

LAW, LEGACY AND THE STIGMATIZED: THE PLIGHT OF THE DENOTIFIED TRIBES

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Tribal people in India have had a very anomalous relation to the state. On the one hand, there are governmental laws to protect their interests and to bring them into the mainstream of development. On the other hand, they have been subjected to a range of discriminations and exclusions. Under colonial rule, they were deprived of their access to the forest and therefore of their traditional livelihood by the implementation of the Forest Act of 1871. As a result they were forced to relocate to urban settings, where lack of employment forced some of them to resort to petty crimes. The various Criminal Tribes Acts, first enacted in North India in 1871 and later extended to Bengal and other areas in 1876, branded many tribal communities as habitual criminals. In practice, this meant that they could be apprehended and arrested for any crimes that were committed in an area. Settlements or rehabilitation centres were established to ‘reform’ them, facilitating their surveillance and bodily control and were perpetuated even after the colonial rule. In 1949, after India gained independence, the Criminal Tribes Act was repealed and was replaced by the Habitual Offenders Act, 1952. Known now as “denotified tribes” or “vimukta jatis,” they continue to suffer stigma, harassment by the police and economic hardship. The Andhra Pradesh Police Code, 1991, for instance, includes in its list of ‘history-sheeters’ persons who are “such of those registered ex-notified tribe members under Order 736 for whom the Superintendent of Police or the Sub-divisional Officer thinks it advisable to do so on account of their active criminality.”

In recent years, a number of writers from these communities have articulated resistance to such injustice. Laxman Gaikwad’s autobiographical account *Uchalya* (1987) or *The Branded* (1998) which won the Sahitya Akademi Award seeks to expose the bodily tortures inflicted on the members of his (Uchalya) community, in the name of administering the law. This rich text, which has been studied mostly for its autobiographical elements, needs to be examined as an expression of resistance to an authority that uses the body as a site of control. The aim of this paper is to explore the forms of violence on the tribal’s body and to study how both men and women are subjected to a deeply anomalous exercise of power as a legacy of the colonial law. It argues that the stigma of the colonial law coupled with social stigma make the life of the DNTs inhuman and miserable.

The end of nineteenth century was a turning point in the history of England and colonial India. Around this time debates on many crucial issues were initiated and looked at from fresh perspectives. These issues include problems of the colonies, moral and ethical issues related to colonialism. There were proposals to make India prosper with more railways, schools, and hospitals. Problems such as famines were to be tackled, and problems like thugis and dakaitis were to be suppressed. There was a need to pass legislation to curb criminal activities of the castes involved in thugis and dakaitis. The rule of law has been perceived as the great gifts for India by the colonial policy makers. In 1881 W.W. Hunter states in his book *England’s Works*

in India “ a more secure, more prosperous India, where roads, railways, bridges, canals, schools and hospitals had been built; famines tacked; thugi, dakaiti and predatory castes suppressed; trade developed; barbaric social practices like widow burning and infanticides abolished”(2). Though the intentions behind promulgating these laws according to the British were to usher betterment and progress, but the way they were implemented had serious implications on the tribes. Rudolf Heredia stats that “The Criminal Tribes Act was intended to suppress the predatory castes but it gave rise to hapless nomads, stigmatized and stereotyped by this”. Here were recommendations from government officials, administrators that recommended that certain tribes were criminal by birth. For instance, Nembhard, the Commissioner of East Berar argued in his report Para 3. states: “Now every one of the tribals I have mentioned (the Banjaras, the Kolatees, the Badhuks, the Kunjars and the Nuths) [...] are professional criminals[...], crime is their trade and they are born to it and must commit it” (qtd. In Nigam 134). The law was first enacted in North India in 1871, in Bengal in 1876 then spread to rest of the country and was applicable to Madras Presidency in 1891. This Act was to apply to 150 notified castes of hereditary criminals. Later other castes were added to the list. The Salvation Army also played an important role in influencing the legislation as its aim was to civilize and reform the “uncivilized” and they echoed in the objectives of the legislation. As Meena Radhakrishnan points out, it had “ a significant role to play in the criminal legislation in Britain and all over the empire” (7).

In recent years, scholars who have studied the history of certain ex-criminal tribes argue that the colonial belief that criminal nature is inherent in any tribe is a myth. Sanjay Nigam (1990), V. Lalitha (1995) and Malli Gandhi (1996) in their respective works specify the reasons that were responsible for the tribes to turn to criminal activities. One of these reasons was the colonial forest policy which denied the tribals their means of livelihood. Malli Gandhi in his unpublished thesis titled A Historical Survey of Ex-Criminal Tribes Settlements in Andhra studies the Yerukula, Yanadhi, Lambadi, and Dommanna tribes that were notified as criminal tribes. He points out that there was no criminal behaviour during their life in the forest. They depended on the forest products. However, with the intrusion of the British government, their life patterns changed. Ramachandra Guha and Madhav Gadgil point out that as a consequence of encroachment, tribes devoted to hunting and collection of jungle produce led a nomadic life, and were not allowed to sell forest produce in accordance with the Criminal Tribes Act of 1878. They lost their legitimate means of livelihood. The railways and roadways destroyed their business. As we know that they used to transport salt to far of places. There was also encroachment by the outsiders. So the only alternative left to them for their survival on earth was thieving and looting. Stephen Fuchs in his book The Aboriginal Tribes of India states that with their traditional professions and the enclosure of the commons off which they lived the nomads were in fact left with no other alternative. As a consequence of the Criminal Tribes Act, the tribes which were notified as criminal tribes were required to register themselves, with details of their family and means of livelihood. No registered person was allowed to leave his village without a licence issued by the officer in charge of the police station. It was in 1952 that Prime Minister Nehru repealed this Act. However, the police still retain arbitrary power under the existing law. The police can examine cases of individuals from time to time. Every registered offender is given a certificate and can be subjected to police enquiry at any point of time, and this means harassment, bodily torture and exploitation.

