

# **BEYOND THE MARGINS**

**Stigma and Discrimination Against  
India's Nomadic and Denotified Tribes**

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-Anna Jay

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## PREFACE

When East India Company came to India, first of all it established its rule in the Bengal followed by Sindh and Bihar province. There were three types of rules in India – 1) Area ruled by East India Company 2) Area ruled by Princes (Raja or Sansthanik) 3) Area ruled by Adim Jati. British tried to establish a British rule to the whole of India by capturing small provinces of princes, but the princes of Adim jati who stayed in the jungle opposed it, they could not accept their rule, opposed restriction on free roaming, opposed forest act 1874 which was disturbing of their life style. Whenever the British army traveled through jungle, people of Adim jati attacked British Army to protect their independence in the jungle. By the sudden attack of the Adim Jati, soldiers of the British Army were frightened and left the place to save their life by leaving belongings with them like horses, weapon, artillery, ration, treasure etc. British Govt. understood that unless it controlled these tribes, they can't rule as a whole. Therefore, they declared Adim Jati as criminal tribes by enforcing on them Criminal Tribes Act in 1871.

Under CTA 1871, British Govt. prepared a province-wise list of criminal tribes and restricted them to move anywhere in the country without permission. They declared criminal tribes by defining them as follows - 1) A person who is born in a particular caste/community and further follows the traditional work of that caste/community. 2) A person who is born in the criminal tribes would follow criminal activities generation after generation since its his/her duty to the follow the tradition of their forefathers. 3) A person who follows criminal activities continuously. Whenever criminal tribes come to villages/cities for search of livelihood, it was compulsory that they register their names and belongings to the nearest police station and should not leave the place without police's permission. They were kept in the open jail and were used as labourers in construction of schools, govt. buildings, jails, hospitals, railway roads etc.

The CTA 1924 notified the communities along with other

proposals. Munshi Committee of Bombay Province in the year 1937 says that until the criminal tribes/gypsies settled down, they will continue having criminal tendencies. So, the first attempt should be made to settle them down as soon as possible. Government of India constituted an inquiry committee for criminal tribes under the chairmanship of Shri AYANGAR in the year 1949. He recommended the repeal of CTA-1871. Hence, it was repealed on 31st of August, 1952. As a result, the tribes notified earlier as criminal tribes were declared as denotified (Vimochit or Vimukt) and the name denotified tribes (DNT) has been in use for them.

Nomadic and Denotified tribes constitute approximately 10% of the Indian population. Having left out of both the schedules made under the constitution, these communities have remained far from progress and development. With plethora of reports and recommendations made by the government constituted commissions, fate of these communities has been testing dirt in the same cupboard where these reports are decaying in government offices.

Half of these communities, termed as Vimochit or Vimukt, were branded as criminals by birth. How they became criminals by birth is yet another horrific story, which has been said and, we will reiterate it in cohesive and complete manner soon. However it would be necessary to understand the synopsis of it to understand this report better. A legislation enacted especially for this purpose ensured their prolonged incarnation in open settlement, the law held field till 31st August 1952. On its repeal these communities were set at liberty, forcefully. At the places, where they had spent decades, they were whacked out practically without any documentation or rehabilitation. People who left these places then are still migrating from place to place, in search of food and work. Some could settle down in forest lands, rest are still looking for a piece of peace. The Law may have gone, but their persecution continues unabated. Bombay Police Act Section 122 provides for arrest of a person found suspiciously post sunset, a shallow research will show that this provision has been used only and mostly against these communities. There are a lot more things, actions and inactions, which have prevented children from these communities to partake education. However, to name one; they have a strong belief that having a name in an FIR or in any police station bars them from any employment, and thus education is a wastage of time.

The rest of the community i.e. Nomadic tribes are traditional

wanderers. They were entertainers, traders, shepherds. Their fate and life has altered, from respectable people, to beggars. Entertainers of those days i.e. fortune tellers, bards, nandibailwale, mariaaiwale etc. who had the right to collect entertainment tax; have become beggars of modern days, even though their activities are the same. Not having any permanent place to stay, everyday struggle to make ends meet, customs not permitting them to stay at a place for long, child marriage, strict tribe rules and customs, have prevented these communities from availing education.

Countless hours of research, meetings with community leaders and members, consultations have gone in to raising awareness to NT/DNT rights at the state and national level. In particular, the Independent People's Tribunal presented in August 2014 at Ahmednagar, Maharashtra and the National level Consultation held in March 2015 at Delhi, have been made possible through the dedicated advocates from HRLN and activists from Sangharsh Wahini, Nirman sanstha. I hope that the work that has gone into this initiative will lead to the official recognition of the right of the NT/DNT and sustained efforts on the part of the central and state government to improve the situation of these communities.

I present this report with great hope that it will explore information and harsh realities about denotified and nomadic tribes of India.

Anna Jay

## NOMADIC AND DENOTIFIED TRIBES IN INDIA

### INTRODUCTION

The history of nomadic and denotified tribes (NT/DNTs) in India is, by now, well known. Scholars and policymakers have documented extensively the effects of the Criminal Tribes Act of 1871 and the following decades of systematic discrimination against NT/DNTs. Speaking of the effects of the Criminal Tribes Act, Celia Jenkins has noted:

“It serves as an apt example of a piece of legislation that created an adverse label and attached it to persons who henceforth lived stigmatised, marginalised lives, effectively segregated from society as a whole. It is acknowledged that a criminal record attached to any person will serve as a means of marginalisation, but this Act ensured that even persons in a group who had never committed a crime could have their movement significantly restricted, accompanied by a societal sanction of their criminal potential. From the commencement of the CT Act, they rose to the status of official guinea pigs-the first to be rounded up by the police for any crime committed in the vicinity. With the presumption of their criminal tendencies being taken virtually for granted, it became impossible for them to prove their innocence.”<sup>1</sup>

These communities are generally recognized as the most disadvantaged among the disadvantaged, and some states have granted them specific constitutional status. However, despite general awareness of the social and economic status of these communities, the national government has failed to implement a cohesive policy for NT/DNT development or to conduct a comprehensive assessment of their living conditions and requirements.

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1 Celia Joanne Jenkins, *Constructed Criminality and Contemporary Solutions for De-Notified Tribes*, p. 126.

Although NT/DNTs have not been enumerated in an official census since 1931,<sup>2</sup> most estimates place the total number of NT/DNTs at around 10% of India's population<sup>3</sup>. Since there is no central schedule for NT/DNTs, the assignment of these tribes to various social welfare schedules is left to the individual states. The result is that some NT/DNTs are placed in the ST or SC categories, others are counted as OBCs, and still others have no constitutional status and are therefore ineligible for any designated benefits<sup>4</sup>. According to the National Advisory Council (NAC), "a number of States have not prepared lists of either the De-notified or Nomadic communities, and the status of such people is unknown."<sup>5</sup>

The most common factor cited by activists and researchers for the widespread destitution of NT/DNTs is lack of access to social security benefits, regardless of a constitutional status. The NAC noted, "Even those covered under the categories of SC/ST or OBCs are often not able to avail the benefits because of either not having caste certificates, or because the relevant allocations are exhausted by the non-nomadic/non-de-notified communities in the reserved categories."<sup>6</sup> Nomadic families, in particular, have no permanent address and so are precluded from obtaining any official documents that require proof of address. Where such documentation does exist, local authorities often refuse to recognize it.<sup>7</sup>

In addition to being excluded from state institutions and developmental schemes, NT/DNTs are frequently subjected to various forms of violence from other members of the society— including the Dalits and other marginalized communities. Police too are complicit in this harassment. Many cases have been documented of police registering false criminal charges against NT/DNTs, reinforcing the criminal stigma attached to these communities.<sup>8</sup>

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2 Milind Bokil, *De-Notified and Nomadic Tribes: A Perspective*, Economic and Political Weekly, January 12, 2002.

3 E.g., <http://planningcommission.nic.in/data/ngo/pune.pdf> .

4 National Advisory Council, *Recommendations Regarding Denotified, Nomadic, and Semi-Nomadic Tribes*, p. 1-2 (2011).

5 National Advisory Council, *Recommendations Regarding Denotified, Nomadic, and Semi-Nomadic Tribes*, p. 1-2 (2011).

6 National Advisory Council, *Recommendations Regarding Denotified, Nomadic, and Semi-Nomadic Tribes*, p. 1-2 (2011).

7 Presentation on "Including the Nomadic and the 'Denotified Tribes' in the 12th Five Year plan" By Arjuna and Krishna from ECONET, <http://planningcommission.gov.in/data/ngo/pune.pdf>; Pnina Motzhafi-Haller, *Locating the Agency of Marginalized People*, 32 (2011).

8 E.g., TISS TANDA report, *Status of Pardhis*, p. 18-19; Case studies documented

## Unavailability of Data on the Socioeconomic Status of NT/DNT Communities

The only national-level study conducted in recent history to ascertain the socioeconomic status of NT/DNTs was undertaken in 2007 by the National Commission for Denotified, Nomadic, and Semi-Nomadic Tribes (better known as the Renke Commission). The Renke Commission identified several areas in which NT/DNT communities suffer from discrimination and institutionalized exclusion, including housing, livelihood, education, healthcare, access to credit, and political participation.

The Commission noted that

“Denotified, nomadic and semi-nomadic communities are the most neglected, suppressed and oppressed communities in India. Wherever they live they are pushed to fringes of environs. They live in hard to reach places, both in rural and urban areas. Most of them do not own land, livestock, homestead, house or consumer durables. They live in tent, jhuggies, katcha or semi-pucca houses. They do not cultivate, therefore, depend on wage labour mostly. Most of their traditional skills could not be utilised for their sustenance. Stigma continues till this day and manifest in the form of discrimination, harassment, humiliation and punishments. Most of them are illiterate, ignorant of schemes and facilities, do not access bank / insurance facilities or utilise existing development schemes.”<sup>9</sup>

The Commission’s final report recommended a detailed census of NT/DNT communities and the implementation of schemes designed to address the specific needs of these communities and to counter the effects of decades of marginalization. However, despite coverage in the national media and inclusion in the goals of the twelfth Five-Year Plan, the recommendations of the Renke Committee are yet to be implemented by the national government.

## Recent Studies of NT/DNT Communities

While there is a dearth of statistical information available on NT/DNT communities, two recent projects in particular have

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by HRLN/Sangharsh Wahini.

9 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India (p. 12).

recorded detailed information on individual communities in specific localities. The first of these is Pnina Motzafi-Haller's 2008-2010 survey of nomadic camps in Rajasthan. The second is a series of studies of the NT/DNT communities in Mumbai carried out by the TANDA project of the Tata Institute of Social Sciences (TISS) during the same years, the most comprehensive of which focuses on Mumbai's Pardhi community.

These studies present differing numbers – in some cases, significantly differing numbers – so it is difficult to generalize these statistics to the NT/DNT community as a whole. However, one can extrapolate certain factors that are likely to lead to common experiences across NT/DNT communities – for example, the lack of a permanent home address leading to difficulty in obtaining social security benefits. Moreover, while the extent of marginalization differs among communities and local, it is clear that all of the NT/DNT groups encountered in these studies are marginalized in one respect or another.

i. **Motzafi-Haller's Survey of Rajasthani Camps**

Motzafi-Haller's survey paints a bleak picture of the nomadic tribes in Rajasthan. She reports a shocking lack of education – less than 2% of all respondents had ever attended primary school – and her findings indicate a conscious effort on the part of local residents and authorities to exclude these communities from social and political participation.

She found that-

*"Almost 90% of the respondents defined their collective identity in terms of one of the known named groups of service nomads. The camps that were surveyed had almost no infra-structure. Fewer than 20% of the camp-dwellers had access to piped water, only 15% had electricity and less than 2% had regular access to cooking fuel. The camps had no public services of any sort."<sup>10</sup>*

*The lack of attention by local authorities appears*

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10 Pnina Motzafi-Haller, *Locating the Agency of Marginalized People*, 33 (2011).

*to be linked with the perception that NT/DNTs are unstable and unreliable. Mozafi-Haller stated, "The need to secure a title to the land they occupy is thus paramount in camp-dwellers' discourses... Contrary to what their settled neighbours report, most camp-dwellers (66%) insisted that they had lived in the camp for between twenty to forty years."<sup>11</sup>*

Despite the tribe's long-term residence in these camps, Motzafi-Haller noted, "When we announced that we were interested in visiting the nomads in their near-by camps, we were often informed that this would be a quite impossible task because the camp site we had heard about might have relocated since it was last heard of."<sup>12</sup> The refusal to recognize as legitimate, the nomadic tribe's residence has implications for their ability to access government welfare schemes, as well. As Motzafi-Haller observed, "Without any official documents (the parichay patra), such as a voting card or a Below the Poverty Line (BPL) card, camp-dwellers are not eligible for the benefits of these welfare plans, despite their extreme poverty."<sup>13</sup> This phenomenon has been observed in essentially every publicly available analysis of the socioeconomic situation of NT/DNTs.

Beyond this neglect of the nomadic tribe's needs, however, Motzafi-Haller found more insidious forms of discrimination: "In several schools that we visited, we learned that the camp children are explicitly excluded from school. In most reports by camp residents and other observers, camp-dwellers' children were not welcome in such schools and were often humiliated by the local teachers."<sup>14</sup>

She also reports the explicit denial of identification documents and refusal to provide welfare benefits, even to those with proper documentation. She notes:

"Our survey revealed that 62% of our respondents reported that they had at one point held a voting card. But... this did not guarantee any political leverage for the marginalized community. Our research affiliate, who carried out the survey work, made this point explicitly, arguing that: 'Nomads were given voting cards by the elected representatives or head of the village, with the sole

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11 Motzafi-Haller, 34.

12 Motzafi-Haller, 34.

13 Motzafi-Haller, 32.

14 Motzafi-Haller, 46.

purpose of garnering votes. As soon as the election was over such people took all the voting cards from them so that they could not claim anything'...

According to our census, 46% of our respondents reported holding [BPL] cards. This was documented in only seven of the 22 camps that were surveyed, a fact that reflects the general status of the camp. In most camps no BPL cards had been issued. Still, even in the seven locations in which BPL cards had been issued, the resident population complained bitterly of being cheated in the distribution of the provisions the cards promised to their holders... food articles and other consumable items that were supplied by government agencies meant to be distributed through BPL cards were not delivered to such card holders. Many of them had no idea that government agencies were giving flour, rice, oil to those who had BPL cards at a subsidized rate...<sup>15</sup>"

Whether as a result of direct experience of discrimination, or a general distrust of government institutions, residents of these camps were also reluctant to seek the services of government hospitals and schools. Some even preferred to avail the services of private institutions, despite the heavy financial burden this entailed.

The survey found that:

"about half our respondents reported that government schools were in fact available not too far from their camps, and 70% reported that government hospitals were 'not far away' from them. Moreover, more than a third of our respondents (340 out of the total of 1061) reported that they were aware that education and health-care services were free of charge in these government schools and hospitals. Still, only 9% of respondents (both men and women) opted to use the government health service, and less than 1% sent their children to government schools..."

