

# Contemporary Socio-Economic Challenges and Legal Intervention to Nomadic Tribal Community: A Case Study of Nomadic Prisoners in Bihar

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## Abstract

Nomadic, de-notified and semi-nomadic tribes are considered to be the earliest inhabitants of any nation. Their sacrifices and sufferings in the past and present have resulted in a developing nation that we are today. Despite that, today, the nomadic tribal communities are the worst sufferers because of the lack of education, livelihood, occupation, fundamental rights, legal rights, etc.; they are considered to be the least developed. Failure in implementing the framework and crooked legislations had harvested their souls for our own selfish needs, and incarcerated the nomadic tribal community without providing them access to free legal aid service endeavouring for due justice. The present study broadly scrutinises these issues, problems and their ill effects because of which these communities are facing a lot of challenges and are unable to secure justice.

## Keywords

Nomadic, de-notified, tribal, communities, policies, free legal aid services, victim, vulnerable, injustice

Society had always been cruel to the nomadic tribes (NTs), de-notified tribes (DNTs) and semi-nomadic tribes (SNTs) since time immemorial. The nomadic tribal community had always been treated like an alien by the society as well as

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by the government. Even though some of the nomadic tribal communities had escaped the cycle of the socio-economic problem that they were benighted to suffer, they had to deal with the stigma attached to their community. The past was horrific, present is worst and there is no sign of a better future.

Legal and judicial systems had failed to guarantee justice and civic participation in the criminal justice process, thereby falling short of ensuring the accountability of officials to the law and the people. The complex web of the Criminal Justice System acts as a spider web, while the nomadic tribal community is concomitant to fly, it is very difficult to escape in a sense getting due justice. Lack of legally valid documents and improper implementation of sundry policies and programmes had just acted as fuel to fire.

The broader outline of this study would be to cover the historical injustice, present mishap and advocating the bigger picture of an improperly implemented framework which had not been proved to be beneficial hitherto. Lastly, the paper outlines a few root causes that act like a pigeon-hole to our current schemes, and if not rectified the future of nomadic tribal community would be doomed.

## **Objective**

The objective of the study is to highlight the socio-economic contemporary issues and challenges faced by the nomadic, semi-nomadic and de-notified tribal communities in their day-to-day life. The improper implementation and poor government policies, schemes and programmes are also given due weightage. The problem faced due to complex legal system dispensing justice is also brought out into the light, with few case narratives underlining the broader picture of the free legal aid service.

## **Sources of Data**

Primary data sources include criminal justice fellow fieldwork but not limited to it, day-to-day court and prison visits also played an important role. Interaction with people, their responses, demeanour and reactions had also been relied upon. The case study enumerated had been cited duly after interviewing individuals case-to-case basis, additionally, home visits of under-trial prisoners had been done while drafting the paper. Pragmatic analysis and groundwork had also been given due weightage.

The present study also depends upon some secondary sources such as government reports, law journals, periodicals articles and commission reports.

## **Chronicles of Injustice**

A significant foible of humankind is the yearning to have control over others. It had been witnessed since antiquity. In context to India before the arrival of East

India Company, caste, race, gender, sex, etc. were the tools through which we used to control our people, later we Indians were controlled by Britishers. Even till now, we are controlling people but in a more sophisticated manner, that is, through soft power and cultural hegemony. State and its machinery had portrayed themselves as innocent, but bestowed their controlling impetus to various institutions. Now we had intrigued it as a part of ourselves thus we do not revolt. Hence, the predisposition of control is still out there. We commit wrong acts, but we do not parse it as thus we do not realise we had. Since time immemorial, nomadic tribal people had been sufferers only because they had their religion, tradition, rites, rituals and were not ready to bow or assimilate to Indian society. The advent of the colonial system seemed to fail; controlling tribal people thus enforced the Criminal Tribal Act 1871. The object of this legislation was to protect the tribal people's identity from the predatory castes. Ironically, the sole intention behind such draconian legislation was to suppress their rebel and to criminalise them, so that it could become a peaceful assassination in the name of promoting harmony, peace and prosperity. The law was first implemented in North India in 1871, in Bengal in 1876 and then spread to the rest of the country until finally it was made applicable to the Madras presidency in 1911. This Act had notified 150 nomadic tribal communities as 'hereditary criminals' in the Hindu society, later on the number escalated. However, if analysed deeply it is not based on a genetically transmitted crime, rather the Act claims it to be a profession practiced and carried on from one generation to another (Heredia, 2007). Already their past was horrible, but this Act wholly stigmatised and annihilated their present and future. However after Independence, the criminal tribes were declared de-notified.

