

Dishonoured by History, Branded by Law

Dishonoured by History: 'Criminal Tribes' and British Colonial Policy

by Meena Radhakrishna;
Orient Longman, Hyderabad, 2001;
pp xiv+192, Rs 435.

Branded by Law: Looking at India's Denotified Tribes

by Dilip D'Souza;
Penguin Books, New Delhi, 2001;
pp xxiv + 200, Rs 200.

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The rule of law has often been considered one of the great gifts, or benefits of the colonial government to this subcontinent. The first volume under review considers how this was the cornerstone of British policy that, already in 1881 when W W Hunter surveying *England's Work in India*, envisioned

a more secure more prosperous India, where roads, railways, bridges, canals, schools and hospitals had been built; famines tackled; thugi, dakaiti and predatory castes suppressed; trade developed; barbaric social practices like widow-burning and infanticides abolished (p 1).

But the real test of any rule of law cannot be in the good intentions of the legislator or such visionary ideals, it has to be sought in the way a law is operationalised and implemented, and finally in the effect it has on those it impacts. Often the good intentions of the legislator have only paved the way to hell for victims of their laws. For a law must be ethically legitimated not by intentions or due process, but by what it actually achieves in a society, whether this be unintended consequences or anticipated effects.

The Criminal Tribes Act (CTA) was meant to suppress the 'predatory castes' for this vision of a secure and prosperous country. And yet ironically it was precisely these hapless nomads, stigmatised and stereotyped by this act, who became its most helpless victims, while those for whose protection this law was enacted become the cynical 'predators'. The law was first enacted in north India in 1871 and in

Bengal in 1876, and then spread to the rest of the county until finally it was made applicable to the Madras presidency in 1911. This act was to apply to 150 notified castes of 'hereditary criminals' within the Hindu system. Later other communities were added to the list. However, in India this was not based on the notion of genetically transmitted crime but rather as a community profession passed on from one generation to the next.

Precisely because the notion of hereditary criminal was grounded in social rather than genetic transmission, the reform and rehabilitation of these groups was sought through a policy of social engineering that was rather quaintly called 'criminocurology' by the Salvation Army that was placed in charge of many of the settlements for these so called 'Criminal Tribes' (CTs). The official intention then of the legislation was not so much punitive and retributive as preventative and remedial. It was all part of the civilising mission of the colonial raj. The CTA provides a window through which we can examine how such good intentions of the government work themselves out into an oppressive hell for those it was supposed to benefit.

The relationship between itinerant and sedentary communities has always been not just problematic but bound together in a kind of mutual antagonism. The author does well to refer to the way gypsies were dealt with in England to provide an insight into the colonial government's approach to nomads in this subcontinent. "Vagrancy, wanderlust, lack of stability and general purpose in life, restlessness and aimlessness – these are the accusations that plague all itinerant communities" (p 10). Nomadic communities are notoriously difficult to control and govern, to administer or tax. In fact in England "all laws relating to the gypsies were to protect the settled communities from itinerant ones and never the other ways around" (p 11).

But as David Mayall in his *Gypsy Travellers in the Nineteenth Century* (Cambridge, 1988) has pointed out, they were also romanticised in imagination, and valued for some of the services and skills they provided. We find the same sort of ambiguity in colonial fiction and poetry

with regard to Indian Banjaras and others, who were feared and shunned as ferocious criminals, and yet eulogised for their supposedly healthy outdoor life and independence of spirit. Some of the stylised pictorial representations are eloquent evidence of this. Myth-making of this kind only underlines the discomfiting suspicion with which such people are viewed, and how it served to legitimate the way they were treated.

An important player in this sordid drama was not just the government, but the Salvation Army that served more as a self-conscious imperial agency than the evangelical sect it portrayed itself to be. It had a significant role to play in criminal legislation in Britain and all over the empire. The various schemes visualised by William Booth, its founder, in his rather pompous *In Darkest England and the Way Out: A Study of Poverty and Vice in England and a Scheme by the Salvation Army for Reclamation of Criminals and Prevention of Crime* laid out a regime in 1890 for "the starving, the criminal, the lunatics, the paupers, the hopeless, the drunkards and the harlots" (p 17) which became models that influenced British administration elsewhere as well. One can see from this background that the category of criminal tribe was not a sudden development though there are, as Sandria Freitag emphasises, certain "leaps of legal logic...whereby the crimes of a few were could be cited to establish the guilt of many". This served vested interests that were never quite officially articulated.