Among the women in our survey, fewer than 1% turned to biomedical health centres for child delivery. This is in comparison to the 14.8% nationwide average record of women in India who had their babies delivered at a public health facility. These survey

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15 Motzhafi-Haller, 38.

results support our ethnographic data, from which we also learned that those few who made use of biomedical health-care centres for child delivery had paid up to 5000 Indian rupees (about 100 days of labour, or a total of US \$100) for private health care.<sup>16</sup>

## ii. TISS-TANDA Study of NT/DNTs in Mumbai

Between 2008 and 2010, the TANDA project of TISS carried out several studies of NT/DNT communities in Mumbai. As in Motzafi-Haller's study, the TANDA study found both direct discrimination and institutional barriers to accessing social and economic welfare benefits. Findings from the studies, the most detailed of which focused on Mumbai's Pardhi community, are presented below.

### Health Facilities:

In the realm of health care, the TANDA study found that the historical marginalization of the Pardhi community has resulted in mutual distrust between the tribe and mainstream society, which exacerbates the problem of lack of access to government services. For example, one community member noted, "We usually don't go to government hospitals as the doctors and the staff screams at us and ill-treats us."<sup>17</sup> This experience of discrimination is then reflected in the community's hostile response to other government initiatives, which ultimately results in a lack of education and autonomy in reproductive choices. The study found that the designated ASHA (Accredited Health Activist) "has hardly any contact with the community which is fuelled by the hostile response of the community towards her."<sup>18</sup>

Another TANDA study focusing primarily on the Wadar and Masanjogi communities in Mumbai found that 44.9% of children were born in government hospitals, and the remaining 55.1% were born at home without assistance from a trained birth attendant.<sup>19</sup>

TANDA researchers investigating the immunization of NT/DNT children in Mumbai remarked:

16 Motzafi-Haller, 41.

17 TISS TANDA Report, Health Issues of a Branded Community, p. 10.

18 TISS TANDA Report, Health Issues of a Branded Community in an Urban Slum of Mumbai, p. 7.

19 TISS TANDA Report, Living on the Edge, p. 9.

“Years of facing institutionalized forms of social stigma and discrimination from society has resulted in the community resisting and opposing positive initiatives from the State and society... The activities of community health outreach seldom reaches this area due to the hostile response of the community; health workers and community health volunteers fear to come to this area. Due to lack of information, knowledge and awareness regarding the available health services, the community fails to avail the urban health services.<sup>20</sup>”

The immunization researchers found that only 11.5% of NT/DNT children in the sample group were fully immunized, compared with 81.6% of Scheduled Caste children and 54.6% of Scheduled Tribe children in Maharashtra.<sup>21</sup> The most commonly cited reason for not immunizing children (cited by 57.7% of parents) was lack of information about vaccines or where to obtain them.<sup>22</sup> Another 12.8% of parents did not immunize their children because “the public health facilities were far from the locality,” and 5.1% feared the side effects of immunization.<sup>23</sup>

Where government facilities are otherwise available and non-discriminatory in their provision of services, other structural barriers prevent the Pardhi community from accessing these facilities. The study noted:

“The distance of the (medical clinic) 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.<sup>24</sup>”

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20 TISS TANDA Report, Living on the Edge, p. 11-12.

21 TISS TANDA Report, Living on the Edge, p. 2, 12.

22 TISS TANDA Report, Living on the Edge, p. 11.

23 TISS TANDA Report, Living on the Edge, p. 11.

24 TISS TANDA Report, Health Issues, p. 14.

## Housing and Social Welfare Schemes:

The TANDA study found that-

“Few Pardhis who have lived in the city since before January 1995 have proof of residence of a particular dwelling structure. There are several reasons for this.

- the dominant occupation among the Pardhis in the city has been manual labour in construction industry as a result of which the families keep moving from one worksite to another within the city.
- Those families who have tried to settle down in one place with the intention of having a permanent accommodation have faced demolitions and evictions that once again turn them into migrants within the city. - due to low level of literacy and unawareness of the legibility/documentary practices of the state with regard to formalizing citizenship, most Pardhi families do not have basic identity documents that would established over the years their proof of residence in a particular slum.<sup>25</sup>”

Table 1: TISS Study: Possession of Basic Identity Documents by Pardhi Families:<sup>26</sup>

Identity Document	Number of Households	Percentage of households in which at least one family member possesses the respective document
Birth certificate	213	21
Election card/ receipt	560	55
Ration card	655	64
Caste certificate	110	11
PAN card	174	17
Bank account passbook	157	15
Census receipt	472	46

25 TISS TANDA Report, Status of Pardhis, p. 24.

26 TISS TANDA Report, Status of Pardhis, p. 51.

The study noted that only 8% of individuals surveyed possessed birth certificates.<sup>27</sup>

Table 2: TISS Study: Possession of Different Types of Ration Cards Among Pardhis<sup>28</sup> :

Type of Ration Card	Percentage of households
Antyodaya	20.33
APL (Orange)	41.95
BPL	1.87
Annapurna	0.10
APL (White)	0
None	35.76
Total	100

Access to ration cards – especially BPL cards – is so difficult that “possessing a ration card was an achievement and a symbol of power in the community.<sup>29</sup>” The lack of permanent residences and consequent inability to access government benefits are also compounded by the attitude of Mumbai’s police and municipal planning policies. Residential instability also contributes to employment instability and food instability, and the vicious cycle of poverty is perpetuated:

“Due to internalisation of the unpredictability of state violence, at any indication of demolition, many able and willing workers stay back to protect their possessions, thereby losing out on a number of wage earning opportunities. There is a withdrawal of women from the workforce and the children from the schools for the same purpose.<sup>30</sup>”

“Though many families source foodgrains from the ration shops, they are often unable to cook food themselves due to vigilance by the police who often disallow them from using public spaces for cooking

27 TISS TANDA Report, Status of Pardhis, p. 52.

28 TISS TANDA Report, Status of Pardhis, p. 53.

29 TISS TANDA Report, Status of Pardhis, p. 7. (The survey was conducted from October 2010 - January 2011 in 31 Pardhi enclaves).

30 TISS TANDA Report, Status of Pardhis, p. 26.

food. Many homeless families thus, prefer to sell their procured quota and buying cheap food from the roadside or begging for food. This also reduces the nutritive value of their meals.<sup>31</sup>

#### Education and Employment:

Many NT/DNTs also remain impoverished because they have neither the education nor the resources to obtain steady employment.

Of the 2,668 adults surveyed, only 10 individuals stated that they had “steady and salaried employment.” Six of these were employed as security guards on contract – rather than as permanent employees – and none were employed in the public sector.<sup>32</sup>

The study also found that:

“Some of the Pardhis who had learnt to drive could not get employment with the state transport services either because they were inadequately educated or because they could not shell out extra-legal charges demanded by the ‘brokers’ who are the gatekeepers to such jobs.<sup>33</sup>”

School attendance is abysmally low among Pardhis in Mumbai, with less than 40% of children ever having been enrolled in school<sup>34</sup>. Moreover, researchers found that “most of the ‘currently enrolled’ children had not been attending school regularly. Their parents had neither formally withdrawn their names from the school nor were aware of the policy of expulsion of children by school authorities who default regularly on attendance.<sup>35</sup>”

In a survey of women from the Wadar and Masanjogi communities, researchers found that:

“Only 12.8 percent of the women had completed primary education (up to 3rd or 4th standard), but even those who had completed their primary education were not able to read or write. Majority

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31 TISS TANDA Report, Status of Pardhis, p. 26.

32 TISS TANDA Report, Status of Pardhis, p. 35.

33 TISS TANDA Report, Status of Pardhis, p. 37.

34 TISS TANDA Report, Status of Pardhis, p. 41.

35 TISS TANDA Report, Status of Pardhis, p. 42.

of the women are involved in construction work as labourers and helpers (57.7 per cent). The remaining women involve themselves in any kind of work that is available on a particular day/time ranging from sewage cleaning to manual labour.<sup>36</sup>

The reasons for the low levels of school attendance are manifold, ranging from the need to work to supplement household income, to lack of faith in the utility of education, to the simple reason that “many Pardhi children... do not go to school regularly simply because they cannot afford to take a bath everyday.”<sup>37</sup> In Gandhi Garden Enclave, a local politician issued passes that allowed homeless children to use public toilets for free. One survey respondent noted, “these passes have contributed more than anything else to the sustained enrolment of our children in school.”<sup>38</sup>

#### Access to Formal Financial Institutions:

NT/DNTs’ extreme poverty is compounded by their inability to access formal financial institutions. They are unable to obtain loans that would provide them with the capital to generate income in a sustainable manner, and so are relegated to dependence on sporadic employment as manual labour. The nature of manual work also leads to frequent medical problems, the treatment of which workers are unable to pay for with their wages. The TANDA study found that medical expenses are one of the primary reasons for taking out loans from non-institutional lenders “at interest rates as high as 36 percent per annum.”<sup>39</sup>

The survey also found that “85 percent of the families have never engaged in formal banking... Since most of the families are assetless, run on a deficit budget and are not assured of adequate savings, they have to borrow from relatives or from the non-institutional sources of credit such as the local sonar.”<sup>40</sup>

As with healthcare and social security benefits, the lack of access to formal financial institutions is compounded by mistrust of government institutions, as well as bank officials’ reluctance to engage with the NT/DNT community. Researchers noted:

36 TISS TANDA Report, Status of Pardhis, p. 42.

37 TISS TANDA Report, Status of Pardhis, p. 46.

38 TISS TANDA Report, Status of Pardhis, p. 46.

39 TISS TANDA Report, Status of Pardhis, p. 31-32.

40 TISS TANDA Report, Status of Pardhis, p. 34.

“Many Pardhis have not opened an account on the basis of a misplaced assumption that if one does not keep depositing money regularly the account will automatically be closed and their savings will be usurped by the government... Since most Pardhis are illiterate they require assistance in filling up forms for opening the account which the bank officials may not be obliged to extend.<sup>41</sup>”

Pardhis thus face barriers to access on multiple levels, and their exclusion from the mainstream financial system has repercussions for livelihood, education, health, and the continued marginalization of the NT/DNT community.

It is clear from the experiences of NT/DNT communities in Rajasthan and Mumbai that the creation of social welfare schemes is not sufficient to address the marginalization of NT/DNTs. Not only do these communities face distinct barriers to accessing public benefits, but they are also actively discriminated against, by both state and private actors, on the basis of their nomadic or ex-criminal tribal identity.

## **Atrocities**

As the TANDA researchers pointed out:

“Extreme mistreatment by police and higher caste persons in villages is routine. Those families that live in ‘tandas’ or temporary camps of nomadic groups are usually not permitted to stay within the village. Even those Pardhis who live in large settlements dominated by their community are subjected to constant surveillance and interrogation by the police. Stigmatisation has graver consequences for the security of Pardhi families who are poor and landless.<sup>42</sup>”

Some of the more shocking cases of atrocities have been recorded by Sanjay Kolekar:

“Vikas Desai Kale of Nipani Adagaon village was marked as a thief by villagers and was stoned to death on May 19, 2007 ... In May 2007, villagers of

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41 TISS TANDA Report, Status of Pardhis, p. 56-57.

42 TISS TANDA Report, Status of Pardhis, p. 18-19.

Lonawala accused Sidheshwer Shinde of being a thief and cut off his hands and legs.<sup>43</sup>

“In June 1998 ... 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.<sup>44</sup>”

In all of these cases, the victims were members of NT/DNT communities.

In addition to these atrocities, HRLN and Sangharsh Wahini collected testimony from victims of more recent atrocities throughout Maharashtra. The experiences of the NT/DNTs we met with range from the destruction of houses and crops to segregation in schools to sexual assault and murder.

Despite the brutality of many of these crimes, the vulnerability of NT/DNT communities remains unrecognized by mainstream society. Kolekar notes, “Politicians, media, academicians, activists and organizations have protested similar kinds of atrocities against Muslims, dalits and other minorities, but they seem to remain numb to the issues faced by nomadic tribes.<sup>45</sup>”

## **Social and Developmental Obstacles Facing the NT/DNT Community**

While many of the developmental problems facing NT/DNT communities are common to all impoverished communities in India, NT/DNTs’ nomadic lifestyle, criminal stigma, and history of institutionalized discrimination result in unique challenges and a distinct manifestation of marginalization. In order to develop effective policies to address the destitution of NT/DNTs, it is necessary to understand the particular problems encountered by these communities.

### **Inconsistent Classification**

The classification of NT/DNTs as SC, ST, or OBC is inconsistent

43 Sanjay Kolekar, *Violence Against Nomadic Tribes*, Economic and Political Weekly, Vol. 43.26/27 (June-July 2008), p. 571.

44 Kolekar, p. 571.

45 Kolekar, p. 571.

across states – and sometimes even across districts within the same state. Additionally, “about 16 percent (9 communities) of Nomadic tribes and 3 percent (2 communities) of Denotified communities [do] not belong to any of the existing constitutionally designated categories – SC, ST or OBC.<sup>46</sup>” This inconsistency means that the same tribe will be entitled to different benefits, depending on the state of residence. Not only does this discrepancy arguably infringe upon the right to reside in any state of the union – as constitutional entitlements may be revoked subsequent to a move to a different state – but it also creates political divisions among NT/DNTs and within individual tribes.<sup>47</sup>

Jenkins also observed that:

“There are anomalies [in social development schedules]. Often the lists of the Police Department and the Social Welfare Department do not match. Due to these factors, DNTs cannot avail central reservations and concessions. Therefore, neither the violation of their human rights can be addressed effectively nor can their economic advancement take place.<sup>48</sup>”

## **Inability to Obtain Government Documents**

As the TANDA and Moztafi-Haller studies indicated, the technical availability of social and economic benefits does not automatically translate into the practical ability to access those benefits. Because members of these communities often do not have a fixed place of residence – and when they do, they largely utilize government or forest land – it is nearly impossible to obtain any government document that requires address proof.

For example, according to Rajasthan state law, “in order to be eligible for government emergency relief programs, camp-dwellers must demonstrate that they have been residing in the camp continually for at least ten years.<sup>49</sup>” One government official in Rajasthan opined with regard to nomadic tribes, “If they move all the time, government can do nothing for them.<sup>50</sup>”

46 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India (p. 21).

47 See also Recommendations from the SC/ST Commission Consultation on Policy-related issues, p. 7.

48 Jenkins, p. 128.

49 Motzafi Haller, p. 38.

50 Motzafi Haller, p. 38.

The Renke Commission also identified this phenomenon, noting that:

“Half or more than half do not have caste certificates that are essential to seek benefits available for marginalized caste groups in the nation. Though majority of them were aware / claim that they belong to SC, ST or OBC, they are not eligible for reservations and benefits of development. Not having a fixed place of stay, lack of residence proof, absence of birth certificates, stigma attached to their caste names, lower social status, ignorance of procedures for obtaining caste certificates as well as benefits, and without any political clout, these communities face many hardships in obtaining caste certificates. Anecdotal evidences suggest that many have given up after trying a while to obtain the caste certificates.<sup>51</sup>”

However, there are some indications that the insufficiency of residence proof may be more contrived than real. The Renke Commission found that:

“It is interesting to note that more than 80 percent of the Denotified community men and women and two thirds of Nomadic community men and women possess voter identity card (I.D.). It is good to see that many communities reported having voter I.D. Card, though they did not possess either BPL or any other type of ration card.<sup>52</sup>”

While the Commission merely noted that this discrepancy is “paradoxical,<sup>53</sup>” Motzafi-Haller’s study inferred a more sinister motive – that Voter I.D. Cards are issued by local authorities to ensure a vote bank, while other social security documents and benefits are denied to those in need.<sup>54</sup>

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51 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 62.

