women and children are the worst hit by this social injustice (Abraham, 1999). The unjust actions by society and the State arising out of the prevailing social prejudices against them violate their human rights. The changing global economic scenario and technological transformation in the village society and economy has been responsible for the loss of their livelihood opportunities. They have been alienated from land and are forced to migrate because of violence and loss of their traditional livelihood means (EPW, 2010).

It is important to note that the NT-DNTs do not have a uniform classification across the country. There is no official data on NT-DNTs, since they are not separately enumerated in the Census. They are not recognized as a separate social category under the Constitutional schedules like the SCs and the STs. Instead, they have been spread across SCs, STs, OBCs, NTs and VJNTs in different states. Some of them are not even listed under any recognized marginalised category, resulting in non-uniformity across the country. The following table shows some DNT communities in India and their legal non-uniform classification.

**State wise classification of some De-notified Tribes:**

State	Banjara	Vadar	Kaikadi	Pardhi	Kanjarbhat	Berad
A.P.	S.T.	S.C.	S.C.	S.C.	S.C.	S.C.
Karnataka	S.C.	S.C.	S.C.	S.T.	S.T.	S.T.
Delhi	S. C.	S.C.	S.C.	S.T.	S.T.	S.C.
U.P.	O.B.C.	O.B.C	S.C.	S.T.	S.T.	S.T.
Orissa	S.T	S.C.	S.C.	S.T.	S.T.	S.C.
W.B.	S.T.	S.T.	S.T.	S.T.	S.T.	S.C.
Bihar	S.T.	S.T.	S.C.	S.T.	S.T.	S.T.
Gujarat	S.T.	S.T.	S.C.	S.T.	OBC	S.T.
H.P.	S.C.	S.C.	S.C.	S.T.	S.T.	S.T.
Rajasthan	S.C.	S.C.	S.C.	S.T.	S.T.	S.C.
Maharashtra	DNT	DNT	S.C	S.T.	DNT	DNT
Tamil Nadu	DNT	S.C.	S.T.	DNT	DNT	DNT

Source: Rathod Motiraj: 2000

There is lack of substantive initiatives or allocation of funds by the government to uplift their socio-economic status and empower them. In absence of reliable-scientific data and statistics about the population, geographical distribution, rural-urban ratio and other human development indicators, it becomes extremely complex to restore dignity, rights and plan an effective intervention strategy for NT-DNTs. There are some estimates of NT-DNT population done by activists, civil society and academics working with NT-DNTs across India. It is estimated that there are nearly 1500 nomadic and semi-nomadic and 198 Denotified tribes, comprising 150 million NT-DNT in India (EPW, 2010). Motiraj Rathod in his research study has estimated population of NT-DNTs in India to be 6 crores. Tamil Nadu has the largest estimated DNT population in India. Andhra Pradesh has the highest number of DNTs placed under the category of Schedule Tribes (STs) in India. Karnataka has the highest number of DNTs placed under the category of Schedule Castes (SCs) in India.

It is not just the absence of data but also no legal, political, budgetary and policy support that further marginalises NT-DNTs in India. In urban spaces, legislation regarding inhibition of beggary, prevention of cruelty to animals and anti-poor propaganda is used to harass members of NT-DNTs communities. In rural areas, the burden of criminality stigma does not allow them to build settlements across villages or allow them to use forest produce following the legislation on

preservation of forest and wildlife. There is no well-thought strategy or rehabilitation plan for members of NT-DNT communities.

The Government of India on March 14, 2005, constituted a National Commission for De-Notified, Nomadic and Semi-Nomadic Tribes (NCDNSNT) to study their situation and problems. The Commission began functioning on 6 February 2006. Mr Balkrishna Renke was appointed as the Chairperson of the Commission. The Commission was constituted to recommend the economic interventions required for raising the living standards of Nomadic, Denotified Tribe and Semi-Nomadic Tribe through asset creation and self-employment opportunities; and measures to utilize the existing agencies set up for the economic development of SCs/STs and OBCs, keeping in view their specific requirements. It was also asked to identify programmes required for their education, health care and overall development, and to make any other connected or incidental recommendations that the Commission deemed necessary. However, even after submission of its report to the Government of India, it has not been made public. NCDNSNT Commission does not enjoy any power in comparison to what SC/ST Commissions wield. The National Human Rights Commission recommended in 2000 that the 1952 Habitual Offenders Act be repealed and none of the states have repealed the Act so far. It has been found that their marginalisation continue in the academic field as well and very rarely has any academic institutions produced information-based and research-based literature on them. A very few academicians have studied this group, which are very limited in both nature and number.

Also, the question of their citizenship remains unanswered. Most of the NT-DNTs do not have basic citizenship entitlements like voting card, ration card, domicile certificate, caste certificate, birth certificate etc. This does not allow them to participate in democratic political process and also act as a hurdle in getting access to welfare schemes and enjoy their Fundamental Rights.

### **Government Committees on NT-DNTs**

#### **1. Ayyangar Committee Report, 1950**

The Ayyangar Committee recommended repealing the Criminal Tribes Act of 1924, and similar provisions which declared an individual as a criminal on the basis of his caste or birth in a particular class. The Committee's recommendations removed the legal inconsistencies that the

Criminal Tribes Act had with the Constitution of India. The Committee recommended several steps towards the uplift of the conditions of the Criminal Tribes after the repeal of the Act. The Committee's recommendations were essentially directed at the improvement of the conditions of those socially backward and economically depressed sections and also to ensure that some of them from these backward classes, who had criminal leanings in the past, do not revert to crime on the repeal of the Criminal Tribes Act (TAG:2011).

## **2. Kakasaheb Kalelkar Committee Report, 1953**

The first Backward Classes Commission was appointed on the 29th January 1953, under the Chairmanship of Kakasaheb Kalelkar after independence. The Kalelkar Committee recommended that the former 'Criminal Tribes' should not be called as 'Tribes' and the name 'Criminal' or 'Ex-criminal' should not be attached to them. Rather, they should be called as 'De-Notified Communities'. The Committee further recommended the 'assimilation' of these communities into the mainstream and tried to end their isolation. The policy guidelines proposed 'assimilation' of the De-Notified Communities, maybe at the cost of their cultural identity. It could be said that the Committee undermined the democratic rights of the De-Notified communities and ignored their entitlements to protective discrimination as guaranteed to Scheduled Castes and Scheduled Tribes. The Kalelkar Committee took special note of the 'wandering communities' and recommended their proper rehabilitation and providing them facilities towards a 'settled life' (Panda:2008).

## **3. Lokur Committee Report, 1965**

In 1965, an Advisory Committee was constituted for the revision of the Scheduled Castes and Scheduled Tribes list by Government of India under the chairmanship of Mr. Lokur. The Committee while revising the list of Scheduled Tribes looked for certain indicators such as primitive traits, distinctive culture, geographical isolation, shyness of contact with the community at large, and backwardness. The Committee also suggested that tribes whose members have by and large mingled with the general population are not eligible to be in the list of Scheduled Tribes. The Committee's remarks on De-Notified and Nomadic Tribes were quite interesting. In the matter of defining them as De-Notified and Nomadic Tribes, the Lokur Committee recommended that it would be more scientific to refer them as 'communities'. The

Lokur Committee was so convinced about the distinct characteristics of the De-Notified Tribes and Nomads that it recommended that it would be in the best interest of these communities if they are taken out from the lists of Scheduled Castes and Scheduled Tribes and treated exclusively as a distinct group, with development schemes specially designed to suit their dominant characteristics (Panda:2008).

#### **4. Mandal Commission Report, 1980**

The Mandal Commission was constituted in the year 1978 during the Morarji Desai Government under the chairmanship of Mr. B.P Mandal. The Second Backward Classes Commission under the chairmanship of B. P. Mandal criticized the government policy of emphasizing the economic criteria and dismissing caste as a criterion to determine the social and educational backwardness. It strongly recommended that caste should be the basis for determining social and educational backwardness. It said that the substitution of caste by economic tests will amount to ignoring the genesis of social backwardness in the Indian society. The Commission through its recommendations brought the focus back to caste-based oppression and social disabilities inherent in the system to be considered as relevant criteria for welfare activities by the State. The Mandal Commission interpreted the caste hierarchy as having two distinct divisions, i.e. forward and backward and did not recommend dividing the backward into backward and more backward classes (Panda:2008).

#### **5. National Human Rights Commission Report, 2000**

The recommendations of the NHRC report included one recommendation of appointing a retired senior police officer of high reputation in every state as a watchdog of cases of atrocities against DNTs. It recommended that the National Police Academy and other institutions imparting training to police officers should reorient their syllabi and that the Habitual Offenders Act should be repealed. It also recommended systematic enumeration of NT-DNTs, providing educational, employment and other infrastructural facilities, and work out action plans for NT-DNTs. The states were asked to report back on the action taken by them on their recommendations. The matter has been taken up with the state governments and is being pursued by the Commission (NHRC : F.No.132/12/98-99-LD-V).

#### **6. Technical Advisory Group (TAG) Report, 2006**

The TAG strongly recommended preparing a Comprehensive National List of De-Notified, Nomadic and Semi-Nomadic Tribes and Communities (CNL-DNSTC), at par with Schedule of Tribes and Schedule of Castes for the purpose of ensuring an equitable delivery of rights, entitlements and social justice; for redressal of the stigma of criminality and for facilitating inter-ministerial coordination in dealing with these Tribes and Communities. The TAG recommended for Ministerial Allocations for the De-Notified and Nomadic communities, and that the De-Notified and Nomadic communities listed in the Scheduled of Tribes be placed under the Ministry of Tribal Affairs and the De-Notified and Nomadic communities listed in the Schedule of Castes be placed under the Ministry of Social Justice and Empowerment.

The group also recommended Enumeration of NT-DNT communities and their locations. In order to determine the population of the De-Notified, Nomadic and Semi-Nomadic communities, it recommended that the Indian Institute of Statistics may be asked to prepare population projections. In order to determine the precise locations to create comprehensive development schemes for De-Notified Tribes, it recommended that the list of settlements established during the colonial period, and cited by the Ayyangar Committee report, should to form the baseline.

The TAG recommended for Rights, Entitlements and Protective Mechanisms, Non-Displacement Guarantee, Compensation Norms, Protection of Electoral Rights and Mobile Voting System, Forests Grazing and Passage Rights, Issuance of Domicile and Birth Certificate, Protection to Women, Representation of DNTs in democratic bodies, Livelihood Security, Educational Facilities, Hostels for students and Old Age Houses, and Healthcare for the NT-DNT communities (TAG:2011)

#### **7. National Commission for De-Notified Nomadic and Semi-Nomadic Tribes, 2008**

The Ministry of Social Justice and Empowerment (SJE) constituted a National Commission for De-Notified, Nomadic and Semi-Nomadic Tribes (NCDNT) in November 2003 which was reconstituted in March, 2005. Mr. Balkrishna Renke was appointed its Chairman in February, 2006. The Commission submitted its report in July 2008 and made 76 recommendations that broadly pertain to:

1. Amendment to the Constitution
2. Reservation in government jobs
3. Action to be taken by the states
4. Action to be taken by the Govt. of India
5. Action to be taken by both GOI and the state governments

It recommended for reservations for the Nomadic, De-Notified and Semi-Nomadic Tribes as available to Scheduled Castes and Scheduled Tribes. It further recommended that the provisions of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989, be applicable to the De-Notified, Nomadic and Semi-Nomadic Tribes as well.

**8. National Advisory Council (NAC) Recommendations, 2011**

The recommendations of the National Advisory Council (NAC) regarding De-Notified, Nomadic and Semi-Nomadic Tribes are broadly categorised into six major clusters. They are:

- a. Administrative Actions
- b. De-Criminalization of DNTs
- c. Legislative Actions
- d. Policy Inputs
- e. Program/Schematic Strengthening and Targeting
- f. Institutional Arrangements

Administrative Actions include enumeration and classification of DNTs and other Nomadic Tribes, ensuring inclusion, issuing caste certificates and other identity cards, police sensitization and training, recognition of their forest and land rights.

De-criminalization of DNTs can be ensured through a vigorous national campaign to inform the DNT communities about their rights as SC/ST/OBC and to inform the public that violence/discrimination against these communities and violations of their human rights is punishable under law.

Legislative Actions include reviewing the implementation of existing legislations so as to provide built-in safeguards for DNTs from harassment by the police as well as to enable protection against discrimination in application of the laws, and to ensure that the safety, livelihoods and nomadic life style of DNT communities.

Policy Inputs refer to the development and establishment of a special dedicated Central Fund for DNTs. The quantum of the fund should not be less than the population proportion of DNTs, based on the caste census. This fund will be dedicated for the socio-economic empowerment of the DNTs. The fund should also have due safeguards against diversion or non-utilization.

Program/Schematic Strengthening and Targeting refers to the set of new programmes needed to be designed and implemented for DNTs, especially in respect of Education, Housing, Livelihood for skill development, Community Organization and Leadership Building with special focus on women's empowerment and Infrastructure development.

Institutional Arrangements may include the following:

- a. Creation of an empowered Inter-Ministerial Standing Task Force (STF) for DNTs to be chaired by the Home Minister.
- b. A senior officer not below the rank of Director in the Ministry of Home Affairs should be entrusted with the responsibility to coordinate with the state police agencies to ensure that the DNTs are protected from atrocities.
- c. A senior officer not below the rank of Director in the Ministry of Social Justice and Empowerment should be entrusted with the responsibility to coordinate with the state social welfare departments to ensure effective implementation of special programmes designed for DNTs and also to ensure effective coverage of DNTs in the on-going developmental programmes.
- d. At state level, an exclusive department shall be established for DNTs to monitor and coordinate with various departments for ensuring effective coverage of DNTs in all the developmental programmes. The department shall also ensure effective grievance redressal mechanisms.
- e. Representation: At least one member in the National Human Rights Commission and the State Human Rights Commission should be drawn from the DNTs.

#### 9. **Planning Commission Report, 2012**

The Planning Commission recommended that the most effective way of extending developmental support for DNTs would be to provide special and relevant support and facilities for these communities within the existing facilities for ST, SC and OBC categories. Access to scholarships and hostel facilities need to be given priority. The existing schemes for scholarships and hostel facilities need to be revised to extend their coverage to nomadic, semi-nomadic and de-notified tribes. The Commission report also stressed the importance of economic empowerment through capacity building programmes for skill development and loans for economic empowerment would be given priority.

The commission recommended that the existing legislations such as Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Habitual Offenders Act, 1952; The

Bombay Prevention of Begging Act, 1959; Prevention of Cruelty to Animals Act, 1986; Wildlife Protection Act, 1972 and the Forest (Conservation) Act, 1980; and Excise Law and so on need to be reviewed to ensure the dignity and the livelihood of DNTs.

A nation-wide survey of DNT settlements needs to be conducted urgently. This could form the basis, inter alia, for introducing a suitable shelter programme for homeless DNTs. The skill development initiatives of the States and Central Government need to give priority to cover the unemployed youth among the DNTs with a view to provide them employable skills. A suitable Action Plan for the rehabilitation of the Nomadic, Semi-Nomadic and DNTs as well as to meet the infrastructure needs including basic amenities of their areas needs to be prepared. The requirement of funds for the purpose will be met out of the proposed Cluster Development Fund. The Finance and Development Corporations under the Ministry of Social Justice and Empowerment will be tasked to address the skill development of the DNTs.

The Commission suggested for an Integrated Infrastructure Development Programme which needs to be especially designed to provide basic amenities such as roads, schools, electricity, drinking water, community centres, and so on in the existing settlements of the DNTs.

## **Recommendations from the Regional Meetings Organised by Budhan Theatre and TANDA**

The recommendations presented in this report have emerged from the four Regional Meetings, and assumes great importance in the on-going struggle of NT-DNTs for justice. This is perhaps the only report which is based on feedback almost entirely from the NT-DNT community leaders and members. The four Regional Meetings were held in Ahmedabad on 1<sup>st</sup> and 2<sup>nd</sup> Sept 2013 at Gujarat Vidyapith, in Hyderabad on 28<sup>th</sup> and 29<sup>th</sup> Oct. 2013, Guwahati 30<sup>th</sup> Nov. and 1<sup>st</sup> Dec. 2013, and in Kota 21<sup>st</sup> and 22<sup>nd</sup> De. 2013. These Regional Meetings were organised with the help of community members, Budhan Theatre and TANDA. We also consulted experts and activists like Dr. Ganesh Devi, Dr. Kalpana Kannabiran, Dr. Kanjibhai Patel, Dr. Ajay Dandekar, Dr. Murali Karnam, Dr. R. Prasad, Dr. S. Kavita, Mr. Harsh Mandar, Dr. Yogendra Yadav, Dr. Usha Ramanathan, Ms. Meghali Senapati, Mr. Tarique Qureshi and Mr. Ram Rathod. Each Regional Meet was divided into two days. On the first day, the participants from the community discussed problems and issues related to NT-DNTs in their respective areas and shared their work with the communities. On the second day, we focused on the NAC recommendations and suggestions to the improve quality of life of NT-DNTs and ensure the dignity to these communities.

As stated by Lokur Committee (1965), the De-Notified, Nomadic and Semi-Nomadic Tribes (NT-DNTs) have nomadic way of life and stigma of criminality creates hurdles in getting the benefit of welfare programmes. The present set of recommendations focus on decriminalization of the DNTs, citizenship entitlements, addressing their nomadic way of life and their developmental demands. The recommendations are:

### **1. Official listing and definition**

#### *Problem*

In all four Regional Meetings, it was reported that apart from Maharashtra, there is no other state with an official list of NT-DNTs. There is also no official list of NT-DNTs at the central level. As a result of this, it is difficult to extend welfare schemes to these communities. Even if the Planning Commission allocates funds for welfare schemes for NT-DNTs, it will not reach these communities unless they are officially identified and notified both at central and state levels.

### Recommendations

#### Definition of Nomadic and Semi-Nomadic Tribes

- i. There is no clear definition of Nomadic Tribes or Semi-Nomadic Tribes for official purposes by the Government of India. The only reliable list of Nomadic Tribes compiled so far can be sourced from the 1931 Census of India.
- ii. All Tribes and Communities included in the 1931 Census as Nomadic or Semi-Nomadic should be treated for official purposes by the Government of India as Nomadic Tribes. Any Nomadic Tribe or Semi-Nomadic Tribe recognized in any state of India, or a Union Territory, should be recognized uniformly as Nomadic Tribes throughout the Union of India, for official purposes by the Government of India.
- iii. As and when any future Census enumeration brings to notice any other community/ies showing livelihood patterns that is nomadic or semi-nomadic, they should be considered as such after a proper scrutiny for inclusion in the category of Nomadic Tribes.

#### Official Listing and Placement of De-Notified, Nomadic and Semi-Nomadic Tribes

- i. Any tribe or community falling within the definition of De-Notified Tribes, and recognized as a Scheduled Tribe in one or more state/states, should be recognized as Scheduled Tribe uniformly throughout the Republic of India for official purposes by the Government of India.
- ii. Any tribe or community falling within the definition of De-Notified Tribe, and recognized as a Scheduled Caste in one or more state/states, should be recognized as Scheduled Caste uniformly throughout the Republic of India for official purposes by the Government of India.
- iii. Any tribe or community falling within the definition of De-Notified Tribe, and is recognized variously as a Scheduled Tribe as well as Schedule Caste in different states, is to be recognized as Scheduled Tribe uniformly throughout the Republic of India for official purposes by the Government of India.
- iv. Any tribe or community that falls within the list of De-Notified Tribes as per the definition of De-Notified Tribes as mentioned in this report, and not included in either the Schedule of Tribes

or the Schedule of Castes, is to be included either in the Schedule of Tribes or the Schedule of Castes by the Government of India on the basis of the merits of the case.

