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THEORIZING CRIMINALIZATION OF 'NOMADIC SUBJECT': A STUDY OF DE-NOTIFIED TRIBES IN INDIA

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Abstract

The scheme of criminalizing around 190 social groups as criminals was introduced during the Colonial Rule through administrative and legal intervention since 1871-Criminal Tribes Act (CTA). It conveyed a sense that the communities notified under CTA possessed criminal tendencies since birth and were in practice of crime as a profession. In the independent India, the de-notification of the notified criminal communities took place through the repeal of CTA in 1952. However, despite de-notification it can be observed that in the contemporary times De-notified tribe still has to face the stigma of criminality on their identity leading to varied forms of victimization and exclusion. There exists literature which critic the colonial rule and focus on the marginalization of the indigenous groups, however, there still exists a scope to create a critical understanding regarding construction of certain categories like Criminal Tribes and internalization of such categories by society. Moreover, the majority of the attempts to answer the queries regarding the criminalization of DNTs have been largely made by the civil society and activism from a human rights perspective, but remains a marginally explored from theoretical lens of social sciences. In view of the above backdrop the paper shall make an attempt to understand the issue of criminalization of De-notified Tribes from the theoretical lenses of social science and shall explore the vicious circle forcing the DNTs to remain with the criminal stigma.

Keywords: Nomadic Subject, Criminal Tribe, De-notified Tribe, Theory.

Introduction

De-notified Tribes (DNT) of India hardly finds space in the public discourse in contemporary society. They are largely the Nomadic communities which were notified as criminals under the Criminal Tribes Act (CTA), 1871. In the postcolonial context, the CTA was repealed in 1952 and the notified criminal tribes were de-notified. The de-notification officially erased the label of criminal from the identity of the notified criminal tribes during the colonial period, as they were de-notified from the list of notified criminal tribes. In the post-independence context therefore the category de-notified tribe happened to become a new identity of the groups criminalized through CTA during colonial rule. However, presence of DNTs in the society still stigmatizes their identity as criminals in contemporary India.

The Idate Commission Report (2017) based on the survey done in twenty-nine states and seven union territories provides a rough estimate of the population of De-notified tribes and also the nomadic tribes to be fifteen crores (Idate, 2017, p.121). However, in order to get the exact figure of the population of DNTs there is a need of proper caste wise census enumeration of the groups. As the reason lies in the fact that construction of stigma of criminality was a systematic intervention introduced through colonial discourse, the integration of DNTs can be done through a systematic counter discourse of liberating knowledge from a social sciences point of view, which shall be an attempt in the proceeding sections of the article.

History of Criminalizing Nomads

To emphasize on the history of criminalization of the nomads, the British had arrived to a conclusion that there existed a section in the predominantly agriculture oriented sedentary society, which practiced nomadic dwelling through pastoral nomadism, itinerant trading and other occupations which involved wandering (Radhakrishna, 2009, p.4). For the British, unlike sedentary society, the nomadic groups were difficult to be located within the established social, economic and administrative slots of governance. Furthermore, the colonial interest in the forest also brought them in conflict with many forest dwelling hunting nomads and other tribal groups (Radhakrishna, 2009, p.4). Such groups were considered to be deviants within preconceived and the so called obedient sedentary landscape and society and therefore were required to be restricted through legal interventions and institutions of penalty and rehabilitation for the adherence of law and order. Moreover, in order to make some sense of the history before British, Panda (2008) tracks the instructions of certain religious philosophers such as Narada, Manu, Kautilya, Yajnavalkya etc who suggest to practice distance with that of the aboriginal groups as they were thought to be possessing high degree of delinquent tendencies (p.1). In addition, the detailed norms regarding social interaction were constituted through traditional caste system leading to the prevalence of isolating such groups and maintaining the purity of remaining social groups (Panda,2008, p.1). Similarly, Rana (2011) refers to the existence of criminal communities as Thugee or thug in the history whereby under most of the muslim as well as Hindu rules these groups paid city taxes too and were considered to be as regular professions (p.13). Such scenario provides a reason to consider that their existed some



system whereby the social positioning and the governance of the groups which later got termed as criminal tribe by the colonial state. Moreover, there are possibilities and such prior existing system and notions of criminal communities may also have influenced the colonial construction of criminal tribe.