52 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 63.

53 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 62.

54 Motzafi-Haller, p. 37.

## Nomadic Patterns Interrupting Education

Because children in nomadic tribes migrate with their families, their education is interrupted with every change in residence. Even those who are semi-nomadic, in that they alternate seasonally between places of residence, often miss the opportunity to attend school for several months a year. The children of migrant brick kiln workers, for example, do not have access to schools while their families are living on the premises of the brick kilns. Although they return to the same school after the brick-making season concludes, they have by then missed half a year of classes and are therefore unable to keep up with their studies.<sup>55</sup>

## No Historical Land or Home Ownership

Historically, nomadic and the erstwhile criminal tribes did not have private land rights or title to their homes.<sup>56</sup> Two main factors have contributed to the absence of land ownership among NT/DNTs. The first is the long-term effect of restrictions imposed upon the tribes under British colonial rule. Since the criminal tribes were legally denied land ownership rights and confined to designated settlements, they were actively disadvantaged in terms of land ownership opportunities.<sup>57</sup>

The second factor is the failure of nomadic tribes to fulfill the requirements for adverse possession of land, even where land was physically accessible. The Renke Commission noted, "Historically Nomadic peoples have not been regarded as having any rights to land because their Nomadic lifestyle was not considered to fulfill the criterion of 'effective occupation' of the land ... This is true in the Indian context."<sup>58</sup>

This exclusion from land and home ownership has led most NT/DNTs to use "government land, space near garbage dumps, along the road ways / railways, rivers / streams, slums, etc." as

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55 Jenkins, p. 128; Sangharsh Wahini, Report on Out-of-School Children.

56 Bokil .

57 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 25; Criminal Tribes Act 1924, s. 11.

58 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 33 (internal citation omitted).

residential areas.<sup>59</sup> As the Renke Commission noted, “poverty and years of deprivation affect their ability to secure a decent dwelling, access to basic amenities and services and residence proof.”<sup>60</sup> This particular deprivation underlies many of the other factors that contribute to the extreme marginalization of NT/DNTs.

## **Reliance on, and Displacement From, Forest and Public Land**

Although NT/DNTs have not historically had access to private land or home ownership, they have traditionally utilized forests and public-access grazing land for their residential and livelihood requirements. Milind Bokil has identified four factors that have contributed to the denial of these traditional rights of access to land and natural resources. He notes:

“Livelihoods of the pastorals and hunter-gatherers are primarily affected because grazing lands and forests are no longer the open access regimes. The specific reasons for the impact on their livelihoods are (a) overall degradation of natural resources in terms of both quality and quantity (b) emergence of competitive use patterns between various users and sectors (c) increasing privatisation and commercialisation of resources and (d) restrictions on access to and control over natural resources.”<sup>61</sup>

Many nomadic tribes, the Renke Commission pointed out, “have strong ecological connections. Many of them are dependent upon various types of natural resources and carve out intricate ecological niches for their survival. The changes in ecology and environment seriously affect their livelihood options.”<sup>62</sup>

The Forum for Fact-Finding (FFF) estimates that development projects have displaced 2% of the Indian population, half of which consists of tribal communities.<sup>63</sup> There are few provisions in place

59 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 26.

60 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 26.

61 Bokil.

62 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 26.

63 Forum for Fact-Finding Documentation and Advocacy, Shadow Report to ESCR

for providing alternative means of livelihood to the displaced population.<sup>64</sup> The FFF notes that, “by using the 1894 Land Acquisition Act, the State of India continues to displace Denotified and Nomadic communities from their lands without sufficient compensation.”<sup>65</sup>

In addition to development projects, legislation intended to protect land and resources has had a detrimental effect on the livelihood of NT/DNTs. The Renke Commission noted:

“Increasingly nomadic communities are losing (or denied of) their customary rights to graze their livestock in common lands, agricultural land during post harvest seasons, and forests. The restrictive forest laws, eroding relationship with land owning communities, urbanization and adopting sedentary form of life, proportion of families owning livestock as well as number of livestock owned have been declining.”<sup>66</sup>

## No Physical Assets

The lack of any valuable physical assets may also place NT/DNTs at a disadvantage for rehabilitation and compensation schemes. According to the Renke Commission:

“At the time of natural disasters like famine, flood or earthquake, the compensations that are paid by the concerned government do not reach the nomadic groups among the affected due to lack of necessary registrations in the books of the concerned governing bodies and the lack of any physical assets on these people’s part which may be assessed for compensation.”<sup>67</sup>

## No NT/DNT Census Figures

Without reliable statistics on the population and socioeconomic circumstances of NT/DNTs, it is impossible to develop meaningful

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Committee, p. 13 [Forum for Fact-Finding Report].

64 TISS TANDA Report, Status of Pardhis, p. 14.

65 Forum for Fact-Finding Report, p. 13.

66 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 34.

67 Renke Commission Report, Annexure 15, Observations of the Commission on the Basis of Experiential Evidence, p. 1.

programmes or to allocate funds effectively. The last national census that enumerated the NT/DNT population was in 1931.<sup>68</sup> NGOs have used various methods to estimate the current population of NT/DNTs, which is generally placed at around 10% of the total Indian population (12 crore). However, no official population figures exist.

Among its recommendations for addressing the development of NT/DNTs, the Renke Commission noted:

“Available information about Denotified, Nomadic, and semi-Nomadic tribes is scanty. Lack of comprehensive and compiled information about these communities and their socio-economic and development aspects is an impediment for evolving workable strategies to improve their well being.”<sup>69</sup>

The lack of information also affects societal perceptions of the communities; the TANDA project noted that the presence of Pardhis in Mumbai is officially “invisible”; this official invisibility merely pushes the community further to the margins of society.<sup>70</sup>

## **Obsolescence of Traditional Livelihoods**

Many nomadic tribes earned their livelihood through long-distance trading and various forms of performance and entertainment. The mechanization of production processes, advances in transportation technology, and the rise of mass entertainment media have rendered these traditional occupations obsolete.<sup>71</sup> With no viable means of adapting these occupations to the modern market on a small scale, NT/DNTs are pushed into menial jobs.

## **Criminal Stigma and Mistrust**

Perhaps the most pervasive and insidious factor contributing to the marginalization of NT/DNTs is the criminal stigma attached to DNTs and the general public mistrust of nomadic lifestyles.<sup>72</sup> This stigma is reinforced at the institutional level, with some police manuals still referring to certain tribes as criminals. For example, the TANDA study reported that “Several police officers have mentioned

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68 Bokil.

69 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 15.

70 TISS TANDA Report, Status of Pardhis, p. 7.

71 Bokil.

72 Kolekar, p. 570.

to us that their training manuals continue to characterise Pardhis and other denotified communities as perpetual thieves and bad characters.<sup>73</sup>"

The TANDA researchers also found that:

"Pardhis are routinely picked up by the police on account of suspicion and without preliminary investigation that is otherwise required to arrive at a reasonable satisfaction to make an arrest. There have been cases of 'combing operations' in which police have rounded up adult and teenage members of the Pardhi community at night for making collective inquiries about crimes committed in the area or elsewhere. The interrogation that should take place within the confines of a police lock-up is held in full view of members of other communities living in the settlement.<sup>74</sup>"

"The Pardhis themselves perceive the routine arrests and interrogation of their fellow ethnics as an outcome of their social identity. According to them, these acts of the police constitute ethnic discrimination since members of other social groups with whom the Pardhis share location of residence and work, and thus a similar class position, are less likely to be picked up with as much frequency in cases of theft.<sup>75</sup>"

"Around four years back, the police rounded up only the Pardhi men living in the two buildings and made a collective inquiry about a case of highway robbery. Some of the men were marched to the police station and had their thumbprints taken... As per the accounts narrated by the Pardhis and their neighbours in this settlement, it was clear that the residents of the enclave were regularly subjected to such interventions, often violent, of the police.<sup>76</sup>"

Not only do NT/DNTs face state-sanctioned discrimination, but they also face hostility from the general public, which precludes

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73 TANDA report, Status of Pardhis, p. 60.

74 TANDA report, Status of Pardhis, p. 62.

75 TANDA report, Status of Pardhis, p. 63.

76 TANDA report, Status of Pardhis, p. 63-64.

any attempts to integrate into the mainstream economy or social structure.<sup>77</sup> Sanjay Kolekar notes an unease with the societal role of nomadic tribes: “Nomadic tribes (NTs) are neither untouchables nor scheduled tribes. Nomadic tribes are outcaste people ... These communities survive through economic interaction with sedentary caste communities and their social status remains ambiguous.”<sup>78</sup>

The FFF stated:

“DNT-NTs continue to face severe discrimination from multiple fronts, including upper-caste villagers, exploitative lenders, and ration dealers. For example, testimony from Kuldip Bhimrao Rathod revealed that while some members of the 51 Phase Pardhi families in Wadala Village, Akola District, have BPL (Below Poverty Line) cards or Ration cards, they were still being charged the regular price of rice instead of the subsidized price... Another important note, there was one Phase Pardhi member in the Gram Panchayat or local village council. However, he was not informed about the time of the village council meetings or allotted government schemes for his community.”<sup>79</sup>

There have been numerous reports of NT/DNT children being discriminated against in schools, by both peers and teachers. This discrimination takes the form of physical and verbal harassment, refusal to register NT/DNT children, and segregation in classrooms and lunchrooms.<sup>80</sup>

Mainstream media, too, perpetuates the stereotype of criminality by noting specifically when an accused criminal belongs to a nomadic or denotified tribe – a detail usually left out of reports of crimes committed by upper-caste individuals.<sup>81</sup>

TANDA researchers noted:

“[R]eports project thieving and robbing by murder as a

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77 Kolekar, p. 570.

78 Kolekar, p. 569.

79 Forum for Fact-Finding Report, p. 9-10.

80 Forum for Fact-Finding Report, p. 15.

81 See, e.g. <http://www.newindianexpress.com/cities/kochi/article141545.ece>; <http://www.newindianexpress.com/cities/bangalore/Three-'Witchdoctors'-Handed-Over-to-Police/2014/01/12/article1996313.ece>; [http://www.newindianexpress.com/states/andhra\\_pradesh/article1516039.ece](http://www.newindianexpress.com/states/andhra_pradesh/article1516039.ece).

normal and recurring feature of the livelihood seeking efforts among Pardhis and highlight the historicity of illegalities associated with the Pardhi fold. By depicting crime as an expression of the collective mind among Pardhis, rather than as an act of an individual or a gang of individuals, the mass media effectively implicates the Pardhi identity and contributes to reinstating popular prejudice against them.<sup>82</sup>

## Habitual Offenders Act

After the repeal of the Criminal Tribes Act in 1952, individual states implemented versions of a piece of legislation known as the Habitual Offenders Act, which carried forth many of the same provisions as the Criminal Tribes Act. The Bombay Habitual Offenders Act has been used particularly effectively to perpetuate the criminal status of NT/DNTs.

In Maharashtra, men from Denotified Tribes are frequently arrested and jailed for crimes with which these individuals have no apparent connection. Many police manuals still include a section detailing the physical appearance of NT/DNTs and the crimes they supposedly engage in. Police stations also keep history sheets with the details of all male members of a tribe, alongside the crimes and grievances lodged against each; when the head of a family dies, his crimes are then inherited by the first son.<sup>83</sup> As the TANDA researchers noted, "This serves to perpetuate the historically cultivated and commonly held prejudice against these communities. Thus, there is a need to revise the curricula for police training and conduct sensitisation programmes for encouraging a more meaningful understanding of the historicity of stigma attached to denotified groups."<sup>84</sup>

Despite a 1988 order by the Bombay High Court requiring an end to such practices,<sup>85</sup> police across Maharashtra continue to employ the Habitual Offenders Act to discriminate against NT/DNTs. The stigma of criminality extends to all tribe members, including children. In a recent incident recounted by activist Totaram Jadhav,

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82 TISS TANDA Report, Status of Pardhis, p. 7.

83 One particular example of such history sheets can be found at the Pardur Police Station, Jaha District, where such family trees mounted on a big board on one wall within. Ibid. 30.07.2012.

84 TISS TANDA Report, Status of Pardhis, p. 68.

85 Order dated 3.8.1988 in Writ Petition No 3375 or 1988.

a student in 7th standard was arrested when the police believed his parents had committed a crime.<sup>86</sup>

## **Lack of Common Identity or United Political Movement**

While all NTs and many DNTs have in common the characteristic of nomadism, the category of NT/DNT encompasses a wide range of culturally, ethnically, and linguistically diverse tribes. Weak political organization has not allowed NT/DNTs to forge a common political identity based on their legal classification. Jenkins asserts:

“They fail to realise that their common identity has been spawned through a draconian legislation known as the Criminal Tribes Act. Discrimination between the groups is rife. Some even believe that other DNT groups are ‘born criminals.’ To effectively join a movement at the international level, it will be vital from them to first achieve a certain degree of solidarity at the local level.”<sup>87</sup>

It is important to note the difference in political strength between the NT/DNT community and the SC and ST communities, despite the NT/DNT population being similar in size to the ST population. Kolekar states, “Comparatively dalits have built strong political organizations whose importance is considerable in vote bank politics for mainstream politicians.”<sup>88</sup> The Renke Commission noted that, where small groups of NT/DNTs had succeeded in organizing themselves politically, they were able to access social welfare benefits that remained elusive for most other NT/DNTs.<sup>89</sup>

## **Women in NT/DNT Communities**

Women in NT/DNT communities face double hardship of their position at the bottom of both the social and gender hierarchies. The TANDA report noted:

“These women have to bear not only the stigma associated with poverty and their historically discredited community identity but are also subjected to the patriarchal violence within the community and to domestic violence at home.

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86 PIL No. 78 of 2011, Prof. (Retd.) Motiraj Rathod v. State of Maharashtra and Ors.

87 Jenkins, p. 142.

88 Kolekar, p. 571.

89 Renke Commission Report, Annexure 15, Observations of the Commission on the Basis of Experiential Evidence, p. 1.

Participation of women in labour markets is laced with patterns and instances of gender-based discrimination, most noticeably in the form of gender gap in wages. Inadequate provision of basic civic amenities by the State has put considerable pressure on women as they have to make a greater effort to secure the basic services and goods for the household.<sup>90</sup>

The traditional structure of most NT/DNTs is highly patriarchal and is subject to the decisions of the Jaat Panchayat, the tribe's internal governance body. Women are not permitted to hold any position in the Jaat Panchayats, nor are they allowed to participate freely in this form of community decision-making.<sup>91</sup> Additionally, the percentage of NT/DNT women in possession of voter I.D. cards is much lower than the percentage of NT/DNT men with voter I.D. cards. This, too, indicates a lack of societal participation on the part of women and denial of their full citizenship rights.<sup>92</sup>

The Renke Commission noted:

"[A]mong the extremely patriarchal nomadic communities there is hardly any protection for women, and the progressive property laws and laws for the dignity of women have virtually no relevance to the women in these communities. Living utterly undignified lives in destitute conditions, they are subject to maltreatment and abuse by all - the family, the community and the society at large. Having no shelter or support, they fall victim to every kind of social harassment and torture."<sup>93</sup>

Milind Bokil has reported:

"Patriarchy among nomads is more stringent than sedentary, agricultural communities. Though outward expressions differ in different communities, the underlying feature is that women are considered as a piece of property. Child marriages are common. In some of the nomadic communities like the Pardhis or Vaidus,

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90 TISS TANDA Report, Status of Pardhis, p. 73.