- v. Any tribe or community or group recognized in any part, state, or Union Territory, as Nomadic or Semi-Nomadic, should be recognized uniformly throughout the Republic of India, for official purposes by the Government of India, as Nomadic Tribe.
- vi. Any Nomadic or Semi-Nomadic Tribe or Community that falls within the definition of Nomadic Tribe as mentioned in this report, and recognized as a Scheduled Tribe in one or more state/states, should be recognized as Scheduled Tribe uniformly throughout the Republic of India, for official purposes by the Government of India.
- vii. Any Nomadic or Semi-Nomadic Tribe or Community that falls within the definition of Nomadic Tribes as mentioned in this report, and recognized as a Scheduled Caste in one or more state/states, should be recognized as Scheduled Caste uniformly throughout the Republic of India for official purposes by the Government of India.
- viii. Any Nomadic or Semi-Nomadic Tribe or Community that falls within the definition of Nomadic Tribes as mentioned in this report, and recognized variously as a Scheduled Tribe as well as Schedule Caste in different states, should be recognized as Scheduled Tribe uniformly throughout the Republic of India for official purposes by the Government of India.
- ix. Any Nomadic or Semi-Nomadic Tribe or Community that falls within the list of Nomadic Tribes as mentioned in this report, and not included in either the Schedule of Tribes or the Schedule of Castes, should be included either in the Schedule of Tribes or the Schedule of Castes by the Government of India on the basis of the merits of the case.
- x. There is a strong demand from many communities that they are known by different names in different regions and states and they should be named by their single name. For example, Sansis are known as Chharas, Dabgars, Salats, Adodiyas in Gujarat and Kanjar and Kanjarbhat in Maharashtra. Sansi community wants that their community should be identified as 'Sansis' all over India and their various regions wise names should be change and replace it as 'Sansis' which may help to the administration to identify the community state wise and nation wide.
- xi. A separate official list should be prepared through a judicial commission appointed for this purpose, to create a Comprehensive National List of De-Notified, Nomadic and Semi-Nomadic

Tribes and should be officially notified as per with Schedule of Tribes and Schedule of Castes, for the following purposes:

- a. For ensuring an equitable delivery of rights, entitlements and social justice;
- b. For redressal of the stigma of criminality; and
- c. For facilitating inter-ministerial coordination in dealing with these tribes.

If some communities were in the settlements during colonial rule but due to some reason, they are not in any particular state's NT-DNT list study should be conducted state-wise to identify them and they should be included in the final list for official purposes.

#### Ministerial Allocations

For administrative purposes,

- i. The De-Notified and Nomadic communities listed in the Scheduled of Tribes should be placed under the Ministry of Tribal Affairs.
- ii. The De-Notified and Nomadic communities listed in the Schedule of Castes should be placed under the Ministry of Social Justice and Empowerment.
- iii. All other Nomadic tribes and communities should be placed under the Ministry of Social Justice and Empowerment.
- iv. Under all the categories i.e. Schedule Caste, Schedule Tribe and Other Backward Classes, the status of Special Group should be given to NT-DNTs to help the government in developing special programmes keeping in mind their nomadic way of life and stigmatisation.
- v. DNT and NT Communities in the OBC categories in the respective states should be immediately transferred into the Schedule Tribes List as they are historically and traditionally "TRIBES", not "CASTES". There is enough evidence from the period of British rule in India that communities living in these settlements were 'TRIBES'.

Similar distribution of ministerial responsibilities is to be brought into effect at the level of state governments.

#### Enumeration of communities and locations

- i. In order to update the listing of Nomadic and Semi-Nomadic communities, the Census of India should undertake a relevant exercise at the earliest.

- ii. In order to determine the population of the De-Notified, Nomadic and Semi-Nomadic communities, the Indian Institute of Statistics should prepare population projections of these communities.
- iii. In order to determine the precise desired locations towards developing comprehensive schemes for De-Notified Tribes, the list of settlements established during the colonial period, and cited by the Aiyengar Committee report, should form the baseline. In addition, the settlements maintained in the post-independence period that have substantial population of the NT-DNTs should also be taken in account for the above purpose.

## **2. Education**

### Problem

In the Regional Meetings, it was identified that the literacy level of NT-DNTs is very low and situation of girl children is worse. Participants shared about the Nat community from Bihar and Kanjar community from Rajasthan where students drop out of school due to discrimination by school staff and fellow students on the basis of their identity and the social stigma due to female members of their being engaged in prostitution. In the Guwahati Regional Meeting, women from the Nat community (Bihar) explained that when their children started going to school, people laughed at them and boys followed them till home from school. The school authorities or the police didn't take any action against this behaviour. Finally, the children stopped going to school. In the case of the Chharas from Gujarat, many of the private schools cancel the admission of the children when they come to know that the children belong to the Chhara community.

Many communities who are nomadic or semi-nomadic find it difficult to send their children to school in the present system of schooling, such as the Rabaris from Rajasthan and Brokpas from Anurachal Pradesh (as they migrate with families and their animals). The performing artists from NT-DNTs communities face similar problems as they too travel for their livelihood. The other reason that has been identified in the Regional Meetings is that most students at the primary level are familiar with only their community language; as the result, they perform badly and dropout from schools.

### Recommendations

- i. Under the Right to Education, special scholarships should be provided to NT-DNT students and the scholarship amount should be doubled in case of girl students.
- ii. A special scholarship scheme should be initiated by the ministry/ies concerned to provide scholarships to NT- DNT students till the doctorate level.
- iii. There should be provision for on-demand schools, libraries, remedial centres and asst. Teachers to promote the education of NT-DNT children.
- iv. In areas where there are large numbers of NT-DNTs, special measures should be taken in a time-bound manner by the authorities concerned to improve the education status by introducing special schemes consisting of components like adult education, community libraries, playgrounds, vocational training centres, remedial centres in the community, parent-child counselling centres, etc.
- v. For the communities who continue to live nomadic or semi-nomadic existence, schools should be set up at the locations of their migration route. The department concerned should involve the community to understand their migration routes and identify locations to start such schools.
- vi. The mid-day meal scheme should be put in place for NT-DNT children attending these schools.
- vii. Residential schools should be set up wherever there is high concentration of NT-DNT population.
- viii. Sensitization programmes should be conducted on a regular basis for school teachers and staff to prevent discrimination of NT-DNT children. Protection committees should be formed in each school to address issues of discrimination and create awareness about these communities. The school syllabus should have a chapter on NT-DNTs which can help in building their positive image. Similar provisions should be made at the university level.
- ix. There should be a provision in RTE that in case of harassment/abuse of NT-DNT children in school in the name of caste or community by teachers/students (above 18 years) or the school staff, they should be prosecuted under the law. If any student (below 18 years) harasses/abuses NT-DNT children, his/her parents must be counselled by the school administration to sensitize them and report the matter to the District Education Officer. Similar provisions should be made at the university level too.
- x. The government should launch special vocational training programmes for NT-DNT communities by setting up polytechnics, agricultural training centres and craft-based workshops.

- xi. A study of the occupational skills of NT-DNT communities may be undertaken at the national level in order to determine the shifts away from their traditional occupations and appropriate vocational avenues that can be created for them.
- xii. The ‘Commission for Scientific and Technical Terminology’, Ministry of HRD, Government of India, and the Central Institute of Indian Languages, may be entrusted the task of developing text-books, reference books, supplementary reading materials and terminologies in the languages of these communities and such educational material should be placed in special schools and in schools where NT-DNT children are admitted.
- xiii. Under the RTE, a provision should be made to teach children of NT-DNTs children in their language. Special teachers should be appointed and trained to create a pool of teachers who know their language.
- xiv. At the primary level, text-books should be published in their own language.
- xv. Under the RTE, NT-DNTs should be declared as economically deprived groups and five percent seats should be reserved in fully aided/semi-aided/non-aided schools/institutions on free-ship basis.
- xvi. Hostels for boys and girls should be set up in all major cities and towns for NT-DNTs, preferably not too far from the DNT localities.
- xvii. For encouraging Middle school and High school level education, hostels may be created for NT-DNT children. In addition, special residential schools should be conceptualized and created for such children.
- xviii. Government of India should reserve 5 per cent of scholarships for NT-DNT students for overseas studies. Overseas scholarships should be provided in all fields of education including arts, humanities, social sciences, languages studies, physical sciences, technology, medicine, etc. In each field, a minimum 50 scholarships should be exclusively created for NT-DNT students. If a NT-DNT student is selected for a scholarship, the government should pay his/her family’s maintenance to support the family in his/her absence.
- xix. Children from acrobatics communities such as Nats, Dombaris, etc. should be selected from the school level and they should be given special training with scholarship. They should be encouraged to participate in national and international sports competitions in the field of acrobatics.

- xx. Children who are from traditionally entertaining communities like musicians, theatre artists, puppeteers, jugglers, magicians, etc. have special talent. These children need to be groomed by providing training from childhood. To promote their art and culture, a National Schools of Arts along the lines of the National School of Drama should be set up so that such children can develop their talent. The government should provide financial support to schools to hire such coaches or tutors.
- xxi. Concessional loans and skill development programmes should be provided for NT-DNTs, through the National Scheduled Castes Finance and Development Corporation and National Backward Classes Finance and Development Corporation. NGOs running awareness campaigns and vocational training centres for NT-DNTs should be provided with financial assistance.
- xxii. The NCPCR should have a special focus on the children of NT-DNTs who are prone to child labour.

### 3. Health

#### Problem

The health situation of the NT-DNT communities is very poor due to lack of awareness, superstitions, alcoholism, isolation, stigma and apathy of the health systems toward them. Most of the communities live outside the village or places where there are hardly any basic amenities. In most of these communities, ICDS centres are absent and the ASHA workers do not reach them. As a result, there is hardly any awareness about immunization of expectant mothers and their children. In the Regional meetings, women from the Nat community reported that they are not able to leave their place because people from other communities treat them badly. Women from the Rabari community said that very few child births take place in hospitals as they spend most of the time in the forest areas. It is the same situation in the case of Pardhis and Masanjogis in Maharashtra. They too are not aware about the medical facilities and do not want to visit government hospitals due to mistreatment by medical staff and sometimes due to the threat of arrest by the local police. (Refer to annexure – 7 for case studies)

- i. A combined plan of nutrition and health care for NT-DNTs and their livestock should be drawn and implemented in a time-bound manner, which may include:
  - a. Mobile medical units should be set up for immunization of NT-DNT children.
  - b. Women from the NT-DNT communities should be identified and trained as ASHA workers for basic healthcare, maternity and child-care.
  - c. Rationing from PDS should be provided free of cost to families with expectant mothers and children upto three years along with nutritional supplements.
  - d. Free medical facilities should be provided in central and state government hospitals to all NT-DNT families. They should be admitted on producing election card or ration card only or recommendation from local organization/Gram Panchayat member/Municipality member/government employee in private hospitals free of cost.
  - e. NT-DNT patients and one attendant may be made eligible to avail of free travel in public transport systems.
  - f. Families and livestock may be covered under a medical insurance scheme. The premium for the insurance scheme should be paid by the Central Government/State Government.
  - g. Basic health care training should be provided to traditional healers and traditional birth attendants (*Dais*).
  - h. Sensitization programmes should be introduced in all medical and Para-medical colleges about the situation of NT-DNTs for hospital staff and doctors. A Protection Cell for NT-DNT patients should be formed in each hospital including private hospitals where NT-DNTs can complain against the discrimination.
  - i. There should be Provision for Primary health Centres and education facilities near villages where DNTs live.

#### **4. Old Age Homes**

##### *Problem*

In the Regional Meetings, the situation of senior citizens from NT-DNTs was discussed. Most NT-DNT families do not possess documents to avail the benefit of welfare schemes for senior

citizens. The elderly are not able to migrate with their families due to their frail physical condition and are forced to fend for themselves through begging.

#### Recommendations

- i. Old age pension should be provided to senior citizens from the NT-DNT communities by conducting spot surveys by district social welfare officials.
- ii. Special provision for Community Housing for the Elderly needs to be made for destitute members from the NT-DNT communities so that they are not forced to beg for a living or end up in custodial institutions (beggars' homes) under the beggary prevention laws.

### **5. Livelihood Security**

#### Problem

It was stated in the Regional Meetings that criminalization and livelihood are closely related. Most of the traditional occupations of NT-DNTs have been criminalized by the State through various legislations. For example, under the beggary prevention laws in existence in different states, those soliciting or receiving alms in a public place whether or not under any 'pretence' such as singing, dancing, fortune telling, performing or offering any article for sale, or 'wandering' or 'loitering' in a public place, get included under the definition of begging. This is direct attack on NT-DNT communities such as snake charmers, wandering musicians and theatre artists, puppeteers, jugglers, and magicians, who earn their livelihoods by performing their arts/skills on the streets. Snake charmers can also be arrested under laws to prevent cruelty to animals. These communities have been engaged in these occupations since ages. The State has not made any effort to provide alternative skills for these people while criminalising their traditional occupations through various legislations. The beggary prevention law is replica of the Section 26 of the Criminal Tribes Act, 1871. (Refer to Annexure – 2)

#### Recommendations

1. Special Economic Zone for NT-DNTs should be created in high concentration districts where the communities can set up their production units with subsidy from government.
2. One-fifth of the National Skill Development Fund should be utilized for developing NT-DNT skills.
3. In all policy documents, NT-DNTs should be considered as vulnerable group.

4. The National Urban Livelihood Mission and the Nation Rural Livelihood Mission should have a separate component and a separate budget for NT-DNTs reserved in the programme.
5. The Prevention of Beggary Act, 1959; the Bombay Prevention of Begging Act, 1959; Prevention of Cruelty to Animals Act, 1986; Wildlife Protection Act, 1972; the Forest (Conservation) Act, 1980; The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; excise laws, and so on need to be reviewed to ensure the dignity and livelihoods of NT-DNTs.
6. In the cities and villages, open spaces should be reserved for NT-DNTs for their performance in market places.
7. Temporary family shelter (NT-DNT Homes) for NT-DNTs should be created in all cities for their temporary stay and in rural areas, open spaces in the Gram Panchayat should be reserved for their temporary stay with basic amenities such as toilet, sanitation, medical care and drinking water.
8. The state/central government should organize NT-DNT cultural festivals every year funded by the Ministries of Culture and Tourism at the state and central level. There should be special provisions to organise cultural Melas of performing arts, crafts and exhibits of NT-DNT communities.
9. Vending as traditional right should be recognized and legal provisions should be made for vending rights of NT-DNT communities.
10. Liquor production and selling should be legalized as a cottage industry for NT-DNTs in all states, including Gujarat which is dry state.
11. There should be provisions in the department of culture at the state and central level for fellowships in the field of arts and humanities to senior and junior artists from the NT-DNT communities. There should also be provisions for old age pension for artists. The fellowships and pensions will encourage sustaining the traditional art forms of NT-DNTs.
12. A department within the Ministry of Cultural Affairs should be created to encourage and preserve traditional art forms among NT-DNTs through organizing cultural programmes at the national and at international levels and special awards should be given to folk artists from the NT-DNT communities by the Ministry.
13. The central and state governments, through the Ministry of Tourism, should promote communities engaged in performing arts such as singing, dancing, theatre, playing musical

instruments, puppetry etc. The community members can also be employed as guides for tourists inside forest areas and to patrol forest areas to prevent poaching of wild animals.

14. An exclusive bank should be encouraged in all states for providing financial assistance to NT-DNTs to start small scale enterprises based on their skills.
15. The government should provide artisan cards to perform in cultural fairs (Melas) and provide free stall facilities for NT-DNTs in the government sponsored Melas.
16. For the purpose of all schemes, NT-DNTs should be treated as a vulnerable group.
17. The provisions of the National Rural Employment Guarantee Scheme should be extended to the NT-DNTs wherever they live.
18. A De-Notified and Nomadic Tribes Development Authority should be set up with branches in areas where there is sizeable concentration of these communities. This authority may have the following mandate:
  - i. To create a single window system from initiation to finalization of schemes for livelihood support.
  - ii. To facilitate forward linkages for the units set up under the aegis of the Board.
  - iii. To facilitate finance at a nominal rate of interest.
  - iv. To provide entrepreneurial trainings and seed capital for setting up of enterprises.
19. Ten percent space in commercial complexes may be reserved for allotment in rural, semi-urban and urban areas for the commercial activities initiated by NT-DNTs. This space may be leased out to the Self-help Groups to carry out their activities as micro-enterprises.
20. A Special Purpose Vehicle (SPV) to procure and market the arts, crafts and other products made by NT-DNTs at the national level, with branches in major commercial regions of India, should be set up by the government.
21. The KVIC promoted cluster development programmes should consciously include and promote the crafts of NT-DNTs.
22. Government agencies that promote cottage and small-scale industries should be encouraged to design special schemes for NT-DNTs so that their traditional skills get sharpened and expanded to manufacture products for which market demand exists.

23. Gram Panchayats should be made responsible for implementing MGNREGA for NT-DNT communities. The requirement for permanent address should be made flexible. Wage employment under MGNREGA should be provided on priority basis to the homeless. Opening of a bank account or a post office account for disbursement of MGNREGA wages should be made possible even for those with temporary habitations, or for homeless NT-DNTs.
24. Nurturing the knowledge system of these communities. Create provisions to sell the artefacts they produce. Issuing artisan Cards.

## **6. Forest Rights**

### Problem

NT-DNTs have a close relation with the forests. In the Regional Meetings, it was reported that the forest rangers harass the NT-DNTs whenever they enter the forest areas. They have to pay bribes to the forest rangers for animal grazing. Most communities complained that they were not able to get land entitlements under Forest Dwellers Act.

### Recommendations

- a. Forest officials should be sensitized on the unique history, culture and livelihood patterns of the NT-DNTs. Training programmes should be designed to sensitize forest officials. The law and order machinery should be instructed not to brand NT-DNTs as naxals or maoists in the Red-Corridor districts (especially in Odisha) because of their earlier ‘criminal tribe’ status. Strict disciplinary action should be taken against forest officials who harass the ex-hunting communities whenever an endangered animal is poached or found dead. Women and girls of DNTs should be given special protection from sexual harassment as they work in remote and isolated parts of forests. Action should be taken against forest guards and officials who indulge in sexual harassment of NT-DNT women and girls.
- b. Steps should be taken to urgently rehabilitate traditional forest-based NT-DNTs.
- c. Strict vigilance should be undertaken to prevent women and girls from NT-DNT communities falling prey to trafficking, bonded labour or child labour after eviction or displacement from the forests.
- d. Pastoral NT-DNTs who are evicted on account of preservation of forest or establishment of protected areas and sanctuaries face serious problems to sustain their livelihoods. Apart from the

rehabilitation provided for hunter-gatherers and shifting cultivator communities, the following special needs should be addressed for pastoral DNTs:

- Forest rights of pastoralists like grazing rights and rights concerning water for the animals should be recognized.
- Sheep, goat and camel should be included in the government's "useful animals" list so that the community can draw the benefits attached to husbanding useful animals.
- e. Pastoral NT-DNTs should be encouraged to form their own cooperatives and provided with financial assistance, animal insurance, and animal breeding.
- f. 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.

## **7. Women**

### Problem

Women from these communities without any doubt are the most vulnerable. As mentioned in the Regional Meetings, the percentage of single women from these communities is very high compared to any other community. Also, there is no support from the State or civil society towards single women. Prostitution is prevalent amongst some of these communities. The atrocities against women from these communities mostly go unreported or end in compromise. Sadly, it has been reported that police also commit atrocities against women from these communities. Apart from this, they face discrimination within their communities. The Jat Panchayat among these communities is dominated by males. Women in the Jat Panchayats have no place and it is impossible to expect any justice in these forums. (Refer to Annexure – 4)

### Recommendations

- a. A Special Cell for Protection of Rights and Entitlements for Women of NT-DNTs should be created within the National Commission for Women.
- b. A Special Cell for Women & Children for the Protection of Rights and Entitlements of the NT-DNT Women should be created in police stations where the concentration of NT-DNTs is high. The Special Cell will work in coordination with the Home Ministry and the Ministry of Women and Child Development at the state and central level.

