

## Freedom of movement and the Indian constitution: Reading the Constituent Assembly Debates

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### Abstract

The right to freedom of movement under Article 19(1)(d) and 19(1)(e) of the Indian Constitution is formally guaranteed to all citizens. Yet Denotified and Nomadic Tribes (DNTs) remain subject to administrative mobility controls, principally the state-level Habitual Offenders Acts. These communities have historically been classified as criminal under the Criminal Tribes Act 1871. The conventional explanation for the mobility control treats this as a failure of application or judicial interpretation. This paper, however, argues that the failure is more fundamental. It can be traced to the constitutional founding moment itself. A close reading of the Constituent Assembly Debates reveals that the framers were not merely silent on the Criminal Tribes Act when drafting the movement provisions. Criminal tribes do find a mention in the debates. Yet the assembly proceeded without any action or amendment to cater to the specific needs of nomadic tribes vis-a-vis the Draft Article 13(1)(d) of the constitution. The paper traces its institutional consequences through the CTA-to-HOA transition to the present day.

**Keywords:** Freedom of movement, Article 19(1), Criminal Tribes Act, Constituent Assembly Debates, denotified and nomadic tribes

### Introduction

Article 19(1)(d) of the Constitution of India guarantees every citizen the right “to move freely throughout the territory of India”. Read alongside article 19(1)(e) which guarantees the right “to reside and settle in any part of the country”, the provisions appear to constitute a comprehensive internal mobility right (Constitution of India, 1950, Article 19(1)(d)-(e)).

However, the experience of Denotified and Nomadic Tribes (DNTs) exposes its limits. These communities comprise approximately 1500 nomadic tribes and 198 denotified tribes identified in official classifications, encompassing millions of people across India (Ministry of Social Justice and Empowerment, 2016) <sup>[15]</sup>. However, decades after independence, they remain subject to state-level Habitual Offenders Acts that impose registration requirements, periodic reporting obligations, and movement controls that replicate the mobility restrictions of the Criminal Tribes Act, 1871 (Criminal Tribes Act, 1924) <sup>[10]</sup>. The latter was the colonial legislation that had classified their ancestors as hereditary criminals. The right to move freely throughout the territory of India has, for these communities, remained substantially inoperative (Brown, 2017; Renke Commission, 2008) <sup>[5]</sup>. This is not because courts have explicitly denied it to them. But because the administrative apparatus most directly operative on their mobility has never been successfully subjected to the constitutional scrutiny that the right would require (Brown, 2017) <sup>[5]</sup>.

The standard account of this failure locates it in implementation. Modern constitutional scholarship has generally approached Article 19 through questions of judicial interpretation and doctrinal development rather than through the historical conditions of its framing (Bhatia, 2019) <sup>[3]</sup>. The constitutional text is adequate but judicial interpretation has been insufficiently rigorous. Moreover, the administrative apparatus has been inadequately scrutinised. To add to that, the communities affected have lacked the political standing and legal resources to force the apex courts to engage with their specific situation. On this

account the failure is remediable, through better lawyering, more ambitious public interest litigation, and a more searching application of the proportionality doctrine that the Supreme Court has developed across seven decades of constitutional adjudication.

This paper argues that the failure is more fundamental. Understanding it requires returning to the constitutional founding moment itself. The Constituent Assembly debates on Article 19(1)(d) and (e), then numbered as Draft Article 13 (Austin, 1966) <sup>[1]</sup>, reveal a picture that is more complicated and more damaging to any charitable account of the constitutional settlement, than either complete silence or deliberate exclusion. It is seen that the framers were directly confronted with the CTA's incompatibility with the right to movement they were drafting, chose not to address it, and proceeded to adopt restriction grounds broad enough to accommodate the continuation of the administrative mobility control apparatus the CTA had created.

### Constituent Assembly Debates on Draft Article 13(1)(d)

The Assembly took up Draft Article 13 on 1 December 1948 and continued the debate into 2 December. The connection between the movement provisions and the position of tribal communities was present from the opening of this debate. Moving the first substantive amendment to Article 13, Damodar Swarup Seth proposed alternative language that would have made the relationship between tribal status and restriction explicit on the face of the provision itself. His proposed Article 13-A read: ‘All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in any place he pleases. Restrictions may, however be imposed by or under a Federal Law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace’ (Constituent Assembly Debates, vol. VII, 1 December 1948).