91 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 76.

92 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 63.

93 Renke Commission Report, Annexure 15, Observations of the Commission on the Basis of Experiential Evidence, p. 2.

women are sold, exchanged, mortgaged or and even leased out. In most of the communities 'Dahej' (dowry) is paid to the bride and, hence, parents frequently indulge in extracting as much price as possible. There are also stringent rules on conduct and behaviour of women. The most traumatic aspect is the penalty imposed on women when these rules are broken. Exogamous marriage, adultery and pre-marital pregnancy are considered serious crimes. The forms of penalties, to put it simply, are inhuman, brutal and barbarous. For example, in most of the DNTs, the accused woman has to pick up a coin from a pot of boiling oil to prove her innocence. Other penalties include branding the tip of the tongue with a hot iron, forcing to carry human or animal excreta, forcing to walk through fire, shaving of head, social boycott and ostracism.<sup>94</sup>

There are many other instances of internalized gender-based violence and discrimination. Farida Khan has documented the following examples, among others:

"Polygamy exists in the Berad tribe but polyandry is prohibited. Child marriage is present in some tribes but no woman can remarry. Any woman in Chhparband tribe has no right to seek justice if she has been tortured, cheated or hurt physically, only her father, brother or husband can make a complain to the tribe council on her behalf. Women in Kanjaar Bhat tribe have to prove their chastity to the tribe council before marriage. Offering girls to the goddess is decided by the tribe council. The tribe council controls the sexual behavior of women with its strict and rigid policy. Yet, its role is ambiguous regarding the sex labour of women; the male have right upon their income derived from that."<sup>95</sup>

In addition to experiencing gender-based oppression from within the community, NT/DNT women are often the target of violence from police and individuals from upper-caste communities. Milind Bokil asserts:

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94 Bokil.

95 Farida S. Khan, *The Position of Women in Patriarchal Denotified Tribes' Council*, ISSN-2250-2629, January 2013.

“Another dimension of gender issues is the exploitation and repression of DNT women by the police. The regional newspapers are full of stories of police atrocities against these women, especially from the Pardhi community. Women are easy targets for the police as their men-folk are often either absconding or are locked in police custody. In Maharashtra, cases against police personnel for atrocities on DNT women have been registered from time to time but the percentage of conviction is minuscule.<sup>96</sup>”

Early marriage and childbearing among NT/DNT women helps to perpetuate patriarchic expectations and removes opportunities for women’s educational and occupational advancement. According to the Renke Commission:

“About 8 percent women in Denotified communities and 7 percent in Nomadic communities have had their first child at the age of 14 years... There is, thus, a need for advocacy with Health Department and National Rural Health Mission to highlight specific needs of the communities and ensure their coverage with maternal and child care services.<sup>97</sup>”

The lack of adequate maternal health and family planning services contributes to the dismal health situation of NT/DNT women. The Renke Commission states:

“About 50 percent of the communities said that child birth happens at home attended by traditional Dais. Among Nomadic communities, relatives and neighbours attending child birth was mentioned in 24%; it is 16% of Denotified communities... Most of the houses in these habitations lack access to basic amenities. Given this situation, child birth attended by friends, neighbours or untrained dais poses challenges as well as risks to the mother and the new born child. Dependence on untrained Dais, neighbours and relatives also points to the lack of awareness about practices related to safe pregnancy and delivery. There is, thus, a need to create awareness and ensure reach

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96 Bokil.

97 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 23.

of rural/urban health services, coupled with health education, to the Denotified as well as Nomadic communities.<sup>98</sup>

Given the infrequent visits of ASHAs and the reluctance of NT/DNTs to engage with government health institutions, special efforts must be made to ensure that family planning, prenatal and postnatal care, and trained birth attendants are available to women and girls in these communities.<sup>99</sup>

The inability to access government welfare schemes also has particular effects on women, especially those who must support themselves financially. The Renke Commission reported:

“More than 31 percent of the Denotified communities and 42 percent of the Nomadic communities have 20 destitute women or more in their communities. Most of these were widows and eligible for widow pension. However, ignorance or lack of support from voluntary/community based organizations denies them utilisation of existing facilities. These women do not get membership in any SHGs, as they are destitute.”<sup>100</sup>

The rights status of NT/DNT women is thus particularly grave and should be given priority in the formulation of any policy or scheme for the development and socioeconomic inclusion of NT/DNT communities.

## **Legal Status and Schemes for NT/DNTs in Central Government**

### **Recognition by Planning Commission**

In the period immediately following Independence, NT/DNTs were recognized by the central government as extremely marginalized groups in need of developmental schemes and were accorded budgetary space in the national 5-year plans.<sup>101</sup>

98 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 47-48.

99 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 49.

100 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 65.

101 NIRMAN, Note Prepared for UN, Present Situation of Denotified and Nomadic Tribes.

Responsibility for NT/DNT development was later transferred to individual states in the fifth 5-year plan (1974-1979).<sup>102</sup> Despite recognition of the vulnerable status of this group, the progress assessment in the eleventh 5-year plan was not promising. It stated:

“De-notified, Nomadic and Semi-Nomadic Tribes and Banjara communities constitute the most vulnerable and disadvantaged sections of the Indian society... Unfortunately, these groups still continued to be marginalized and their specific needs even today are neither adequately understood nor catered to. In order to acquire a comprehensive picture of the situation of these communities and to suggest action for their socio-economic development, a National Commission for De-notified Tribes, Nomadic Tribes and Semi-Nomadic Tribes was set up in 2005. In the Eleventh Plan, special attention will be accorded to the well-being of these groups through steps in pursuance of the recommendations of the Commission.<sup>103</sup>”

The central government has still not taken any steps to implement the recommendations of the Renke Commission. However, the twelfth 5-year plan has recognized the negative impact that particular legislation has had on the rights of NT/DNTs and the need for legislative reform. The twelfth 5-year plan states:

“The existing legislations such as Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Habitual Offenders Act, 1952; The Prevention of Begging Act, 1959; 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.<sup>104</sup>”

With regard to the detrimental effects of certain pieces of legislation on the rights of NT/DNTs, the general lack of information on these communities has also hindered the assessment of the laws' practical impacts. For example, the 2010 Report of the Joint

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102 Eleventh 5-Year Plan, National Planning Commission, Chapter 6, p. 121.

103 Eleventh 5-Year Plan, National Planning Commission, Chapter 6, p. 121.

104 Twelfth 5-Year-Plan, National Planning Commission, p. 271.

Committee on the Forest Rights Act “clearly says that there is no national level data on the status of FRA implementation specifically with regard to Nomads and pastoralists.<sup>105</sup>” Without a concerted effort to determine the status of the communities and their interaction with the law, legislative and practical reform is not possible.

The Planning Commission has also recognized the need for targeted schemes for NT/DNT communities, recommending the following:

“The quick and 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 as applicable. 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 DNTs. For economic empowerment and development of DNTs capacity building programmes for skill development and marketing, loans for economic empowerment need to be given priority. Specific strategies and mechanisms will also be put in place to ensure flow of funds for the welfare and development of nomadic, semi-nomadic and Denotified Tribes (DNTs). For social empowerment of DNTs an enabling environment needs to be created so that they are able to utilise the reservation benefits in education and employment. DNTs do not have permanent residential locations due to various social, political and cultural reasons; as a result, they are unable to avail the benefits of the various schemes of the Government. Therefore, an effective rehabilitative approach, supported with an equally effective plan for the socio-economic development of the DNTs needs to be adopted and implemented especially by establishing habitations/villages for them. This would be given emphasis during the Twelfth Plan period.<sup>106</sup>”

“A nation-wide survey of DNT settlements needs to

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105 Nirman, Report to National Advisory Council, 2011.

106 Twelfth 5-Year Plan, National Planning Commission, p. 271-272.

be conducted urgently. This could form the basis, inter alia, for introducing a suitable shelter programme for homeless DNTs. Free or subsidised housing may be provided to eligible DNT house-holds in a phased manner—by adopting special measures like a ‘Rajasthan’s Gadaria Lohar Community Housing Scheme’. Given the high incidence of homelessness among DNTs, a proportion of the current outlay for Indira Awaas Yojana (IAY) should be earmarked for DNTs. Within DNTs, the nomadic communities need to be assisted financially to construct dwelling units by receiving priority under the on-going housing programmes of the Central Government. Therefore, it is suggested to create a Cluster Development Fund for assisting the DNTs for the construction of houses, for providing land to them and for creating infrastructure, and so on so that proper clusters can be developed for them.<sup>107</sup>”

“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. An Integrated Infrastructure Development Programme also 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.<sup>108</sup>”

Although the Planning Commission has recognized the need for schemes tailored specifically to the requirements of the NT/DNT community, it has failed to recommend a comprehensive, nationwide census of NT/DNTs – the first step to determining the

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107 Twelfth 5-Year Plan, National Planning Commission, p. 272.

108 Twelfth 5-Year Plan, National Planning Commission, p. 272.

extent of the community's requirements. The FFF has observed that the failure to implement this initial step indicates a clear lack of planning for increasing access to mainstream societal and economic structures.<sup>109</sup>

## Central Government Legislation and Schemes

In a press release issued on July 15, 2014, the Ministry of Social Justice & Empowerment stated:

“There is no separate scheme exclusively for nomadic tribes being run by the Ministry of Social Justice and Empowerment... Since there is no separate scheme exclusively for nomadic tribes run by the Ministry of Social Justice and Empowerment, no funds have been sanctioned to the States for the purpose.<sup>110</sup>” The Ministry did note that “under the Scheme of National Overseas Scholarship for Scheduled Caste students, four seats are reserved for Denotified, Nomadic and Semi-Nomadic Tribes.<sup>111</sup>”

It is indicative of NT/DNTs' educational status, however, that “for the seats reserved for Denotified, Nomadic and Semi-Nomadic Tribes no fund was released since none of this category candidate got selected during the last three years.<sup>112</sup>”

No other Central Government ministry appears to have developed schemes or provisions specifically aimed at the NT/DNT community.<sup>113</sup>

## Legislation with a Detrimental Impact on NT/DNTs

In addition to the absence of legislation and schemes specifically for the benefit of NT/DNTs, it is also important to mention the legislation that has had a detrimental effect on these communities. As part of the Renke Commission's investigation:

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109 Forum for Fact-Finding Report, p. 8.

110 <http://pib.nic.in/newsite/PrintRelease.aspx?relid=106657>.

111 <http://pib.nic.in/newsite/PrintRelease.aspx?relid=106657>.

112 <http://pib.nic.in/newsite/PrintRelease.aspx?relid=106657>.

113 It is worth noting, however, that the Ministry of Health and Family Welfare has explicitly acknowledged that nomadic tribes may face particular difficulties in accessing government schemes. <http://mohfw.nic.in/WriteReadData/1892s/TDP-10782508.pdf>. Moreover, it has recognized a category of “Marginalized Tribal and Nomadic Communities” that may require targeted initiatives. <http://mohfw.nic.in/showfile.php?lid=114>.

“Communities were also asked about the laws of the land that affect them adversely. About 37 percent Nomadic and 23 percent Denotified communities report Forest Conservation Act. Other Acts affecting the community are Wild Life Protection Act 1972, Habitual Offenders Act, Anti Beggary legislation (Bombay Prevention of Begging Act, 1959 adopted by different States), Prevention of Cruelty to Animals Act, 1960, and Excise Act, 1944.<sup>114</sup>”

Laws put in place to protect forests, animals, and natural resources have prevented many NT/DNTs from continuing in their traditional occupations. Unfortunately, this occupational displacement has not been addressed with the provision of alternative means of subsistence or livelihood.<sup>115</sup>

#### **i. Wildlife Protection Act and Prevention of Cruelty to Animals Act**

As Mittal Patel has noted:

“Certain laws like Wild Life Protection Act prevents snake charmers from their traditional occupation and they have lost their livelihood, while traditional salt producers inside the Little Rann of Kutch are being expelled from their area as the area is declared a sanctuary for wild ass. These communities are not recognised for the rehabilitation and compensation as their dependency on the common resource, land, forest land, sanctuary areas are not recognized in terms of the so called “Legal rights”. Rights of the tribals were recognized in the Forest Rights act, as they were cultivating the land. However, communities like the snake charmers who were also depending on the forest but do not have documentary evidence to claim their rights have been driven out.<sup>116</sup>”

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114 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 78.

115 See <http://aajeevika.gov.in/studies/legislations/f-DNT-Oct-8-Final.pdf>.

116 Mittal Patel, A Report from the VSSM, p. 7, <http://indianfolklore.org/journals/index.php/Mukt/article/download/820/1088>.

NT/DNT communities recognize the need for legislation to protect animals and the environment; however, they require vocational rehabilitation and opportunities to engage in sustainable, productive work. A Frontline report noted the use of the Wildlife Protection Act to harass nomadic communities that traditionally perform with animals, including Saperas, Bahelias (who work with birds) Madaris (who work with monkeys), and Qalandars (who work with bears).<sup>117</sup> One member of the Qalandar community was quoted as saying, “We understand that we are not supposed to work with bears and have surrendered them, but we have not been offered any support from the government in the form of alternative livelihood.”<sup>118</sup> The Prevention of Cruelty to Animals Act has also interfered with the traditional occupation of many street performers.<sup>119</sup>

The Planning Commission has noted the “urgent need” to rehabilitate those nomadic and denotified tribes who have traditionally hunted wild animals and lived around tiger preserves and tiger corridors. They have suggested employing members of these tribes to patrol and protect wildlife preserves, which would allow them to maintain their connection to the land while respecting modern animal protection laws.<sup>120</sup>

## ii. Forest Conservation Act

By designating protected forest areas, the Forest Conservation Act has displaced nomadic communities who have traditionally relied on the availability of forest land for subsistence. In a review of concerns over the effects that forest protection has on land rights, the Maharashtra Forest Department recommended certain remedies to tribal groups who can produce pre-existing land title or other proof of prior possession of forest land.<sup>121</sup> Unfortunately, such solutions do not address the situation of nomadic tribes who do not necessarily lay claim to possession of a single plot of land but rather utilize forest or public land as the need arises.

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117 <http://www.frontline.in/static/html/fl2904/stories/20120309290409500.htm>

118 <http://www.frontline.in/static/html/fl2904/stories/20120309290409500.htm>

119 <http://ajeevika.gov.in/studies/legislations/f-DNT-Oct-8-Final.pdf>

120 [http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11\\_wildlife.doc](http://planningcommission.nic.in/aboutus/committee/wrkgrp11/wg11_wildlife.doc). Similar accommodations have been endorsed by the SC/ST Commission. SCST Commission, Consultation on Policy Related Issues, 2008-2009, p. 33.

121 <http://mahafca.com/pdf/Handbook-12.pdf>.

### iii. Prevention of Begging Act

This act, which is in place in several states, including Maharashtra and Delhi, has been used to target communities who perform on the street, including acrobats, tight rope walkers, dancers and singers.<sup>122</sup> The definition of “begging” in the act includes “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 exists by soliciting or receiving alms.”<sup>123</sup> This definition criminalizes not only the act of begging, but also the status of being a (presumed) beggar – and thereby perpetuates the criminal status of NT/DNTs. Not only does this criminalization of status violate the basic tenets of criminal law, but it also carries forth the legacy of the Criminal Tribes Act by turning nomadic tribes’ mere existence on the street into a criminal offense.