- c. The Women's Special Cells should be formed in *Vimukta Evam Ghumantu Janjati* Commission as proposed in this report.
- d. There should be representation of NT-DNT women in Human Right Commissions, Women Commissions, Child Rights Commissions and Minorities Commissions.
- e. The legal title of land and houses belonging to NT-DNTs should be in name of their women.
- f. Formation of cooperative societies should be encouraged to initiate livelihood alternatives for NT-DNT women.
- g. Special programmes for NT-DNT single women should be implemented to address their livelihood, social security and shelter.
- h. Special rehabilitation programmes should be implemented for the DNT women and families engaged in sex-work / prostitution.
- i. Adult education programmes should be implemented among NT-DNTs along the lines of the Mahila Samakhya programme.
- j. State Commissions for Women should focus on women and girl children of NT-DNTs who are victims of trafficking due to loss of livelihoods. Alternative employment should be provided for such women to make them less vulnerable to trafficking.
- k. NT-DNT women should be given priority while providing loans, training, asset building, land distribution, etc. Women among the NT-DNT communities are economically active and are frequently the only breadwinners for their families. Special attention should be paid by the MCWD to health, education and protection of the NT-DNT girl children.
- l. There has to be Leadership programmes organized by Government organization or funding provision from government for NGOs to develop leadership quality among male and female members of NTs and DNTs and SNTs. The programme should be designed in a way to enhance/facilitate the process of regaining their identities

## **8. Citizenship entitlements and documents**

### Problem

Citizenship entitlements are most difficult to obtain for NT-DNT communities. In all the four Regional Meetings, it was shared that presently laid down rules for obtaining caste certificates,

election cards, Aadhar Cards (UID), ration cards, etc. make it very difficult to get these documents. Most of the rules are meant for settled communities. As a result, most NT-DNTs are not able to vote and not able to avail of government schemes. Not being registered as voters excludes them from the political process and leads to their exclusion from the agenda of political parties. (Refer to Annexure – 3)

### Recommendations

- i. For issuing certificates such as caste certificate, birth certificate, domicile certificate, and other documents, there should be relaxation of rules and the local authorities should issue such documents on the basis of a spot survey (in the location where they are found to be living). The authorities can also ask for authentication of their residency by reputed academic institutions or NGOs by asking them to carry out independent surveys. Officials who do not provide them certificates should be punished under the proposed Prevention of Atrocities Act.
- ii. The state government should take responsibility to identify NT-DNTs and issue caste certificates to them in a campaign mode.
- iii. The caste certificate should mention the NT-DNT community they belong to, even if they fall under SC/ST/OBC category.
- iv. States which have stopped issuing caste certificates to NTs and DNTs such as Gujarat, must immediately start issuing caste certificates to them.

## **9. Rights and protective mechanisms**

### Problem

Human right violations against NT-DNTs are common throughout India. The participants in all four Regional Meetings reported about harassment and/or violence/abuse against NT-DNTs by the police, forest rangers and ordinary citizens. Cases of unreported rapes, beatings, discrimination and torture by the police on mere suspicion are common. Despite the Criminal Tribes Act being repealed, it is still in practice in form of the Habitual Offenders' Act and the Beggary Acts. The police persist with an attitude and mindset of treating NT-DNT communities as born criminals. (Refer to Annexure – 6 and 8)

### Recommendations

- i. The Habitual Offenders' Act, if it is in force in any Indian State, may be abolished forthwith.

- ii. Human Rights Protection Cells may be established in the states/areas that have sizeable population of NT-DNTs.
- iii. The Human Rights Commissions in various states may be given the responsibility of monitoring the proposed cells. Additional officers may be appointed in districts having a large population of NT-DNTs for this purpose.
- iv. The NHRC had suggested in their Seventh Annual Report that a senior police officer be appointed in every state to look in to the cases of violation of human rights of NT-DNTs and report to the State Human Rights Commissions. This recommendation may be implemented, except that the nodal officer for this purpose may be an officer from the Social Welfare or the Tribal Welfare Department, with members from civil society and one member from NT-DNT community, who should be responsible for reporting violation of human rights to the Human Rights Commission.
- v. The administrative machinery, especially the police, needs to be sensitized and reoriented to the problems of the NT-DNT communities. The National Police Academy and other Police Training Institutes may be instructed to bring about attitudinal changes among police officials by incorporating suitable material and training inputs in their curriculum. There is ample evidence that settled DNTs are forced by the police to commit crimes like brewing of illicit liquor in order to get their share of the earnings. While rehabilitating such groups, care may be taken to see that the local police are not given the authority over them for a specified period, so that they are given the breathing space for starting their new lives.
- vi. A listing of such vulnerable communities who need to be ‘protected’ from the police may be undertaken and special protection given to them against police reprisals and atrocities.
- vii. Besides training of the senior officials of the police department for dealing with the problems of NT-DNTs in a humane and considerate manner, there is a need for special training of the subordinate staff, especially since the interface of the DNTs is at the level of Head Constables PSI and PIs.
- viii. The police can be involved in the development and welfare programmes for NT-DNTs to give them a first-hand understanding of their vulnerabilities rather than their ‘criminality’. However, this involvement should be intended for their education, as a part of their curriculum at the Police Academy, and not for the police personnel in positions of authority.

- ix. Women from NT-DNTs are especially vulnerable as it is noticed that men of other communities, especially those from the police force, try to sexually harass them. In case NT-DNT men try to protect their women against such harassment, their NT-DNT status is constantly used to get them beaten, jailed, or even killed in retaliation. A Special Cell in the proposed *Vimukta Janajati Commission* should be established, so that women from the NT-DNTs come forward and complain against cases of sexual harassment.
- x. The thumb impression on legal documents (police complaints, or as a witness in a case, etc.) is usually sufficient for illiterate people. It has been frequently found that such thumb impressions are taken from NT-DNTs by force by the authorities. Some measure is necessary, like a witness testifying that the signatory indeed understood and voluntarily agreed to put his/her thumb impression on legal documents.
- xi. In the case of NT-DNTs, it is necessary to protect them from harassment on mere suspicion. A suitable revision should be made in the Criminal Procedure Code (for example in Section 41(D) of the Cr.P.C.) and local laws such as the Bombay Police Act (Section 122) to prevent such harassment.
- xii. A massive information campaign may be launched to sensitize the public about problems faced by the NT-DNT, and the stigma of criminality.
- xiii. The Prevention of Atrocities Act, which is currently applicable to Scheduled Castes and Scheduled Tribes, should be extended to NT-DNTs.
- xiv. Further, the proposed Act should be extended to take into account atrocities caused by policemen and state officials as well to give a positive signal to the members of the society who harass these communities.
- xv. There is also a need to include under the proposed Atrocities Act the harassment caused to these communities by misuse of the Goonda Act and the Anti-Beggary law. It has been found that a majority of individuals booked under these acts belong to the NT-DNTs.
- xvi. Since the livelihood of these communities is not ensured by the State, it may be considered an atrocity to book persons from these communities under laws for forest conservation and for animal protection. Communities like *saperas* and *madaris* who make a living by training animals to perform, or communities who continue to depend on forests for a living, may be exempt from

these laws till alternative economic rehabilitation is ensured. This may be done on a case by case basis.

- xvii. The act to prevent atrocities against NT-DNTs should have a component of monetary compensation in instances of atrocities caused by the police and others, and which may be paid by the State to the families of persons suffering loss of life or livelihood due to such atrocity.
- xviii. As a way of some moral ‘compensation’ to the community as a whole, the government may install at some selected locations having a substantial DNT population, memorials on the lines of war memorials. These will be symbolic of public admission of the historical and collective injustice caused to these people for a century and a half. These memorials will also serve the purpose of reminding the public of the collective responsibility of the State and society to ensure that such atrocities are not perpetrated again.
- xix. All district police chiefs should appoint area committees in the district in order to maintain peace and to sort out local issues. These area committees should directly report to the district chief about the work and efficiency of local police. These area committees should include members from the NT-DNT communities.
- xx. Special committee to open pending court cases. Orientation prog for Police and public to address issues like atrocity and stigma.

## **10. Housing**

### *Problem*

Housing is a major problem of the NT-DNTs. Traditionally; these communities don’t own settled housing structures except some semi-nomadic communities. Initially, the British kept them in settlement colonies but there is no concrete policy laid down by the by government to provide housing facilities to these communities. The participants in the Regional Meeting reported that they most of them are compelled to live on the streets or in forest areas and have to face legal action due to this reality. The villagers do not allow them to settle them. They live as part of the homeless or as victims of police atrocities.

### Recommendations

- i. The state should prepare a housing policy for NT-DNTs in consultation with community members and in coming five years, a minimum of five crore housing units should be provided in a time bound manner to NT-DNTs families.
- ii. A survey should be conducted of all settlement colonies and land should be allocated to homeless NT-DNTs families.
- iii. An Integrated Infrastructural Development Programme may be specially designed to provide basic amenities such as roads, schools, electricity, drinking water, community centres, etc. in the existing settlements of NT-DNTs.

## **11. Creation of Task Force and *Vimukta Janajati Commission***

### a. Task force

- i. An empowered Inter-Ministerial Standing Task Force (STF) for NT-DNTs to be chaired by Home Minister should be created.
- ii. A senior officer not below the rank of Director in the Ministry of Home Affairs should be entrusted with the responsibility to coordinate with the state police agencies to ensure that the NT-DNTs are protected from atrocities.
- iii. A senior officer not below the rank of Director in the Ministry of Social Justice and Empowerment should be entrusted with the responsibility to coordinate with the state social welfare departments to ensure effective implementation of special programmes designed for NT-DNTs and also to ensure effective coverage of NT-DNTs in the on-going developmental programmes.
- iv. At the state level, an exclusive department should be established for NT-DNTs to monitor and coordinate with various departments for ensuring effective coverage of NT-DNTs in all the developmental programmes. The department shall also ensure effective grievance redressal mechanisms.

### b. *Vimukta Janajati Commission*

A Permanent National Commission, called the *Vimukta Evam Ghumantu Janajati Rashtriya Aayog* may be set up for the De-Notified, Nomadic and Semi-nomadic Tribes, by following the precedence of the National Commission for Scheduled Tribes that has been set up under Article

8A on the bifurcation of the erstwhile National Commission for Scheduled Castes and Scheduled Tribes, to oversee the implementation of various safeguards suggested in this report for the De-Notified, Nomadic and Semi-nomadic Tribes. The Commission may consist of a Chairperson, a Vice-Chairperson and three full time Members (including one woman Member from NT-DNT communities). The term of Members of the Commission will be three years from the date of assumption of charge.

## **12. Others**

### **i. Land Rights**

Many NT-DNT families have been practicing agriculture for several decades- as sharecroppers, wage labourers in agriculture and as small farmers. Land reform efforts have largely overlooked for the NT-DNTs in the past decades. The *pattas* of NT-DNTs should be given and regularized, and possession of their land facilitated on a priority basis. Distribution of land should be monitored so that DNT communities have direct access to land.

#### **Special dedicated Central Fund for NT-DNTs**

A Special dedicated Central Fund for NT-DNTs should be created. The quantum of the fund should be not less than the population proportion of DNTs, based on the caste census. This fund should be dedicated for the socio-economic empowerment of the DNTs. The fund should also have safeguards against diversion or non-utilisation.

### **ii. Community Organization and leadership building with special focus on women empowerment**

States with substantial numbers of DNTs could initiate several pilot schemes with youth and women towards their capacity building to engage with formal processes of development and governance, including capacity building to initiate social audits from the perspective of NT-DNTs. These pilot schemes may be implemented through grant-in-aid mechanisms through credible nodal NGOs in each state.

### **iii. Census and survey**

The census process should have separate component of NT-DNTs and other official surveys should also have separate NT-DNT component:

1. District Level House Hold and Facility Survey,
2. National Family Health Survey,
3. Indian Human Development Index Survey, and

#### 4. National Sample Survey

##### iv. North-East India

In the Eastern India Regional Meeting, it has been observed that there is lack of awareness about NT-DNTs. In the discussion, it was emphasised that there is need to explore issues of NT-DNTs in North-Eastern region of India. The central government should take up special efforts to explore the situation of NT-DNTs in this region.

## Conclusion

Dr. Ganesh Devi<sup>4</sup>

Though this report has a conclusion, we are aware that the social awakening that this report expected to generate in a process that does not have an easy conclusions. While began as a phenomenon of social ‘awakening’ in a historical phase of general disempowerment calls for a series of measures aimed at a consensus empowerment This work needs to be done through a series of steps. It also call for a special sensitivity from all section of legislations, administrations, media, citizens, civil society and those who have been the identified victims of the notification/denotification acts. We hope that this report will be seen as a small but sincere step in that direction.

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<sup>4</sup> Dr. Devi is an eminent linguistic, founder member of BHASHA Academy and senior Tribal activist.

## Annexure – 1

### Accused Of Being Accursed

Dilip D'Souza<sup>5</sup>

There is an interesting sequence of entries in a bank passbook I saw recently in Purulia District, West Bengal. Shyamoli Sabar, a young woman from the hamlet of Akkarbaid, holds an account in the Mallabhum Gramin Bank in nearby Rajnowagarh. She started it on June 17, 1994, with a deposit of Rs 40. Six months later, she made her second deposit: ten rupees. Her passbook records deposits, over the next four years, of such amounts as one rupee, three rupees, ten rupees, one rupee again. Rarely did she deposit more; only once did she manage to put in as much as Rs 50.

Until 1998. On May 26th, the passbook shows she deposited Rs 14,943 in the account. Then, on November 2nd, Rs 28,231.33. Four days later, another Rs 56,042.

It is a startling change. How did Shyamoli go from depositing single rupees to several tens of thousands? There is a very simple answer. Those fat amounts were by way of compensation given to Shyamoli by the Government of West Bengal. Compensation, because in February 1998, police in the town of Purulia took her husband Budhan into custody and beat him to death.

Simple, I said. Like denotified tribals elsewhere in the country, Kheria Sabars -- the tribe Shyamoli and Budhan belong to -- also live under the constant threat of arrest, torture and murder by the local police. So it was with Budhan.

On February 10, 1998, he and Shyamoli got on his bicycle. "We were going to Barabazar, to my mamasasur's [mother-in-law's brother] house," Shyamoli told me when we met outside her hut in Akkarbaid. On the way, they stopped for a *paan*. Ashoke Roy, Officer-in-Charge of the Barabazar Police Station, came up to them at the little shop and took Budhan away on his

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<sup>5</sup> This article is part of the project Dilip D'Souza is pursuing to study India's DNTs on a National Foundation for India Media Fellowship for 1998-99.

motorcycle. Roy would later claim, in an affidavit he submitted to the Calcutta High Court, that Budhan's name came up "in course of my investigation in connection with Barabazar Police Station Case no. 37/97 dated 15.9.97." That's why he arrested Budhan.

Over the next few days, the police beat him savagely. On the morning of the 13th, Budhan accompanied a police party that raided Akkarbaid in search of supposedly stolen goods that he had supposedly told Roy about. None were found, but a few villagers spoke to Budhan as he sat in the police jeep. He told them of the nonstop torture and the pain he was suffering. On February 17th, he was dead. The police claimed he had hung himself in his jail cell that evening with his "gamchha", or thin towel.

In July, Justice Ruma Pal of the Calcutta High Court delivered a judgement that tore this police version of Budhan's death to shreds. She had already directed the State to pay Shyamoli "ad-interim relief" of Rs 15,000; in this judgement she directed a further payment of Rs 85,000. She also ordered a CBI investigation into Budhan's death, departmental proceedings against Roy and other officers, and that Roy must be transferred out of Purulia District.

It was a remarkable judgement, a stunning blow to the police of Purulia. They had treated Budhan as scarcely a human being. But the judgement also made clear just how arrogantly the police behave with DNTs. Their attempts to cover their trail seemed almost deliberately filled with lame mistakes, as if to say: catch us if you can.

Consider some examples.

On page 3 of his affidavit to the Court, Biplab Dasgupta, Purulia's Jail Superintendent, says that he left the jail at 6:07 pm on February 17th, reached home at 6:20 pm and was told immediately about Budhan's death. "[I] rushed back to the jail," he goes on, "and at about 6:25 pm I entered the jail ... [and] found the said Budhan Sabar lying on the floor [dead]." On page 10 of the same affidavit, Dasgupta says "I saw the body at 6:18 pm on 17.2.98 ..."

A seven minute time difference, maybe you think, is hardly worth picking on. An understandable error, perhaps in typing? Read on, as I did.

In paragraph 3 on page 2 of his affidavit, Syed Liakat Hossein, the Sub-Divisional Officer in Purulia, submits: "I proceeded on 17th February 1998 to District Jail, Purulia, at 7:30 pm to inquire into the alleged suicidal death of ... Budhan Sabar." In paragraph 4 (the very next paragraph), Hossein says: "I entered into the District Jail ... at 7:15 pm on 17th February 1998."

And as if that 15 minute difference wasn't enough, there's Hossein's Annexure "A", which is his "detailed enquiry [sic] report to the District Magistrate, Purulia." It says: "I proceeded to the District Jail, Purulia at 8:30 pm on 17.2.98 to enquire [sic] into the alleged suicidal death of ... Budhan Sabar." There you are: one affidavit, one supposed event, three different times.

Then there's Kumaresh Roy, the jailer. His statement to the Court begins thus: "While I was working in the office on the evening of 14.2.98 ... [I was informed] that [Budhan] committed suicide in cell." Clearly, Kumaresh Roy could not be bothered to get even the date on his story right.

As for Ashoke Roy, he was similarly troubled by dates. As I mentioned above, he submitted in paragraph 4 of his affidavit that he picked up Budhan for interrogation "in connection with Barabazar Police Station Case no. 37/97 dated 15.9.97." In paragraph 10, Roy says this: "[I]n course of his interrogation, [Budhan] disclosed startling facts in connection with the involvement of others [in] Case no. 37/97 dated 5.9.97." There you are: one affidavit, two different dates for Case no. 37 of 1997.

Mere typos, all? One, perhaps. Two, possibly. But an entire string of time inconsistencies? It could only have come from a clumsy joint effort to put together a clumsy story to account for Budhan's death. The kind of effort that could not but leave a trail of fishy mistakes.

And there were fishier mistakes still. The basis of Ashoke Roy's submission to the Court was that he picked up Budhan because he wanted to question him about a crime committed on September 15, 1997. This was the robbery of a bus belonging to Balaji Roadways on the Barabazar-Purulia road. Rs 16,000 in cash, a gold ring, ten wrist watches and sundry other items, for a total of Rs 35,000 worth, were stolen from the passengers of the bus that day.

Now when a crime like this is committed, and when the police say they have a suspect whom they want to arrest, the normal practice is to alert the police station that covers the area where this suspect's home is. That police station puts his name on a list of suspects wanted for various crimes. Budhan lived in the hamlet of Akkarbaid, which falls under the jurisdiction of the Kenda Police Station. (In fact, when Roy raided Akkarbaid on February 13, the Officer-in-Charge of the Kenda PS accompanied him: precisely because Akkarbaid is in Kenda's jurisdiction).

Sure enough, the Kenda PS did have a list of suspects known to be living in their area of concern. On January 17, 1998 -- over three weeks before Budhan was picked up -- the same Officer-in-Charge of Kenda PS gave a copy of this list to the Paschim Banga Kheria Sabar Kalyan Samiti (PBKSKS), an organisation based in Rajnowagarh that works with Sabars. This was a routine happening; the Samiti picks up copies of such lists from the nearby stations every now and then and files them.

Now this particular list contained the names of 22 Sabars who were suspects in various crimes in the area. "Budhan Sabar" was not one of those names.

(Just to check, the Samiti also had a copy of a similar list from the neighbouring Manbazar PS. There were 12 names on that list. "Budhan Sabar" was not one of them either).