Seth's amendment is significant for the argument of this paper independent of its fate, which was not adopted in this

form (Wadekar, 2025) <sup>[7]</sup>. It establishes that the drafters were, from the first reading of the movement provisions, working with a conceptual frame in which ‘the protection of aboriginal tribes’ was a recognised and nameable ground for restricting the general right to move freely. The final text of Article 13(5) and its successor Article 19(5), retained a version of this protective ground for Scheduled Tribes, while saying nothing about the position of nomadic and itinerant communities. Their relationship to the restriction architecture was the inverse of the protection relationship Seth’s argument contemplated: they were not to be protected from outsider’s movement into their areas, but were themselves the object of movement restrictions under a separate and unrelated body of law. The conceptual distinction between protecting tribal communities from external incursion and restricting the movement of communities classified as criminal was available to the Assembly from the first day of the debate (Wadekar, 2025) <sup>[7]</sup>. It was not drawn.

The debate continued on 2nd December 1948, with the Assembly considering the restriction grounds under Article 13(5) in detail, including the proposed insertion of the word ‘reasonable’ before restrictions. This Amendment was moved by Pandit Thakur Dass Bhargava (Constituent Assembly Debates, vol. VII, 1 Dec 1948) and became central to the subsequent doctrine of reasonable restrictions. It was within this discussion of the scope and discipline of the restriction power that the Criminal Tribes Act was invoked directly, by two members arguing to opposite effect.

H.J. Khandekar spoke on the substance of the right to move freely, arguing that the restriction grounds as drafted effectively took away with one hand what the right had given with the other. His intervention named the CTA directly and with specificity:

Further we read of the right to ‘move freely throughout the territory of India’. This is sub-clause (d). Under it every citizen of India would have the right to move freely into any province or any village of India. But the substance of this right is taken away by clause (5). I would make this clear by an illustration. It is a matter of great amazement that in this country there is a law known as the Criminal Tribes Act under which a persons is considered a criminal from the moment of his birth. There’re also some unfortunate communities in this country whose members would not have the right to move freely in the territory of India granted under this sub-clause to every citizen of India. I believe, Sir that you are aware that under the Criminal Tribes Act the people following pastoral occupations cannot go to any particular part of India they would like to go. Now they do not have that freedom. We have in our province a tribe known as Mangarodi. If it has to go from the village of Khape to the village of Janwanver it is followed by the Police who sees to it that it goes only to the latter village and nowhere else. Similarly if it goes from Janwanver to Katol the Police of the former place would go up to Katol to entrust the Police of the latter place to keep watch over it. Thus they have no freedom of movement, whatever freedom of movement is now given under sub-clause (d) is taken away by clause (5) of the same article. If the intention is not to give to the criminal tribes, who are also citizens of India, the freedom which they are entitled to, it is something extremely unjust. (Constituent Assembly Debates, vol. VII, 2 December 1948)

Deshbandhu Gupta of Delhi, a Congress member and former president of the Delhi Provincial Congress Committee, answered Prasad directly in the same session, defending the restriction architecture and explicitly invoking the criminal tribe’s designation as self-evidently justified:

Some of my friends here have objected saying that what has been given by one hand has been taken away by the other. But if you ponder a little, you will find that it is not so. If some one is given a freedom by which the freedom of the other is curtailed, then I would say, that such a demand is not for the right type of freedom. For example, it has been stated that restrictions have been imposed on the movement of people belonging to the criminal tribes. I would like to ask, why should not restrictions be imposed on the movement of the criminal-tribe people, when they are a source of danger to other law-abiding citizens? Could anyone be serious in saying that restrictions and conditions imposed on the criminal tribes should not have been imposed at all? (Constituent Assembly Debates, vol. VII, 2 December 1948)

Gupta’s intervention proceeds on three assumptions that together reveal the constitutional imagination within which the movement provisions were adopted. One, the criminal tribe’s designation was a valid present-tense classification rather than a contested colonial inheritance under active political challenge. Second, that the freedom of movement being guaranteed was definitionally, the freedom of the ‘law-abiding citizen’, a category from which criminal tribes were self-evidently excluded. And, third, that restrictions on this excluded category did not ‘curtail our freedom’ because the relevant political community did not include them. Gupta’s subsequent welcome of the ‘reasonable’ amendment, treating it as a judicially enforceable safeguard against undue restriction while simultaneously treating restrictions on criminal tribes as obviously and uncontroversially reasonable, exemplifies the asymmetry this paper traces. The same constitutional safeguard was invoked as a protection for the settled citizen and assumed, without argument, to validate the existing mobility controls imposed on nomadic communities.