### iv. Excise Laws

The National Advisory Council Working Group on DNTs has suggested that “provisions in excise laws that prevent brewing and selling of traditional liquor” should be reassessed “to ensure that the safety and livelihood opportunities of DNT communities are protected and promoted.”<sup>124</sup>

Given the various laws that perpetuate the criminal status of the NT/DNT community, the government should either include provisions to exempt individuals from these tribes, or implement vocational training and rehabilitation programs to counter the occupational displacement that has resulted from expanding legislation. The Renke Commission suggested, “It would be useful to have a dialogue with the community leaders/representatives and evolve mechanisms about how the communities and the Acts can exist without adversely affecting livelihood options of the community and protecting breach of laws as envisaged by the Acts.”<sup>125</sup>

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122 <http://ajeevika.gov.in/studies/legislations/f-DNT-Oct-8-Final.pdf>.

123 The Bombay Prevention of Begging Act, 1959, Ch. 1, s. 2(d).

124 <http://ajeevika.gov.in/studies/legislations/f-DNT-Oct-8-Final.pdf>. NAC meeting in April, 2012.

125 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 78.

## Recommendations

### International Legal Standards

Where domestic law has failed to protect the human rights of a segment of the population, it is useful to look at the international legal framework as a point of reference for legislative and policy reform.

#### i. Indigenous Peoples' Rights

While Jenkins notes that existing law on indigenous peoples does not adequately address the rights of indigenous groups, the UN Declaration on the Rights of Indigenous Peoples provides a starting point for formulating an approach that includes both individual and group rights.

In particular, the following provisions of the Declaration may be of guidance in demanding equal rights for NT/DNT communities collectively:

#### Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

#### Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

#### Article 24

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

#### Article 7

1. Indigenous individuals have the right to life, physical and mental integrity, liberty and security of person.

## Article 15

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

## Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.<sup>126</sup>

### ii. Racial Discrimination

Regardless of whether NT/DNTs are recognized as indigenous peoples, the provisions of the Convention for the Elimination of All Forms of Racial Discrimination (CERD) apply to discrimination against them.<sup>127</sup> The preamble to CERD implicitly recognizes the colonial history behind racial discrimination, which is particularly relevant to the situation of NT/DNTs in India:

“Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end.<sup>128</sup>”

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126 UN Declaration on the Rights of Indigenous Peoples, 61/296 (Sept. 13, 2007).

127 India ratified CERD in 1968.

128 International Convention on the Elimination of All Forms of Racial Discrimination, adopted Dec. 21, 1965, entered into force Jan. 4, 1969, Preamble.

The CERD Committee itself addressed the issue of the treatment of NT/DNTs in its May 2007 India country report.<sup>129</sup> Referring to its general comment no. 29 on the issue of “descent,<sup>130</sup>” the Committee explicitly stated that CERD’s provisions apply to caste-based discrimination. It noted, “the Committee reaffirms that discrimination based on the ground of caste is fully covered by article 1 of the Convention.<sup>131</sup>” The Committee noted many points of concern for marginalized groups, most implicating violence against SCs, STs, and other tribes, inadequate provisions for tribal communities to participate fully in the public life of the nation, and widely prevalent stigma regarding issues of both criminality and purity.

The CERD Committee indicated potential violations of CERD in the following instances:

“[T]he alarming number of allegations of acts of sexual violence against Dalit women primarily by men from dominant castes, in particular rape, and... the sexual exploitation of Dalit and tribal women who are being trafficked and forced into prostitution. (art. 5 (b))<sup>132</sup>”

“[S]cheduled castes and scheduled tribes along with other tribes are underrepresented in the Union, State and local governments and legislatures, as well as in the public service. (arts. 5 (c) and 2 (2))<sup>133</sup>”

“[R]eports that Dalits are often denied access to and evicted from land by dominant castes, especially if it borders land belonging to such castes, and that tribal communities have been evicted from their land under the 1980 Forest Act or in order to allow private mining activities (art. 5 (d) (v) and 5 (e) (i) and (iii)).<sup>134</sup>”

“[R]eports that members of scheduled castes and scheduled tribes along with other tribes are disproportionately affected by hunger and malnutrition,

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129 Concluding Observations of the Committee on the Elimination of Racial Discrimination, India, CERD/C/IND/CO/19 (May 5, 2007).

130 CERD General Recommendation XXIX on Article 1, Paragraph 1, of the Convention (Descent) (Nov. 1, 2002).

131 Concluding Observations of the Committee on the Elimination of Racial Discrimination, India, para 8, CERD/C/IND/CO/19 (May 5, 2007).

132 CERD Committee report, CERD/C/IND/CO/19, May 5, 2007.

133 CERD Committee report, CERD/C/IND/CO/19, May 5, 2007.

134 CERD Committee report, CERD/C/IND/CO/19, May 5, 2007.

infant, child and maternal mortality, sexually transmitted diseases, including HIV/AIDS, tuberculosis, diarrhoea, malaria and other water borne diseases and that health care facilities are either unavailable in tribal areas or substantially worse than in non-tribal areas. (art. 5 (e) (iv))<sup>135</sup>”

In addition to its more general observations, the Committee noted two points of particular relevance to the NT/DNT community. It first stated, “The Committee notes with concern that the State party does not recognize its tribal peoples as distinct groups entitled to special protection under the Convention.<sup>136</sup>” Second, it noted, “The Committee is concerned that the so-called denotified and nomadic tribes, which were listed for their alleged ‘criminal tendencies’ under the former Criminal Tribes Act (1871), continue to be stigmatized under the Habitual Offenders Act (1952).<sup>137</sup>” It recommended the repeal of the Habitual Offenders Act and the implementation of remedial measures to rehabilitate those affected by this discriminatory legislation.<sup>138</sup>

## **Creation of a Separate Constitutional Category for NT/DNTs**

One of the greatest difficulties in formulating recommendations for NT/DNT-specific legislation revolves around the question of identity. Policymakers must consider whether including NT/DNTs in the ST list may amount to forced assimilation and a denial of the nomadic tribes’ group identity and unique challenges. Conversely, one must ask whether the creation of a separate constitutional category for NT/DNTs would amount to codification of their formerly-criminal status and perpetuate the stigma associated with these communities.

### **i. Arguments for a Separate Category**

Those who advocate for a separate constitutional category

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135 CERD Committee report, CERD/C/IND/CO/19, May 5, 2007.

136 Concluding Observations of the Committee on the Elimination of Racial Discrimination, India, CERD/C/IND/CO/19 (May 5, 2007).

137 Concluding Observations of the Committee on the Elimination of Racial Discrimination, India, CERD/C/IND/CO/19 (May 5, 2007).

138 Concluding Observations of the Committee on the Elimination of Racial Discrimination, India, CERD/C/IND/CO/19 (May 5, 2007).

for NT/DNTs point to the unique challenges, including criminal stigma, that face this community. As Kolekar notes, violence against NT/DNTs is motivated by a different discriminatory animus than violence against Dalits or Adivasis.<sup>139</sup> For this reason, if NT/DNTs are included in the SC/ST/OBC categories, they may still be discriminated against or excluded from benefits and reservations by the better-organized or higher-status SCs/STs/OBCs.

Jenkins notes:

“A further problem is that this affords them a very general protection on par with all other scheduled castes and tribes -- providing mostly reservations and protection from caste based atrocities. While it is not denied that these are indeed pressing issues for DNTs, and has the distinct advantage of letting them be included within a wider group of persons who have faced discrimination over time and space, the disadvantage it proposes is that it cannot guarantee uniform inclusion. It will still depend largely on the will of the state. Furthermore, a lot of the issues specific to DNTs and the special needs they face may be subsumed by the needs of the wider community.<sup>140</sup>”

Given the extent of harassment and violence perpetrated against NT/DNTs by the police, this community may require special legal protection beyond what is provided by the SC/ST Atrocities Act. Since the state-supported criminalization of this community serves to perpetuate their extreme marginalization, it may be useful to implement legislation that provides significant penalties for initiating criminal proceedings against NT/DNTs without cause.

Moreover, nomadic communities face distinct difficulties in obtaining government documentation because they have no permanent residence. It is therefore necessary to establish identity and residence requirements specifically tailored to the realities of NT/DNTs' circumstances.

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<sup>139</sup> See generally Kolekar.

<sup>140</sup> Jenkins, p. 142-143.

## ii. Arguments Against a Separate Category:

The national SC/ST Commission has recommended addressing the barriers to accessing SC/ST benefits within the existing social welfare framework, rather than creating a new constitutional category. The Commission noted that “Many of the DTs/NTs already categorized as SCs/STs/OBCs, may not like the existing arrangements to be disturbed as they would have to forego the benefits already guaranteed to them as SCs/STs/OBCs.<sup>141</sup>” The Commission also warned that “further dividing the society on caste basis” would have detrimental societal effects and could potentially lead to social conflict.<sup>142</sup> The SC/ST Commission, recognizing that the socioeconomic conditions of NT/DNTs “are generally worse than those of the Scheduled Castes and the Scheduled Tribes,” has recommended the following change to Article 342 of the Constitution:

“342-A. Scheduled Communities -

- (1) The President may with respect to any State or Union Territory and where it is a State, after consultation with the Governor thereof, by public notification specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purpose of this Constitution be deemed to be Scheduled Communities (Denotified and Nomadic Tribes), in relation to that State or Union Territory, as the case may be.<sup>143</sup>”

Some (including the SC/ST Commission) suggest granting NT/DNTs constitutional status as “Scheduled Communities,” which would remove the stigma associated with being a “denotified”. However, some NT/DNTs may not wish to subvert this identity, which carries with it the history of discrimination and injustice borne by these communities.

For this reason, the official designation of NT/DNTs should be decided in consultation with the communities themselves.

## Other Recommendations

It is not sufficient for the government to implement welfare

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141 Recommendations from the SC/ST Commission Consultation on Policy-Related Issues.

142 Recommendations from the SC/ST Commission Consultation on Policy-Related Issues.

143 Recommendations from the SC/ST Commission Consultation on Policy-Related Issues, p. 7-8.

schemes that are practically unavailable to one tenth of the country's population. Although the non-utilization of these schemes may be exacerbated by, or even primarily attributable to, the community's lack of willingness to participate, the onus is on the administration to adapt its development efforts to reach those in need. As the TANDA researchers pointed out with reference to immunization drives, "When the community's participation is low, it becomes the duty of the service providers to ensure that every child is immunized irrespective of caste, creed, religion, ethnicity and region.<sup>144</sup>" The following recommendations are intended as first steps toward addressing the marginalization experienced by the NT/DNT community.

1. **Conduct a comprehensive census of NT/DNTs nationwide, and include them in future Indian Censuses.**

The first step towards addressing the rights of NT/DNTs is to perform a comprehensive census. The Renke Commission suggested, "A complete enumeration of these communities is a must to realistically plan... effective intervention measures for overall well being, including conferring all the rights of citizenship."<sup>145</sup>

2. **Standardize lists of NT/DNTs across and within states.**

Whichever classification scheme is used to allot benefits to NT/DNT communities, it is imperative to standardize the scheduling of tribes and sub-tribes across states. Not only will this ensure that development schemes are equally accessible to a given tribe anywhere in the country, but it will also allow for the creation of political alliances based on a common, constitutionally recognized identity.<sup>146</sup>

3. **Ensure that all NT/DNTs are issued official identity documents.**

In the short term, Nirman suggests that the top priority

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144 TISS TANDA Report, *Living on the Edge*, p. 12.

145 Renke Commission Report, Annexure 5, *Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India*, p. 1.

146 TISS TANDA Report, *Status of Pardhis*, p. 71. See also National Advisory Council, *Recommendations Regarding Denotified, Nomadic and Semi-Nomadic Tribes* (recommending that the Ministry of Social Justice and Empowerment coordinate with states to create consistent lists of NT/DNTs).

should be to ensure that the requisite identity documents are issued to enable NT/DNTs to access the schemes that are currently available.<sup>147</sup> Anecdotal evidence from the field supports this as one of the most pressing concerns for the NT/DNT community.

However, the administration must arrange for alternate or flexible requirements for identity proof and proof of residence, as NT/DNTs are unable to comply with the current requirements.

The National Advisory Council has also suggested:

“the definition of ‘residence’ and ‘address’ should be made non-conventional and flexible to include everyone who is physically living in a given area, [and] Pastoral and ex-hunter gatherer communities should receive special attention with due regard to their geographical isolation... [a] special drive should be conducted to provide DNTs with Voter Identity Cards, BPL Cards, Ration Cards, MGNREGA Job Cards etc., in a campaign mode.<sup>148</sup>”

#### **4. Provide specific legal protection to NT/DNTs against discrimination based on tribal identity.**

In addition to the legislative reforms suggested above (see section on Central Government legislation), NT/DNTs should be provided specific legal protection against discrimination based on their tribal identity.

#### **This may be accomplished by including all NT/DNTs under the protections of the SC/ST Atrocities Act.**

The SC/ST Commission recommended inclusion of NT/DNTs in the SC/ST Atrocities Act:

“The DNTs are also victims of atrocities like Scheduled Castes committed by anti-social elements. It is, therefore, necessary that the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 be, mutatis mutandis, made applicable to

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147 Nirman, note for UN.

148 National Advisory Council, Recommendations Regarding Denotified, Nomadic and Semi-Nomadic Tribes.

DNTs as well and the central assistance be granted to the States in the same ratio as in the case of SCs and STs. Similarly, special cells may be set up by the States for the implementation of the above Act. To expeditiously prosecute cases under this Act, the number of Special Courts be suitably increased to effectively deal with the cases relating to DNTs.<sup>149</sup>

**Protection against atrocities may also be accomplished by implementing a separate law specifically tailored to protect NT/DNTs from atrocities.**

Such legislation would include, in addition to enhanced sentencing for crimes committed against NT/DNTs, provisions for enhanced sentencing for police officers who file criminal charges against NT/DNT individuals without cause or based on discriminatory animus.

Teachers, administrators, and schools who deny admission to NT/DNT children or allow them to be discriminated against in the classroom should also be severely sanctioned.<sup>150</sup>

- 5. Educate the police force in every state about the history of NT/DNTs and the challenges facing this community. Update police training manuals to ensure that there is no reference, either explicit or implicit, to the “criminal nature” of NT/DNTs or to any sort of “group mindset” of the NT/DNT communities.**

Milind Bokil has suggested, in addition to sensitization workshops for police, the “setting up of special cells (in collaboration with NGOs) for legal aid and counselling, especially for women.”<sup>151</sup>

- 6. Grand land plots to NT/DNT families and facilitate low-income housing for NT/DNT communities.**

Keeping in mind the history of denial of land rights to NT/DNTs, plots of land should be granted to these families regardless of whether they can demonstrate effective occupation of a particular piece of land for the statutorily

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149 Recommendations from the SC/ST Commission Consultation on Policy-related issues, p. 6.