The above colonial perception developed into a rationale for the criminal tribe legislation to come into existence since 1871 which gradually targeted around 190 communities of the landscape, which later became the country known as India. Moreover, in the process of administrative consolidation of various caste groups and tribes the colonial administrative engaged in record maintenance, documentation and other forms of studies. These documentations eventually led to forming detailed accounts regarding the characteristics of different notified criminal tribe as abnormal, deviant and illegitimate (Cohen, 1996, Dirks, 2001). This gradually led to formation of ‘body of knowledge’ which proved the tendencies among certain groups to be criminal tendencies.

The legislation enabled the government to segregate, forcibly settle and penalize the sections of the nomadic society, moreover, such mechanism also contributed to the notion that the criminals are born and their rehabilitation is impossible. Nevertheless, post-independence the criminal tribe legislation got repealed nationwide in 1952.

Explaining the above context, Radhakrishna (2001) through socio-historical exploration provides a picture of colonial motivation in terms of political, economic and social factors existing behind the intervention through Criminal Tribes Act since 1871 and the provision of Settlement Colonies with special reference to groups such as the Koravar, Yerukula and Korachas that were criminalized under the said act in India. The said legislation through certain provisions though provided a sense of being reformative and rehabilitative in nature it formed the primary base to marginalize, discriminate and exploit the nomadic section that largely form part of the lower stratum of the Indian society (Radhakrishna, 2001). Similarly, Pandian (2009) explains, in the study on Piramali Kallar community of Tamil-Nadu, regarding the labeling of the said group as ‘criminal tribe/caste’ and its influence of creating anxiety in the society regarding the community which continued even in the post-independence context. However, he also concludes by suggesting that a counter hegemony against the colonial discourse by the Piramalai Kallars continued through centuries, despite being criminalized popularly in the society (Pandian, 2009). Furthermore, D’Souza (2002) in his work attempts to bring into limelight the issues of various de-notified communities across country in the postcolonial context and the manner in which the colonial legacy continues in contemporary times. The criminal tribe act although got repealed in the independent India, the provision of habitual offenders’ act sustained the stability of the practice of criminalizing certain groups as criminals targeting the same groups among de-notified tribes (D’Souza, 2002).

The explorations as above suggests that the most vital period in the history of the De-notified communities has been the time since the intervention of criminal tribe legislation in their lives and in the social composition of India. As it labeled certain section in every province as habitual or born criminals and introduced a system of restriction and regulation over such groups.

The consistency of colonial legacy and caste-based notion regarding different sections of the society provided a platform for prevalence of stigma of criminality over de-notified tribe in the postcolonial context too, further allowing the authorities such as police to regulate instructions specific to de-notified tribes. The elaboration on the said aspect is reasonably done in the works of Radhakrishna, D’Souza, Pandian etc. The larger discourse yet seems to be dwelling on the chapter of notification (through CTA since 1871) and de-notification (in 1952), conveying a dominant sense that the history of the DNTs started since 1871.

The advent of Criminal Tribe legislations thus remains the most defining point in the social history of the sections of nomadic society, which forced them to undergo a process criminalization in India. In 1871, the first criminal tribe came into existence, criminalizing around twenty-eight communities. In 1876, the Bengal Presidency was brought into its domain. The act further got extended to Bombay and Madras Presidency through 1908 and 1911 amendments, respectively. In 1924 final amendment was introduced to the legislation incorporating of the acts under one, having comprehensive control over around 190 all notified criminal tribes, in the country (CTA, 1924). This act remained functional till the repeal of CTA in 1952.

