

FORCED EVICTION OF ‘GADIA LOHAR’ COMMUNITY IN PREM NAGAR, KOTLA, DELHI: CONTEXTUALIZING THE HUMAN RIGHTS VIA VOICES OF DISPOSSESSED



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Abstract

India is a homeland to various Denotified Tribes, constituting 10% of India's population. But even after 76 years of independence DNTs of India are governed by Habitual Offenders Act(s), an adaptation of the Criminal Tribes Act (1924). One such community is 'Gadia Lohar', temporarily settled in 'Gadia Lohar Basti' and 'JJ Camp' Prem Nagar, Kotla, South Delhi, which has a history of displacement and struggle. They were displaced from their settlement near Tyagaraj Stadium in 2009 to make way for Commonwealth Games. Many of them lost their traditional source of income and children dropping out of schools. This research paper will analyze the effect of their displacement in 2009 to widen the road and construct an underpass to connect Tyagaraj Stadium with Jawaharlal Nehru Stadium and violation of their human rights in the light of Madras Restriction of Habitual Offenders Act, 1948 (as applicable in Union Territory of Delhi).

Keywords - *Criminal Tribes, Denotified Tribes, Habitual Offenders, UN, DNT*

Introduction

India is a polygenetic population, with an exceptional amalgamation of sundry cultures and races. Indian society is multi-ethnic, multi-racial, multi-linguistic and multi-religious. The Constitution of India provides equal privileges, rights, duties and liabilities to all its citizens, irrespective of their gender, caste, sex, race, class, language and religion. But with India's 3.5 trillion economy and enactment of various progressive laws and schemes and programs, we can also detect the unequal distribution of resources and socio-economic inequality. Amongst them one of most marginalized groups are 'Denotified, Nomadic

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and Semi-Nomadic Tribes'. Due to many historical and colonial policies, several tribes have been dispossessed from their lands. They were marginalized and are deprived of their rights and privileges.

The term “Denotified Tribes (DNTs)” means all those nomadic and semi-nomadic communities who were “notified” as ‘criminals’ under the notorious Criminal Tribes Act of 1871 and later were “Denotified” by the repeal of the Act after the independence of India in 1949. With the enactment of Criminal Tribes Act of 1871 in north - India they were considered as ‘born criminals’, which was later extended to the whole of British India in 1911, affecting 14,00,000 people according to official figures¹ and took its final form in 1924. The British government used to feel threatened by the nomadic communities which moved from one place to another and indulged in unconventional practices, like ear cleaning, snake charming, rope walking, juggler, monkey street performer, ironsmith etc.

The Greek word “nomad” means “to pasture”. In India they are also called as “Ghumantoos”, which indicated “an un-settled, un-disciplined, aimless, or vagrant” mobile communities.² Their nomadism was perceived as a challenge to Britishers. The Britishers had an anti – pathetic attitude towards the nomadic communities back home in the Great Britain, where they were treated as ‘habitual offenders’. This attitude and approach of Britishers towards the nomadic communities was reflected in the Indian context as well. In the words of Henry Mayhew, who was an influential mid – nineteenth century English author, on ‘the wanderers’:

“Whether is it that in the mere act of wandering, there is a greater determination of blood to the surface of the body, and consequently a less quantity sent to the brain, the muscles being thus nourished at the expense of the mind, I leave psychologists to say. But certainly, be the physical cause what it may, we must all allow that in each of the classes above mentioned, there is a greater development of the animal than of the intellectual or moral nature of man...”³

¹Meena Radhakrishna, *Dishonoured by History: ‘Criminal Tribes’ and British Colonial Policy 2* (Orient Blackswan, Delhi, 2015).

²Government of India, “Interim Report: National Commission for Denotified Nomadic and Semi-Nomadic Tribes” 10 (Ministry of Social Justice & Empowerment, 2016-17)

³Henry Mayhew, *London Labour and the London Poor: The Condition and Earnings of Those That Will Work, Cannot Work, and Will Not Work* 4 (C. Griffin, United Kingdom, 1864).