If Budhan was indeed a suspect in that Balaji Roadways robbery, as Ashoke Roy claimed, why was his name not on the Kenda PS list? Because this was a concocted story, this suspicion of Budhan's involvement in the bus robbery, a story concocted solely to explain Budhan's arrest.

These inconsistencies and lies were only the ones I caught during a quick look at some of the police papers in Budhan's case. Justice Ruma Pal found more, just as egregious. For example, she comments: "The police records do not show that Budhan was carrying a gamchha at any time. [It was found] to be new. ... Where did the gamchha come from? It is true that in the column headed 'private property received with the prisoner' it has been written: 'full pant, G. shirt, Punjabi and gamchha.' But the word 'gamchha' appears to have been subsequently inserted."

The murder of Budhan Sabar was bad enough. Without meaning to belittle its magnitude, we know well about deaths in police custody. But the string of foolish mistakes and inventions the police made in presenting their case to the Calcutta High Court spoke of something else altogether: an entire attitude towards the Sabars. There is only one possible conclusion to be drawn from their submissions: that these officers really did not think anyone would take the death of a mere Kheria Sabar seriously; that therefore, their ham-handed efforts to cover up would certainly never be scrutinised. So why even bother to get all the little details -- times, dates, facts -- consistent?

If Budhan's death was tragic, this bald-faced arrogance is simply galling.

All of which persuades me that still another error in Ashoke Roy's affidavit is something of a Freudian slip. In paragraph 14, Roy says: "I had produced remand accused, Budhan Sabar ...". It's only an extra "r", but think what a difference it makes to the meaning.

Indeed, Budhan and the rest of the Sabars are accused. No mistake there.

*Source (<http://www.rediff.com/news/1999/jun/10dilip.htm>)*

**Annexure – 2**  
**Beggary Act**<sup>6</sup>

**Bombay Prevention of Begging Act 1959**

The basic essence of the Beggary law is that it criminalizes begging which itself is remarkably unfair in a country like India. It is based on the premise that poverty was a historical concern and that every person who has been abused within his/ her family, or is old or differently abled is receiving support from the state and civil society members. The law in its underlining argument assumes that Begging is a choice one of the alternatives that people choose and enjoy. Our experience of working inside the institution has shown that this assumption is extremely untrue.

A person can be pushed into Begging due to several less than optimal life circumstances characterized by the absence of a combination of the following: - Shelter, Food, clothing, healthcare facilities, water, and sanitation facilities.

It can be the outcome of economic deprivation or Social/ familial rejection or exclusion. Economic deprivation of communities could result on a large scale due to displacement caused as a result of development projects or inter community conflicts or Natural/ manmade calamities. (like the people who turned homeless due to big dams like Sardar Sarovar and Indira Sagar, and those who had to leave home after the riots in Assam and Muzaffarnagar, and the calamity in Uttarakhand). Economic deprivation at an individual level could be a result of a sudden/ drastic event like death of the bread winner of the family, or a major accident/ physical or mental disability that results in drying up of the financial resources of a family, or a slow gradual deterioration in economic status due to loss of livelihood.

Social exclusion can be a result of one or several attitudinal deficiencies (especially related with identities) that result in issues like gender discrimination, Domestic violence, discrimination against religious, caste and sexual minorities. It could also result from prejudice against people with HIV or Leprosy. One or several of these factors combine together to form a situation of continuous poverty.

In a way, Begging can be seen as the result of a person's 'slipping off' the stairs of several social indicators and not finding even one railing to hold onto. (Where slipping on one step will increase the chances of slipping off the next too) eg: a disability caused due to an accident which has already caused the financial resources of a family to dry up, will further reduce the clients' chances of finding a job, because of his reduced abilities and the prejudice that exists against physically challenged people. Such

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<sup>6</sup>Note prepared by Mohd. Tarique (Ashoka Fellow), Asst. Prof. and Program Head, Koshish, Tata Institute of Social Sciences (Koshish is a field action project of TISS working on issues relating to urban poverty, destitution and beggary in India).

loss of livelihood could reduce the health, education and other living standards of a family and could gradually result in making them destitute.

Many women who have been arrested under the Bombay Prevention of Begging Act have been victims of sexual, physical or mental violence. They have also faced violence at the hands of their family members. Thus moving out and surviving on alms has been a better option in comparison with staying at home. Most of the persons who engage in begging don't have access to pension schemes, like Old age and Disability pension. Our Client Tarun (name Changed) was arrested primarily because of his mental illness and was detained in the Beggars' Home on the pretext of receiving treatment, but the Beggars Home proved to be a very difficult space for facilitating his rehabilitation, due to insensitivity of the staff members and red-tapism in procedures.

**Another important point about the legislation is that it defines begging in a very questionable manner. Section 2(1) of Chapter one states that, Begging means**

**a) Soliciting or receiving alms in a public place whether or not under any pretense such as singing, dancing, and fortune telling, performing or offering any article for sale.**

**d) Having no visible means of subsistence and wandering about or remaining in any public place in such condition or manner as makes it likely that the person doing so exist soliciting or receiving alms.**

Sub part (a) equates street performing, fortune telling and street hawking with Begging which is indeed a source of livelihood for many people. As a result, persons from Nat Community and other de-notified tribes become a target for this act.

Sub part (b), is even more controversial, unconstitutional and in total violation of the fundamental right to Right to Life and Liberty (Article 21). It gives an immense and unfair amount of discretion to the raiding team to decide who is likely to beg. Thus a person whose means of living are not visible to the raiding team, or who has been wandering in a public place and looks poor can easily fall prey to arrest and detention under the act. We are well aware that people from many nomadic and semi nomadic tribes live in public spaces for most part of the year without depending on Begging and while pursuing some traditional occupation. Most homeless people or persons from villages with dirty clothes and a different appearance than the rich are assumed to be beggars and are arrested under the act. The provision also lays an unjustified quantum of importance over the appearance of a person and operates at a preventive level. The only other legislation that provide for preventive detention are related to terrorism.

The Beggary act provides for arrest of an offender without a warrant. This is a rule generally used for cognizable offences, which are the more serious offences.

It has a provision for detention of persons who are wholly dependent on the beggar. Section 9 of the act says that when the court has ordered the detention of a person in a certified institution under section 5 or 6, it may often making an inquiry as it thinks fit order any person who is wholly dependent on such person to be detained in a certified institution for a like period.

The Act also provides for the indefinite detention of incurably helpless beggars, which includes blind, crippled or otherwise incurably helpless persons. The act doesn't define in clear terms that can be called 'incurably Helpless'. It is needless to say that in the era of staunch believers in Human Rights for persons with Disabilities this provision comes as a blow to such idyllic ideas.

**Demand:**

It can be observed after analyzing the provisions that they affect the de-notified, nomadic and semi nomadic tribes in a direct manner. Thus we demand a repeal of the Bombay Prevention of Begging Act, especially a strict review of the provision that includes in the definition of begging Singing, Dancing and performing. The provision that gives extraordinary powers to the raiding team to decide who can be accused of Begging on the basis of appearance is absolutely unconstitutional and must also be reviewed.

### Annexure – 3

## CHALLENGES FACED BY DNT/NT COMMUNITIES IN ACCESSING GOVERNMENT SCHEMES<sup>7</sup>

### Aim

The aim of the study is to identify challenges faced by the people from the NT/DNT communities in accessing such government schemes of their benefit.

### Sanjay Gandhi Niradhar Yojana (SGNY)

SGNY is a scheme by the government of Maharashtra to provide financial assistance to destitute people, blind, disabled, orphaned children, widows, divorced women, abandoned women, women rescued from prostitution and trans-genders. For the purpose of study we had selected three categories out of the aforementioned list. The chosen categories are – elderly, widows and disabled people from the NT/DNT community.

### Eligibility criteria

#### SGNY for the elderly and widows

The applicant should be below 65 years of age and a resident of Maharashtra for more than 15 years. He/she cannot have sons older than 25 years of age, if they do and the sons don't stay with them they are supposed to get a *potla*<sup>8</sup> document written by the police station. Also, a person is eligible for this scheme until the eldest son turns 25 after which the pension automatically stops. For the elderly the applicant must be below the age of 65 crossing which the person gets automatically transferred to **Sravanbagh Yojana** with the same benefits.

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<sup>7</sup>Prepared by Shriti Munshi, TANDA. TANDA is a field action project of Tata Institute of Social Sciences working with NT-DNTs.

<sup>8</sup>*Potla* – a document issued by the nearest police station stating that the applicant is a destitute member of the community with no one to look after him/her.

### **SGNY for PWDs**

For a disabled person to avail this scheme, the disability factor should be more than 40% in case of any physical disability other than blindness for which the cut off becomes 100% i.e. partially blind people are not eligible for this scheme.

Each Beneficiary will get Rs.600/- per month and family with more than one beneficiary will get Rs.900/- per month. Benefit will be given to beneficiary till his/her children become 25 years old or he/she gets employed, whichever occurs first. If beneficiary has only daughters, the benefit will be continued even they become 25 years old or get married.

Another important eligibility criterion is that the annual income of the family of the beneficiary must not exceed Rs. 21,000.

The offices to be visited for the process of availing this scheme are *Tehsildar* office and Setu Kendra of the district.

### **Sravanbagh Yojana**

As mentioned earlier this scheme is only for the elderly who are above 65 years of age. When a person is enrolled in SGNY for old age, he or she gets automatically transferred to Sravanbagh once they turn 65.

### **Documents required for SGNY**

The following documents are required to avail SGNY:

1. AADHAR card and ration card – the applicant must possess these two documents in order to avail this scheme.
2. Income certificate or *Utpancha dakhla* – This certificate could be issued by the *Talathi* office of the district by filling up the income certificate form along with address and age proof. In case of BPL families, a BPL card will suffice.
3. *Vatsavya Dakhla*– This document is a proof of the applicant's stay in the district for a minimum of 15 years

**For elderly:**The scheme requires a written document from the police station or *potla* in case the applicant has sons older than 25 years but he/she is living alone/with spouse with no one to look after.

**For widows:**The applicant is required to produce her husband's death certificate and in case the death happened outside Thane, an NOC from the Talathi office.

**For PWDs:**Disabled applicants are needed to produce a disability certificate issued by a civil surgeon from a government hospital.

## Case Studies

### SGNY for the elderly

#### Case Study 1

**Sakhubai Sahebrao Suryavanshi**, 63, is a resident of Sathe Nagarcommunity in Airoli. She belongs to the *Vadaar* community. She stays with her husband in a room on rent. She has three sons, out of whom one stays nearby the old couple with his wife and children. Sakhubai works on daily wage on a temporary basis subject to availability of work. There are days when there is no work and she and her husband suffer a hand to mouth condition living on money borrowed from neighbors. Although all three sons are adults, older than 25 and married, none of them takes care of their parents. The documents possessed by her are Aadhar card and election card. She does not have a ration card and on being asked for it to be able to be eligible for the scheme she got her son's ration card which did not have her name on it.

#### Case Study 2

**Rajubai Babusha Shende**, 61, is a resident of Sathe Nagarcommunity in Airoli. She belongs to the *Vadaar* community. She stays in a room owned by the family with her husband and six kids (3 daughters and 3 sons). The couple lost four other children previously to a fire accident that engulfed their house. Out of the six children, none go to school, instead they go for work to help the family financially. Rajubai works on daily wage and so does her husband. They live in a very

poor economic state barely managing to make ends meet. The documents possessed by her are ration card, Aadhar card and election card. Although she did have all the documents required the problem was her documents had different ages recorded (38 in ration card, 41 in election card, 34 in Aadhar card). This issue was seen in many other cases in the community. When taken up with the official in the *Tehsildar* office, it was suggested that in case of such discrepancies an age certificate by a civil surgeon will suffice. However, when Rajubai went to the civil surgeon for an age certificate, the doctor refused to issue any without being paid a sum of Rs. 1000 upfront which she obviously couldn't.

### **Case Study 3**

**Laxmibai Shankar Unavane**, 63, is a resident of Sathe Nagar. She belongs to the *Mataang* community. She stays in a room owned by the family with her son, daughter-in-law and five grandchildren. Her husband stays in village in Aurangabad. Laxmibai has three sons who are much older than 25, however while one of them is crippled in leg, another is partially blind. The third son works on daily wage and lives away from the family. Laxmibai stays with her second son who is partially blind while her eldest son, who is crippled in leg, stays nearby with his own family. Because of their disabilities the sons are unable to work therefore, Laxmibai goes for work along with her two daughters-in law. They work on daily wage and barely manage to make ends meet. The children are very young with a toddler and an infant in the family which makes it difficult for the women to go out for work every day. The documents possessed by her are ration card, Aadhar card and PAN card. Despite her profile suggesting her family's need to receive financial support, she is not eligible for SGNY because she has three sons older than 25 in spite of the fact that two of them cannot work and provide for their families.

### **SGNY for widows**

#### **Case Study 1**

**Savita Ramdas Shende**, 25, is a resident of Sathe Nagar. She belongs to the *Vadaar* community. She has been staying in her parents' house since her husband's death, 5 years back. Her household has her parents, two brothers and one sister-in-law. She has one more sister who's married. Savita has a 6 year old son studying in standard 1. Her daily routine consists of taking

care of her old father and her 6 year old son. She doesn't go for work since her job has been cooking for the family for her entire stay here after she moved in. That way there's no way she can earn or save any money for her son or his future. However, the bigger problem is, she doesn't have any documents required to access this scheme. Even her parents' ration card doesn't bear her name while it was made when she was still living with her before her marriage. On being asked her mother said that her name got missed out of carelessness on their part. She doesn't have her husband's death certificate either. The only document that she has, is her son's Aadhar card which was made only because his school got it made for the students.

### **Case Study 2**

**Kanchan Raju Valekar**, 24, is a resident of **Samrat Nagar** in the Nausil Naka in Rabale. She belongs to the *Maatang* community. Her husband died in an accident two and a half years back in Pune. She has been staying with her parents ever since along with her five year old daughter. Two of her brothers stay in the same house along with their wives. Kanchan has partial blindness because of which she cannot go out and work. Documents possessed by her are her father's ration card which bears her name, Aadhar card, husband's death certificate, daughter's birth certificate, house tax receipt and PAN card. Although she is perfectly eligible for the scheme, the reason for no access is no awareness about any such schemes. It's clear that these communities are completely untouched and requires a great deal of awareness regarding such schemes which can provide them with some relief.

### **Case Study 3**

**Radhabai Hiralal Dhotre**, 72, is a resident of **Indira Nagar** in Turbhe. She belongs to the *Vadaar* community. She lost her husband after 10 years of her marriage and has been staying alone ever since. She doesn't have any children and no other family. She works as domestic help. Documents possessed by her are an Aadhar card receipt and PAN card. She doesn't have any other documents of her own. She never got a ration card issued on her name. She said since she has stayed alone there was no one to tell her to get such documents made. Her PAN card and Aadhar card are also recent after she became a part of the SHG TANDA has begun in the area.

She also doesn't have her husband's death certificate which becomes an obstacle in her accessing the scheme.

#### **Case Study 4**

**Jaya**, 32, is a resident of **Indira Nagar** in Turbhe. She belongs to the *Vadaar* community. She stays in a room owned by her in-laws and stays there with them and two kids. She has two sons (8 and 10 year old). Jaya works in a company in the packaging department and is the sole bread earner of the family. Her in-laws are old and cannot go to work and the children go to school. Her husband died in Mizoram five years back. She does not have a death certificate of her husband's death. She doesn't have any documents other than a school leaving certificate since she had done her schooling from Mumbai. The rest of her documents belong to Mizoram where she had moved to after her marriage. She moved back to Mumbai following her husband's death and hence doesn't have any documents needed to access this scheme.

#### **Case Study 5**

**Meena Uttam Ahire**, 39, is a resident of **Sathe Nagar** in Airoli. She belongs to *Maatang* community. She stays in a room owned by her late husband alone with her children. She has two sons and two daughters two of which stay in village with their grandparents. None of these children have ever gone to school. She works on daily wage but is very irregular at work because of poor health as a result of which she misses work and it gets difficult to make ends meet for her and her two kids. The children also do odd jobs to help their mother financially, a reason why they could never go to school. Meena's husband died five years back due to alcoholism. She said that even when her husband was around it was difficult for her and her children since he would spend all his money on alcohol and stay drunk the whole time. Her husband never took interest in getting documents like ration card made for the family as a result of which the family never got any documents made. It's just recently that she got Aadhar cards made for herself and her children. Meena is still not eligible to access this scheme until she gets her ration card made which is again a long enduring process.

## **Disability Pension Scheme**

### **Case Study 1**

**Bhikan Shankar Unavane**, 41, is a resident of **Sathe Nagarin** Airoli. He stays in a room owned by him with her wife and four children. He has two other sons one of whom stays in village and the other is studying in hostel on scholarship. Bhikan is physically challenged. He has 45% disability in both of his legs since the last 20 years. He stays at home while his wife goes out to work as a ragpicker. He can write his name but apart from that he cannot read or write. One good thing is he is pretty aware of government procedures and has all his documents in place. The documents possessed by him are disability certificate, PAN card, election card, caste certificate, AADHAR card, school leaving certificate and ration card. He also got his *Vatsavya Dakhla* made a year back. The biggest challenge that he has to face in accessing a scheme or going through government procedure is the complexity of the process. Because of his condition and illiteracy Bhikan and people like him fall into the loopholes of these schemes.

### **Case Study 2**

**Rakesh Hanumant Varse**, 21, is a resident of **Samrat Nagarin** Nausil Naka in Rabale. He belongs to the *Vadaar* community. He stays in a room owned by his family with his parents and one sister. He also has two other sisters who are married. Rakesh is unemployed and stays at home. He is physically challenged with 50% disability in both his legs. His father is the sole bread earner of the family who not only got two of his daughters married but also is taking care of his adult son. His father told us that it takes a lot of money for Rakesh's treatment. One more aspect of his expenses are his married daughters. He said that his daughter's in-laws keep asking for money and recently when the daughter had an accident and require surgery, her in-laws have totally given up on her. She was expecting when she had that accident. The father said that the doctors are charging a lakh to operate her dislocated hip which they cannot afford and he is doing his best in making sure his daughter gets operated. The family has anyway had a very low economic status and because of this incident it's getting harder for the father to look after everyone. The scheme would provide some relief to him financially. The documents possessed by Ramesh are ration card, PAN card, disability certificate, house tax receipt and domicile

certificate (*rahiwasi daakhla*) from Nagar Sevak. Despite having the documents it's difficult for them to access his scheme because of the time required for the process. Also, they had no knowledge about any such scheme existing which is a major impediment in most of the cases.

### **Analysis**

The pension schemes by the government are meant to provide relief and support to people who need it. There are although many challenges that the people have to face while availing these schemes. The fact that the people who can benefit from these schemes have very poor access in availing them itself poses as a major challenge.

### **Need of the community**

Most of these people from the community work on daily wages. They don't have permanent modes of income and there are times when they have to go months without any earning. Consequently, children drop out from school and start doing trivial jobs here and there to help their families make ends meet. Even a small supplement to their income would be a huge relief for them. These schemes thereby can help a great deal in supporting them financially.

### **Lack of awareness**

The first obstacle is lack of awareness. The people in the community have no awareness about the kind of schemes available out there which they are entitled to. When I went to the community for the study we did not find a single person who knew about these schemes or any other for that matter.

### **Complicated and lengthy process**

The second difficulty comes with the complicated process and the time required by the process that makes it difficult for the people to get through the entire procedure of application even if they begin with it. The process requires frequent visits to government offices like Tehsildar office and Setu Kendra for information and application forms. Since most of these people work on daily wages, it's very difficult for them to set out a time to make these trips. Going to an

office, take information and come back might take a whole day or more and that means giving up the wages for those days which is a big deal for them.

The process demands a lot of paper work and most of these people cannot read or write, which means they will need someone from these offices to help them filling up the forms and getting the correct documents. From my experience of these visits to the offices, the officials are too busy to help and are not very cooperative. So there is a very small chance that the people from the community get any help in their paper work.