150 See suggestions from Nirman, Note for UN.

151 Bokil.

required period. Milind Bokil has also recommended the “facilitation of low income housing projects in small towns and cities by granting land plots to DNT families.<sup>152</sup>”

**7. Allocate funds at the state and central levels for interventions targeted at the NT/DNT community.**

Addressing the socioeconomic needs of the NT/DNTs will require more than simply adding their names to the list of social welfare schemes; the community requires targeted interventions and alternative means of establishing identity and residence. For example, a standard initiative in increasing women’s economic participation is the creation of self-help groups. However, as the Renke Commission noted, “low or no source of income, nomadic lifestyle, living in urban / rural fringes and prevailing suspicion arising out of stigma would pose challenges integrating [NT/DNTs] into existing micro-credit.<sup>153</sup>”

Nirman has suggested that funds be allocated specifically for the development of NT/DNT communities, including education, livelihood, health and community development.<sup>154</sup> This may include initiatives such as maternal health education and rural health facilities specifically for NT/DNTs, or the provision of free education through 12th class for NT/DNTs.<sup>155</sup>

**8. Strengthen community representation and reserve government seats for NT/DNTs.**

Strengthening community representation may also aid in improving NT/DNTs’ access to mainstream social and economic structures. The Renke Commission stated,

“In much of the places these Jaat Panchayats [NT/DNTs’ internal governance mechanism] have not been able to effectively participate in local body elections or in mainstream politics. This indicates weak community mobilization process and

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152 Bokil.

153 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 44.

154 Nirman, note for UN

155 Bokil; Nirman, Note for UN.

limited role for Jaat Panchayats. However, this does not rule out the possibility of sensitizing the communities, and Jaat Panchayats in participating in local body election process and contribute to overall development needs of the communities.<sup>156</sup>

The Renke Commission suggests that the Jaat Panchayats be “recognised and strengthened.”<sup>157</sup> While community independence is an important goal for NT/DNTs, it is also imperative to proceed cautiously in supporting a form of governance that discriminates against women and has been known to impose brutal punishments on women for such perceived transgressions as sexual infidelity. For this reason, education and the fulfillment of social and economic rights should be the primary goals of NT/DNT advocacy. Self-governance and community-level conflict resolution should be developed subsequently to these efforts and should comply with national and international human rights norms.

9. **Dedicate institutional resources to social welfare schemes for NT/DNTs:**

The National Advisory Council has also recommended the following arrangements to ensure that social welfare schemes are developed for and targeted at NT/DNTs:

- “A senior officer not below the rank of Director in the Ministry of Home Affairs be entrusted with the responsibility to coordinate with the State Police agencies to ensure the DNTs are protected from atrocities.
- A senior officer not below the rank of Director in the Ministry of Social Justice and Empowerment be entrusted with the responsibility to coordinate with the State 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.
- At State level an exclusive Department should be

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156 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 76.

157 Renke Commission Report, Annexure 5, Rapid Community Based Survey of Denotified, Nomadic and Semi-Nomadic Tribes in India, p. 77.

established for DNTs to monitor and coordinate with various departments for ensuring effective coverage of DNTs in all the developmental programmes. The Department should also be responsible for effective grievance redressal mechanisms.

- At least one member in the National Human Rights Commission and the State Human Rights Commission should especially look after the issues relating to the DNTs.<sup>158</sup>

## Conclusion

Government commissions, independent researchers, and international bodies have repeatedly recognized the marginalized experience of nomadic and denotified communities in India. They have identified specific legal and policy measures that could improve the socioeconomic status of NT/DNTs and contribute to overcoming the decades of criminal stigma associated with these tribes. Despite the similar recommendations proposed by successive commissions, the state and union governments have failed to either implement these recommendations or design their own schemes to address the needs of NT/DNT communities. The significant social, legal, and economic barriers impeding the fulfillment of the communities' rights require concrete action on the part of the state. This action must take the form of not merely another commission to assess NT/DNTs' socioeconomic conditions, but rather comprehensive measures tailored to provide NT/DNTs equal access to state and societal institutions and to enable them to participate in the life of the nation as full citizens.



158 National Advisory Council, Recommendations Regarding Denotified, Nomadic and Semi-Nomadic Tribes.

## **TESTIMONIES AND DEPOSITIONS FROM VICTIMS OF HUMAN RIGHTS VIOLATIONS FROM THE NOMADIC AND DENOTIFIED TRIBES**

**T**his section contains the depositions and testimonies that were collected from the field. There are around 30 testimonies of various incidents, from rape and murder to custodial ill-treatment and denial of access to land and land rights.

A reading of the cases gives a complete perspective of the kind of atrocities that people from the NT/DNT community face on a daily basis. The lack of access to healthcare, education and livelihood opportunities only compounds their situation.

Particularly in the state of Maharashtra, these communities do not have any guarantees under the constitution. They are unable to obtain basic social security documents such as BPL cards, although most of the adults have voter identity cards in their names.

These testimonies indicate that the people from these communities are considered dispensable; neither their lives nor their dignity are afforded any value. Moreover, the state – including the judiciary, legislature, and police – have not contributed to the creation of positive development options for these communities.

### **Atrocities Committed by Police**

#### **1. Custodial Ill-Treatment**

Name of Victim: Kailash Ramesh Shinde

Age: 24

Tribe: Pardhi

Date of incident: November 2013

Place: Basmat (Hingoli District)

#### **Incident:**

Kailash Shinde was arrested in connection with a case of alleged

theft. He was taken to Wasmat Police Station, where he was tortured to extract a confession. Three officers conducted the interrogation. Four people stood on a cement roller, which was then rolled over his legs. They hit him with wooden sticks on his chest, back, and heels, and they beat him with a leather belt on his arms and hands. This treatment continued for approximately three hours, after which blood started to ooze out of Shinde's mouth, and he lost consciousness.

Shinde was taken to a government doctor, who did not mention any of his injuries in the medical report. The doctor also refused to do a chest scan, despite Shinde's complaints of chest pain. A few days later, he was released from police custody. He went to a private doctor for a medical check-up and was prescribed some medicine. He still suffers from intermittent pain in his chest and body.

Shinde has not filed a complaint or FIR against the police who ill-treated him, as he has no proof of the ill-treatment and believes that he would not be able to make a case. He has a chest x-ray from the private doctor, but the film is badly faded and almost impossible to read. He also has a foot x-ray, which is difficult to read, from the private doctor.

Shinde's older brother had experienced similar treatment at the hands of the police a few years earlier. His older brother was beaten badly and suffered permanent brain damage. Shinde has his brother's leg x-ray, which shows a clear fracture, and a brain scan (interview team members were not qualified to interpret the brain scan). No action was taken against the police.

## **2. Custodial Ill-Treatment**

Deponent: Suresh Guruling Shinde

Name of Victim: Suresh Guruling Shinde

Age: 39

Tribe: Pardhi

Date of Incident: August 23, 2013

Place: Basmat (Hingoli District)

**Incident:**

I am a samaj sevak. I was arrested by Nanded Police on August 23, 2013, while I was coming back from the field. Without a warrant they just picked me up; they did not even inform the SP or DYSP. They beat me a lot for three days in custody. On August 28, they charged me with 4 false cases and kept saying that “you are in the wanted list of Maharashtra police since the past 10 years. You have been stealing a lot; tell us the names of your accomplices,” etc. They tortured me like this for 23-25 days. They had no previous criminal records in my name. They even changed my father’s name to manipulate information about me.

I was released on bail after 6 months on March 3, 2014. They made me rot in the jail for all those months, and there are 11 false cases against me in Hingoli, Vasmat, and Nanded. I don’t get any time; I have to keep attending to one case or another all the time. I don’t even have money to pay the lawyer. My father sold my part of the plot to pay for the lawyer.

Nanded and Hingoli police are the worst – they trouble Pardhis a lot. My two sons are in 10th and 11th class. My brother is a teacher. We are a well-educated family and still we cannot escape the cruelty of this social system.

All this causes a lot of fear amongst the Pardhis, and they have run away, leaving their farms. The Marathas occupy their lands. We have still not gotten our land back. Everybody knew what was going on – the SP, the nagar sevak. I used to meet them regularly, but even then the police did not release me. I told the SP that I will commit suicide if all this does not stop, but still nothing has been done.

**3. Systematic Arrest and Registering of False Criminal Charges Against Pardhi Community**

Names of Victims: Anand Kale, Suraj Shankar Kare, Ram Mani Pawar, Rama Pawar, Lakshman Kamalya Chauhan, Lakshman Pawar, Champati Nyanu Chauhan, Dinesh Ganpat Kale, Balaji Ganpat Kale, Sunil Ganpat Kale, Tukaram Shakaram Kale

Tribe: Pardhi

Date of Incident: Ongoing

Place: Kharbi (Hingoli District)

**Incident:**

In the Pardhi basti of Kharbi, residents report that every single man in the neighborhood has been arrested on false criminal charges. Most of the men have several cases pending against them, and some have more than ten ongoing cases. There are around 50-60 people in the basti.

The women in the area report that the police come at all times of the day and night to arrest men from the basti. The police do not hesitate to drag men and women out of their homes at night. In the course of arrests, the police handle both men and women roughly. Those who resist are hit by the police. For this reason, many residents sleep in the jungle to avoid being harassed by the police.

When the fact-finding team arrived in Kharbi, we found that nearly all of the men, with the exception of the most elderly, had run into the fields when they saw our vehicle approaching. They believed we were the police, and they feared being arrested on false charges. We spoke with the wives of several men who had multiple criminal charges filed against them. We were told that there are 15-20 people in the basti with charges currently pending against them. The families of the following victims spoke with the fact-finding team:

**Anand Kale:**

He has been arrested under IPC 395 (dacoity) and is currently in Parbhani Jail. The case is being heard in Basmat Court. He has three children, aged approximately 20, 16, and 15.

**Ushabai Shankar Kale:**

Ushabai's son Suraj, who is approximately 30 years old, was arrested under IPC 399 (preparation to commit dacoity) and MCOCA and is in jail in Hingoli. Ushabai stated that Suraj currently has six cases pending against him.

**Ram Mani Pawar:**

Ram Mani Pawar is a farmer who owns 35 acres of farmland around 3 km from Kharbi. He has around 10-15 criminal cases pending against him. He has four cases under IPC 395 (dacoity),

10 cases under IPC 389, and 1 case under IPC 399. The cases are being tried in several different courts, at which he must attend regular hearings. He has incurred a large debt in order to pay his lawyer's fees.

**Rama Pawar:**

He has three or four cases pending against him, according to his sister-in-law. He was released on bail and left Kharbi for Mumbai, leaving his two wives, Sangitabai and Pilkabai, and their five children in the village.

**Lakshman Kamlya Chauhan:**

Lakshman's mother, Bhagubai Kamlya Chauhan, stated that he was arrested on his way home from a religious yatra and has been in Akola jail for two years. He has been charged under IPC 395 (dacoity).

**Lakshman Pawar:**

His wife stated that he had 10-15 dacoity cases pending against him. He was released on bail and was in Kharbi when the fact-finding team visited, but he did not wish to come out of the house to meet the team. His wife stated that he has been harassed by the police for the last ten years. He has already spent more than Rs. 50,000 on legal fees.

**Champati Nyanu Chauhan:**

Champati Chauhan works in Mumbai, but was arrested when he returned to Kharbi (about 15 days before the fact-finding team visited). He was released, but ran from the basti when he saw the fact-finding team approaching.

**Dinesh Ganpat Kale, Balaji Ganpat Kale, Sunil Ganpat Kale:**

They have been arrested in connection with 15 dacoity cases and have been in Parbhani jail for the last six months. Dinesh Ganpat Kale's wife recently died during childbirth in Parbhani Hospital.

**Tukaram Shakaram Kale:**

He has been charged in 20 dacoity cases; he ran from the

basti when he saw the fact-finding team approaching. His wife, Sarsubai, works as a labourer and supports their three children.

#### **4. Police Violence Against NT/DNTs**

Names of Victims:

Mirabai Navnath Kale, 40

Vaktabai Bhagwan Shinde, 45

Kalpana Ramesh Shinde, 22

Shyamkalabai Bhawan Shinde, 20

Tribe: Pardhi

Date of Incident: December 14, 2006

Place: Rajivnagar Slum, Aurangabad Railway Station  
(Aurangabad District)

##### **Incident:**

The victims live in kaccha houses in Rajivnagar slum and work as manual labourers. On December 14, 2006, at around 2:00 a.m., police from Kranti Chowk Police Station in Aurangabad came to the slum, kicked in the doors of the complainants' huts, and began to search the huts. The police beat the complainants with wooden sticks. The victims were later booked under theft charges.

#### **5. Custodial Death**

Name of Victim: Suman Gajanan Kale

Age: 45

Tribe: Phanse Pardhi

Date of Incident: May 16, 2007

Place: Kotwali Police Station, Ahmednagar

##### **Incident:**

On May 16, 2007, Suman Kale was arrested in connection with a case of dacoity and taken to the office of the District Superintendent of Police, Ahmednagar. There, police personnel tortured her for two days. When blood started coming out of her genitals, they sent her to a private hospital. In the hospital, Suman used sign language to inform her brother, Girish Chavhan, that she had been molested by the police. After two days in the hospital, she died. The postmortem report falsely stated that she was menstruating at the time and had died after

ingesting poison. Despite Girish Chavhan's demand to register an FIR for murder, the police recorded Suman Kale's death as a natural death.

Three days after the incident, Girish Chavhan began a hunger strike outside the office of the Collector in Ahmednagar to convince him to appoint an enquiry committee. Following the enquiry, DSP Ramanand suspended two policemen, but they resumed work after just three days of suspension.

The Collector agreed to investigate the case; Girish Chavhan also requested that the dead body be shifted to Dr. Ghate's Hospital and another postmortem be conducted. The investigation concluded that the cause of death was ill treatment and molestation by the police. On the basis of this investigation, Girish Chavhan filed a writ petition before the Aurangabad High Court. MLA Anil Rathod also raised the issue of a CID enquiry in the Maharashtra Legislative Assembly.

A CID enquiry was directed to be done through Mr. Sayyad, who was a classmate of one of the accused police officers, Mr. Sonavane. At Girish Chavhan's request, Sonavane was removed from the enquiry, and Mr. Tandale was appointed in his place. Mr. Tandale's enquiry concluded that the police were responsible for Suman Kale's death.

By order of the High Court, the crime was registered at Bhigar Police Station, but the accused were not arrested. Another petition was filed before the High Court, which directed the police to arrest the accused. They did so, but the accused were released on bail two months later. Following the subpar performance of the public prosecutor, Girish Chavhan has now requested that Ujwal Nikam serve as public prosecutor for the case, which has been shifted to the sessions court.

Suman Kale's family was also granted five lakh rupees by the National Human Rights Commission.

## **6. Police Encounter**

Name of Victim: Alya Devidas Bhosale

Age: 30

Tribe: Pardhi

Date of Incident: June 27, 2007

Place: Pakhrud, Bhum Tehsil, Usmanabad

**Incident:**

Alya Devidas Bhosale worked as a casual laborer in Pakhrud along with his mother and maternal aunt, and his wife and their four children. He was an Antyodaya Ration Card holder. Ramdas Jadhav, the police patil of the area, said that Alya Bhosale was a good person by character and was cordial with others in the village. There were no cases registered against him in Bhum Police Station. However, it was found that the Sessions Court of Ahmednagar had declared Alya Bhosale a wanted dacoit in a MCOCA case.

On June 27, 2007, at 1:00 pm, Alya Bhosale and his wife were busy cooking when the rural police team of Pune and Ahmadnagar surrounded them and fired at Alya Bhosale. Four bullets hit his thigh, and one hit his chest, killing him instantaneously. Even though the entire incident happened in broad daylight, the police fabricated the incident as protecting themselves from Alya's attack on them with a country-made pistol. Then the police took Bhosale's dead body to Washi, Bhum, Usmanabad and finally Solapur for a post mortem exam, despite the fact that facilities to conduct a post mortem exam were available at the government hospital in Usmanabad.