In 1949 the Criminal Tribes were denotified and their rehabilitation recommended. Between 1950 and 1952 the Criminal Tribes Act has been finally abolished. But the provisions

of the Act are still in force, and have been legalised under a new Habitual Offenders Prevention Act in various states and the Prevention of Offenders Act, 1958, at the centre.

Now let us look at some quick facts about the DNTs. The Committee on the Elimination of Racial Discrimination in its 2007 report states that there are 60 million people categorized as the DNTs. Some of them are Scheduled Castes, and others Scheduled Tribes and Other Backward Castes. There are 313 Nomadic Tribes and 98 Denotified Tribes. In 1952 the Indian Government withdrew the CTA of 1871 but enacted Habitual Offender's Act. Both deny the universal principle that "all human beings are born free and equal." In the Five Year Plan, the Government had declared to spend about 3.5 crores to rehabilitate and insure resettlement. Such declarations had been made three times since the first five year plan but there have been no noticeable outcome. In the 1990s there was an attempt by the government to abolish the Habitual Offender Acts but it was not done. As a result of the custodial death of two DNTs- Budhan Sabar and Pinya Hari Kale the land mark judgement pronounced police officials guilty but the Act did not change. Between 1979 and 1982 forty two Lodhas were mob lynched without suspicion of crime but based on their tribal ancestry. There have been reports of such killings in many other places, but the Act continues to reign.

Laxman Gaikwad's narrative deals with such a tribal community which has been stigmatized as a criminal tribe. Through his personal experience, Gaikwad talks about the whole Uchalya community which was described as a criminal tribe in 1871. Gaikwad himself has experienced poverty and misery as a member of the Uchalya community. He has suffered because of the stigma attached to his community. It is a fact that the British declared the community as criminals, but at present, the real perpetrators of this kind of stigma are the upper caste people. They have a stigmatized attitude towards the tribals, and look at them with contempt. When they see Laxman wearing good clothes, they think that he might have stolen from somewhere:

'[...] hell! This Pathrut's boy now moves about dressed like a saheb.' Others said: 'How poor he used to be.' God has blessed him. Now he works.' Some boys from rich families remarked: 'What works! [...] in hell! He is from the Uchalya community, will it ever mend itself! Lakshya must be in some thieves' gang, we're so educated and yet we cannot obtain jobs. How will this Pathrut's boy ever get a job?' (115)

Gaikwad's account also lays bare the corrupt practices of the police officials who instead of reforming and rehabilitating these people, add to their misery and encourage them to steal. Gaikwad mentions that the police can come to their house any time for inquiry. He recalls an example of the immoral behaviour of the police:

The police caught our grandfather and dragged him to our hut, beating him severely all the way. They wanted to search our hut for stolen goods. [...]

Grandfather was handcuffed and the police kept asking him: 'Tell us where you've hidden the stolen money and gold. Show or we'll smash your bones.'

Grandfather wailed piteously: 'See Saab, see for yourself, there's nothing in the hut.'

'Your whore will know,' cried the police and grabbed our grandmother by the hair and thrashed her all over. [...] They squeezed grandmother's breasts, asking her to show the stolen goods.

Then they left, taking grandfather with them. He was jailed for some months. (1-2)

The police would demand money. The family would borrow from the moneylender to give to the police. Then, they would have to resort to thieving to pay off the debts. Some members of the community are used as informers and are paid for the job. Gaikwad's narrative also attacks the

State for its indifference and apathy towards their problems. He points out that India got Independence in 1947, but his community achieved it only five years later. He says: “It was when Prime Minister Jawaharlal Nehru ‘denotified’ the ‘notified criminal tribes’ on August 30, 1952, exactly five years and 16 days after the rest of India was officially declared ‘free’ that the Denotified Tribes could call themselves independent” (Gaikwad, “For the Chharas” 3).

In the narrative, the author says that the tribals have indeed been engaged in these activities. However, one gets the feeling that the socio-economic factors and the arbitrary colonial rule are responsible for this situation. Through this novel the writer expresses the cruelty of the so-called civilized society, and draws the attention of mainstream society to the mores of his tribe. One can note that the colonial law has a perpetual and adverse effect on the tribal communities. Its legacy continues in different forms.

This autobiographical novel of Gaikwad helps us to see how the legacy of the colonial law has been still working in the minds of the people and lingers in perpetuating the stigma even after so many years. The tribals become the sufferers of oppressions imposed both by the state and the upper caste hegemony. The auto-biographical novel helps us to see some finer details through lived experience of an individual and his community.

From the above narratives, I would like to conclude the following. That the colonial laws have contributed to the suffering and stigmatized predicament of the tribal people. The stigma and belief led the tribal people to undergo bodily violence, and when the violence on the tribal or dalit body, it is more reckless and atrocious as these people are considered as “lesser humans.”

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Dr Anand Mahanand has been on the faculty of EFL University for more than sixteen years. Apart from his work in the area of ELT, he has been working in the field of tribal culture and literature for a long time. He has published three books titled Tribal Literature in India (2005) and Imagining the Other: Tribal India in Fiction (2011) and Lo(k)cal knowledge: Perceptions on Dalit, Tribal and Folk Literature (2013). He has also translated two collections of Tribal Folktales from Oriya to English.