### **No relaxation**

For Sanjay Gandhi Niradhar Yojana, the two documents that an applicant must possess are ration card and AADHAR card.

The first problem that arises out of this is that not all of the families in these communities have these documents. So, the families who do not have a ration card for instance, automatically become ineligible to apply for this scheme. On taking up this issue with an official at the Tehsildar office, she responded defensively saying that as per her knowledge all the people in the area have been issued ration cards and AADHAR cards and producing them should not be a problem. One might think of going through the process of getting a ration card issued on their name but then, a) the process is too cumbersome to get through without multiple visits and follow ups, b) corruption among the officials involved denying help with the paper work unless bribed and c) the officials won't issue a single ration card, they only do it when a bunch of applications come in.

The second problem that branches out is the discrepancies in the birth years of the applicants in their documents. For instance, while filling up the forms I found many elderly women who were not eligible for the scheme just because their ages are recorded way less than what they actually are. Their reason is since they never really knew what difference can such mistakes make, they never cared to check what birth years were getting recorded in their documents. It's also highly careless on the part of the people who come down to record such data while issuing AADHAR cards and election cards. A woman who can clearly pass for 65, is actually 39 according to her election card. On discussing this problem with the Tehsildar official, who had been very helpful

in providing me the information about these schemes, I got to know that they are actually aware of these discrepancies in government documents and to deal with it, as an age proof they consider a certificate from a civil surgeon from any government hospital. When I offered this idea to the women in the community, they later told me that the doctor wouldn't give them an age certificate unless he gets paid. According to the women, the doctor's words were, "when you will be getting pension every month, this small fee wouldn't matter at all."

According to SGNY, an applicant is only eligible for pension if they are without children or have only married girls or sons with disability. If there is a son who is older than 25 years of age in the family, they immediately get ineligible to access the scheme. Moreover, if the applicant has sons younger than 25, they are eligible for the pension until the day the eldest son turns 25 after which the pension would be stopped. The problem with this clause is most of the old couples living in the community are living on their own. They might have sons older than 25 but they are either alcoholic or settled with their families somewhere else leaving no one to look after their parents. In this case, the elderly couple only have themselves to earn a living which gets difficult due to the amount of labor required to work on daily wage. Also, the unevenness in the availability of work every season is another concern which calls for some stability in income especially in those difficult months.

In the disability scheme the minimum percentage required to be able to be eligible for the scheme is 40% except in the case of visually challenged persons where the eligibility is only granted if the person is completely blind. Now in my visits to the community I came across many people who have partial blindness, bad enough to be needing support to move from one place to another. With such an amount of disability there is a very bleak chance of them getting work good enough to feed their families. When discussed with the official at the Tehsildar office, this issue was subverted by her saying that, "when a person can see with one eye, he or she is expected to work."

## Annexure – 4

### **Women from Nomadic and De-Notified communities in India: Invisibility of marginalization and violence<sup>9</sup>**

(Submission by TANDA to UN Special Rapporteur on Violence Against Women on 7<sup>th</sup> July, 2013)

Nomadic and De-Notified Tribes (NT-DNT)<sup>10</sup> belong to those social groups who have been subjected to historical injustices both in the colonial and independent India. They remain an invisible section within the marginalised communities in India. During the British rule, the Criminal Tribes Act (CTA) 1871 notified various tribal and nomadic communities as criminal. The CTA implied that these communities were criminal by birth and practiced crime as a profession. The act gave the colonial administration the power to brand, penalise, segregate and deny rights of people from NT-DNT communities. Independent India saw CTA being repealed but the lawmakers enacted the Habitual Offenders Act 1952, which ended up in perpetuating the injustices under the CTA.

These tribes are now known as DNTs, *VimuktaJatis* or the Ex-Criminal Tribes. Sadly, not much has been done with respect to their socio-economic development and they continue to live in a state of deprivation (D'Souza, 1999). Since the Census of India does not cover NT-DNTs as a separate category, it is extremely difficult to estimate the total number of NT-DNTs in India. Most of the research and field based organisations working across with NT-DNTs estimate the population of these highly heterogeneous social groups comprising 7% to 10% of the total Indian population. The NT-DNTs do not enjoy constitutional safeguards that are provided to the Scheduled Castes (SCs), Schedule Tribes (STs) and Other Backward Classes (OBCs) in India.

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<sup>9</sup>The note is prepared by Towards Advocacy Networking and Developmental Action (TANDA), a Field Action Project of Centre for Criminology and Justice, Tata Institute of Social Sciences, Mumbai, which is working with Nomadic and Denotified Communities (DNCs). TANDA works towards “creating self-reliant DNCs and ensuring the realisation of their constitutional and entitlement rights, as citizens of India”. TANDA strongly believes that DNCs should organise themselves to advocate for their rights and dignity. The project aims to play the role of a change agent through generation of knowledge, capacity building and networking with different stakeholders on relevant issues towards policy advocacy.

<sup>10</sup> The term Nomadic and De-Notified Tribes (NT-DNT) and Nomadic and De-Notified Communities (DNCs) has been interchangeably used in this note.

Some groups within NT-DNTs have been included in the respective state lists of SCs, STs and OBCs but there is no uniformity across the country.

Most members of the NT-DNTs do not have basic citizenship entitlements like voter identity cards; ration cards, domicile certificates, caste certificates, birth certificates, etc. (Bokil, 2002). The absence of these basic citizenship documents does not allow them access to government welfare schemes and programmes and hence they are not in a position to exercise their fundamental rights and duties. Their political marginalization continues in absence of basic citizenship documents and they do not constitute a significant voting population. Their nomadic, dress, dialect, customs, norms, culture, folklore and traditional livelihoods patterns has no place in today's competitive market driven economy, leading to their further isolation. The market, society and the state have systemically marginalised the NT-DNTs and have deepened their vulnerabilities and deprivation. The majority of NT-DNTs are out of the ambit of reservations, affirmative actions, welfare schemes and citizenship entitlements in India. Subsequently they remain one of the lowest groups on Human Development Indicators (HDI) and very far from the Millennium Development Goals (MDG). The Indian state has not taken sufficient steps to ensure the citizenship entitlements and a life of dignity for NT-DNTs.

This context of NT-DNTs is extremely crucial to understand the lives of women from these communities. The women from these communities have to bear not only the stigma associated with poverty and their historically discredited community identity, but also face violence at home, within the community and at the societal and state level. The NT-DNTs are largely patriarchal communities, where male members exercise the authority and the status of women is extremely low and very often, brutal sanctions are imposed on them (Bokil, 2002). The women in the NT-DNTs have borne the most violent and repressive brunt of the stigma of criminalization, continued violations and arbitrary use of Habitual Offenders Act, societal non-acceptance and the failure of the polity to include them in the mainstream social and economic fabric of the country. The local newspapers and media are testimony to rampant violence against women from NT-DNTs and cases of child marriage, rape, custodial violence and arbitrary detention, mob lynching, burning of houses of NT-DNTs occur frequently. Most of these cases of women's rights violation do not find an articulation or redressal at the national and local level. The NT-DNTs are not covered under the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act (1989). The National Crime Records Bureau under Ministry of Home Affairs (MHA), Government of India over the years has only taken cognizance of crimes against women in general and among the marginalised communities have only separate category for crimes against SC and ST women. Not being a significant vote bank or a stronger political and economic group has further rendered the violence against NT-DNTs women invisible.

The women from NT-DNTs shoulder the double burden of working at home and earning wages to sustain their families. In many urban areas, women from the NT-DNTs are engaged in construction or manual labour. Gender-based discrimination e.g. unequal wages in the labour market is rampant. Inadequate provision of basic civic amenities by the state has put considerable pressure on these women and they are forced to pay to secure the basic services and goods for the household. The search of water, sanitation and livelihood forces them to travel long distances and these places often become sites for sexual violence against women from NT-DNTs. In many of the NT-DNTs, child marriages are a common practice. In some of the nomadic communities including the Pardhis and the Vaidus, women are sold, exchanged, mortgaged and even leased out (Mane, 2001). The practice of dowry is prevalent and exogamous marriage, adultery and pre-marital pregnancy are considered serious crimes and are meted out with inhuman penalties. In some DNTs, the accused woman is forced to pick up a coin from a pot of boiling oil to prove her innocence. Some other penalties include shaving of head, burning the tongue with a hot iron, forcing to walk through fire, forcing to carry human or animal excreta, social boycott and ostracism (Mane, 1997). The criminal justice system has largely remained apathetic, perpetuated the stigma and failed to bring relief to women from the NT-DNTs. Very often the police are the perpetrators of violence and atrocities against DNT women. The state machinery is hostile to addressing the violence against NT-DNTs women from the stage of filing of the FIR at the police stations to the delivery of justice in courts and women's commissions.

The section below highlights a few cases of violence against women from NT-DNTs perpetuated by the state, society and community members.

- May 1998, Maharashtra: At Doki village in Usmanabad district, police raped a Pardhi woman and her husband's genitals were crushed (Devi, 2002).
- August 1998, Maharashtra: The railway police attacked a group of Pardhi fishermen at Diksal

village including women and children. A pregnant woman lost her child as she was kicked on the stomach (Devi, 2002).

- May 2007, Maharashtra: Custodial death of a Pardhi woman arbitrarily detained by Ahmednagar Police and allegedly tortured to death on suspicion of involvement in robbery (Indian Express, 17 May 2007).
- September 2007, Madhya Pradesh: In Multai village of Betul district in Madhya Pradesh, 2000 people of the same village attacked 350 people from the Pardhi community living near the village. The police and the villagers raped 10 Pardhi women and killed two people including one woman (Tehelka, November Issue 2011).
- January 2011, Maharashtra: Four girls belonging to the Pardhi community were raped by four youth at Terkheda village in Osmanabad district (Atrocity News, 27 January 2011).
- July 2011, Maharashtra: Three men repeatedly raped a 15-year-old girl over a span of 20 days. The girl belonged to the Gosavi community and is from Bhor block of Pune district. No legal complaint has been registered so far and the family faces social ostracization (one of the cases taken up by TANDA in 2011).
- December 2011, Maharashtra: A police constable raped a 40 years old Pardhi widow in her house in Bhigwan village, Indapur block of Pune district. The police investigation is still on (one of the cases taken up by TANDA in 2011-12).
- January 2013, Maharashtra: TANDA is working with Wadar community in Mumbai and Navi Mumbai. There are many cases of domestic violence identified and work is in progress to bring relief to women from the communities. (TANDA's work in Navi Mumbai and Mumbai, 2013).
- March 2013, Maharashtra: A Pardhi woman living in Mumbai was arbitrary detained by Rey Road Police and humiliated and threatened (one of the cases followed up by TANDA in 2013).

The violence against women is an all-pervasive phenomenon in the Indian context. At the same time, the gravity and contours of injustice takes a prominent dimension for NT-DNTs women as the academic literature and research; the debates at national and state level on violence against women; key stakeholders; budgetary allocations and policy; state machinery and justice delivery system are marked by stark absence of NT-DNT voices and issues.

## **Recommendations to ensure a life of dignity for NT-DNTs with a special focus for women and girl children**

### **Legal remedies**

- Repeal of Habitual Offenders Act, 1952.
- Extension for the provision of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to NT-DNTs OR introduction of a new legislation similar in scope and spirit for NT-DNTs.
- Revisit and reformulate definitions relating to criminalization of certain categories of NT-DNTs
  - repeal the Bombay Prevention of Begging Act, 1959 and other similar acts in urban and rural areas that criminalize performing arts (acrobats, dancing and singing on roads) of various NT-DNTs.
- Revisit and reformulate rules and provisions in Wildlife Protection Act, 1972 and the Forest (Conservation) Act, 1980 with regards to prohibiting grazing of cattle, fishing in the forest ponds, hunting of small game for their food requirements, collection of forest produce, growing of staple food through shifting cultivation by nomadic communities.
- Police training academy should have a compulsory training component on issues and problems of women with a focus of NT-DNTs women.
- The Special Cell for Women in the police system needs to be strengthened to address the violence against NT-DNT women and to provide them legal and support services.

### **Policy and Budgetary allocation**

- Targeted budgetary allocation and sub-plan is needed for the socio-economic empowerment of the NT-DNTs.
- There should be a national policy for NT-DNTs with special focus on women with a comprehensive coverage of education, health, livelihood, shelter and social security.
- There should be a national census of NT-DNTs. At the state level, a committee comprising of academic institutions, organisations of NT-DNTs and those working with these groups and government officials should undertake enumeration and identification of NT-DNTs.
- A National Commission for NT-DNTs needs to be given constitutional power.

### **Schemes/Programmes and Support**

- Each state needs to proactively engage in providing citizenship documents including voter identity cards, ration cards, domicile certificates, caste certificates and birth certificates to members of NT-DNTs.
- A comprehensive package for resettlement and sustainable livelihood creation of NT-DNTs needs to be designed. Alternative viable livelihood options, skill development and training and employable education needs to form an important component of ensuring citizenship rights and a life with dignity.
- Special schemes for single women, girl child education, health with focus on reproductive and child health, livelihood and housing schemes, social security needs should be designed for members of NT-DNTs. The Ministry of Women and Child Development, Ministry of Social Justice and Empowerment, the National and State Women's Commissions, the Central Social Welfare Board and other government agencies need to play an effective role in delivering and implementation of these schemes for NT-DNTs.

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## Annexure – 5

### **Letter written to Ms. Chandra Roy Henriksen, Secretariat of the Permanent Forum on Indigenous Issues, United Nations<sup>11</sup>**

Ms Chandra Roy-Henriksen  
**Secretariat of the Permanent Forum on Indigenous Issues**  
United Nations, 2 UN Plaza  
Room DC2-1454  
New York, NY, 10017

Thanks for the appointment, in a short notice to discuss some of the key human and political rights of De-notified and Nomadic tribes (DNTs) of India. My organization Budhan Theatre is advocating for DNTs through theatre, films, seminars and talks since last 13 years and is committed to run social justice movement of DNTs for their socio-economic, political and cultural rights.

The Government of India has neglected this tribes ever since the Independence. Even today, they are carrying the stigma of Criminal Tribes. With the efforts of SrimatiMahasweta Devi and Dr. Ganesh Devi, the government of India did form a commission on the Denotified, Nomadic and Semi-Nomadic Tribes of India, but has failed to implement and recommendation so far. The commission was formed to study their problem and policy recommendations for their development. The Government also appointed Technical Advisory Group (TAG) to advice the commission for policy recommendation. Currently, the policy on DNTs is under the review at National Advisory Committee (NAC) of Government of India.

The Commission was formed in 2006, while it has to submit its report at the end of one year. The commission did not submit its report on the time. The Government of India later on formed the Technical Advisory Group(TAG), which timely submitted its report.

After 59 years of the de-notification of these tribes, the National Advisory Council of Government of India, had issued a recommendation on October 26, 2011 based on the outcomes

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<sup>11</sup>Letter written by member of Chara community (DNT) Mr. Roxy Gadekar. He is associated with Budhan theater which in only DNT theater group in India.

of the DNT/NT/SNT Commission, TAG report and meetings with community representatives and NGOs. NAC had asked to civil society for their recommendation in this connection.

On behalf of over 100 million DNT/NT/SNT communities of India, the Budhan Theatre, requests the Permanent Forum of Indigenous Issues to inform the Government of India to implement these recommendations immediately. A copy of the draft recommendation is attached in Annexure I.

Dr. Ganesh.Devy, the founder of Budhan Theatre and a renowned linguist as well as tribal activist presented the plight of DNTs and Tribal of India before the same forum in February 2007. Mr DakxinkumarBajrange, a theatre practitioner and one of the director of Budhan Theatre also presented the plight of DNTs.

In March 2007, After reviewing India's 15th-19th periodic reports, the UN Committee on the Elimination of Racial Discrimination (CERD), in its Concluding observation, expressed concern and stated that "the so-called de-notified and nomadic which are listed for their alleged 'criminal tendencies' under the former Criminal Tribes Act (1871), continue to be stigmatized under the Habitual Offenders Act (UN, 2007).

Earlier in February 2007, the Forum for Fact-finding Documentation and Advocacy (FFDA) raised the issues of discriminatory Indian law and treatment of the tribes on the basis of their origin and birth. This campaign, in association with the Resist Initiative International (IRI), included the submission of a shadow report, entitled "Branded 'Born' Criminals: Racial Abuse against Denotified and Nomadic Tribes in India". The FFDA and IRI report stated that *reforms are needed to protect the denotified and nomadic tribes from discrimination* (Mohapatra, 2007).

Since so many years, we are having dialog with Govt. of India to introduce policy for the development of DNTs and a law which protect their human, social and political rights.

Since British branded these tribes as 'Born Criminal' by introducing legislation called the *Criminal Tribes Act* (CTA) in 1871, these tribes have been heavily marginalised. I have attached

a document to understand DNTs historical perspective and its marginalization (Please see Annexure II).

I have attached NAC's document (Please see Annexure I) and with due respect, herewith I am submitting petition for an immediate implementation of policy recommendations by National Advisory Committee (NAC).

Madam, In India, DNTs are so afraid and scattered and the most harassed people by civil society, legal and judiciary system. They are still 'forever suspect' in the eye of law and order. We can submit atrocity cases on DNT people across the country. We need protection and a life with dignity. We are eagerly waiting for legal safeguard and the centralized policy for our development. We would be happy if you can look in this matter and help us for immediate implementation of NAC's policy recommendations.

In anticipation,

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(Honorary Director, Budhan Theatre)

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## Annexure – 6

# Critical Analysis of the Habitual offenders Act in Indian States and Comparative linkage with the Criminal Tribes Act, 1871<sup>12</sup>

### Introduction

It is imperative and utter necessity to consider both negatives and positives when we critically analyze the state habitual offenders act from Human Rights Perspective. For the better understanding of legislative scheme in India, three legislations will be considered namely, a) Bombay Habitual Offenders Act, 1959, b) Punjab Habitual Offenders Act, 1918 c) Andhra Pradesh Habitual Offenders Act, 1962. Such limitation is not to narrow to scope of the research, but to give a brief overview of the laws prevalent throughout the country.

### Habitual Offenders Act: Bombay, Punjab and Andhra Pradesh Comparative Analysis

It is evident from the discourse of various authors that no substantial analysis has been done with regards to this subject matter. The question arises on first hand that why do we need such comparison? The only reply which will suffice the query is that to find out commonality between various state laws, as in absence of a central law; and most importantly to have a concrete overview whether the provisions of various state habitual offenders laws are in consonance or in opposition to the Criminal Tribes Act.

Preamble is a very important part of the any statue if one considers the interpretational aspect of it. The scope is itself defined in the statue and by reading it one can simply understand the ‘Purpose’ of the legislation. The Bombay Habitual Offenders Act, 1959 (hereafter the “Bombay Act”) states,

“WHEREAS it is expedient to make better provision for the *treatment and training* of habitual offenders, and for certain other matters;”

Here we can see the first commonality, as if one considers The Himachal Pradesh Habitual Offenders Act, 1969, THE KARNATAKA HABITUAL OFFENDERS ACT, 1961, THE ANDHRA PRADESH HABITUAL OFFENDERS ACT, 1962, Gujarat, Habitual Offenders Act,

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1959 (Bombay Act of 1959), The Kerala Habitual Offenders Act, 1960 the verbatim used is the same. In other words, the operative words “*treatment and training*” are reoccurring, providing us with the aspect of rehabilitation and considering the habitual offenders as no less than a diseased person which is clearly against the human rights of the habitual offender.

It is the Punjab Restriction of Habitual Offenders Act 1918, which provides for a different definition as such in the preamble. It states:

“An Act for restricting the movements of habitual offenders in the Punjab and for requiring them to report themselves.”

Such a discriminator provision remains un-amended giving the legislature draconian nature. Before analyzing the above aspect from human rights approach or ‘Rights based approach’ it is important to understand what are the key components of it.