Further, the practice of nomadism meant that their movements could not be regulated by the British Indian government. It was thus important to sedentarize them so as to control them and tax them. Thus, the British government started the forced – settlement of these nomads. These so called ‘reformatory settlements’ were virtually like prisons for these nomads. Consequently, these nomadic communities lost their traditional occupation. Furthermore, the enactment of the Indian Forest Act of 1865, the Indian Forest Act of 1878 and the Indian Forest Act of 1927 established the monopoly of the Britishers over the Indian forests and its natural resources. Some of these lands were also given to the Zamindars and the forest - dwelling tribes were forced to cultivate on these lands. The forest areas became a major source of revenue for the Britishers. Consequently, the nomadic tribes were prevented from collecting forest produce, which was an important item of barter in their trade. They were not even allowed to collect bamboo and leaves, which they used for making the baskets, mats, brooms etc. Later, the Britishers’ control over the common pasture lands and the grazing areas, denied the fodder for the cattle of these nomadic tribes (like, Van Gujjars of Uttarakhand). All this cumulatively compelled some of these tribes to resort to other sources of income for their subsistence.

In order to further suppress the nomadic tribal groups involved in the ‘deviant acts’, as from the Britishers’ perspective (like *Nat*, *Sansi*, *Prerna*, *Singhvi*, *Gadia Lohar*, *Sapera*, *Madari* etc.), the nomadic tribes from the entire India were declared as ‘criminal tribes’ by the passing of the Criminal Tribes Act (1871) by the British India, which was initially applicable only to the North India. As a ‘civilizing mission’, the Britishers extended this Act to the whole of India by the enactment of Criminal Tribes Act (1911), which took its final form via an Amendment in 1924.

After the independence of India, the plight of the criminal tribes was considered by Mr. Pandit Jawaharlal Nehru’s government and consequently the Criminal Tribes Act, 1911 was repealed on 31st August, 1949 (celebrated as ‘Liberation Day’ or ‘Vimukta Jatis Diwas’). Nonetheless the systematic discrimination by the members of the mainstream society, along with a social stigma as ‘born criminals’ continued to haunt 198 De-Notified Tribes and 313 Nomadic tribes of India.⁴ As a result, Habitual Offenders (Control and Reform) Act was passed by the Parliament in 1952 as a Model Code and implemented

⁴Dr. Chandrakanthi L. and Ms. Veada Noopura V.T., “Socio-Legal Status of Tribal People under the Criminal Tribes Act, 1871: An Overview” Oct.-Dec. *Bharti Law Review* 116 (2018).



by few States (like Gujarat, NCT of Delhi, Karnataka, Tamil Nadu, etc.), which continued the criminalization of Denotified Tribes. Thus, the criminal tribes are now branded as ‘Denotified Tribes’ and are treated as ‘strangers’ in their own land.

In 2007, the ‘United Nations Anti – Discrimination Body Committee on the Elimination of Racial Discrimination’ noted that the Habitual Offenders Act(s) is a sophisticated replica of Criminal Tribes Act, 1911. In NCT of Delhi, Madras Restriction of Habitual Offenders Act, 1948 was extended via Notification of Ministry of Home Affairs, dated 22nd December, 1951.

One such extremely marginalized nomadic community is the ‘Gadia Lohar’ community, who are largely living in ‘informal settlements’ in various pockets of the Delhi for several decades. ‘Gadia Lohar Basti’ and ‘JJ Camp’ in Prem Nagar, Kotla, South Delhi are the settlements of Gadia Lohar community who migrated from Rajasthan to Delhi in 1965 and 1980, respectively. They were displaced from their settlement near the Tyagaraj Stadium in 2009 to make way for the Commonwealth Games. Their settlement was demolished without any prior notice, leaving the community without homes, livelihoods, or proper rehabilitation, which forced them to relocate to a temporary settlement in Prem Nagar, Kotla. The community continues to face poor living conditions, inadequate sanitation and medical services. Along with many of them losing their traditional source of income and children dropping out of schools, they face the stigmatization of being the ‘criminal tribes’ by the so-called mainstream society.

Research Objectives

The ‘Gadia Lohar’ Denotified community settled in Prem Nagar, Kotla, South Delhi, has a history of displacement and struggle. This research will analyze the effect of their displacement in 2009 to widen the road and to construct an underpass to connect the Tyagaraj Stadium with the Jawaharlal Nehru Stadium and violation of their human rights in the light of Madras Restriction of Habitual Offenders Act, 1948 (as applicable in Union Territory of Delhi). In the end, relevant suggestions and recommendations will be provided for a better operational framework for the betterment of Denotified Tribes in the light of the data collected and analyzed.

Thus, the researcher will delve into the following questions:

1. To study the impact of eviction and displacement of the Gadia Lohar community in the selected region of Delhi.



2. To analyze the impact of the Madras Restriction of Habitual Offenders Act, 1948 on the Gadia Lohar community of the selected region of Delhi.

Research Methodology

Utilizing the Doctrinal Method: There can be different methods to approach a research problem, namely, doctrinal, empirical or an amalgamation of both. The present research shall be using Doctrinal method of legal research as well as some *case narratives* of Gadia Lohar community of the selected region of Delhi. The researcher shall be relying on the primary as well as secondary sources for the present research.