Between 1950 and 1952 criminal tribes were de-notified but it was just a misnomer in reality, the crooked provision was sheltered under the Habitual Offenders Prevention Act in various states and the Probation of Offenders Act, 1958 at the centre. The fate through which tribal communities had to go through was harsh and stringent. We need to reminisce the recently passed Terrorist and Disruptive Activities Act<sup>1</sup> which had lapsed, is now being revived with a new Prevention of Terrorism Act,<sup>2</sup> which was dropped by the United Progressive Alliance which is only a revival of War of Terrorism Act.<sup>3</sup> Through these legislations and penal provisions, the terrorists that we are trying to deal with are of course the latest 'criminal tribes' rather than by addressing the root cause of their problem (Heredia, 2007). Even after celebrating the 70th year of Republic Day as a 'secular' country, which is only theoretically relevant, practically the gap between the various communities had grown wider. Various statutes and articles were added to our esteemed Indian Constitution, though simply inserting may have a theoretical implication but for a pragmatic outcome, there must be an effective administration.

Hitherto, the ignorance to understand the root cause of the problem and treating them like an alien had only brought us catastrophic results.

**Table 1.** Data of Socio-Economic Problem Faced.

Categories	De-notified		Notified	
	Yes	No	Yes	No
Possess a caste certificate	50.7	49.3	38.2	61.8
Access to drinking water	82	18	54	46
Access to health care	31.8	61.2	45.5	54.5
Children attending school	41.8	58.2	28.3	71.7

**Source:** Renke Commission (2008).

## Challenges Faced by Nomadic Tribal Communities

On a close field, study reconnoitre and working at a grass root level, it had made us aware of the daily life challenges that the nomadic tribal community had to go through. The difficulty inaccess to daily life facilities like safe drinking water, electricity and shelter, tremor their body and soul. The complex system of the Criminal Justice System had barred them to get access to due justice. Table 1 provides a holistic view of these.

### *Citizenship Rights 'A Myth' to Nomadic Community*

These nomadic tribal communities who had spent centuries living in this country hitherto, they do not have Indian citizenship. 'Nomadic, De-notified, and semi-nomadic'<sup>4</sup> tribes are commonly known as *ghumantu* (wanderer) or *Banjara* (vagabond). They do not have a permanent residence or any citizenship documents like voter IDs, permanent account number card, ration card or aadhar card, because of which they are not qualified to be citizens, thus they do not fulfil their political rights too. They are even barred from any government policies or programmes like Public Distribution System,<sup>5</sup> these schemes are formulated for the betterment and to ameliorate the conditions of poor, but in reality, they are of no use because the implementation is not far-reaching to ease out the problems of NT-DNTs. Lack of social rights (the right to a modicum of economic welfare and security to the right to the full in the social heritage, which means the right to live a life of a civilised being, according to the standard prevailing in the society) or as enumerated in the Article 21 of our Constitution of India 1950. If we dig deep down, we will get an insight that our society had itself forsook the sole existence of such tribal communities. These tribal communities say that they cannot live more than three days in any particular village because the latter on villagers make a public announcement that thief has come near the village be alert. They are deprived of their social rights too. Due to such difficulties, these nomadic tribal communities are inept to earn their livelihood and unable to keep their body and soul together. Thus, these communities are excluded by the government as well as by the society.

The NTs had been identified by the survey done by the erstwhile National Commission for De-Notified, Nomadic and Semi-Nomadic Tribes. For all-round development of NTs a Development and Welfare Board for De-notified, Nomadic and Semi-Nomadic Communities have been constituted on 21 February 2019 for a period of three years extendable up to five years with following terms of reference:

- To formulate and implement welfare and development programme as required, for de-notified, nomadic and semi-nomadic communities.
- To identify the locations/areas where these communities are densely populated.
- To assess and identify gaps in accessing existing programmes and entitlements, and to collaborate with ministries/implementing agencies to ensure that on-going programmes meet the special requirements of de-notified, nomadic and semi-nomadic communities.
- To monitor and evaluate the progress of the schemes of Government of India and the states/Union Territories concerning de-notified nomadic and semi-nomadic communities.
- To redress the grievances of DNTs communities and fulfil their expectations.