Contemporary State of De-notified Tribes

In contemporary times, though the repeal of criminal tribe legislation provided a new recognition to the de-notified tribes, the stigma of criminality over them still prevails and put an immense impact on their identity in contemporary time too (Bokil,2002, p.150). In the postcolonial context, despite eliminating the category ‘criminal tribe’ officially from the government registers and police records, the perception of the society as well as the administrative officials regarding the de-notified tribe remained unchanged (Bokil,2002). The presence of the DNTs in the society is still viewed in a stereotypical manner whereby they are still considered as criminals or some notion of illegality or disrepute is attached to them (Radhakrishna, 2009). In such context it has created a situation in the postcolonial



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context whereby the identity imposed by the colonial administration primarily on the sections of the nomadic society, in a way has become their original identity eliminating major possibilities of addressing their cultural life and historical discrimination as compared to the other marginalized groups such as Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). Moreover, though de-notified emerged as an identity of the ex-criminal tribes, their exclusive categorization by the state never happened as one, and they were largely brought into the list of SC, ST or OBC and in some cases none. In rare states such as Maharashtra the exclusive categorization is done as Vimukta Jati Nomadic Tribe (VJNT), but not all ex-criminal tribe groups are included under the said category. In different states the groups are put into different categories. The classification of some of the groups in different states is as below:

State wise classification of some De-notified tribes

State	Banjara	Berad	Kaikadi	Kanjarbhat	Pardhi	Wadar
Andhra Pradesh	ST	SC	SC	SC	SC	SC
Karnataka	SC	ST	SC	ST	ST	SC
Delhi	SC	SC	SC	ST	ST	SC
Uttar Pradesh	OBC	ST	SC	ST	ST	OBC
Orissa	ST	SC	SC	ST	ST	SC
West Bengal	ST	SC	ST	ST	ST	ST
Bihar	ST	ST	SC	ST	ST	ST
Gujarat	ST	ST	SC	OBC	ST	ST
Himachal Pradesh	SC	ST	SC	ST	ST	SC
Rajasthan	SC	SC	SC	ST	ST	SC
Maharashtra	DNT/VJNT ¹	DNT/VJNT	SC	DNT/VJNT	ST	DNT/VJNT
Tamilnadu	DNT/MBC ²	DNT/MBC	ST	DNT/MBC	DNT/MBC	SC

Source: Rathod Motiraj³: 2014

Moreover, the communities which despite being categorized under SC, ST or OBC list the welfare measures meant for the categories rarely get extended to them because of their unique backwardness distinct from other SC, ST OBC groups. Furthermore, the complication gets worse when it is found that the categorization of same community has been done differently in distinct states. To provide examples, Banjaras are classified as ST in Andhra Pradesh, Gujarat, Orissa and elsewhere, SC in Karnataka, Rajasthan, Himachal Pradesh and a few other states, as OBC in Uttar Pradesh and as VJNT in Maharashtra. Similar is the state of various other groups such as Kaikadi, Berad, Sansis, Pardhis, Vadars, Budhuks, Garuds, Gondhalis, Kalbelias, Chitrakathis, Madaris, Nats, Kanjars, Kanjarbhats etc.

The above explained scenario of criminalization of the nomads in the colonial context and the prevalence of stigma of criminality over de-notified tribes in the postcolonial context provides a reason to understand the said issue through social sciences theoretical frameworks. There have been studies, as reviewed above, which have attempted to critically dwell on the issue of colonial stigmatization and oppression of indigenous communities. There have been however rare attempts that have done theorization of such historical criminalization. In present times some space has been created for the said issue in the popular discourse by the activism, however, the major focus which has been put on is the human rights aspects. There exists a huge scope to deal with the subject of social stigmatization through legal intervention from a social sciences perspective.

Furthermore, the studies focusing on DNTs either are concentrating on particular region or are specific to certain groups leading to sidelining the approach that attempts to understand comprehensive phenomena. In view of the above-mentioned scenario further an attempt shall be made to use different theoretical frameworks in social sciences to understand the issue of criminalization of the nomadic subject which in contemporary times are known as de-notified tribes in India.

²VJNT stands for Vimukta Jati Nomadic Tribe

³ MBC stands for most Backward Class

⁴ Link - https://anarchyindia.wordpress.com/2014/11/07/denotified-and-nomadic-tribes-in-maharashtra-by-motiraj-rathod/



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Locating Criminalization of DNTs through theoretical lens

Though there is limited work on criminalization of nomadic communities in India from a theoretical point of view, there has been a rich history of intellectual work in sociology of crime and punishment that comprises of multiple dimensions and is connected interconnected in a classical sense. The classical foundation of theoretical lens to perceive crime in sociology finds its roots mainly in the works of Karl Marx, Max Weber and Emile Durkheim, although it is only Weber and Durkheim who studied law systematically.