A third and related intervention occurred later in the same volume of debates, in a different but closely connected discussion. When Hari Vishnu Kamath proposed that the right to bear arms be included among the fundamental rights, Dr. Ambedkar, speaking as Chairman of the Drafting Committee, opposed the amendment by invoking the criminal tribes category directly: “if Mr Kamath’s proposition was accepted that every citizen should have the fundamental right to bear arms, it would be open for thousands and thousands of citizens who are today described as criminal tribes to bear arms” (Constituent Assembly Debates, vol. VII, 2 December 1948). Notably, in the course of this same exchange, Ambedkar remarked that the underlying question of tribal status “...could have been very properly raised when we were discussing the Fifth and the Sixth schedules”, that is the dedicated debate on Scheduled Areas and Scheduled Tribes, but had not been. This is a significant admission. It confirms that there existed, in Ambedkar’s own understanding, a more natural institutional location for a sustained debate on the constitutional position of tribal and quasi-tribal communities, and that this location had not been used for that purpose. The question instead surfaced obliquely, twice, in the debate on Article 13. It once surfaced as a

justification for breadth of restriction, and once, as a reason to deny an unrelated proposed right. But not once did it become the subject of a dedicated constitutional reckoning. The constitutional debate surrounding the final text of Article 13 (subsequently, Article 19) failed to resolve the problem of CTA-style mobility controls, instead maintaining restriction grounds broad enough to accommodate them (Wadekar, 2025) <sup>[7]</sup>. This outcome reflects a sustained pattern across the recorded debate in which the constitutional problem was repeatedly named and never resolved (Wadekar, 2025) <sup>[7]</sup>.

This reading is corroborated by historical scholarship situated outside the constitutional record. Gandee's (2018) <sup>[12]</sup> archival study of the criminal tribe category's postcolonial afterlife in Punjab found that the category was actively sustained by the postcolonial state: in refugee administration, penal practice, and welfare policy. It remained not an unintended holdover but as a category state actors found administratively useful in the specific conditions of Partition and nation-building (Gandee, 2018) <sup>[12]</sup>. Affected communities were politically active and engaged directly with the emerging citizenship framework (Gandee, 2018) <sup>[12]</sup>. It was an engagement that the constitutional debate analysis here shows was not reciprocated with sustained attention on the floor of the Assembly. The CAD evidence presented in this section is thus not an isolated textual artefact. It is the floor-debate expression of a pattern that the wider historical record confirms. It is a founding settlement in which the relevant community's situation was repeatedly visible to the state and repeatedly left structurally unaddressed.

### **Institutional Consequence: The Habitual Offenders Acts**

The constitutional settlement just traced did not remain confined to the historical record of December 1948. It produced, with notable directness, the institutional architecture through which Denotified and Nomadic Communities continue to be governed today. Tracing this consequence is necessary to demonstrate that the founding moment analysed above was not merely of antiquarian interest but established the doctrinal space within which the post-independence administrative apparatus of mobility control would operate largely free of constitutional constraint.

The Criminal Tribes Act was formally repealed by the Criminal Tribes Laws (Repeal) Act of 1952, (Criminal Tribes (Repeal) Act, 1952) <sup>[11]</sup>, following the recommendations of the Criminal Tribes Act Enquiry Committee, which had been constituted in 1949. It was formed to advise on the form that post-repeat legislation should take. Mark Brown's (2017) <sup>[5]</sup> archival analysis of the Enquiry Committee's deliberations reveals that the committee did not proceed on the assumption that the formally denotified communities were now free citizens whose mobility rights required restoration. It proceeded on the assumption that the administrative problem the CTA had purported to address remained, and that new legislation was required to manage it in constitutionally acceptable form (Brown, 2017) <sup>[5]</sup>. The Committee's recommendations directly anticipated the structure that would become the Habitual Offenders Acts. It was a shift from collective birth-based criminality to an individualised standard based on repeated convictions, while preserving the core administrative operators of registration, surveillance, and

movement restriction that the CTA had established (Radhakrishna, 2008; Ranjan and Pruthy, 2025) <sup>[18, 19]</sup>.

The timeline of this transition is itself significant. The Madras Restriction of Habitual Offenders Act was enacted in 1948. It was the same year as the Constituent Assembly's Debates on Article 13, and four years before the central CTA repeal. Rajasthan followed in 1953 and over the subsequent two decades Andhra Pradesh, West Bengal, Karnataka, Himachal Pradesh, and Uttar Pradesh enacted equivalent legislation (Renke Commission, 2008, vol 1). The repeal of the CTA and the construction of its administrative successor were not sequential but substantially concurrent. The governmental project of managing nomadic and mobile communities as a population requiring administrative control did not pause at the moment of constitutional transition. It proceeded across that transition with remarkable institutional continuity.

The Habitual Offenders Acts were never challenged as pre-constitutional law rendered void by Article 13, now Article 19, because they were not pre-constitutional. They were new legislation, enacted after the Constitution's commencement, operating squarely within the 'general public interest' restriction ground that Article 19(5) made available. The very breadth that Gupta had defended 2 December 1948, became four years later the doctrinal foundation on which the HOAs were constructed. The constitutional architecture did not merely fail to prevent the HOAs' enactment. It supplied, by design, the restriction ground broad enough to make their enactment straightforward.