There are 269 communities which are currently not classified under scheduled caste (SC)/scheduled tribe (ST)/other backward classes (OBCs)/other communities; Development and Welfare Board for De-notified, Nomadic and Semi-Nomadic Communities have been working on classification of these communities. Further National Institution for Transforming India (NITI Aayog) had assigned the task of an ethnographic survey of sixty-two tribes to the Anthropological Survey of India to conduct the studies of these communities in different parts of the country. For this purpose an amount of ₹22,632,500 had been sanctioned .

### *No License to Education*

The NT and DNT had been completely left ignorant of modern education. The education policies and programmes formulated hitherto had not brought any affirmative results. The Government of India recently (April 2010) made education as a fundamental right for every child between six and fourteen years of age through the Right of Children to Free and Compulsory Education Act. Education as a fundamental right is also included in the Universal Declaration of Human Rights in 1948. A new scheme for ST girls in low literacy pockets was introduced in 1993–1994 and implemented through non-governmental organisations.

Districts having literacy rates for Scheduled Tribe women of less than ten percent as per 1991 census are covered. 136 Districts and in eleven States. The female literacy among certain primitive tribal groups is also very low. (Government of India, 1998–1999, pp. 35, 36)

Traditional knowledge was the only source of income for such nomadic tribal people, but now even that had become unfruitful. The lack of an educational facility and the improper implementation of the current policies will have a strong crippling effect on the future of children and would leave a catastrophic result to their future generation.

### *No Scope for Livelihood*

NTs and the DNTs solely rely on their traditional knowledge to keep their loved ones breathing in this self-centred world. Lack of required finesse and support either from the government or from the society had left them alone to their nemesis. Not having a proper address or any kind of valid identity card is the biggest obstruction that churns out every beneficial policy, programmes and objective to worthless. Carrying out the traditional knowledge as a profession and lineage, these tribes find it difficult in switching over occupations. In his book, Raghaviah had divided these communities by their occupation namely the food gathering nomads, pastoral nomads, trader nomads, criminal nomads and beggar nomads. Milind (2002) had divided these communities into four categories by their occupation namely hunter-gatherers, good and services nomads, entertainer nomads and religious nomads. Some NT-DNTs communities' traditional occupations are bull deckers, snake charmers, monkey trainers, bear trainers, and their livelihood depends on this traditional occupation.

### **Wildlife Protection Act, 1972<sup>6</sup>**

Some of the drafted legislation to cater to animals and the natural environment had affected the NTs and the DNTs quietly in their livelihood sources. The Wildlife Protection Act implemented in 1972 had been quite effective in dealing the issue, albeit on the other side it had affected the tribal people livelihood whose lineage as well as a profession was to hunt down and eat some wild animals or used to collect natural substances such as honey, sap, toddy, etc., from the forests.

### *Bombay Prevention of Begging Act, 1959<sup>7</sup>*

One of the other most salient sources of livelihood for the tribal region was 'begging in the name of god'. Inability to do anything or loitering from places to places and asking people for alms either in the name of the god or for their fellow family had been criminalised too. The nomadic tribal community who used to survive on such a run errand had been completely left devastated after the implementation of the Bombay Prevention of Begging Act, 1959.

Definition of begging under Section 2(1) of the Act includes any entertainment service performed at public or private places will be considered begging and would be thus punishable. Section 6(1) of the Act provides punishment for a

period not less than two years and not more than three years for second-time offenders. This Act tears apart the livelihood of NT and DNT by holding that the offenses under Section 6, and Section 11 would be considered as cognizable and non-bailable.

### ***Bihar Prohibition and Excise Act, 2016<sup>8</sup>***

Nomadic tribal communities in villages also draw their source of living by working as a labourer in the liquor preparation. Howsoever in few states, the government had implemented a liquor prohibition act, prohibiting the ‘manufacturing, bottling, distributing, transporting, collecting, storing, possessing, purchasing, selling or consuming any intoxicant or liquor’. The main objective behind such an Act was to decrease the rate of crime and domestic abuse against women, albeit the outcome is not very satisfactory.