Sympathetic anthropologists, like Stephen Fuchs in *The Aboriginal Tribes of India*, have shown that with loss of their traditional professions and the enclosure of the commons off which they lived, the nomads were in fact left with no other alternative. However, what is too easily left out and forgotten is that these nomads were traders and suppliers of grain and salt in remote areas even when the railways displaced them from the major trading routes. In the Madras Presidency as long as their services were needed their notification was resisted by the government itself (p 30). It was the privatisation of this trade that finally deprived them of their livelihood. Thus they were first marginalised and later notified by the same government, who then sought to reform and rehabilitate them. Notification by the 1871 CTA required that settlement precede the notification of these communities. Needless to say, this was followed

more in the breach than in observance.

Thus the historical compulsion behind the CTA was dictated less by the need to contain crime than by the demand for labour to reclaim agricultural land and later to supply textile mills and industrial establishments. In fact the eagerness of various landed communities and castes, not to mention industrial employers, to have such nomadic tribes declared notified under the act, and then with the help of the government and the police to exploit their labour for private gain, exposes some of the most sinister implications of this act. Even in the Salvation Army settlements, the economic profit from such labour kept the settlement going with its programme to market this 'damaged labour' (p 77). That the settlements were in fact sites for forced labour was at times contested in the courts but unsuccessfully. Radhakrishna's

close study of some city settlements run by the government shows that any low caste, vulnerable section of the people could be declared a CT and forced to work in an enterprise; any person including a manager of an enterprise could be made responsible for their control; and any site including an enterprise itself could be declared a CT settlement (p 167).

In one of the most interesting chapters on how these 'Criminal Tribes' were 'Dishonoured by History', the author reconstructs the historical memory that they internalised from the Salvation Army. In the Stuartpuram settlement in Madras Presidency, the whole community of the Yerukulas would chant recalling their past:

for I am 'crim' ...
I belong to the criminal kind ... (p 148)

and then celebrate their conversion with gratitude:

The Salvation Army now comes to our aid;
With work for the Crim – yes, work for
the Crim! ...
I am living by industry honestly wrought,
And have changed from the criminal mind!
(p 151)

This was their journey from 'crimdom' to 'cureddom' under the notorious 'criminocurology' to which they were subjected. There were thus only negative recollections of their historic memory before the settlement and now only gratitude for what had been perpetrated on them by the Salvation Army.

The second volume by Dilip D'Souza is a more contemporary account of how

a self-fulfilling prophecy has perpetuated the legalised branding and statutory oppression of the now denotified but still nomadic tribes in independent India, even a half century after the end of colonial rule. The reflective descriptions here are based on personal encounters with various groups of these Denotified and Nomadic Tribes (DNTs) across the country. And though the book, unlike Radhakrishna's study, is not a work of academic scholarship, its impact is no less shocking.

D'Souza's reflections invite a review of 'parallels in the trust' (p 137). From the early reports of Lewis and Clark, the explorers of the 19th century American west and their remarks about the 'savage natives', to contemporary reports in the *New York Times* about present-day gypsies who have begun wondering over western Europe after the lifting of the iron curtain, the distrust of itinerant communities is a common phenomenon. Nomads, so different from the settlers, whether rural or urban, whether in industrial or agricultural societies, have been stigmatised in these societies and 'branded by law'. It is not just their poverty or misery that marks them out, but the social and legal prejudice that takes away any shred of human dignity they might still cling to.

There are of course exceptional success stories of heroic individuals who have transcended their situation and escaped their circumstances. But these exceptions leave the real tragedy of these people untouched, if anything it sets their situation in even more stark relief. It is only when we accept that birth need not be destiny that we will be able to exorcise the demon of prejudice from our caste-ridden society. As one of the more educated leaders of these DNTs

remarked: "a country that looks after all its people will be advanced. But we are not that way, so we won't" (p 17). We are all vulnerable to prejudice, either guilty of it or victims of it. If we can but see our own future in the present of these people, we might find the resources we need to change.

In 1949 the criminal tribes were denotified and their rehabilitation recommended. Between 1950 and 1952 the Criminal Tribes Act was finally abolished. But this was a change in name only, the provisions of the act are still in force, and have actually now been legalised under a new Habitual Offenders Prevention Act. The harshness of the legislation is appalling and yet it is not repealed. We need only to recall that the Terrorist and Disruptive Activities Act (TADA) which had lapsed is now being revived through a Prevention of Terrorism Ordinance. The terrorist is only the latest 'criminal tribe' that we are trying to deal with through penal measures rather than by addressing the root of the problem.

It is precisely this continuity between the pre- and post-colonial state that needs to be exposed. The plight of the DNTs today in the country is stark testimony to this. Hence turning the spotlight on our colonial past should be but the first step in the long haul of breaking with it. Already a DNT Rights Action Group (DNTRAG) has been formed to agitate for their rights. It certainly will not be an easy task as these two volumes under review demonstrate so forcefully. It is the not unfamiliar case of first victimising a community and then blaming the victim while the victimisers plead not guilty. But the truth of the matter is otherwise. 'We have seen the enemy, and the enemy is us'. [EW]