Police buried Bhosale at Anjansoda, in the absence of any family member, as the villagers of both Pakhrud and Nagewadi refused to allow his burial. On June, 28, 2007, a news report regarding the death was published in Lokmat, a local Marathi daily. In response to the news report, the police declared that there were a number of dacoities happening in various districts of the state, and Bhosale's group was involved. They booked 32 people under MCOCA for 19 cases of dacoity. This was reportedly done on the orders of Mr. Prem Jain, the Inspector General of Police, Nashik.

**Accused Police Stations:**

Rural Police Station, Pune

Washi Police Station, Ahmednagar

Bhum Police Station, Ahmednagar

## 7. Assault by Forest Department Officials

Deponent: Appa Saheb Chavan (on behalf of victims)

Names of Victims:

Lata Bai Bhosle

Vanaspati Bai Chavan

Tarsan Bai Chavan

Tribe: Pardhi

Date of Incident: April 29, 2014

Place: Henkarwadi.

### **Incident:**

Three women had gone to the forest as usual to work the land they have been cultivating for the past 15-20 years. A forest officer, P.M. Patil, beat these three women mercilessly. One of the women's legs has still not recovered from the fracture. We found P.M. Patil's badge lying there on the spot where it happened – that is how we know it was him. He was not even aware that his badge had fallen down, he was beating them so much.

We have given an application to the SP, but the case has not been registered. We even held a protest, but nothing has happened so far.

Instead, the women who were violated have been charged as criminals for causing hindrance in government work.

## **Arrest under False MCOCA Charges**

Deponent: Harshada Raju Chavan.

Victim: Raju Chavan

Tribe: Pardhi.

Date of Incident: August 10, 2012

Place: Pune/Nanded

### **Incident:**

I come from a SC community and had an inter-caste marriage. My husband is a Pardhi. My family has disowned me after marriage. I am a graduate from Nanded University. We migrated to Pune

to live with dignity. He used to work in a company and even I worked as a domestic help.

In every Pardhi family, all the young boys have an experience of getting picked up by the police at one time or another on false charges. There are always one or two cases in their names by default. My husband's eldest brother, Shankar Chavan, was arrested in December 2009, and over the following months other men in the family were also picked up. My husband was picked up by the police from Pune on August 10, 2012. Nanded police arrested him from Pune, and they only filed cases against him after reaching Nanded. Forget about carrying a warrant, they did not even know what they wanted to book him for when they picked him up. This is clearly a false arrest. They have charged him with 16 cases, including MOCCA. The six other men are also in jail. There is no single male member from our family who is out of jail. They pick our men from anywhere and put them in any jail. We have to keep running even to know which jail they have been put in.

People in my family don't understand what the lawyers are saying. All of them have collected money for me to come here and speak. I have been roaming from post to pillar for the last two years. They have put all the men in Aurangabad Jail. I am staying alone on rent in Aurangabad to follow up. Even though the 16 cases have been lifted off him, they have still not given him bail.

## **Denial of Land, Housing, Health and Employment Rights**

### **1. Land Rights and Violence Against NT/DNT Families**

Names of the Victims:

Raju Chavan, 40, & Family  
Sonaji Chavan, 35, & Family  
Prakash Bhosale, 45, & Family  
Manshiram Chavan, 65, & Family  
Ranjana Pandit Bhosale, 37, & Family

Tribe: Pardhi

Date of Incident: February 15, 2010

Place: Kadethan (Paithan Taluq, Aurangabad District)

**Incident:**

Five Pardhi families have been living on and jointly cultivating 25 acres of government (gayran) land in Paithan village for the last 30 years. On February 15, 2010, the sarpanch of Paithan and several people from the village came to these families' houses, beat them with sticks and axes, demolished their homes, and destroyed their crops. Several people were badly injured. The villagers told the Pardhi families not to return, and threatened them with death if they did so.

On December 16, 2009, Mansaram Chavan went to Pachod Police Station to register an FIR, but the police refused, stating that they could not take complaints from a Pardhi. The police then arrested Mansaram Chavan for a 30-year-old dacoity case and took him into police custody.

Following this incident, community members approached the Human Development Foundation in Aurangabad. The Foundation submitted an application to the Judicial Magistrate and Tahsildar (Revenue) of Paithan Tahsil to inquire about the incident and to request protection for the Pardhi community. The Foundation also contacted the Police Commissioner and District Police Superintendent of Aurangabad and requested the filing of an FIR under sections 3(3), 3(10), 3(11), 3(14), 7 of the SC/ST Atrocities Act 1989 and sections 447, 427, 323, 504, and 34 of the IPC. DSP Lohiya then ordered PI Sanjay Hebare at Pachod Police Station to re-investigate the matter.

After the re-investigation process and finding that the community was being harassed, the Tribal Development Department awarded an initial compensation of Rs. 15,000 for each of the families. The families have also filed a civil suit for a permanent injunction against the accused.

Note that a civil suit and criminal case were also filed in 2004 for a similar incident. The civil suit was dismissed for lack of evidence that the plaintiffs were in actual and physical possession of the government (gayran) land.

**2. Land Rights**

Names of Victims:

Indya Pawar, 25  
Ramchandra Babu Kale, 41  
Tejas Ramesh Kale, 30  
Ganfubai Bangalya Pawar  
Tarkya Shinde  
Anjali Tarkya Shinde  
  
Sunil Rajat Kale, 30  
Raju Rajat Kale

Tribe: Pardhi

Date of Incident: December 9, 2012

Place: Sindhi Sirus village (Gangapur Taluq, Aurangabad District)

Approximately 20 Pardhi families had been living on and cultivating 120 acres of government (gayran) land in the village for 25 years. This land is quite valuable, as it borders the Mumbai Highway, and cases for possession are ongoing in civil court.

On December 9, 2012, at around 9:00 pm, about 30 people from the village came to the gayran land, began to beat the Pardhi families, and set their huts on fire. The Pardhi families ran, but several people were badly injured in the attack, including Raju Rajat Kale, Bagwan Indya Pawar, Ramchandra Babu Kale, Tejas Ramesh Kale, Gangubai Bangalya Pawar, Tarkya Shinde, and Anjali Tarkya Shinde. Seven people were admitted to the government hospital for their injuries.

An FIR has been registered in Waluj Police Station; Police Inspector Balaji Sontakke, Police Sub Inspector Dashrath Choudhary, and Deputy Police Commissioner Somnath Ghargeare are in charge of the case. A civil petition for injunction has also been filed.

The Bhartiya Adivasi Vimukt Bhatke Youth Front, based in Aurangabad, has also appealed to the Chief Minister of Maharashtra to intervene in the matter.

### **3. Land Rights**

Name of Complainant: Arvind Rathod, Sarpanch of Papalwadi, on behalf of many families involved in the case

Tribe: Banjara, other ST

Date: Ongoing

Place: Mahur Taluq, Nanded District (Villages: Papalwadi, Vajra, Duttamanjari, Vandra, Vatsunda, Meth, Junapani, Chikramvadi, Kupti, Madapur, Hingni, Tulsi, Pardi, and possibly others)

**Incident:**

Many families from the NT/DNT community have been farming government (gayran) land for more than 20-30 years. Some of these families' names are in the registered list of farmers, but others are not. These families have asked for title to this land (pattas), but have received no response from the government.

**4. Land Rights**

Deponents: Balasaheb Yadav and Gajendra Dongre

Tribe: Gawali, Vaddar, Mahar

Place: Satrapur, Bokara, Nagpur

We have been staying in this basti since 1990. There are around 400-500 people. The gram panchayat says that it is temporary, but we have been staying there for 20 years now. There are no facilities, no water, no transport, and no electricity. Since they say it is temporary, they are not even doing anything about it.

80% of the people are Vaddar, and the rest are SCs. We have made slab-roof houses here. We pay tax, but "temporary" is written on the tax bills. There is outside pressure, but we want facilities to reach us, and ownership of this land.

**5. Land Rights**

Deponent: Shankar Gaddekar

Tribe: Kaikadi

Place: Sirancha, Gadchiroli

We have been in Gadchiroli since 1916. We did not have a status of being natives of that place due to the nomadic nature of our community. Since that sense of entitlement was absent amongst

our people, whenever any community came to the place that we were living on and claimed it as theirs, our people complied and moved on. As more and more people came to the region, eventually all of Gadchiroli was packed, and we realized that we were suddenly left out.

In the last seven years, we have settled down in Kaikadi Nagar, seven kilometers from Gadchiroli. We are 150 families, and we made our homes on barren land where there were no trees, even though it comes under forest land. The Forest Department has filed charges against our people, saying that we have cut trees from the forest. Some other outsiders had come and felled some trees nearby, but we have nothing to do with this. We are being falsely accused of crimes; I myself am accused number 35.

They are using all these methods to threaten us. All this has nothing to do with the felling of trees; it is about taking our land away. They have not filed any charges about occupation of that land, but they are filing such cases to criminalize and remove us.

Our kids go to schools, but we have no birth certificates or caste certificates. There is also the issue of some of us being listed as SCs, and some others as DNTs.

## **6. Land Rights**

Deponent: Rajure Sulekha Chavan

Tribe: Pardhi.

Place: Bambora, Karjat, Ahmadnagar

### **Incident:**

We are seven Pardhi families, and we have been living on the land outside the village for the past 15 years. We carved out 25-30 acres of land for ourselves from the gairan. Every family owns 4-5 acres of that land. It is a good and fertile land. We dug our own well and started lemon cultivation there. The land is not being transferred to our names because the villagers are not letting the revenue officers come from the village.

The villagers have blocked us out of the village. They even

come and harass us from time to time so that we will leave our lands and run away. We don't even have voting rights or ration cards yet.

We don't send our children to school out of fear. In the neighbouring village, two Pardhis were killed by villagers who accused them of theft.

## 5. Maternal Health Rights

Despite the existence of government schemes to provide women with cash assistance for pregnancy and delivery, many NT/DNT women are unaware that they are eligible to receive assistance and free obstetric/gynaec care from the government. The experiences of the following women are representative of the birth experiences of many women from these communities.

Name: Shalu Lakhan Tambe

Age: 25

Tribe: Bharadi

Residence: Waarnagar, Anjangaon Surji (Amravati District)

"I delivered a boy 5 months ago. Since the government hospital was not accessible, I had to go to the private hospital, where I had to spend Rs. 5,000 on hospital charges for a normal delivery. Though people from the anganwadi had come and recorded my name, they did not give me any medication or any relief package. Anganwadi officials did not even inform me that my delivery could be done for free in the government hospitals. Moreover, the facilities in the local government hospital are not adequate, and there have been instances when doctors could not help perform the deliveries and ultimately patients had to be shifted to private hospitals, where they were charged more than Rs. 25,000. Even if we go to government hospitals, we are sure we won't get any help. I do not have a BPL card because the tahsildar refuses to give the card and says he wants proof. We are nomads – where will we get proof?"

Name: Durga Tambe

Age: 22

Tribe: Nathjogi

Residence: Waarnagar, Anjangaon Surji (Amravati District)

"I gave birth to a girl 7 months ago. Since no services were provided to me in the local government hospital, I had to resort to a private hospital for the delivery. There, I was informed that I was suffering from jaundice, and the expenses for treatment and delivery reached Rs. 50,000, even though it was a normal delivery. People from the anganwadi had come and recorded my name, but they didn't give me any medication or relief package. Anganwadi officials did not even inform me that my delivery could be done for free in the government hospitals."

Name: Durga

Age: 20

Residence: Modiapur (Buldhana District)

"I had a baby girl 20 days ago. Since the local government hospital did not accept my case, I had to resort to a private hospital, where the cost of delivery was approximately Rs. 7,000. People from the anganwadi had come to visit me; they registered my name and gave me some medicines for a month, but on the day when I went into labour, no medical government van came to take me to the hospital, and no ASHA worker came to assist when I was being taken to the hospital. Moreover, no ASHA worker has been appointed for Modiapur. Two hundred families own ration cards in the whole village, but there are only 70 BPL cards. I do not have one."

## 6. Social Exclusion

Victims: 27 families from the Wadar Community

Tribe: Wadar

Date of Incident: June 20, 2013

Place: Girola (Ambadi Grampanchayat, Bhandara District)

**Incident:**

Twenty-seven families from the Wadar Community came to Girola about seven years ago to work as manual labourers, as is common in their community. to earn their livelihood by doing labor work, as per the customs of their community. They built houses and huts on approximately 0.7 hectares of barren village land and took up residence there.

The Wadar families met no objection from the villagers or the Gram Panchayat, and so they spent a large portion of their income on securing amenities such as electricity. Then, on June 1, 2013, the Gram Panchayat served a notice of encroachment and demanded that the families vacate the land. The Gram Panchayat submitted that the land belongs to the government and is reserved for burial use.

However, the villagers were not using the land for burial purposes, and the Gram Panchayat is empowered to remove encroachments only within six months of the time the encroachment is noticed. Because the Gram Panchayat failed to take action within the specified time frame, the notice issued for removal of encroachment was illegal under section 53(2) of the Mumbai Village Panchayat Act.

**7. Employment Rights**

Names of Victims: Mr. Sheikh & Mr. Rathod

Date of Incident: Continuous

Place of Incident: All Over Maharashtra

**Incident:**

The State of Maharashtra instituted special residential schools for VJ-NT children, hundreds of which were set up in 2008. These schools have facilities similar to those provided in tribal welfare hostels. Even though State has been paying for the construction of schools, day-to-day costs, and stipends for management and children, it has not paid anything to the teachers who are working on a permanent basis. A number of such teachers are working in the state without any salary and have been raising

their demands through every possible means. According to the government resolutions that set up these schools, these teachers were entitled to receive a 50% salary after completing 5 years of work. However, they are not being paid at all, as a result of which educational standards in such institutes are below standard.

## **8. Racial Discrimination**

Name of Victim: Shelle Sir (on behalf of Pardhi teachers and schoolchildren)

Age: 35

Tribe: Pardhi

Place of Incident: Buldhara

### **Incident:**

The victim is from the Pardhi community and has been working as a teacher in Tribal Residential Military School. He convinced a number of Pardhi families to put their children in the school. However, over a period of time, he realised that the children are being discriminated against by the management and teachers – for example, they are given food after high caste students have eaten, and they are not given soap, uniforms, books, etc. Once, a student complained about this treatment to a teacher, who then brutally beat him up. When Shelle Sir and other teachers from the same tribe raised this issue with management, they were terminated from employment.

## **Violence Against NT/DNTs, Including Violence Against Women**

### **1. Violence Against Women, Violence Against NT/DNTs**

Names of Victims:

Mandakini Sundarsing Pawar, 18

Puja Sundarsing Pawar, 16

Poonam Sundarsing Pawar, 12

Sundarsing Sakharam Pawar, 60

Tribe: Pardhi (Phanse Pardhi)

Date of Incident: January 19 and June 12, 2014

Place: Jortala (Hingoli District)

**Incident:**

The Pawar family has lived in a hut on the outskirts of Jortalab, near Hiridih Shiwar pond, for 21 years. They farm a small patch of gayran land adjacent to the land of the upper-caste Jadav family. For some time, the Jadavs had been harassing the Pawars with the intent of compelling them to leave the gayran land.