According to International Human Rights Network, the concept of human rights based approaches (HRBA) is contained in five legal principles, namely<sup>13</sup>:

1. Express application of the international human rights framework;
2. Empowerment of rights holders;
3. Participation in one's own development (as of right and not just as best practice);
4. Non-discrimination and prioritisation of vulnerable groups; as well as
5. Accountability of duty-bearers to rights-holders (for process and impact).

As rightly said by the philosopher Henry Shue, that honouring a right not only requires avoidance (Negative Duties), but also protective or reparative actions (Positive Duties). In the present context it can be explained through a very good example, Right to Food which is availed by the So-called Criminal Tribes has a primary requirement to avoid stealing the food (Negative Duty). It is not only a one way duty as state has a duty to protect and ensure delivery of the supplies to such people, in order to ensure them the Fundamental Right to food. Therefore, the right cannot be fully guaranteed by only positive, or else only negative duties; it needs both.<sup>14</sup>

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<sup>13</sup>[http://www.ihrnetwork.org/what-are-hr-based-approaches\\_189.htm](http://www.ihrnetwork.org/what-are-hr-based-approaches_189.htm) accessed on 5 July 2013

<sup>14</sup>Henry Shue, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY, Ed. 2 1996, pp. 35-40

Three essential obligations are recognized under this approach, a) Right to Respect; b) Right to protect; and c) Right to fulfill.<sup>15</sup>

In a rights-based approach, every human being is recognized both as a person and as a right-holder. A rights-based approach strives to secure the freedom, well-being and dignity of all people everywhere, within the framework of essential standards and principles, duties and obligations. The rights-based approach supports mechanisms to ensure that entitlements are attained and safeguarded.<sup>16</sup> Rights are indivisible, interdependent and interrelated. The human rights-based approach focuses on those who are most vulnerable, excluded or discriminated against.<sup>17</sup>

The preamble of the numerous state habitual offenders act are not only vague but also against the interest of the tribes, Since it states about Treatment and Training of the habitual offenders, as considering some of them derogatory to the fabric of society and also in the Punjab Restriction of Habitual Offenders Act 1918 it takes a new form of discrimination, as it clearly lays restriction on the movement of such habitual offenders and further more forcing them to report to the concerned authorities.

Law is itself a defining discourse apart from being a social and innovative discourse. Since the habitual offenders' definition is the prima face reason for the genesis of the discrimination it is empirical to discuss it in the light of human rights. Section 2(e) of the Bombay Act and Andhra Pradesh Act and Section 2(3) on Punjab Act No. XII of 1952<sup>18</sup>, define specifically who is a habitual offender. Punjab Act does not define as to who is a habitual offender which indeed adds more vagueness in the implementation of the act.

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<sup>15</sup> Henry Shue, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY, Ed. 2 1996, pp. 41

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<sup>16</sup><http://www.unfpa.org/rights/approaches.htm> accessed on 4 July 2013

<sup>17</sup> Ibid

<sup>18</sup>[http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile\\_ZS0TN8C4.PDF](http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile_ZS0TN8C4.PDF) accessed on 7 July 2013

Section 2(e) of the Bombay act and Andhra Act are different in verbatim, but in the essence as to what to provide for is the same. For better comprehension let us divide the section by its basic elements, which are as follows:

- a) "habitual offender" means any person who, since his attaining the age of eighteen years
- b) During consecutive year of *Five years*,
- c) whether before or after the commencement of this Act (*Retrospective*)
- d) has been sentenced on conviction on not less than *three occasions*, to a substantive term of *imprisonment for one or more of the scheduled offences committed on separate occasions*
- e) being offences which are not so *connected together as to form parts of the*, same transaction, and
- f) Such sentence has not been reversed in *appeal or revision*

This above definition can be found in almost all the state habitual offenders' legislations therefore it will be simple for us to have a comparison between this definition and the provisions of the criminal tribes act. According to the 1891 Act, if the local government had reasons to believe that any tribe, gang or class of people are addicted to systematic commission of a non-bailable offences, then such tribe, gang or class of people as the case maybe, declared as Criminal. Following a abstract from the Asian Tribune about the United Nations observation on the Habitual offenders Act:

“After reviewing India’s 15th-19th periodic reports, the UN Committee on the Elimination of Racial Discrimination (CERD), in its Concluding Observation, expressed concern and stated that “the so-called denotified and nomadic which are listed for their alleged ‘criminal tendencies’ under the former Criminal Tribes Act (1871), continue to be stigmatized under the Habitual Offenders Act (1852).”<sup>19</sup>

Although with the repealing of the Criminal Tribes Act, 1871, the official branding of the tribes as Criminals was put to an end, but it is with repentance to say that the century old stigma attached was not done away. Since it has been the tradition of the tribes, due to drastic change in their occupational sub-cultures and traditions these tribes because of lack of developmental measures and actual empowerment still indulge in these Criminal activities which ‘legally’ force

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<sup>19</sup>Subash Mohapatra, REPEAL THE HABITUAL OFFENDERS ACT AND AFFECTIVELY REHABILITATE THE DENOTIFIED TRIBES, UN TO INDIA  
<http://www.asiantribune.com/index.php?q=node/4972> accessed on

them to be tried under the provisions of the Habitual Offenders Act. Also the act throughout various states has a retrospective effect on the criminals who are habitual offenders. For example, a person Z a member of a tribal community has committed Dacoity and theft before the enactment of the particular habitual offenders act and after such enactment; he again commits extortion, this which makes him a qualified habitual offender to be tried under the provisions of such new enactment due to its retrospective nature.

It is very important to note that such provision has a detrimental impact on the lives of the tribal communities as, it helps indirectly, which I would like to say in a 'Hidden Manner' keeps the stigma attached to such tribal communities. Also the provisions of the Indian Penal Code, 1860, were mainly formulated to serve the interest of the British Raj in India, which lead to the exploitation and social degradation of minorities, specially the Ex- Criminal Tribes. Although the Indian Legislators repealed the Criminal Tribes Act, 1871, to do away the criminality stigma, it is my humble submission that such rescinding of the Criminal Identity was merely on the papers as in reality the Criminal Identity was replaced by a more belittling identity of De-notified Tribes through habitual offenders act. As discussed above that the Baxi argues about the colonial nature of the Indian Legal System, it is clearly evident that we as the members of the modern India did not take any necessary effort to do away with the stigma attached to the discriminated group of the ex-criminal tribes. Further due to advent of modernity in our social structure the condition of tribal community has worsen, as legally we do not consider them as criminal by birth, but at the same time psychologically, socially still consider them as a backward group. Due to non-implementation of the so-called reformative and rehabilitation programmes, what we have created is a class or group of people utterly neglected in socio-economic and political spheres.

It is now important that we consider the Registration part of the habitual offenders act and its linkage with the registration process under the criminal tribes act. Chapter II of the Bombay Act (section 3 and 4) and Section 3, 4 and 5 of the Andhra Act deal with the aspect of the registration. It gives power to the state government to direct district collector to prepare a Register for habitual offenders in the district by entering names and other prescribed details of the offender. Also it provides for finger prints, palm impression, foot prints and photographs to be taken by the authorities for the same. It is even more shocking when we compare these

provisions with that of the criminal tribes act. In essence similar provision does exist in the CTA as it calls upon the local government to direct the magistrate to make a register of such tribes, gangs or groups and enter all particulars deemed necessary. So in essence the basic objective of such a provision was to have surveillance over such criminal population and it is my humble submission that the same motive can be seen in the present habitual offenders act in various states. It is a very valid question if one may ask that for a larger benefit of the people, such habitual offenders should be kept under scrutiny. It is a harmonized proposition of keeping the habitual criminals away from destroying the fabric of the society and maintaining security, peace and harmony, but this seems to me an age old proposition. As of present four distinctive form of justice are considered: a) Distributive justice; b) Procedural justice; c) Restorative justice; d) Retributive justice. Here when we are signatories to various international covenants like that of International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination etc, it is the duty of the state to consider the human rights of minorities before enacting any such discriminating provisions. Further, such registration of criminals has not lead to any improvement in the condition of repetitive crimes, nor any reformation in habitual offenders. Also a very important query arises as to whether all the habitual offenders are the people belonging from the ex-criminal tribes or from de-notified and nomadic tribes, it is my submission that if one looks into the Crime in India, Report of the National Crime Records Bureau of 2013, most of the people under the category of 'Recidivism' belong to Nomadic and De-notified communities.<sup>20</sup>

Article 2(1)(c) of the International Convention on the Elimination of All Forms of Racial Discrimination states, *"Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."*<sup>21</sup>

India being a signatory and has ratified the convention, which imposes legal obligation to eliminate the laws and regulations which are anti minority or which perpetuate racial

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<sup>20</sup> CRIME IN INDIA: COMPENDIUM 2012, Chapter 11, pp. 139-140

<sup>21</sup><http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> accessed on 8 July 2013

discrimination. Also, article 3 and 4 also state about the same aspect, which indeed deals with the state jurisdiction to not promote any form of discrimination.

The shadow report of the Forum for Fact-finding Documentation and Advocacy with respect to the Nomadic and De-notified Tribes in the country give the actual view of the conditions of these communities in the country. It is not in the scope of the present analysis to evaluate the whole of the shadow report, but necessary points should be discussed in the light of the present discussion. The aspect of historical analysis was considered first in the report which need not be discussed again, as it will be a mere repetition of what we have discussed earlier. The only highlight which is to be noted is that, “Despite being ‘de-notified,’ these nomadic groups continue to face severe discrimination and ostracism. They are still perceived as social outcasts by upper-caste villagers, unduly harassed by police enforcement officials, and effectively ignored by the Indian government.”<sup>22</sup> Furthermore, the important contribution of the shadow report is with respect to drawing a nexus between the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and the repealing of the Habitual offenders Act in India. The important provisions so cited with respect to socio-economic rights of DNTs are: i) Article 1: Self-Determination, Natural Wealth, and Resources; ii) Article 2: Progressive Realization of Rights, Discrimination, and Non- Nationals; iii) Article 6 & 7: Right to Work, Choice of Work, and Vocational Assistance; iv) Article 9: Social Security; v) Article 11: Adequate Standard of Living; vi) Article 12: Right to Health and a Healthy Environment; vii) Article 13 & 14: Right to Education and Implementation of Compulsory Primary Education. Legal provisions cited above are not exhaustive in themselves, but are some of the most important of the other provisions, which imposes a duty on the state to not only repeal the habitual offenders act, but also to provide for economic, social and cultural rights to the discriminated tribal population in the country. Section 7 gives power to the district collector or any other person authorized by him to take Finger and palm impressions, footprints and photographs of the registered offenders under the Bombay act and AP Act. Such provision of biometric surveillance has a detrimental effect on the basic human rights of the tribal communities especially on the so-called ex-criminal tribes. For the similar purpose of supervision/surveillance power has been given to the authorities to register the habitual offender if he/she changes the ordinary place of residence

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<sup>22</sup><http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/FFDAIndia40.pdf> accessed on 8 July 2013

from one place to another. Both the Bombay and the AP act give unilateral power to the government authorities to restrict the movement of the required habitual offenders if it deems, “necessary or expedient in the interests of the general public so to do the Government may by order direct that any registered offender shall be restricted in his movements to such areas...” The ambiguity which arises here is about the very definition of what is ‘necessary or expedient’ for the interest of general public. Although section 11 states about the matters which should needs to be considered before imposition of the restriction, but such list is inadequate and ineffective as the arbitrary power given to the authorities in restricting the movement of the habitual offenders surpasses this so-called matters provided in the act. Another aspect of the act is about the provision of corrective training of habitual offenders, which primarily states about establishment of corrective settlements for the habitual offenders. The basic objectives of such settlements are two: first, is the reformation of the habitual offender and second, for prevention of crime in the society. From present state of affairs it is evident that the latter one is major reason for development of such settlements in the country with the reformatory aspect being neglected or simply non-existent. Although the proviso in the Bombay and the Andhra Act, which provides for the age limit of habitual offenders to be 40 year, good behaviour, consideration of mental and physical health etc. This is my humble submission that although existence of such proviso does not change the basic conditions of the exploitation of the habitual offenders and specially the members of the ex-criminal tribes.

## **Health issues of a branded community in an urban slum of Mumbai<sup>23</sup>**

### ***Introduction to NT-DNT communities***

The 'De-notified Tribes' are those communities which were notified under the several versions of the Criminal Tribes Act (CTA) enforced during colonial rule in India between 1871 to 1947. Under this Act, the criminalization of communities engaged traditionally in hunting, fighting (as warriors serving the local rulers and chieftains), dispensing herbal medicines, fortune telling, taming of wild animals, singing, dancing and street performances was not limited to a particular region but covered the entire Indian territory. Post independence, the Indian Parliament repealed these acts, but despite this, the social stigma of criminality continues to follow them. The Act was based on a fallacious understanding of Indian society, particularly the caste system. T. V. Stephens, who was one among the influential members of the Law and Order Commission, equated the caste system with occupation and believed that most of the nomadic communities were criminals by birth; crime was their caste-based occupation as well as religion (1). These ideas were used to formulate the legislation under which certain communities were notified and termed criminal tribes.

Under this act, all members of the community were deemed to be criminals at birth and had to give attendance at the local police station on a given specific day and time, failing which severe punishment would await them. The free movement of these communities was restricted, and they had to take the permission of the local chieftain and the local police before leaving the place and settling in a specific area. If they failed to adhere to these restrictions, the penalties were severe. Apart from this, the local police had the authority to round up any member of the community on mere suspicion. Initially the *Hur* tribes from the Sindh province were notified under the Act; over time, other communities were included. In the year 1897, the Act was modified for the first time, whereby more stringent

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<sup>23</sup>Paper prepared by Dr. Praveen Kumar Katkarki, TANDA

penalties were included. A compendium was prepared for the criminal tribes by the then Inspector General of Police of Bombay Presidency M. Kennedy (TAG Report, 2006).

After a severe criticism of the Act in India as well as overseas, the British enacted the Criminal Tribes Settlement Act in 1908, which ended up virtually imprisoning the criminal tribes in 'settlements' in the name of their rehabilitation. They had to live in a fenced area and had to take the permission of the guards to even answer nature's call during the night. The 1908 Act was modified in 1911, which divided the legislation into four parts viz, notification, registration, restriction and settlement of criminal tribes. Major changes in the Act were brought in 1923-24. The changes were made to 'integrate the communities with the mainstream society' but the basic aim of the law was not altered. The act became a tool in the hands of the village officials to harass the community in legal way.

Major changes were brought in the CTA after 1937 when the Bombay Provincial Government appointed a committee under the chairmanship of K.M. Munshi to review the Act. The Munshi Committee recommended many changes and for the first time. Later in 1938, the Government of Bombay prepared a CTA Manual to clarify the rules and provisions under the CTA. After the formation of Provincial Governments, they repealed the CTA e.g. the Bombay Government repealed the Act in the year 1949 and the Madras Government in the year 1948. However, the CTA was replaced by the Habitual Offenders' Act, which was a back door entry of the earlier legislation, as it provided for establishment of settlements where habitual offenders could ne forcefully 'rehabilitated'. In the year 1952, the CTA was revoked throughout the country and all the notified communities under the CTA were declared as De-notified Tribes (TAG report 2006).

### ***A brief introduction to the site of the study and the community***

The site of the study is located along the Mankhurd-Ghatkopar Highway in the M-East Ward of Mumbai Municipal Corporation. Around 257 families of the NT-DNT community like *Masanjogis*, *Pardhis* and *Wadars* reside on encroached land i.e. private land since the last more than fifteen years. As this is private and encroached land, it is devoid of basic amenities and lacks essential services provided by the State to its citizens. Moreover their

lack of official recognition and identity makes them voiceless to fight for their rights and basic entitlements. In this settlement, one finds communities that are totally secluded from the mainstream. All these are migrants from Maharashtra and borders areas of Maharashtra, Andhra Pradesh and Karnataka. They came to the city in search of livelihood and are mainly engaged in manual labour ranging from sewage work, cleaning of gutters to construction work. Entire families including women and children are involved in earning their daily bread, and their movement depends on availability of work at a particular site.

Often, if they get work in some other part of the city, they relocate to some site near their workplace and once the work opportunity gets over, they come back to their original settlement. There are no community institutions near this settlement. People have to walk nearly 3 km to reach the nearest government health care facility, thus forcing them to go to private health care providers. A visit from the Auxillary Nurse and Midwife (ANM) or the Female Health Worker (HW) from the nearby Health Post is a distant dream. Even the Community Health Volunteer's visit is limited to the rare occasions. There are no community toilets, so open defecation is a common practice, and drinking and washing water has to be purchased from the neighboring slum. Alcohol consumption among the men and women is a common practice and domestic violence is accepted norms in the community.

### **Case studies on maternal health**

#### ***Helplessness of being a woman***

*Eclampsia, 35<sup>th</sup> week gestation period; refused to go to higher facility; Age 17 years*

A woman aged 45 – 50 years narrated the incident who had recently visited her relative's village on the Maharashtra-Karnataka border. She narrated the whole incident from scratch till the end.

The woman on the labor table was in some sort of pain. This could be made out only by the clinching of her fists or tightening facial muscles; there was not a slightest sound from her. Her poverty was evident from her clothing and by her tough mental conditioning which made it possible for her to bear the unbearable pain. It appeared as if the pain she is going

through was nothing compared to the poverty or the sufferings she had undergone throughout her life.

The patient is lying on the labor table along with five other women, who were in the labor room. The labor table was devoid of any mattress; no linen, blanket or sheet to cover the women in pain. There were two nurses running around, writing something in a register and giving chits to the patients' relatives to get medicines from the pharmacy outside.

Unlike many other women, it had been a struggle and an achievement for this woman to keep her pregnancy till the thirty-fifth week and to reach the hospital. The woman had withstood her drunkard husband's beatings and minimum nutrition for herself and her unborn baby. The baby in the womb had also struggled to remain alive with the minimal nutrition. This was the day which was going to decide her fate and that of the baby, and the Darwin's 'survival of the fittest' theory as well.

The woman was suffering from eclampsia, a medical complication during pregnancy with seizures, high blood pressure and high protein in the urine.

As the hospital lacked the equipments and facilities to handle such cases, the woman was referred to higher facility in a nearby district which was 150 kilometers away from the hospital. The hospital was ready to provide ambulance for most of the distance free of cost and for the last 25 kilometers, the cost would have been minimal. It was for the woman to agree to the medical advice. But she refused to go to referred higher facility.

The labor room nurse glared at the woman as if she was going to kill her if she refused to go; she wanted to free herself from this case – it would take her entire day and she would have to answer to her higher authorities in case anything unfortunate happened. She tried to convince the women in many ways; explained the complications of her condition and the consequences in case of lack of proper treatment, but in vain.

Now the question was - why was a woman suffering from eclampsia refusing to go to a higher facility. She found it futile to tell anyone present in the room her multiple problems - lack of money and parental support (she had lost them long back), her in-laws did not even care to visit the hospital, husband drunkard did not care for her, she felt alone and had

come to the hospital along with a distant relative and her relative was not willing to accompany her to the referred facility.

At last the woman said, "Leave things to my fate. It doesn't matter if I am alive or dead. I am already dead to my in-laws and my husband. Let my baby die in my womb, rather than see this dreadful world. Let me stay back at the hospital rather going to a higher facility."

Karnataka has very good schemes for mothers as a demand generation strategy. For example, there is a maternal health care scheme called *PrasootiAraike* whereby Rs. 2000/- is given to the pregnant woman, one thousand during the first trimester and one more thousand post delivery, provided the delivery is done in a public institution, along with the *JananiSurakshaYojana*. There is a free ambulance service to take patients within twenty five kilometres of the hospital and beyond that, at minimum cost to the patient to be taken to the referred hospital.

In above situation, who should be held be responsible?

***Multi gravida with hemoglobin level 6gm/dl; post delivery complications; age 19 years***

The woman in her twenties was lying on the floor with relatives surrounding her. The baby was one day old; there were no precaution taken to keep the outsiders away from the new born baby and the mother.