The Bihar Prohibition and Excise Act, 2016, had failed to achieve its objective and had played havoc with the lives of the poor and weaker sections of society. OBCs account for 34.4% of the total arrests, while they comprise 25% of Bihar’s population. Similarly, SC account for 27.1% and STs 6.8% of total arrests, while their population is 16% and 1.3% of Bihar’s overall population, respectively. A large percentage of the arrested people under this law came from marginalised sections. Communities such as *Pasis* (deemed Hindus), *Musahars* (lower Hindu caste) and several NT-DNTs who were traditionally engaged in the manufacture of toddy and liquor were left without livelihood options, and no concrete alternate livelihood avenues were provided to them. The state government introduced a scheme under which communities engaged in toddy making would be given assistance to start selling fresh *neera* (toddy palm tree sap), from which toddy is made through a fermentation process. This scheme had not succeeded due to its poor implementation. As per reports, the ban had stripped around 35,000 people of their livelihoods. In many parts of the world such prohibition laws were implemented, howsoever in the long run it did not come to be fruitful either for the government or for the people. Countries such as the United States, Norway, Russia and Iceland have made failed attempts to impose prohibition, while in India, Gujarat, Kerala, Mizoram, Nagaland and Andhra Pradesh have imposed similar restrictions, but the results were far from satisfactory due to a host of reasons, including tardy scheme implementation and corruption.

This is how legally the livelihood of nomadic tribal communities was criminalised and they were left stranded.

## **Legal Aid Intervention With Nomadic Prisoners**

### ***Preface to NTs in Bihar***

There are 313 NTs and 198 DNTs in India, out of which sixty-eight of them had been recognised to live in Bihar. As a part of this study and our grass-root level

intervention is concerned, we had majorly encountered these nomadic tribal communities who were *Beldar* (soil scientist), *Dom* (sewage cleaner), *Dusadh* (guard to landlord), *Gareri* (sheep herder) and *Musahar* (bamboo craftsman), all of them are included in the nomadic tribal list who lives in the state of Bihar. These five nomadic tribal communities used to live and support their families by professing their lineage occupation.

*Beldar* is a nomadic tribal community that is included in the OBC category in the state of Bihar despite the socio-economic condition which is akin to SC/ST. They are colloquially referred to as *Mitti Viggyanik* (soil scientist), they are nexus to the agricultural arena. Traditionally they used to check the soil type and used to give advice. They were also employed to make uneven land patches (farm, fields) to plain, smooth and even. Howsoever with the advent of technology and resources, people had started inclining towards technical aide and technological tools. The machines are considered to be more effective, less expensive and time-consuming, because of which these communities are no longer required for their services. Not having a basic education level or any other skill makes them worthless and presses them hard for survival.

*Dusadh* is believed to be a nomadic tribal community, however, the Bihar Government had categorised them into SC. The traditional occupation of this community is to be as a *Latheti* or *Pahredar* (guard) working for *Zamindar* (landlord). This tribal community is well known for its rebellious philistinism. It is considered of having a dominating effect on the other nomadic or de-notified tribal communities. Recently the escalating guard services and high-security cameras have knocked them out of the game. No prior formal education and lack of basic documents leave them in the lurch.

*Dom*, a nomadic tribal community, however in the state of Bihar it is considered to be a SC. This community is kept at last even when the tribal communities are hierarchically orchestrated. They perform the menial task of cleaning manures, sewages and gutters. The kind of work demands a very strong resistance because of the smell and the surrounding in which one has to dip himself completely in shit and cleaning the sewage. In this profession an individual cannot work in his senses, one has to take some amount of alcohol so that he could wither the smell. In today's time, we have got machines with huge containers and long pipes which could go deep inside and could pump the material outside. Thus, with the advent of modernisation even they too have no alternative sources of resources to support their families or themselves.

*Gareri* is included in the OBC category in the state of Bihar despite the socio-economic condition is akin to SC/ST. One can make a guess having slight knowledge of Hindu or Urdu that these tribal communities had the traditional occupation to flock sheep, goats or cows in the field also linked to herders. The problem they had witnessed is that now most of the forest areas or empty fields are converted to skyscrapers. They are unable to find grazing fields for their animals.

*Musahar*, a nomadic tribal community; however, the government of Bihar has classified them as SC. They were prominently engaged in pity run-errands. Usually, this tribal community diaspora to the urban cities and resides near the



roadside and had incorporated the work of repairing mortar and pestle. However, this technique of grinding spices is now antediluvian, thus leaving them in despair. Even in this 21st century where people prefer eating continental, Thai and other sophisticated varieties of food these communities still survive on catching and eating rats.