Durkheim, in his work (originally published in 1897), ‘Suicide: A Study in Sociology’, investigates the relationship between the suicide rates and the level of social integration, which made provision of a model of inquiry for various sociologists to investigate and study different social causes of delinquency, crime and deviance in the society (Durkheim, 1951). Another important work by him, ‘The Division of labor in Society’ further influences sociological inquiries to study the relationship which social structure shares with the organization of law as well as punishment (Durkheim, 1964). On the other hand, the Weberian notion regarding ‘rationalization’ of society and the legitimacy of the legal authority inspired sociologist to do a comparative thinking and introduce historical dimension to the sociological study of law and punishment (Harcourt et al. 2005, p.290). Furthermore, Marxist lens made a rare but a crucial intervention through radical or critical criminology and sociology of law that located causes as well as the control over crime in the systems that are part or the product of the capitalist society which is exploitative, injustice driven and inherently class conflict oriented (Harcourt et al. 2005, p.290, Garland, 1991, p.115).

The above lines of thoughts from Durkheim, Weber and Marx largely formed the base for development of theory of crime; moreover, for present article too the attempt shall be made to dwell on the theoretical perspectives developed from the work of the said thinkers. Below are some of the crucial theoretical perspectives for understanding criminalization of nomads in India.

Structural Functionalist Perspective

This framework mainly influenced by Durkheim’s idea whereby it perceives crime to be a part of the society as a social fact or a regular phenomenon. Moreover, he further claimed that the crimes are normal and plays an integral role in the society as he says – “Crime, for its part, must no longer be conceived as an evil that cannot be too much suppressed. There is no occasion for self-congratulation when the crime rate drops noticeably below the average level, for we may be certain that this apparent progress is associated with some social disorder” (Durkheim, 1965, p.72). In 1893, he also made a most important concept intervention which made a long-lasting mark in analyzing crime as social phenomena through introducing the notion of ‘anomie’. For Durkheim any behavioral restraint was a product of inner force for conscience or conformity that was again reinforced by the social forces such as fear, respect, anxiety for approval etc. According to him, certain kinds of changes in the society, for instance transition of agrarian society to industrial one, allows or produces the relaxation of the above-mentioned forces, leading to different levels of social chaos or disorder ultimately resulting in normlessness or collapse in the cohesiveness, which he terms as anomie (Dicristina, 2016, p.3). The non-availability of the sources of restraint, according to him therefore leads to anomie, resulting in crime and the antisocial behaviors alike (Dicristina, 2016, p.3). Furthermore, Merton (1968) improvised on the concept of anomie as circumstances that emerge as product of disparity between the institutionally available means and culturally prescribed goals in the given context of the society (Bokil and Raghavan, 2016, p.767). As anomie evolves, the disequilibrium also increases in the society, and the people begin experiencing strain and the start adapting to the situation in indifferent manners. The criminal tendencies according to Merton, is one among such indifferent modes of adaptation, which people do, when there is absence of institutional means for achieving the goals which are culturally aspect of their society (Bokil and Raghavan, 2016, p.767).

From the above-mentioned structural functionalist approach, it can be understood that de-notified tribes were perceived by the colonial rule to be the aberrant factors against the law-and-order system established by them because of different factors such as their nomadic life pattern considered to be primitive and their occupational practice such as hunting and gathering to be unusual in nature. Moreover, the changes introduced in the society through colonial rule, such as British taking control over forest actually led to a situation of anomie for the forest dwelling communities like nomads leading to their activities which got perceived by the British administration as criminal in nature. Furthermore, the systems such as caste and the notion of thuggee as explained above in the society further explains the rationalized the notion of the presence of criminal communities in the Indian society for the British from a structural functionalist lens. The mentioned scenario facilitated the colonial understanding regarding certain population to be deviant and disobedient for their governance system hence allowed them to develop the notion of criminal tribe.

Interactionist Perspective

This framework to a certain extent can be traced in Weberian understanding of symbolic interactionism, whereby the people are considered to be relying on the meaning which they derive from the social interaction which they conduct in there day to day life. However, it further got developed immensely through different interventions mainly through the work of George Herbert Meads.