The mother belonged to the *Masanjogi* community, illiterate and married at the age of 14 years. This was her third child (a male); she had two female children from her earlier pregnancies. Her husband worked as daily wage labourer wherever he could find work. Her family was supportive to her. It may have been due to the sex of the baby that made them happy.

As her in-laws wanted a male child, she too wanted a male child to save herself from agony of their taunts. So at the risk of her life, as she had already borne two children within a span of three years and now her third child by the fourth year. Their socio-economic condition was poor and the consequences of these pregnancies had taken its toll on her health. But she was feeling relieved now; the consequences of not bearing a male child was worse than

risking her life to bear a male child. There was pressure from all sides - society, family and friends to beget a male child. She expressed her feelings by saying that if this time it had not been a male child, her husband would have tried two or three more times for a male offspring, failing which, her life would take a different turn. As polygamy is practiced in their community, her in-laws would have taken the step of getting their son married again. Her status would have been reduced further if the second wife got them a male child in her first pregnancy.

The National Rural Health Mission (2005-12) emphasises women's autonomy in deciding their pregnancy and their health, but this does not seem to apply to this community. The missing link in this case is the Accredited Health Activist (ASHA) who works in the community. She has hardly any contact with the community which is fuelled by the hostile response of the community towards her. Due to the strong presence of patriarchal values leading to the male progeny syndrome, such cases are common in the *Masanjogi* community.

### ***Gender, poverty and sufferings of a Masanjogi girl***

A teenage girl was lying down in the shanty, three of her relatives sitting beside her. At the age of seventeen, she was trying to save her baby and become a proud mother. Her parents, in-laws and her husband were illiterate and the girl had gone to school till the third standard. They had got her married to one of her relatives, as is permissible and practiced in North Karnataka; neither the boy nor the girl was consulted. Soon after marriage, she was three months pregnant and referred to the general hospital, as she was found to be severely anemic (Hb level 5.5 gm/dl) and which would be life threatening for the mother and her baby.

The pregnancy could have been avoided through some counseling by the female health worker but was not been done. However, the parents took her to hospital as advised by the doctors. Her husband working was a daily wage labourer and could afford neither nutritious food nor expenses on medicines.

Under the ICDS programme, every pregnant women should receive nutritional supplements from the *anganwadi* worker at the village level, but this girl did not receive any food supplement from the *anganwadi*. The State has launched and implemented many schemes for pregnant women in Karnataka, e.g. under the *PrasootiAraike* scheme, pregnant women receive one thousand rupees during first trimester of their pregnancy and another one thousand rupees post delivery along with the *JananiSurakshaYojana* scheme. Apart from this, the health worker from the sub-centre is supposed to provide iron and folic acid tablets free of cost for registered pregnant women irrespective. Many a time, beneficiaries do not consume the medicines due to the associated gastritis and constipation that usually accompanies the consumption of these medicines. If there was someone to monitor this process, these incidents could be prevented.

### ***Death of a woman with pregnancy complication, a case study through verbal autopsy***

A woman aged 21 years from the *Masanjogi* community with three children and pregnant again with a fourth child in her last trimester, was suffering from abdominal pain since one week. She ignored the pain believing it to be a normal symptom during pregnancy. She had neither received ante-natal care (ANC) provided at public health facilities nor registered for ANC. Her last delivery was normal and conducted by the untrained birth attendant of the community at home. Hence, there was a similar expectation within the family for this pregnancy. Her husband, being a daily wage labourer, was facing difficulties in finding the work and had to support three children, his wife and dependent elderly parents back at native place. The family was illiterate and lacked awareness about free health care services provided to the mothers at public health facilities. For them, pregnancy was just part and parcel of life. As the husband said, "since generations, babies are delivered at home. No one in our home is born at a hospital. Nothing has happened to any one till date, and God willing, nothing will happen. If we have done any sin, God will punish me, or my wife or my unborn baby. There is no need to go to a hospital for delivery or pregnancy". As per the family, home delivery was the safest and common practice within the *Masanjogi* community.

Due to increased abdominal pain, she was taken to a private clinic in Shivaji Nagar. The doctor prescribed some medicines and advised them to take the patient to higher facility if the pain did not subside. Someone in the family said that during last child's delivery, her mother-in-law had taken a vow to appease God but it was not fulfilled; hence all the troubles in the family. If the vow was fulfilled, then the pain would subside and the delivery would be normal. So to fulfill the vow, the family went back to the native village, sacrificed an animal and performed some religious rituals before the village temple. Later, the delivery was performed at home by community's untrained birth attendant in the village. Post delivery, there was a complication leading to severe blood loss, as the birth attendant was unable to handle the case, and the mother was taken to a PHC. As the patient had arrived during the night and due to non-availability of equipments and infrastructure, she was referred to first referral unit. The first referral unit being in a Taluka place, she was

taken to the nearest place. Due to the complication in the case, the FRU referred the case to a tertiary care hospital. On the way to the tertiary care hospital, the patient collapsed.

### ***Early marriage and pregnancy related complication in the Masanjogi community***

The family migrated to Mumbai fifteen years back from a village near the Maharashtra-Karnataka border. They are four brothers. One of the younger brothers is married (about four to five years back), and all of them stay together. The wife is approximately 17 years and is already a mother of two; a two-year old girl and a one-year old girl. She had one still birth from her first delivery. As per the mother (it is a dilemma whether to address her as a woman or a girl, so preferred to address her as a mother), she was married as soon she attained her puberty; she does not remember her age (she does not have a birth certificate). She is illiterate and contributes to household economy by doing menial jobs. She is happy with her married life, being a mother of two children.

In a year into her marriage, she became pregnant. Initially, she could not make out her pregnancy. Due to amenorrhea and frequent abdominal pain, she consulted a local doctor who confirmed her pregnancy. Everyone in the family was happy about the new arrival, but no one thought about the risks of early age pregnancy. The first trimester went without any problems but the problems stated in the second trimester. As the mother said, “everything was fine till the end of first trimester but during second trimester, I experienced severe pain in the abdomen. Despite the pain, they did not take me to a doctor; instead an elderly woman from the community gave me some medicine which relieved the pain.” During the end of second trimester, she experienced severe pain in the abdomen. Again she received some medicine from the elderly woman, and the pain subsided gradually.

During second last month of her third trimester, she was taken to the PHC and referred to the First Referral Unit (FRU) due to an unbearable pain. At the FRU, an ultra sonography revealed intra uterine death of the baby. This came as a shock to the family. But the community believed that going to a doctor brought bad luck and made the baby die in the

uterus. As per the traditional belief, going to a doctor during pregnancy is a bad omen which brings bad news to the family. The community believes that home delivery is safer compared to institutional delivery; the health personnel at the hospital do not provide good care to pregnant women because of their inability to pay money and their ragged appearance. As a family member said, “we usually don’t go to government hospitals as the doctors and the staff screams at us and ill-treats us. Moreover, we prefer home deliveries as we have always had bad experiences in hospital - death of the mother or the baby, the baby becoming blind, physically disabled or mentally retarded.”

### ***The Curious case of a Pardhi pregnant woman***

During enumeration of children in Jai Ambe Nagar, a *Pardhi* pregnant woman (with a one and a half year old and a three year old child tagging along with her) was giving her family details to us. Both spouses were illiterate; the husband worked as a daily wage labourer, and she too contributed to the family income by working. Currently, she was not working as she was in her third trimester. What came as a bit of surprise to us was that she was over forty five with seven living children, one still birth and not expecting the eighth child. Except her seventh child, all her deliveries had taken place at home with the help of an untrained attendant from the community. She had never ever received ante natal care from any public health facilities and none of her children had been immunised. According to her, all her children were healthy and therefore, there was no need of immunization. The seventh child was born in a hospital, but did not receive any immunization. The reason was simple - during her delivery, the hospital did not have the stock of vaccines, so they asked her to come back within two weeks. She never went to the facility, as she did not feel it was important.

“God gives us the children, no one should try to control the God’s ways and has the right to do so. If you try to interfere with it, the family will have to face its consequences. If you get operated at a hospital for family planning, you might suffer from severe back pain, and sometimes there are examples of people dying after operation.”

### ***Lack of accessibility of public health care facilities and consequent catastrophic health care expenditure***

*Facing indebtedness for not repaying a petty loan*

Two families belonging to the *Masanjogi* community and hailing from the same village knew each other since decades. N lived with his aged parents in Mumbai. He had three elder brothers and three sisters who were married and staying at different places, busy with their own lives. His father worked whenever he could find some work; his mother stayed at home due to her age, and N worked as a daily wage labourer to support his parents.

T hailed from the same community; they were five brothers and two sisters, staying together with their parents in the same locality. All of them were engaged in some or the other and were comparatively in a better financial condition than the N's family. N had borrowed Rs. 50/- from one of the siblings of T. Three months had passed and N had not paid back the loan, despite repeated reminders from T. One evening, this led to a verbal fight between them; all of a sudden, T's brothers started beating N and in a fit of rage, one of them stabbed N with knife umpteen times till he collapsed. No one from the community came to help N. Later, a community leader intervened and disbursed the crowd. Since N was bleeding profusely, he was taken to the nearest private hospital but denied admission. This experience was repeated with similar results in three-four private hospitals; finally, N was taken to the nearest municipal hospital. Even here, he was denied admission and had to be taken to a tertiary care hospital. As there was good amount of blood loss and a deep wound, a surgery was suggested but the resident doctor was not willing to call the specialist.

After pleading umpteen times, the resident doctor did not budge. The community leader suggested that the family offers some 'good will' money to the surgeon. Soon after the family offered the 'good will' money, a surgeon/specialist arrived on the scene and performed the surgery. The family paid twenty two thousand to the surgeon/specialist for the procedure.

Post surgery, many other procedures had to be performed by the specialist and the family paid almost another fifteen thousand to the specialist; the injury was supposedly so deep that it was almost touching the kidney. The procedure was complicated and hence they had

to pay the money if they wanted to save their son. The family could not understand the procedures explained by the doctors and they had to accept whatever was told to them. After a month-long stay in the hospital, N was discharged. Since it was a medico-legal case, the police had to be bribed to file the First Investigation Report and to complete all other formalities. By the time N was discharged, the family had spent a total of forty five thousand on his treatment (including expenses like medicines, food, bed charges etc.).

The family was hesitant to complain regarding the bribe (as per the family, it was 'good will' money) paid to the doctors. As the head of the family said, "doctor is like God; does anyone complain about the bad doings of God? We won't complain about him as he has saved our son's life. The amount is negligible compared to his service."

*Paying a heavy cost for not treating Malaria on time*

A young boy aged around 18 years and working as construction labour was suffering from intermittent fever for the last one week. He took treatment for his fever from a nearby private clinic, but the fever did not subside. He visited another private clinic with no result, and the intensity of fever grew in the coming days. In this process, he wasted almost two weeks in getting treatments from various clinics resulting in an expenditure approximately Rs.1500/-. He had to finally be admitted to a private hospital and was kept in the Intensive Care Unit (ICU), as he had symptoms like shortness of breath, high fever and extreme weakness. Neither the patient nor his family members were consulted before admitting the patient to the ICU; they were not even explained the need for ICU admission. They were told to deposit Rs.10000/- as a deposit and their signature was taken in a form. Almost Rs. 4000/- was spent on various laboratory tests which revealed very low platelet count and decreased hemoglobin level, which is common in Malaria.

The tests revealed that it was a complicated malaria case; the patient was suffering from Plasmodium Vivax and Plasmodium Falciparum. He was kept in the ICU for four days and two days in general ward and was charged Rs. 22000/-, which the family had to pay by taking a loan from a money lender. The discharge was against the advice - this means that the hospital was not willing to discharge the patient but the family members forcibly got him discharged. The family lost their daily wage earnings; everyone was scared and out of

fear, every member of the family remained present at the hospital for the entire period of stay of the patient in the hospital. The loss of income of the family and the loan taken from the money lender will push them further into the vicious cycle of poverty.

Malaria can be treated at minimum of cost if treated on time by private medical practitioners. The same treatment is available free of charge at the urban health post. But the patient did not opt to utilize the health care services from the public health facility due to their previous bad experience at the facility. The distance of the facility from the locality is almost 3 km, and therefore, acts as a barrier to access the facility. The timings of the facility (from morning to afternoon) are not convenient for people from the communities as most go to work in the morning and come back in the evening. They therefore prefer the evening hours and hence end up going to private medical practitioners despite the unaffordable fees they may charge. Moreover, the visits of auxiliary nurse and midwife, the male health worker and the community health volunteer to the area are few and far between, leading to lack of awareness about such diseases and services available at the facilities.

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## Atrocities Cases with NT-DNT<sup>24</sup>

### 1. BIHAR (Samastipur)

#### Lynching of ten Kureri men, causing their death

News On September a group of ten individuals belonging to the a semi-nomadic **Kureris community** of Tajpur Banjara village in Samastipur district were **lynched by a mob** of Vaishali District, Bihar by accusing the ten men as being thieves that led to their death.

The news channels also initially reported that these men were lynched by the mob because they were said to be thieves. After a **probe by the National Commission for Denotified, Nomadic and Semi-Nomadic Tribes**, it was established that there was **no evidence associating the victims to an actual case of robbery** or stealing committed by them. And yet, a mob from the village had engaged in this horrendous act of not just beating them but threw their half burnt body in the Ganges. **The police bore witness to entire incident which is a sad case of historical stereotyping of this community** which seems to exist till date among the people of our society including among the very people who are supposed to bring much awareness against such act.

(Source: website: <http://www.infochangeindia.org/other/features/pr...>)

### 2. MAHARASHTRA (BHOR, PUNE)

#### MULTIPLE RAPE AND PHYSICAL ASSAULT

In the town of Bhore, Pune there were only one family in this town who were engaged in the profession of performing *Gondhal* to sustain themselves or they simply subsided on *Biksha*. This family had a young girl with two brothers, parents and grand-parents resided together.

The girl on her way to her uncle house at around 9:30 am to ST bus stand to go to Veer village in Purandar block, District Pune encountered **Mr. Ganesh Sagle caught hold of the girl, raped her and handed her to a man named Akash Gujjar who raped her again in a lodge. Again after raping her girl was handed to a different party person** and so, in this manner **seven**

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<sup>24</sup>Compiled by Vipul Kumar, Siddhart Satija and Vikas Jadebh, student social workers, TANDA

**individuals were involved in raping her and among the seven individuals a man named Mukesh had even beaten her with an iron rod.** And the last person to have sent the girl back to her place had threatened and beaten her badly to not reveal this to anybody or her parents live may be at jeopardy.

However, when the girl was finally found and identified by a brothers friend outside Shivaji High School,Bhor, a complaint was lodged at the police station, all the accused were arrested and the girl had been physically and psychologically tormented and she even fainted in the police station and was even referred to the hospital. Next the CWC were made part of the case, **the girl was sent to the remand home** as the girl's parents did not want to take the responsibility of the girl and hence she **remains there**.

One of the accused out of the seven has **received bail on the account of marrying her**.

### 3. **MAHARASHTRA, (SOLAPUR)**

#### **SUSPICIOUS DEATH IN POLICE RAID**

In December 2007, Subhash Bhosle of Arabali village, Solapur district **suspiciously died in a police raid**. Some local newspapers such as Pudhari and Lokama raised this case. The entire investigation was predisposed and it was only later when print media reported the issue the matter was taken seriously and it was only later when the case was handed over to the Crime Afterward the case was forwarded to the criminal investigation department of the police for further investigation.

In another case, Vikas Desai Kale of Nipani Adagaon village was marked as a thief by villagers and was stoned to death oniminal Investigation Department.

(Source: News reported in daily Samrat (Marathi) on May 29, 2007)

### 4. **RAJASTHAN(JAIPUR)**

#### **Rape of 10 year old girl**

Jaipur, Aug 20 (IANS) A 10-year-old girl belonging to a nomadic family was allegedly kidnapped and then raped by two youths.

The attackers worked at a juice centre close to where the girl's family was staying in a make-shift shelter on the roadside, they added.

According to the police, the incident took place in the city's Kanota

**The duo took the girl to the shop where they worked and raped her**, the Police officer said.

Sub-inspector Ganga Singh, who is probing the case said, "They fled from the spot leaving the girl bleeding. She somehow managed to reach her parents and narrated the incident to them."

(Source: The Indian News - [http://www.thaindian.com/newsportal/uncategorized/minor-girl-raped-by-two-youths-in-rajasthan\\_100639567.html](http://www.thaindian.com/newsportal/uncategorized/minor-girl-raped-by-two-youths-in-rajasthan_100639567.html))

#### 5. MAHARASHTRA (LONAVALA/ NIPANI ADAGAON VILLAGE)

##### Pardhi Men's Hands And Legs Cut Off And Stoned To Death By Villagers In Two Different Cases.

On May 18, 2007 villagers of Lonawala accused Sidheshwer Shinde of being a thief. Instead of taking any legal action or reporting the crime to the police, the villagers decided the crime and criminal, reached to a judgement on the ground of suspicion and also decided to punish the alleged criminal. **His hands and legs were cut off and he was left to die.**

(Source: News reported in daily Samrat (Marathi) on May 29, 2007)

#### 6. MAHARSHTRA (KOTOL VILLAGE, NAGPUR/KALAMB VILLAGE OF USMANABAD)

##### Huts of paradhis were subjected to arson by police and even the paradhi women tortured

February 1995, the police suspected paradhis in Kotol village of Nagpur district of robbery and just on the basis of these **suspicion** the huts **of paradhis were subjected to arson by police** and even the **paradhi women were tortured**. On September 29, 2001, in Kalamb village of Usmanabad district, paradhis were suspected in a robbery case, and frenzied **mobs burnt their homes and displaced them completely from their settlements**. Raja Bhau Pawar, ex-corporator belonging to the paradhi community, was also not spared in this incident by the local people.

(Source: News reported in daily Samrat (Marathi) on May 8, 2007)

## 7. RAJASTHAN (BHILWARA, AJMER)

### 3 year old girl, brutally raped, seriously injured ( lips and other body parts chewed)

AJMER: A three-year-old girl belonging to a **nomadic community** is battling for life in a hospital after being raped by a youth in Bhilwara on Monday night. The accused **abducted the girl when she was sleeping** with her mother in a tent. He had **seriously injured the girl by chewing her lips and other parts of the body**. She is admitted to Ajmer's JLN hospital in serious condition. The accused was later arrested.

According to Sadar police in Bhilwara, a few gypsies had made a stop in Kotu Kota area and were living there in a group. "Last night when they were asleep in their tent, one Asaram (20), who resides nearby, came silently and picked up a three-and-a-half year old girl and took her to a nearby jungle. He brought the baby back and kept her silently in the same place," said Man Singh, assistant sub inspector.

When the child cried, family woke up and found her in a pool of blood, "**Her lips were cut and there were scars of bite on her whole body,**" said Singh. The child was rushed to hospital from where she was referred to JLN hospital, where her condition is described as critical.

Police arrested the accused Asaram after public outrage.

(Source: Times Of India, Jaipur, February 13,2013, retrieved from [http://articles.timesofindia.indiatimes.com/2013-02-13/jaipur/37078411\\_1\\_bhilwara-asaram-three-and-a-half-year-old-girl](http://articles.timesofindia.indiatimes.com/2013-02-13/jaipur/37078411_1_bhilwara-asaram-three-and-a-half-year-old-girl))

## 8. MAHARASHTRA (VITHALWADI VILLAGE OF SATARA DISTRICT)

### Stoning to death and police cases filed against the victims family rather than offenders.

In June 1998, Humanscape had reported the killing of Phanse paradhi in Vithalwadi village of Satara district of Maharashtra. According to the report, Limbu Jayaram Bhosle, a Phanse paradhi, living in Vithalwadi village was stoned to death by the Zamindar's (landlord) men. Limbu was stealing a few pomegranates for his pregnant wife. For a few pomegranates, he lost

his life. The police filed the case against Limbu's brother Salia Jayaram Bhosle instead of the Zamindar. This clearly shows intensity of crime against this community and magnitude of stigma and injustice.