Legal rights have been duly accorded to the citizens, however the duty to fulfil these rights guaranteed remains with the government. The legal process is so tedious, cumbersome, taxing and full of documentation that it makes the ignorant poor people a toy in the hands of injustice. One of the prominent issues in advocating legal rights is the lack of documents, be it is of identification or residential. Hence, they become easy fish to catch and incarcerate. Most of the time they are destitute or family is poor enough to hire a private advocate to file a regular bail. The entire scenario is mirrored more transparently in the case narrative.

### *Criminal Justice Fellow Intervention With Nomadic Prisoners in Bihar*

The background seems well settled to narrate case studies that we had confronted while providing free legal aid services to the under-trial prisoners of Bihar. In the year 2016, Bihar liquor prohibition Act was implemented because of which there was a sudden escalation in the number of under-trial prisoners. A lot of innocent labour class ST, SC, nomadic and de-notified tribal people residing in Bihar were incarcerated and lurching to rot in the jail. While we were working in the Model Central Prison Patna, Bihar as a criminal justice fellow under the Criminal Justice Fellowship programme, Centre for Criminology and Justice, Tata Institute of Social Sciences Mumbai. The prominent role involves day to day prison and court visits, identification of vulnerable under-trial prisoners and providing them free legal aid service. We had identified the cases with the help of para legal volunteer, fifteen cases were there out of which five of them were related to nomadic tribal communities who hailed from sundry districts in Bihar migrated to the capital city 'Patna' for livelihood. One of them was a cart-puller migrated from Jamui district, another was from Gaya district and used to serve the society by cleaning sewerage and manure, while two of them were from Assam travelling to Delhi to work as a daily wage labourer but caught by the Central Railway Police Force in Patna on a false charge of possessing alcohol.

Considering the nature of the profession these communities practice. They had no surety to have bread at night. A daily-wage labourer or poor tribal communities had to melt their muscles to earn for their living. The pain of muscle ache, empty stomach and the compunctious feeling of not able to feed their families were relieved only after drinking a small proportion of alcohol. In the first two cases while they were sleeping on the roadside they were arrested by the police and had nothing to bribe which dragged them to the complex criminal justice system. These vulnerable classes of society did not know any law and order or any fundamental rights, thus made them a toy in the hands of injustice. None of their

family members were informed or any legal procedure was duly carried out. The provision of 'free legal aid' enshrined in our esteemed Constitution of India is only theoretically sound, while the pragmatic view is no less than a hole in the parachute. Every state has a District Legal Service Authority (DLSA)<sup>9</sup> whose prime responsibility is to provide free legal aid service to the poor, needy and helpless people.

While our group visited the jail and enquired about such provisions, half of the under trial prisoners were ignorant while the other half were grinding in its process. We came to know that the DLSA advocates, who were assigned such cases, never visited the prison nor cared to attend the court hearing. They were least interested in taking up such pro bono cases. The under-trial prisoner had never met his lawyer nor knows anything about his case status. There were even demands of cash by some DLSA lawyers, none of the provision of the free legal aid was implemented properly. One of the major problems in nomadic tribal communities is a lack of identification document, without which you do not exist in any administrative work. Many cases were not filled to the courts because of a lack of proper identity documents. Neither having a fixed residential area nor having any valid document makes it even more tedious and taxing. Already the ineffective implementation of beneficial legislation is a problem, that increases manifold times in the cases of nomadic tribal communities due to lack of valid legal documents. However we, first of all, informed their families or near and dear ones and arranged *Mulakati*<sup>10</sup> (visitation), later we tried analysing their case files and it came to light that most of the cases were not filled to the respective courts. Most of the under-trial prisoners had either remained in prison for more than half of the punishment term or even more than the punishment term. We orchestrate the required documents and filled for the bail application to the respective court, informed the prisoner about it and did a home visit, organised legal counselling for the family and provided financial support and ration under the Public Distribution System.