The consequence of this constitutional accommodation persists to the present day, as reflected in successive official reports documenting the continued marginalisation of denotified and nomadic communities (Idate Commission, 2017; Kumar, 2020) <sup>[14]</sup>. International human rights bodies have also expressed concern regarding the continued operation of habitual offender legislation as its impact upon DNTs (Kumar, 2020) <sup>[14]</sup>. As of March 2025, the Government of India confirmed in Parliament that habitual offender legislation remains operative in fourteen states and union territories, and the Supreme Court has itself raised concerns regarding the constitutional questionability of these classifications, particularly their disproportionate impact on denotified tribes (Government of India, 2025, Lok Sabha Unstarred Question No. 2892). The Renke Commission's 2008 report, which is the most authoritative official acknowledgement of the HOA regime's operation, documented how state prison manuals and police registration practises continued to link habitual offender status explicitly to denotified communities, establishing direct administrative continuity between the CTA's classificatory logic and its post-independence successor (Renke Commission, 2008, vol. I). Brown, Jadhav, Raghavan and Sinha's most recent ethnographic study of the Pardhi community in Mumbai and the Kheria Sabar community in West Bengal documents the contemporary operation of this apparatus, showing that imperial legacies continue to cast long shadows over DNT communities despite their formal denotification seven decades ago (Brown *et al.*, 2021) <sup>[6]</sup>.

What is most striking, from a constitutional law perspective, is the near-total absence of apex-level constitutional litigation testing the HOAs' compatibility with Article 19(1)(d). The Supreme Court's proportionality jurisdiction

has developed with considerable sophistication since the 1950s. From the foundational reasonableness tests of *Chintaman Rao v. State of Madhya Pradesh* (1950 SCR 759)<sup>[21]</sup> and *State of Madras v. V.G. Row* (AIR 1952 SC 196), through the integration of Articles 14, 19, and 21 in *Maneka Gandhi v. Union of India* (AIR 1978 SC 597)<sup>[23]</sup> to the structured four-stage proportionality test articulated in *Modern Dental College v. State of Madhya Pradesh* ((2016) 7 SCC 353)<sup>[24]</sup> and the surveillance-specific framework developed in *Justice K.S. Puttaswamy v. Union of India* ((2017) 10 SCC 1). Yet this doctrinal apparatus, capable in principle of providing rigorous judicial oversight of administrative mobility controls, has never been systematically applied to the HOA provisions that constitute the primary instrument of movement restriction operative against denotified and nomadic communities. This is not a litigation gap that better legal advocacy could straightforwardly remedy. It reflects the structural condition this paper has traced to its founding moment. It is a constitutional imagination that did not, and structurally could not recognise nomadic mobility as falling within the protective scope of the right it was simultaneously creating.

## Conclusion

This paper has argued that the structural exclusion of denotified and nomadic communities from the substantive protection of Article 19(1)(d) cannot be adequately explained as a failure of constitutional application or judicial interpretation. Its origins lie in the founding moment itself. The Constituent Assembly Debates revealed that the framers were directly confronted with the incompatibility between the Criminal Tribes Act and the right to movement they were drafting. The assembly proceeded to adopt Article 13 without amendment, leaving in place restriction grounds broad enough to accommodate the continued administrative control of nomadic mobility that the CTA had institutionalised and that the HOAs would subsequently inherit.

This founding settlement was not silence. It was a constitutional choice made with the relevant facts before the decision-making body, defended explicitly by at least one member, and left unaddressed by the assembly's leadership. The institutional consequence of the settlement persists in the Habitual Offenders Acts which remain operative in many states, and which have never been subjected to the proportionality scrutiny that the Supreme Court's doctrine, in principle, makes available. The normative stakes of this finding are not confined to historical reckoning. They bear directly on the question of remedy. A constitutional order whose founding settlement actively contemplated and defended the exclusion of nomadic communities from the substantive protection of the movement rights cannot be adequately repaired through doctoral extension alone. What is required, this paper has suggested, is the kind of transformation of the constitutional imagination that Benhabib's (2004)<sup>[2]</sup> account of democratic iteration describes. It is a transformation that depends on denotified and nomadic communities acquiring the political standing that the founding settlement, knowingly, did not extend to them.

This paper has not attempted to specify what that transformation would concretely require, nor has it addressed the considerable practical and political obstacles to achieving it. Those questions exceed its scope. What it

has established, through a close and verified reading of primary constitutional history, is that the question cannot be deferred by treating the present condition of denotified and nomadic communities as an unintended consequence of an otherwise sound constitutional design. The design was sound for the subject it was built to protect. The historical record now shows that the framers knew who that subject was and who it was not.

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