(Source : Humanscape, June 1998)

## 9. UTTAR PRADESH (LUCKNOW)

### **5 year old girl brutally raped and murder, stabbed 80 times; Police initially reported the case as attack by stray dogs.**

Police filed the death of a five-year-old girl as a dog attack, until further investigations found she was viciously raped and murdered.

The **five-year-old victim, Radhika Devi, was found with multiple injuries** on July 8, near a highway in Lucknow, the capital city of Uttar Pradesh, northern India.

But a postmortem examination report – demanded by my family members – concluded she was **viciously raped and stabbed before she died of shock and blood loss.**

The little girl was from a **nomadic community**. She lived with her mother, Geeta Devi, 34, and two siblings after her father died three years ago.

Geeta had reported her daughter missing to Gomtinagar Police Station when she couldn't find her anywhere near her home on the night of July 8. Four hours later passers-by found the little girl's dead body 500 meters away from her slum home with a pack of stray dogs nearby. **Local police concluded the girl had come out of her home to go to the toilet and was subsequently attacked by dogs** and dragged 500 meters away, towards the highway.

But the family was not satisfied and was determined for the girl's death to be investigated thoroughly.

**The family claimed the police officers tried to dissuade them from ordering a post-mortem examination, which later confirmed she was brutally raped and murdered.** The report found

**she had 80 stab wounds, 72 of those near her genitals and eight deep wounds on her upper body.**

The report concluded the cause of the death was shock and excessive blood loss. They found no dog bite injuries.

Following the medical report and protests by family members and angry locals, the two senior officers were suspended for neglect of duty by local authorities.

(Source: Daily Mail Reporter, Published: 15:32 GMT, 16 July 2013)

#### 10. **KERELA (Tirur)**

##### **3 year old nomadic girl gang raped and murdered**

**14 persons** were held for **kidnapping a girl and raping the 3 year old girl**. The girl belonged to a nomadic tribe. Police held those who are habitual offenders and those who were drug addicts from the area. The Kidnapper took the girl when she was sleeping with her mother in verandah . The girl was later rescued from near a toilet situated behind the Mahila Samajam.

The minor girl who was molested in a cruel way on Tuesday night had undergone two surgeries at the [Kozhikode Medical College hospital](#). The girl was admitted to the ICU and doctors said she had crossed the critical stage. Officials also said that her internal organs were badly injured. The girl couldn't survive the injury.

(Source: <http://www.mathrubhumi.com/english/story.php?id=133859>)

#### 11. **MADHYA PRADESH**

##### **Rape and murder Pardhi couple followed by burning of 300 Pardhi households**

Few pardhis, were **alleged** to have raped and killed a village woman. In retaliation, **a pardhi couple were killed (the woman was raped in revenge before she was killed)**, the **entire settlement of 300 pardhis burnt down**, and **the pardhi community was not allowed to be rehabilitated by the angry villagers**. The retaliation was done just on the basis of suspicion of crime without any evidence. This again brings the question of stigmatizing a community just on the basis of identity.

(Source: RadhakrishnaMeena, *Crime of Vigilante Justice*, January 12, 2008 Economic & Political Weekly)

## 12. KERALA

### A women and her two children publically humiliated (physical assaulted and stripped publicly)

A woman and her two children were **suspected of theft** of a gold anklet in a shop, and so the **angry shopkeepers and the public caught them**. They were **then punched, kicked and battered, and finally disrobed by an enraged public** which aimed to find the jewellery on their persons. There was no evidence or surety of the alleged crime. Still instead of following due legal procedure the mob decided to take law in their hands and humiliated the women and children just because they belonged from a certain community.

(Source: RadhakrishnaMeena, *Crime of Vigilante Justice*, January 12, 2008, Economic & Political Weekly)

## 13. PUNJAB

In a similar case a man, suspected of being a cow-lifter was chained and thrashed by the workers and manager of the 'gaushala' in Punjab till he died. In both the cases people decided to take law in their own hands and without any evidence or without feeling the need to follow the rule of law, brutally thrashed individuals to the extent that they died. No action was taken against the perpetrators of this heinous crime just because the victims came from a community which is identified as 'criminal' by the virtue of their birth in a certain place.

(Source: RadhakrishnaMeena, *Crime of Vigilante Justice*, January 12, 2008, Economic & Political Weekly)

## 14. MAHARSHTRA (PUNE)

### Protection against harassment

Case filed by Baby Dattatrey Ahivale

Baby Dattatrey Ahivale's husband Hassan Chanshugdin Zare was **falsely charged of rape** of a minor by an acquaintance, Nandakumar Sabade, who owed him money. He had given Sabade money to pay medical bills but Sabade refused to return it and in turn filed a case against him.

**Hassan was proved innocent after medical tests** were conducted on 18<sup>th</sup> November 2009 in spite of which several false cases were registered against him.

The SHRC was approached on 12<sup>th</sup> June 2010, which suggested the parties to find a mediated solution. Hassan even got a **character certificate from Daund Police station on 26<sup>th</sup> of June 2010 to prove his innocence**

The police called Nandakumar and took a statement of assurance to ensure he does not defame Hassan any longer on 16<sup>th</sup> November 2010.

Baby Dattatrey Ahivale and her family was attacked on 16th January 2011, a complaint was registered soon after. **Again on 18<sup>th</sup> January 2011, some associates of Nandakumar attacked the family, broke the tv and other appliances.**

She approached the SHRC on the 26<sup>th</sup> of January but **no response was received and no action has been taken.**

#### **15. MAHRASHTRA (TAPALPURA, PARATWADA)**

##### **HUMILIATION: A complain for a complaint**

Case filed by Adv Pravarja Mahajan and others

The first petition, dated 19<sup>th</sup> December 2011 was originally an application for relief to other agencies and was courtesy copied to SHRC, which dismissed it on the grounds that it was not a direct application.

The case was filed by a fact-finding committee working for the betterment of a village called Tapalpura (Paratwada). The committee consists of several people who work together to identify the problems and fight for the development and attainment was basic amenities like water, electricity and land entitlement.

**On 1<sup>st</sup> of September, a few committee members visited the Nagarsevak's house to discuss the issues. They were humiliated and thrown out because the husband of the Nagarsevak thought the committee was indulging in a show of power.**

The next day, police complaint was also filed against them and they were summoned.

Another application to the SHRC was sent on the 24<sup>th</sup> of September, but so far no response or relief was received.

## **16. MAHARSHTRA (Solapur)**

### **Harassment by police**

Case filed by Kavitha Chacha Pawar

Kavitha Chacha Pawar is an **adivasi woman** belonging to the **Phase Pardhi caste**. She is 35 years of age and lives in Mukkam Kendar.

On 26<sup>th</sup> August 2011, the police( PI Borade and constable DB Che Sribangre, Sridede along with seven other officers) **raided house and took away Rs. 60,000 cash, jewelry- including a mangal sutra and three mobile phones. They beat up the family members and humiliated the women by pulling their sarees off them in public**

**The officers abused the caste, threatened to burn down the house and said they deserved to die.**

**In an attempt to file a complaint against Inspector Borade the next day, Kavitha was slapped and they threatened to skin her sons alive. They also threatened to charge her with cases dacoitry.**

She filed an petition with the SHRC, **but no response** was received and the case still remains pending.

## **17. Delhi<sup>25</sup> (Mangolpuri): Beena, a housemaid, wrongfully detained by the Police.**

Beena belongs to Sansi tribe which is a Denotified Tribe. She has been staying in the Mangolpuri Basti of Delhi since 1976. Like many other women in the basti, Beena was also a housemaid. In June 2011, when she didn't reach home at her usual time, her husband and brother in law went to search for her. After sometime, a boy from the basti told them that Beena had been detained by the Police on charges of theft. Theft took place at one of the houses where

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<sup>25</sup>Delhi cases have been collected from the field by Mr. Vikas Jadhav.

Beena used to work, although her owner didn't accuse her for theft because she was working in the same home from past four years but Police detained and accused her wrongfully. It is because of the stigma attached to the Sansi tribe that men and women belonging to it are harassed by the Police. The result of this whole episode was that she had to leave her job because she wasn't comfortable with it.

**18. Delhi (Mangolpuri): Sanjay, a fruit vendor, wrongfully detained by the Police.**

Sanjay also belongs to the Sansi tribe. Sanjay has been born and brought up in Mangolpuri area. His father gave him money to start a fruit vending business in order to keep him away from the criminal activities like pick pocketing and selling of alcohol. One day when he was doing his business, he saw a girl being teased by a guy, upon his intervention in the same matter, a quarrel ensued which was finally stopped by the Police persons passing by. A week later the same person with the Police were looking for Sanjay in a theft case. The Police accused him of theft and kept him in jail for 25 days with finally his father securing him a bail for Rs.5000. This incident took place in 1999 and case came to the court in 2013, by that time, his father had already spent Rs.50000. If not accused, this money could have been used for Sanjay's father who died due to lack of medication.

**19. Delhi (Mangolpuri): Jitto and family being forced by the Police to sell liquor illegally**

After her husband's death, Jitto decided that she and her sons will not sell liquor illegally as her husband used to do it. All three of them earned enough as her eldest son was a driver, her younger son was also a part time driver and she herself was a housemaid. But Police forced them to do this business because it was quite a profitable proposition for them. She being a wise woman always found it awkward and a business of loss because if they use to earn Rs.10, the Police used to take away Rs.6-7 and hence the business was of no benefits for them but rather it was an avenue for the Police to exploit and stigmatize her family. Many times they have picked up her and her eldest son and these random detentions are intrinsically linked with their business of selling liquor which has been imposed upon them by the Police.

**20. Delhi (Mangolpuri): Fake encounter or Muder of Vinod**

One night when everybody was sleeping, they suddenly heard someone screaming and shouting in pain, to their shock it were the screams of Vinod, the Police was mercilessly beating him. He was also a resident of Mangolpuri and belonged to Sansi tribe. Once her mother and sister in law

were very badly molested by the Police and in order to revenge this, his elder brother killed one Police officer. Vinod knew he will never be able to live in these conditions and therefore took a contract labour job in saharapur. He was severely injured. Police use to spit and use to ask him to taste it, and if he would deny then he was again beaten very badly. Entire “basti” was shocked looking at the scene created by the police. After an hour or so, Vinod was put in the van and taken away and very next day the communtiy got news that he was killed at Sarai Kale Kahn. His body was also not given to his family and were told if they had to perform his last rites, they should come to Chanakyapuri. His mother told that he was killed in cold blood by the Police.

### **21. Delhi (Mangolpuri): Fake encounters of Deshraj and Somdutt**

Deshraj and Somdutt were both killed in a fake encounter; both were brothers and belonged to Sansi tribe. Deshraj was killed in 1980s while Somdutt was killed in late 1990s. Somdutt was picked up from his house on suspicion. Police told his family that they are taking him for enquiry because some criminal with the same name had committed theft and is missing. Somdutt went with the police without any resistance. The next day they got the news that he has been encountered. Police said he was engaged in big crime but what crime they didn't specify. They didn't even accept the fact that they had picked him up for enquiry but they say that he was an accused. Similarly in 1980 Deshraj was picked up by Police for enquiry, as during the same period some house robberies had taken place in the locality. Police had put the chilly power in his eyes before inserting an iron rod in his chest. Their sister has filed a petition in the court against the Police.

**Annexure - 9**

**NHRC - Recommendations**

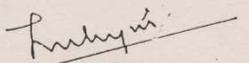
F.No. 132/13/98-99 - LD-V  
National Human Rights Commission  
( PRP&P Division )  
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Sardar Patel Bhawan,  
Sansad Marg, New Delhi -1.

Dated: 22 February, 2000

Sub: MINUTES OF THE MEETING HELD ON 15.2.2000 TO DISCUSS  
THE PROBLEMS OF RIGHTS, REFORMS AND  
REHABILITATION OF THE DENOTIFIED AND NOMADIC  
TRIBES.

A copy of the Minutes of the meeting held on 15.2.2000 on the subject mentioned above is enclosed herewith for perusal and necessary action.

  
[ S. Jalaja ]  
Joint Secretary

As per list attached.

List

1. Smt. Mahasvetadevi, President  
Denotified & Nomadic Tribals Rights Action Group,  
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2. Prof. G.N. Devy, Secretary.  
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6, United Avenue, Near Dinesh Mill, Baroda - 390 007.
3. Sh. B.K. Bhattacharya, Chief Secretary, Karnataka.
4. Shri Inderjit Khanna, Chief Secretary, Rajasthan.
5. Shri Manish Gupta, Chief Secretary. West Bengal.
6. Shri G.S. Shukla, Addl. Chief Secretary, General Admn. Deptt.  
Madhya Pradesh.
7. Shri M.R. Patil, Addl. Chief Secretary, Maharashtra.
8. Shri V.P.B. Nair, Principal Secretary, Home Deptt.,  
Andhra Pradesh.
9. Shri L. Mansingh, Principal Secretary, Social Justice and  
Empowerment, Gujarat.
10. Smt. Satwant Reddy, Principal Secretary (Welfare).  
Punjab.
11. Shri K. Nityanandan, Secretary, Home Deptt. Gujarat.
12. Shri Sandeep Bagchi, Joint Secretary. Ministry of Home Affairs,  
North Block, New Delhi.
13. Dr. Rajeev Dhavan, PILSARC, C-569, New Friends Colony,  
New Delhi - 110 065.

Copy to :

1. SA to Chairperson, NHRC.
2. PS to Member (KR), NHRC.
3. PS to Member ((Smt. SVM), NHRC.
4. PS to Member (SA), NHRC.
5. PS to Member (Vir.D), NHRC.
6. PPS to Secretary General, NHRC.
7. PS to Director General (Inv.), NHRC.
8. PS to Registrar General, NHRC.

MINUTES OF THE MEETING HELD ON 15.2.2000 TO DISCUSS THE PROBLEMS OF RIGHTS, REFORMS AND REHABILITATION OF THE DENOTIFIED AND NOMADIC TRIBES.

At the outset, the Chairperson welcomed Smt. Mahasvetadevi and all the participants (list of participants enclosed) and informed that the meeting has been organised to highlight the problems so that top officers of the state administration understand and appreciate the problems of the specific group of people who are suffering in various ways because of certain past policies. He drew attention of the participants to the inability of Shri Rajiv Dhawan, Sr. Advocate of Supreme Court to remain present but who has taken the trouble to study the problem and send his views in writing (The note of Shri Rajiv Dhawan was circulated to the participants) He then invited all the participants to join in the discussion on the implementation of the various recommendations of the Advisory Group.

2.0 During the initial general discussion the following salient points were brought out:

1. In many states, the former De-notified Tribes and Nomadic Tribes (NT and DNT) have been made part of SC,ST or OBC Groups excepting in Maharashtra where the distinction was being maintained to a certain extent.
2. Many states have taken up welfare measures for the amelioration of the lot of this group of people. Maharashtra state now has a separate department to look to the welfare of this group.
3. In view of (1) above the census may not reveal the true size of the population of this category, as under the category of NT/DNT very few numbers will be shown.
4. Wherever this group is already made part of SC,ST or OBC, they would be entitled to the same concessions and facilities which are applicable to the respective category. It may be difficult to provide within the category (namely of SC,ST or OBC) further sub-division to provide for special treatment to this group, though it is appreciated

by all that this group is likely to be the most deprived within that category.

5. It was, however, noted that in some states some further sub-groupings have been done within the broad group of SC ST or OBC and some special concessions were being provided and other states if they are so inclined, can examine these provisions and decide for themselves whether they would like to adopt similar policies.
6. It was brought out that while special treatment to a group within a category may not be acceptable to all states, it is quite possible to devise special schemes, wherever this group was located in a definite area, through area-based schemes.

3.0 Thereafter the recommendations made by the Advisory Group were taken up for discussion seriatim and the following decisions were taken in respect of the recommendations.

#### **Recommendation No. 1**

##### **Issue**

A retired senior police officer of high reputation may be appointed in every state by the Commission to watch the cases of atrocities against DNTs and to report them to the Commission. Where there is a concentration or an old settlement existing, a separate officer may be appointed at the district level.

##### **Decision**

The idea of having an identified retired Senior Personnel of high reputation to liaise with this group and to report about their problems and cases of atrocities against them to the Commission as well as to the State Governments was broadly accepted. However, depending upon the spread of the population in the State, each state may decide the kind of apparatus that is needed for their specific requirement and report the same to the Commission. The Chairperson clarified that the Commission would be asking the Commission's Special Rapporteurs wherever they are, to associate themselves with this work and further the Commission would

consider associating the State Human Rights Commissions also suitably in this work.

### Recommendation No. 2

I: Since the police training is still faulty in this respect, the National Police Academy and other institutions imparting training to police officers may be advised to reorient their syllabi.

D: It was agreed that sensitising the entire state machinery specially the Police Officers is an important and urgent task which could be undertaken by the States as far as they are themselves concerned and by the Commission suitably taking up the matter with the National Police Academy.

### Recommendation No. 3

I: NHRC may take the necessary steps leading to the repeal of the Habitual Offenders Act.

D: During discussion it came out that in Gujarat, Karnataka and Andhra Pradesh, there were hardly any cases registered under the Habitual Offenders Act. There was a general consensus that this act being hardly in use can be repealed with the recommendation of the NHRC.

### Recommendation No. 4

I: Central/State Governments may be directed to make proper enumeration of the DNCs

D: As far as the enumeration is concerned, the need for making proper enumeration of NT-DNT throughout the country was the general perception except for the Chief Secretary Karnataka who felt that this would not be useful as there were no NT-DNT any more in Karnataka because of their merger into SC, ST or OBC-1 categories. Punjab representative expressed the view that in spite of the NT-DNTs merger in the SC category, certain special and specific requirements of the NT-DNTs justify special treatment even after their merger in the category of SCs. While it is likely that there may be variation in the requirements of earlier NT-DNTs now merged into the category of SC/ST/OBCs, that would be a matter requiring

separate treatment with respect to distinct territories. The Ministry of Home Affairs would be in a position to provide statistics to facilitate this enumeration on the basis of the available records.

**Recommendation Nos. 5 & 6.**

I: The DNCs may be provided educational, employment and other infrastructural facilities.

I: State Government may consider and work out action plans for DNCs with specific provisions in the plans. The Planning Commission may be advised in this regard.

D: There was a consensus that the NT-DNTs would need better access to education, employment and other infrastructural facilities. Where they have been merged into SC,ST and OBC categories, they would be entitled to such facilities as are made available to the respective categories. Even so the States may consider and work out action plans for NT-DNT with specific provision in their annual plans keeping in mind the special problems of this group. Further, the Planning Commission will require to be advised in the matter of specific problems of this group.

**Recommendation No. 7**

I: To launch a massive information campaign aimed at bringing about change in the general attitude towards the DNCs.

D: There were contrary views on the issue of having a massive campaign. While some felt that such special campaign may make their integration within the respective categories more difficult, others felt that in view of the fact that these groups were very highly deprived and discriminated against, the campaign will help to change the mindsets of many in favour of this group. In view of the sharp divergence of views on this issue, it was decided that the matter would be considered separately later by the Commission.

### Recommendation No. 8

I: The National Sample Survey Organisation should be directed to make a special survey of the socio-economic conditions of the DNCs.

D: It was decided that the survey of socio-economic conditions would be undertaken after Dr. Devy can identify locations and areas where a survey could be taken up in association with the different State Governments. Further, Dr. Devy agreed to give specific information about the problems of this group in different States which the Chairperson, NHRC assured will be taken up by the Commission with the respective states.

The Chairperson concluded the meeting after thanking all the participants and requesting them to sensitise the entire State machinery suitably and to provide access to Smt. Mahasvetadevi and Dr. G.N. Devy in their quest to provide social justice to this severely handicapped group.

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