On the hearing date, all of them had been granted bail on surety bond,<sup>11</sup> but they had to furnish it by depositing some amount as a bail bond. These tribal communities had nothing left except their perished body organs, pain, agony and tears that too were on the verge of drying up. This is in itself a huge milestone to cover. We decided to take this issue to the Hon'ble Chief Justice by whose order all of them got bail on the personal recognizance bail bond.<sup>12</sup> In this type of bond, the prisoner was granted bail based on their recognizance in the subsequent trials until the case finally gets disposed of. If in between the prisoner fails to attend the court hearing, then by due process bail gets dismissed. For the first time, more than ten under trial prisoners were released on personal recognizance bail bond. We had organised a proper rehabilitation and social reintegration program, which would help them to secure livelihood. At last due justice knocked on their door.

Law is considered to be blind to convey that is applied equally hitherto, reverse is observed for these vulnerable nomadic tribal communities. They are merely soft toys in the hands of injustice who likes to play with it. Our criminal justice system is a complex web of legal procedures that colourably disavows justice to poor tribal communities.

## Resource Mobilisation to Nomadic Communities During COVID-19

With the enforcement of nationwide lockdown to prevent human lives from the lethal COVID-19 virus, the livelihood is itself in peril. The already persisting issues of unemployment, poverty, poor healthcare, etc., now have escalated to the sky limit.

The improper government initiative, policies, programmes implementation concerning NT, SNT and DNTs had already lured them to die, but the dread to die and desire to live had made them strong enough to be one's messiah (angel). However, this pandemic had paroxysm their sole earning in the present time. The death toll is increasing day by day because of the infection and particularly these vulnerable classes of the society are at higher risks, having no sanitary precautionary measures.

The government-run policies, programmes and schemes are working in this direction, but due to lack of proper documents these beneficiary nomadic tribal community people voices are inaudible to government. To reach out to the helpless people who mostly belonged to NT, SNT and DNTs, our group initiated an effort to distribute ration and basic amenities to several families. Also, the under-trial prisoners who were granted bail before a month or two had lost their earnings and due to lack of any succour from the government side, they were unable to keep their body and soul together.

Thus according to the proposal ration kit was provided to a group of fifty-five families from 1 May 2020 till 12 May 2020. The ration kit dispersed was sufficient for one and a half months and was made sure that it is a completely balanced diet for the individual. While providing the ration kit to the people we faced a moral-ethical dilemma because we could not provide ration to such a huge number, however we tried reaching out to our targeted group.

Our group aided them with basic sustenance amenities so that they could cope up with the ongoing fight against this pandemic.

## Schemes, Policies, Programmes Analysis

Our Constitution of India is considered to be supreme and a source of various rights guaranteed to us. Thus it becomes equally significant to analyse the different provisions which were inserted for the welfare of the nomadic tribal community.

Article 338 of Indian Constitution a commissioner had been appointed by the President of India. The outlined responsibility of the commissioner is: (a) to investigate all matters relating to the safeguards for SCs and STs under the constitution and (b) to report the President on the working of these safeguards.

### *Article 39A of Indian Constitution*

The provision of free legal aid enshrined in our constitution under Article 39A was inserted to provide free legal aid in access to get due justice.

Article 39A reads as follows:

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.

Under this Article, the government is legally bound to aid the individuals who are inept to secure due justice because of their socio-economic impracticality. The lawyers or the advocates who are assigned such probono cases are reluctant to take any such work. The lack of proper implementation, poor check and balance system had made this provision ineffective.

### ***Legal Services Authority Act, 1987***

Article 39A acts as an umbrella provision under which it authorises the central or state government to make suitable legislation and scheme to warrant equal, fair and due justice to all. This led to the development of the Legal Services Authority Act of 1987.

To endorse and certify free legal aid services to the poor and weaker sections of society based on equal opportunity, under the Act, the National Legal Services Authority is at the national level, at the state level a State Legal Services Authority is there and a District Legal Services Authority is at the district level followed by a Taluka Legal Services Committee had also been constituted under this Act. Even in the High Court, a High Court Legal Services Committee is constituted whose primary aim is to ensure justice for all and to provide free legal aid services.

To avail the services of free legal aid the individual had to fall under Section 12 of the Act which is spelling the criteria under which the services would be offered. Then it requires a list of legally valid documents including aadhar card, pan card, etc., that permits the individual to walk through the road of justice. The nomadic tribal community lacks these basic requisites because of which our system neglects them and leaves them to suffer because they are poor and ignorant. Ironically, the objective of the legislation itself was to help the poor and ignorant. In a few circumstances even if the NT can somehow produce document the lawyer or advocate assigned to them are negligent, reckless and irresponsible.