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Moreover, in 1938, Tannenbaum provided a significant analysis regarding crime, whereby he claimed that the criminals largely carry the similar social features as well as has a similar social background as that of the other general citizens (Moyer 2001, pp. 164–5). However, according to him what separates the notified criminals in the society is their interface with the systems and institutions of criminal justice, whereby the application of the label of criminal or offender results in transition of the identity of those who become subject to it, from citizen to a criminal (Moyer 2001, pp. 164–5). The said process of tagging, which primarily might be a result of either a serious crime or any minor mal practice, in both cases exaggerated by the society develops a perspective criminality against some individuals or sections of the society (Moyer, 2001, pp. 164-5).

Furthermore, Becker (1963) being critical of the functionalist school that opined crime to be a consensual result of the society which played a vital role in the social functioning, suggested that it is the same actions that facilitate the labelling of some people in the society as ‘outsiders. Therefore, he claimed that formation of rules and enforcing them should not be the phenomena that should be agreed by all, as such practice only leads to disagreements and conflicts, as a political process of the society (Kennedy, 2010, p.54 and Becker, 1966, p. 18).

In addition, Goffman (1963) introduced the most important work in the Interactinist School to analyze crime and other forms of labeling practice in the society through his work called ‘Stigma’. He viewed stigmatization as a process based on the social construction of identity. Persons who become associated with a stigmatized condition thus pass from a “normal” to a “discredited” or “discreditable” social status (Goffman, 1963, pp.3–4). He describes the concept of Stigma as an attribute, behavior, or reputation which is socially discrediting; it causes an individual to be classified by others in an undesirable, rejected stereotyped manner rather than in an accepted, normal one (Goffman, 1963). Goffman classifies stigma into three categories, ie - character, physical and group association or tribal stigma. Character oriented stigmas are based on the aspects of character of a person. This type of stigma is usually driven by a common system of moral values by which society measures character (Goffman, 1963, p.4). Physical stigma is made applicable on the basis of the physical appearance. Deformity and unusual appearance are examples of physical stigma (Goffman, 1963, p.4). The tribal stigma or group association stigma is a type of stigma placed on people based on their classification within a group. This could be a race, religion, nation etc. According to Goffman, group association is usually attached to entire families and is passed through generations (Goffman, 1963, p.4). In his original discussion of stigma, Goffman included both psychological and social elements, but his ideas have primarily been used in the analysis of the psychological impact of stigma on individuals. This has led to the exclusion of considerations of how social life and relationships are changed by stigma.

The model of stigma proposed by Link and Phelan includes a component of structural discrimination, or the institutionalised disadvantages placed on stigmatised groups. This opens the door for us to begin to elucidate the ways that power— social, economic, and political—shapes the distribution of stigma within a social milieu (Link & Phelan, 2001). More recently, anthropological contributions to the study of stigma have focused on stigma as embedded in moral experience. Accordingly, maintaining moral status is dependent on meeting social obligations and norms. The stigmatized individuals or individuals associated with stigmatised conditions are de facto unable to meet these requirements. Thus, stigma decays the ability to hold on to what matters most to the ordinary people in a local world, such as wealth, relationships and life chances (Link and Phelan, 2001, pp.372-373).

The above-mentioned interactionist framework led to a foundation for the thought that criminality or crime are socially constructed phenomena and claimed that it is the systems and policies for criminal justice that have led to sometimes unforeseen impact which is negative for certain sections or individuals in the society. This framework in a way also helps to understand how caste system in India might have played its role whereby intersection of specific lower strata of the society with that of the colonial state and allied systems of governance led to construction of a perception that criminalized certain groups. In the above said context, the identity specific theories such as labelling theory, the notion of outsiders and stigma seems to fits suitably to the case of criminalization of the nomads in India. To begin with, a stereotype of criminal communities/tribes/caste was created and applied to the sections of nomadic society based on the administrative accounts, community specific studies and census information, forming a knowledge base regarding certain groups to be criminal in terms of their social characteristics. Furthermore, this knowledge was made popular through reinstating such forms of criminalities as a caste driven practice, constructing a suitable and contributing social audience that allowed the prevalence of stigma of criminality over the DNTs, even post de-notification of criminal tribe legislations.