On January 19, 2014, three young, high-caste men approached a girl who is in 8th class, while she was washing clothes at the water basin outside her hut. The three men covered her mouth with their hands and began to drag her toward the bushes. Komal was able to resist and scream for help, after which her sister, Mandakini, came running from the hut and was able to fight off the men. Following this incident, the Pawars filed FIR no. 04/14 on January 19, 2014, in Basmba Police Station under IPC 354A, 506, and 35, and SC/ST Atrocities Act 3(1)(xi). The perpetrators were granted bail immediately and have not been convicted.

In June 2014, the children returned to the village from Mumbai, where they live and study with their mother's sister, Jayabai Mandal. Mandakini was preparing to enroll in the local police force. On June 12, at around 1:30-2 pm, Mandakini, Puja, Poonam, and Komal, and their two young brothers went to the nearby lake to swim. Mandakini, Puja, and Poonam, who swam regularly and were strong swimmers, swam out to the middle of the lake. Komal, Gopal, and Devanand were on the shore. Soon after the girls began swimming, six young men from the village approached from the other side of the lake and followed them into the water. Komal and her brothers saw the young men pushing the girls under the water. Komal ran back to the hut to tell their parents what was happening. They ran back toward the lake, where they saw the six young men leaving. The young men had tied handkerchiefs over their faces, but two of their handkerchiefs had fallen off, and the family recognized them as two villagers from the Maratha community. The girls' mother, Mangalabai, yelled at the young men, "Why have you done this to my children? What did they do to you?" The girls' father, Sundarsing, told his wife and the children to go to the village and ask someone for help. They left for the village, and Sundarsing went to try and rescue the girls. Mangalabai asked the villagers to come help, but they all refused. When they returned to the lake, Sundarsing had

disappeared; his body was later found in the lake.

Mangalabai then contacted Sheikh Fazal, a journalist from Puse Gaon. He arrived at the lake within 15 minutes; the sarpanch of Jodtala, Shankar Jadav, arrived soon after. The sarpanch contacted the police, who arrived soon after but refused to search for the bodies in the lake. Around 7:30 pm, Mandakini's naked, dead body floated to the surface of the lake and was pulled out of the water by the police. When she saw Mandakini's body, Mangalabai fainted. Sheikh Fazal took Mangalabai to the government hospital in Hingoli.

The police took the other bodies out of the water the next morning. The DSP told the family that the four of them must have drowned accidentally. The police initially refused to register an FIR, but when Fazal Sheikh and some villagers put pressure on the police, they finally registered an FIR under IPC 34 and 302, and the SC/ST Atrocities Act, 3(2)(v).

On June 6, Mangalabai, Komal, Devanand, Gopal, and Chandralekha Pawar (a relative) instituted a hunger strike in front of the Collector's Office to demand a CID investigation, help from the Social Welfare Department, and Rs. 25 lakh from the CM's relief fund. They also demanded a house under the Indira Awas Yojna and 7/12 hectares of the gayran land that was at the root of the hostility from the upper-caste villagers. On July 1, 2014, they received a cheque of Rs. 9,37,500 from the Social Justice Department. DySP Lanjewar committed to Mangalabai in writing that the incident had been registered under IPC 302 and the SC/ST Atrocities Act and that the accused would be arrested soon.

However, when the HRLN fact-finding team visited the family on July 4, the accused had not yet been arrested, and the post-mortem report had not been produced.

When the HRLN team spoke to PI Ade at Basamba Police Station, he said that he was under pressure from the villagers not to arrest the accused, but that he intended to do so within the next few days.

## **2. Violence Against Women**

Name of Victim: Daiyappa Saudagir Pawar

Tribe: Pardhi

Date of Incident: 2010

Place: Hiardpuri (Paithan Tehsil, Aurangabad District)

**Incident:**

After an argument about money, an OBC man and 5 other people attacked Daiyappa Pawar with lathis and iron rods. They stripped her of her sari and beat her on her head and legs, and they warned her not to tell the police about the incident. Following the beating, she lost consciousness. When members of her community found her, they took her to the government hospital, but the hospital refused to treat her. She then went to the police station, but the police initially refused to register her complaint. They eventually filed an FIR under IPC 34, 323, 504, and 506. However, none of the accused have been arrested.

**3. Violence Against NT/DNTs**

Name of Victim: Raju Kale

Age: 20

Tribe: Pardhi

Date of Incident: 2010

Place: Parbhani (Parbhani District)

**Incident:**

A theft occurred in Sakra Flats, near the railway station in Parbhani. The residents of the flats found Raju Kale, accused him of committing the theft, and began to beat him up. The next day, his dead body was found near the village school. An FIR was registered under IPC 302 (murder) and the SC/ST Atrocities Act, section 34. The case is ongoing.

**4. Social Exclusion**

Names of Victims: Pandit Bhanudas Kale and others

Tribe: Pardhi

Date of Incident: January 1, 2014

Place: Vadi Godri (Ambad Tehsil, Jalna District)

**Incident:**

An upper-caste villager borrowed Rs. 10,000 from Pandit Bhanudas Kale two years ago, and on January 1, 2014, Kale asked him to return the money. The two got into an argument, and the upper-caste villager said that Pardhis are criminal by birth and should not be allowed in any village. He and some of his friends kicked Pandit Kale. Kale's wife, Mandakini Bhosale, mother-in-law, Nirmaltai Kale, and community member Ginyandeo Bhosale attempted to mediate, but the upper-caste villager and his friends beat them up and tore the women's clothes.

On January 2, 2014, the Sarpanch and other upper-caste villagers declared that two Pardhi families were excluded from Vadi Godri village. This meant that the families would be denied exchange of goods, supply of basic amenities, free entry in the village, and the entry of their children in school.

On January 4, 2014, the Gram Panchayat called Ginyandeo Bhosale into their office and told him to leave the village.

The upper-caste villager also registered a false complaint against Pandit Kale, for which the police from Gondi Police Station arrested Kale. He is now in Aurangabad Jail.

When this incident was reported in the local newspaper, members of the Maharashtra Bhatke Vimukt Jati Sangh, based in Aurangabad, organized a one-day hunger strike outside the Divisional Commissioner's office on February 2, 2014. Representatives of the organization also met with the Jalna District Collector.

**5. Assault and Murder**

Names of Victims:

Hasan Dadarao Solanki, 30

Supada Magan Nagnath, 25

Punjabrao Bhikaji Shinde, 28

Punjab LaxmanSolanki, 35

Tribe: Nathjogi

Date of Incident: May 9, 2012

Place: Nagpur

**Incident:**

In May 2012, four youth artists from the Nathjogi tribe – Hasan Dadarao Solanki, Supada Magan Nagnath, Punjabrao Bhikaji Shinde, and Punjab Laxman Solanki – came to show their traditional art in Nagpur. During this time, they stayed in tents at Pipla, on the outskirts of Nagpur. On May 9, they decided to go to the Kalamana area of Nagpur dressed as hijras in sarees and heavy makeup. At approximately 8:45 a.m. on May 9, the four of them reached Abha Teacher Colony in Kalmana, unaware that the residents of that area were searching for members of a “Saree Choli Gang.” Men dressed in sarees had allegedly been terrorizing the neighborhood, carrying out kidnappings, robberies, thefts, and rapes, although no such incidents were reported to the local police station. In response to the alleged spate of crimes, residents had organized volunteer groups to patrol the neighborhood at night.

Before the Nathjogi artists could start their work in Abha Teacher Colony, a few local residents intercepted them, mistaking them for Saree Choli Gang members, and raised an alarm. The artists attempted to identify themselves to the angry crowd of 15-20 young men, but this proved futile. They then tried to run away, but they were surrounded by the furious mob. The crowd started beating all four of them, and tied three of them up to an electricity pole with nylon ropes.

Punjab Shinde managed to escape from the crowd and ran in the direction of Nagpur High School. Meanwhile, the mob was increasing in size, and people began to manhandle Punjab Solanki, Supada Nagnath, and Hasan Solanki. A police vehicle soon arrived, and the police untied the three artists and took them into custody. Instead of taking the artists to the police station, however, the police began to conduct an inquiry in the police vehicle, in front of the increasingly violent crowd.

At around 9:15 a.m., some of the residents barged into the police vehicle and dragged Supada Nagnath and Hasan

Solanki out. Punjab Solanki hid inside the vehicle, and survived only because the mob forgot about him while it was attacking the other two artists.

With no resistance from the police officers, the mob started hitting Supada Nagnath and Hasan Solanki with wooden sticks, iron rods, bricks, and stones. Subsequently Hasan was targeted with larger stones, which resulted in lethal injuries. Supada, who tried to escape, was also beaten severely. The Petitioner states that the mob stopped beating Supada only when some elders in the neighborhood intervened and begged the crowd to have mercy. At that point, Supada was lying naked and injured on the ground. The police officers were still present but made no attempt to save his life, provide medical aid, or even determine whether he was still alive once the crowd had dispersed.

Punjab Shinde, who had fled in the direction of Nagpur High School, was hit by a stone on the back of his head and was killed on the spot. His body was left lying on the ground until late evening; in the meantime, locals brought huge stones and threw them over Punjab Shinde's head. When the police arrived, they determined – in the absence of any medical expert – that Punjab Shinde was dead, and therefore did not take him to the hospital or call an ambulance or medical expert.

The families of the victims were informed of the incident, and the bodies were buried amidst public outcry over the inaction of the police during the attack. Several government officers and politicians delivered speeches at the burial ground; however, no compensation was declared or granted to the families.

The wife of one of the deceased stated, "My husband went to Nagpur for employment, but since he could not find any work, resorted to begging. He was murdered in Kalmna Bharatwada. After the murder, politicians, the collector, and the BDO came to give their support and said that they sympathized with us for our loss. The collector came to the village and made big promises of giving us land, water, and electricity. But it has been three years, and nothing has been provided to me or the wives of the other two victims. They have only given us one lakh rupees as

compensation and have closed the case. We have nothing to eat in our homes, we work for 50 rupees per day as daily laborers, our kids do not have anybody to take care of them when we are at work, we do not have electricity in our houses, the houses we are living in are not registered in our names, and we do not have any money to educate our kids.”

## 6. Rape of Adolescent Girl

Age: 13

Date of Incident: February 19, 2014

Place of incident: Sanjaynagar, Gevrai, Beed

### **Incident:**

The victim lives with her father, mother, and 3 sisters at Sanjaynagar in Gevrai. On February 19, 2014, the victim and her elder sister were collecting firewood from the fields, about three kilometers from their home. Both of them began walking home, carrying bunches of tied wooden sticks, but the victim fell behind her sister. After a while, the main accused approached the victim and told her that her sister had asked him to help her carry the firewood home in an auto-rickshaw. The victim sat in the auto-rickshaw with the main accused and his two friends, but instead of taking her home, they took her to the jungle and gang-raped her.

That night, the accused dropped the victim off at the Majalgaon bus stand, about 30 kilometers from Gevrai. She made her way to the house of an elder sister who lives in Majalgaon. Her sister found that the victim was in state of shock, her clothes were torn, and she was sobbing uncontrollably.

The next day, the victim and her sister went to Gevrai, where they relayed the incident to their elders. An FIR was filed in Gevrai Police Station. In the meantime, the victim’s health condition became serious, and she was admitted to Government District Hospital in Beed.

At around 9:00 pm on February 21, the elder brother of the main accused came to the victim’s house, intoxicated, and began to

shout at the victim's older sister, who was eight months pregnant. He told her to withdraw the FIR or he would force them to leave the village. On the morning of February 22, a group of NT/DNT activists from Sangharsh Wahini joined the family in Gevrai, where they registered an FIR against the brother of the main accused. Following pressure from the activists, the police arrested all of the accused and kept them in MCR for three months.

Despite the arrests, however, the victim's family felt compelled to move to Beed, where they now live in rented accommodations, in order to keep the victim safe.



## FINDINGS AND RECOMMENDATIONS FROM THE INDEPENDENT PEOPLE'S TRIBUNAL ON NT/DNTS, AUGUST 3, 2014:

### Findings

1. People belonging to the NT-DNT community are being arrested and tortured only because of the stigma that is attached to them. Some of the cases of custodial torture and death also show the biased attitude of the police administration toward the members of the community.
2. The criminal stigma against NT-DNTs is rooted in their being branded as "Criminal Tribes" under the Criminal Tribes Act of 1871.
3. The testimonies of the people show the various kinds of atrocities that members of the NT-DNT community face, which makes their survival even more difficult.
4. Members of the community do not have access to education, health facilities, or other social welfare provisions that the state offers to other communities.
5. There is strong opposition by members of the dominant communities against the NT-DNTs using government land. This opposition is not only for agriculture, but also extends to their housing.
6. State officials refuse the members of these communities access to water, electricity, and transport facilities.
7. Women in these communities suffer the most, as they face various forms of oppression that range from sexual violence to lack of access to health facilities.
8. In some cases, due to the arrests of the men in the families, the women face constant harassment by society as well as from the police.

9. Children do not have access to education, and this is a major reason for the lack of awareness among community members about their rights.

### **Recommendations:**

- A commission should be appointed for NT-DNTs in respect of the cases that have been filed as part of this report, and an inquiry should be conducted. The commission should submit its report in writing to the court and the respective government departments.
- A committee should be formed to look into all the cases which are pending against members of the NT-DNT community, and the report should be submitted to the court to make decisions regarding these cases. This should be done on a time-bound basis, and the report must be made public.
- No more criminal or civil proceedings should be initiated against NT-DNTs, and a stay should be implemented on all ongoing proceedings, until the committee report is submitted to the court.
- The SC/ST atrocity act should be extended to the NT-DNT communities as well.
- There should be special governmental schemes for education, health, etc., for all NT-DNT families, and there should be special provisions to rehabilitate crisis-stricken families.
- The common thread in all the cases that were heard is the gross violation of legal and human rights by the police. Police stations should be made more democratic and people-friendly. They should be controlled by the people, and their every act should be accountable to the people.
- CCTV cameras should be installed in all police stations in order to keep an eye on the police. Moreover, policemen who are involved in the cases of atrocities against NT-DNTs should be penalized.
- Dedicated legal aid committees for NT-DNTs should be formed with sensitive and competent lawyers. Information about free legal aid services should be disseminated and

made easily available. The standard and efficiency of free legal aid centers should be improved.

- In cases of rape, police should be required to go to the victim's house to take his or her statement and conduct any necessary enquiries, including medical tests where necessary, rather than requiring the victim to travel to multiple locations.
- All evictions of NT-DNTs should be stopped within two weeks.
- There is a need to recognize these tribal people as citizens of India, and they should have all the rights associated with citizenship. The Government should take responsibility to ensure that all constitutional rights are realized, particularly the right to life and personal liberty, the right to education, the right to equality, all other rights that fall under Article 19 of the Constitution.
- NT-DNT communities should be provided with housing facilities and sources of livelihood, whether in the form of land to cultivate or job opportunities. In every settlement, there should be an Anganwadi in which the Savikas are appointed from the NT-DNT community. Every settlement should also be appointed a doctor and nurse, and an ANM should visit at least once a week.
- The rights to residence, permanency, and access to health facilities should also be made available to NT-DNTs.
- NT-DNT settlements should have their own Gram Panchayats. According to a 1990 government order, a Gram Panchayat can be formed in settlements with a population of 300-500 people.
- Lastly, the categorization of NT-DNTs in SC/ST/OBC categories should be made consistent.