Due to these complex substantial issues, the procedural part of the Act is unable to achieve its goal. Many nomadic tribal communities after going through these taxing provisions had left their hope to get justice because of which others even fear to ask for help. Lack of awareness programme to the nomadic tribal community and legal counselling makes them completely ignorant of such policies by the government.

### ***Five-Year Planning Commission***

The entire country runs according to the Five-Years Plan which is formulated to set goals or perimeters to make things more accessible, so that every sector of the

country could be considered equally important and due consideration could be given to that area.

Since the paper focusses on the challenges faced by the nomadic tribal community hitherto from the date, we hoisted our flag enough high in the sky and took oath as ‘We Indians are all brother and sister’ and vowed ourselves to make our country a better place to live in. In the reports of the various Five-YearsPlan, it had been observed that at every Five-Years Plan the total outlay for the welfare of the nomadic tribal people and the actual spending on the tribal communities are way too less. The overall development of the tribal people in their livelihood is not a considerable figure. Table 2 broadly portrays the amount spent during the sundry Five-Years Plans.

The reports portray us that a hefty amount had been proposed to be employed for the welfare projects and schemes for the nomadic tribal community. In reality, the actual amount spent in each plan is far too less. In more than half of the plan, the amount spent is less than even one percent of the proposed amount because of which to date they are extremely backward. Thus, since independence, the government had not taken any effective initiative for their livelihood and settlement. There is no provision of livelihood for DNTs, NTs and SNTs in the Five-Years Plan of India.

**Table 2.** Plan-Wise Expenditure for Tribal Development in India (Rupees in Million).

Plan	Plan Period	Total Outlay for the Plan (in Millions)	Allocation for Tribal Development Sector in the Total Outlay	
			Rupees in Millions	Percentage to the Total Outlay
I Plan	1955–1956	19,600.00	199.3	1.02
II Plan	1956–1961	46,000.00	499.2	1.08
III plan	1961–1966	85,760.00	505.3	0.60
Annual plan	1966–1969	67,560.00	323.2	0.48
IV plan	1969–1974	159,020.00	750	0.47
V plan	1974–1979	372,500.00	11,820	0.32
Annual plan	1979–1980	121,760.00	8551.6	7.02
VI plan	1980–1985	975,000.00	41,930	4.30
VII plan	1985–1990	1,800,000.00	69,767.6	3.86
VIII plan	1992–1997	3,145,760.43	183,119.3	5.82
IX plan	1997–192002	8,592,000.00	7,750	0.09
X plan	2002–2007	16,184,600.00	104,810	0.64
XI plan	2007–2012	36,447,180.00	36,330	0.09
XII plan	2012–2017	35,686,260.00	NA	NA

**Source:** Figures compiled from different Five-YearsPlan documents, Planning Commission. Population figures compiled from the Census of India, New Delhi from 1951 to 2011.

**Note:** NA indicates not available.

The Union Budget of 2020–2021 which was made by respected Mrs Nirmala Sitharaman on 1 February 2021 had increased the overall budget for the Ministry of Social Justice and Empowerment to 13.7% for 2020–2021, as compared to the last year. It soared some hope to the nomadic tribal community because of its theme: Aspirational India, economic development and above all, a ‘caring society’. However, at last, it was akin to the previous budgets and did no good to the nomadic tribal community.

### **NITI Aayog**

NITI Aayog came into force on 1 January 2015 substituting the Planning Commission. It is a think tank of the Government of India that broadly endeavours sustainable development. Its initiatives include a ‘15-year road map’, ‘7-year vision, strategy and action plan’.

The Social Justice & Empowerment division of the NITI Aayog is bestowed with the responsibility of formulating plans, policies, schemes for ameliorating the conditions of the SC, STs, *safai karmacharies*, OBCs, economically backward classes, religious minorities, NT, SNT and DNTs, and social defence groups such as persons with disabilities, senior citizens/aged, transgender, victims of substance abuse/drug addicts, destitute and beggars.