Conflict Perspective

Conflicts perspective though has some impression from interactionist framework, it has reasonable influence of Marxist framework too. As it largely dwells on the politico-economic aspects of crime and understand criminality as the product of the problems that emerge out of capitalist society (Bokil and Raghavan,2016, p.773). Moreover, the radical perspective emerging out of conflict



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theory also throw light of the issue of crime through conceptual interventions such as racism, imperialism, sexism and similar kinds of exploitations, whereby they attempt to re-conceptualize crime in terms of human rights violation (Bohm, 1982, pp. 567-71).

In the explained line of thought Richard Quinney (1970) through his work 'Social Reality of Crime' provides a significant view in order to understand crime. According to him crime needs to be seen as the by-product or the result of the political economy of the capitalist society (Bilton et al.1997, p.392, Kennedy, 2010, p.59). One among such ways is the rise of redundancy in economy that occurs because of the population of labourers in surplus produced due to capitalist industries (Bilton et al.1997, p.392, Kennedy, 2010, p.59). Furthermore, capitalists are on constant move taking their operation of production to different places for maximising the profit through creating the cheapest labour of humans, giving rise to unemployment in the process, whereby creating a possibility for the unemployed to meet their needs through crime (Bilton et al.1997, p.392, Kennedy, 2010, p.59). In the same context, Spitzer (1980) makes a claim that against the labelling there is a need to provide more attention on the aspects regarding the labelling is done by whom (Macionis and Plimmerm 2005, p.50). Moreover, he suggests the reason for such dimension as the capitalism actually is dependent on the respect for the figures of power, whereby those who would resist doing that or resist the authority are prone to be labelled as deviant (Macionis and Plimmerm 2005, p.50). The laws therefore cannot be considered to be completely neutral, but their existence is to secure the interests of the capitalists and not the poor or the working class (Kennedy, 2010, p.59).

Furthermore, Foucault, by departing from the structural analysis provides a micro analysis of the apparatuses used to penalise the subjects that are criminalised. He largely engages in such internal analyses by emphasizing on particular penal power technologies and their operation modes in the society (Garland, 1991, p.134). Through his different works (1977, 1978, 1980, 1990) Foucault attempts to provide a detailed analysis of the mechanisms through which the modern penalty sanctions exercises their control of specific forms, inspection, discipline and the surveillance principle on which they rely, and the kind of rationalities and the knowledge of penology that directs the modes of power exercising (Garland, 1991, p.134). Such mechanisms result in a kind of penal control phenomenology, providing elaboration of the ways through which 'microphysics of power' has an interface with the bodies that are subject to it as criminals, deviants or illegitimate (Garland, 1991, p.134).

The conflict framework as mentioned above allows some aspects of the issue of DNTs to fit in suitably whereby the process of criminalization of the nomads explains Spitzer's position regarding how the notion of crime or criminal behaviour is constructed and applied to specific groups of the society. While the instrumentality of CTA as well as the provision of settlement colonies explains Foucault's notion of technologies of penal power, against the people who become subject to criminalization, the imposition of sedentary life pattern on the nomads and exploiting their labour for the colonial industries proves the significance of Quinney's understanding regarding the way capitalist motives creates a class prone to criminal tendencies as per the law.

Conclusion

The complexity of the issue of criminalization of the sections of nomadic society in the history, multiplicity of colonial rationalities of governing Indian social groups and the diverse characteristic of the communities criminalized through CTA provides varied reasons to apply different theoretical lenses as mentioned above to understand specific as well as distinct aspects of the issue. However, what seems to be missing is having a comprehensive framework to analyse the problems of different DNT groups as a monolithic category, in parallel to that of the other marginalized categories such as Scheduled Caste, Scheduled Tribe and Other Backward Classes. Such framework needs to respond to a multiplicity of the historical victimization which the community has faced primarily because of two factors. One is the marginal position of the community in the larger Indian society whereby caste specific analysis would help to respond to the situation. The second factors are the intervention of the state institutions responding to the issues of criminalization of the community which continues in the postcolonial context too through interventions such as Habitual Offenders legislation in different states, other legal interventions and targeting by police, and recognition through proper affirmative action policies. In the said context the present work can be viewed as a small attempt to provide a basic theoretical reasoning to the issue of criminalization of DNTs.

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