Following specific functions were enumerated to Social Justice and Empowerment division for the empowerment of the NT, SNT and DNTs:

- Central policies and programmes of Nodal Ministry and Line Ministries in-respect of empowerment of NT, SNT and DNTs.
- State and Union Territory policies for NT, SNT and DNTs.
- Timely evaluation and monitoring all policies implemented for NT, SNT and DNTs.
- Going on field visits and collecting data of implemented policies and deficits accordingly.
- Ascertaining new areas and strategies for the overall development of the NT, SNT and DNTs.

However, for our part of concern hitherto NITI Aayog had failed to endeavour any considerable step towards improving the miserable condition of NT, SNT and DNTs. The achievement report of 2017–2018 and 2018–2019 published on the NITI Aayog website hardly mentions or talks about the welfare policies for the nomadic, semi-nomadic and de-notified tribal communities.

### **Conclusion**

Jawaharlal Nehru in 1948 said ‘If you have to suffer, suffer for the interests of the Nation’, while the entire country was feeling prosperous of having Hirakud Dam, but nobody knew its cost, the nomadic tribal community was traded-off.

Tribal communities to date suffer for the interests of the nation, whether it is for constructing new roads, buildings or dams, they are the first ones to be displaced that too without any recourse.

In the era's civilisation, tribal communities are the ones who had to sacrifice their land, livelihood, families, relatives, etc., so that we urban could meet our ends. Unaccountable millions of nomadic tribal communities even till now had no access to fresh drinking water, then for whom are we constructing dams, skyscrapers walking the roads of developments if our people who had sacrificed so much at the end get nothing less than a tougher life than earlier.

The challenges faced by the nomadic and de-notified communities be it in livelihood, natural resources, shelter, land, legal rights and access to justice, etc., makes them even more resilient towards the government. The lack of proper policies and ineffective implementation had brought such a catastrophic result in the present. Even the issues faced in the criminal justice system are too taxing and complex. Due to which even our justice system is unable to provide them due justice. Lack of proper legal documents or identification document is the sole cause. The inability to produce so many documents and the mental pressure throughout the process makes them vulnerable in the hands of injustice.

The respective governments in their term cannot lurch them or harvest their souls for somebody else's cause/needs, they too deserve to be treated as humans. The challenges above discussed and narrated should be properly analysed and due remedy should be brought as soon as possible. This is not even a complete picture there's far untold still lying in the hearts of the nomadic tribal community.

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### **Notes**

1. Terrorist and Disruptive Activities (Prevention) Act, commonly known as TADA, was an Indian anti-terrorism law which was in force between 1985 and 1995 under the background of the Punjab insurgency and was applied to whole of India. It came into effect on 23 May 1985.
2. The Prevention of Terrorism Act, 2002, was an Act passed by the Parliament of India in 2002, with the objective of strengthening anti-terrorism operations. Repealed on 21 September 2004.
3. War on terrorism, term used to describe the American-led global ... war on terrorism entailed new antiterrorism legislation, such as the USA PATRIOT Act.



4. De-notified, nomadic and semi-nomadic tribes are *Banjaras* (vagabond) hereinafter referred as NT-DNTs.
5. The Public Distribution System in the country facilitates the supply of food grains and distribution of essential commodities to a large number of poor people through a network of fair price shops at a subsidised price on a recurring basis.
6. The Wildlife Protection Act, 1972 is an Act of the Parliament of India enacted for protection of plants and animal species enacted on 9 September 1972.
7. Bombay Prevention of Begging Act 1959 is an Act under which a person who is found begging can be arrested by any police officer or by any person who is authorised in this behalf.
8. Bihar Excise (Amendment) Act, 2018, which is an Act of Bihar Legislative Assembly which prohibits manufacturing, bottling, distribution, transportation, accumulation, possession, purchase, sale or consumption of any type of liquor, intoxicating substance including bhang and medicines with alcoholic substance.
9. Legal Services Authority Act 1987 to endorse and certify free legal aid services to the poor and weaker sections of society based on equal opportunity. Under the Act, the National Legal Services Authority at the national level, at the state levels a State Legal Services Authority and a District Legal Services Authority at the district level is established.
10. A facility where family of offenders are allowed to visit them.
11. A surety bond is defined as a three-party agreement that legally binds together a principal who needs the bond, an obligee who requires the bond and a surety company that sells the bond. The bond guarantees the principal will act in accordance with certain laws.
12. PR bail stands for personal recognizance bail which means a defendant doesn't pay for a cash bond or surety bond or post property as collateral for bail.

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