The researcher shall be using various primary resources entailing the relevant Indian legislations, governmental reports, judicial interpretations and international conventions available at her disposal. The secondary sources shall include data collected from National Archives of India and Ministry of Social Justice and Empowerment, books, articles published in various prestigious journals, newspapers and websites.

Suggestions for a prudent legal reform in the Indian context - Based on the study, the researcher shall identify the pitfalls of the Indian legal and social system leading to the victimization of the Denotified Tribes and shall suggest the measures for safeguarding the future of Denotified Tribes.

Limitation of the Study

The research shall be having the following limitations:

1. The research shall be limited to the Gadia Lohar Denotified Tribe only, and shall not include any other Nomadic and Semi – Nomadic Tribes of NCT of Delhi.
2. The study shall be limited to the status of Denotified Tribes in Prem Nagar, Kotla of South Delhi and thus, shall not be representing the status of the Denotified Tribes of the whole of India.
3. The population count of Denotified Tribes of NCT of Delhi is under the process by the NITI Aayog. So presently no survey reports could provide the clear data and details of the Denotified Tribes living in the different pockets of NCT of Delhi.

Mapping the origin of ‘Gadia Lohar’ community in Prem Nagar, Kotla

The nomadic community, Gadia Lohar, originated from Chittorgarh of Rajasthan.



They are “Lohar” (means ironsmith) by profession and for subsistence used to move from one place to another on their “Gadia” (means carts) for selling their manufactured iron utensils and other tools.

The community members were ironsmiths of the army of Maharana Pratap of Mewar. When Mewar was taken over by the Mughals, then they took the oath that they will lead a nomadic life and will return their homeland only when Maharana’s power is restored.⁵ Since then, Gadia is their mobile home and stay temporarily on the outskirts of the cities or villages to sell their goods. The community is born with the following “self – imposed taboos:⁶

1. Not to return to Chittorgarh Fort.
2. Not to live in permanently settled homes.
3. Not to light a candle at night.
4. Not to keep their cots in their carts.
5. Not to keep a rope for drawing water from the well.”

After the passing of the Criminal Tribes Act, 1871 by the British India, the community was forced to settle at one place. They are now settled in NCT of Delhi, Haryana, Punjab, Madhya Pradesh, Maharashtra, Gujarat and Uttar Pradesh.

In the NCT of Delhi, the Gadia Lohar community is settled in over 90 ‘informal *bastis*’ in various parts of Delhi since last several decades.⁷ Most of these settlements are situated near roadsides for trade purposes. Due to this, they live under the constant threat of forced eviction along with the absence of the basic amenities.

The settlement of Prem Nagar, Kotla, South Delhi came into existence 60 years ago and is the selected area of research. The Gadia Lohar community living here were the migrants of Rajasthan in 1965. India was hosting the Commonwealth Games of 2010 in Delhi and as its part of preparation an underpass was required to be build joining the Tyagaraj Stadium with the Jawaharlal Nehru Stadium. For this purpose, the bulldozers were used to demolish the Gadia Lohars’ settlement to make the way for the underpass on 12th January, 2009. Before the demolition, neither prior notice was given

⁵Government of India, “Interim Report: National Commission for Denotified Nomadic and Semi – Nomadic Tribes” 83 (Ministry of Social Justice & Empowerment, 2016-17).

⁶Supra note 5.

⁷Housing and Land Rights Network, “Mapping the Marginalized: Delhi’s Gadia Lohar Community” 2 (2019).

to the resident - victims nor any compensation or rehabilitation was offered for their displacement.⁸

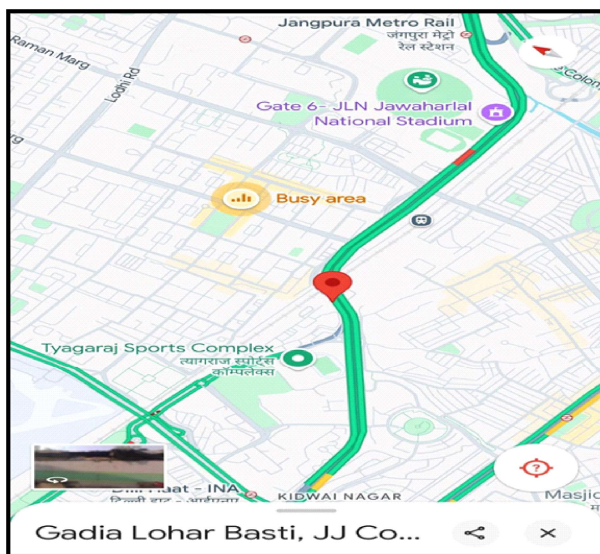
The community is still looked upon as a ‘stranger’ in their own land. Thomas Carlyle wrote about the Denotified Tribes that:

“The Nomad has his very house set on wheels; the Nomad, and in a still higher degree the Ape, are all for ‘liberty’; the privilege to flit continually is indispensable to them... The civilized men lives not in wheeled houses. He builds stone castles, plants lands, makes life long marriage – contracts; - has long – dated hundred – fold possessions, not to be valued in the money market; has pedigrees, libraries, law – codes; has memories and hopes, even for this Earth, that reach over thousands of years.”⁹

Case Narratives of ‘Gadia Lohar’ of the Selected Area

The researcher visited the Gadia Lohar Basti in Prem Nagar, Kotla of Delhi during July – September, 2024. The researcher has taken following ethical considerations:

1. The data is collected after Free, Prior and Informed consent (that is, FPIC Principles of research) of the stakeholders.
2. The names of the stakeholders used in this paper are kept anonymous to protect their identity.



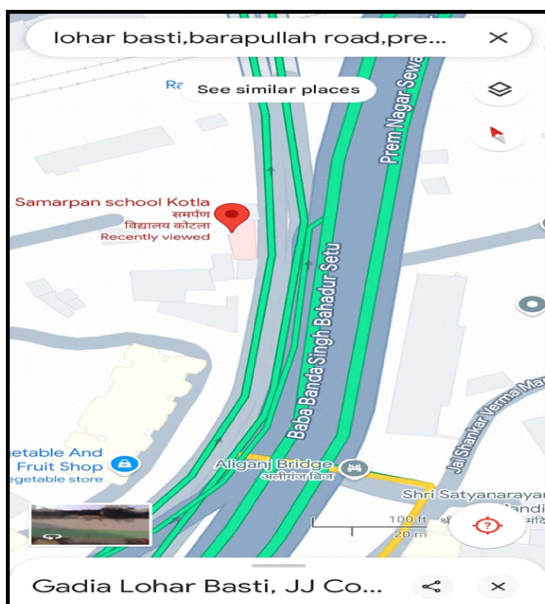
⁸Supra note 7 at 11.

⁹Thomas Carlyle, Past and Present 341-342 (C.C. Little and J. Brown, United Kingdom, 1843).



Road connecting JLN Stadium and Tyagaraj Stadium though *Gadia Lohar Basti* ()

The Gadia Lohar settlement was divided into two parts by Baba Banda Singh Bahadur Setu road. An underpass was constructed to connect Jawaharlal National Stadium to Tyagaraj Sports Complex in 2009 for Commonwealth Games (2010).



The *Gadia Lohar* Settlements () on both sides of the road.

On the left side of the road is the '*Lohar Basti*' with the settlement of 18 Gadia Lohar families; while on the other right side of the road is a temporary settlement of around 250 Gadia Lohar families residing beside the *Kushaknalla* (formed from a very small tributary of Yamuna river).

Case Narrative I: The researchers' first stakeholder is a 14 years old girl, named *Riya*, who belongs to the *Gadia Lohar* Denotified Tribe, living in *Gadia Lohar Basti*, situated on the left side of the road. She is studying in Class VII. She took the researcher to visit her house. She lives with her father, mother and two elder brothers. Her mother told the researcher that they are living in Delhi since 1960s. The parents of *Riya* are uneducated. Her brothers have completed their schooling, but they are not interested in pursuing higher education. They have joined their traditional business of ironsmith.

Riya aspires to become a doctor. An NGO named '*Samarpan Foundation*' is helping the children of the community to study by providing tuition to school

students for free of cost. All the family members hold an Aadhar Card. They live in the *pucca* house on the left side of the road since 1960s. They have electricity, water and *Sulabh Sauchalaya* (by Delhi government) facilities.

The source of subsistence of Riya's family is the making and selling of iron tools and utensils. They put up the shop stalls to sell their products on the roadside of their settlement in the evening from 3:00 pm to 8:00 pm. The selling of their hand – made goods has become a challenge against the machine - made iron goods.

Case Narrative II: The second stakeholder is a woman, named *Suman*, who is of 40 years old. She lives with her one daughter, one son and mother-in-law. Her husband passed away due to heart attack in 2011. With him they lost their traditional business. Suman now works as a house – help in the near by Government colonies at the rate of Rupees 1200 per month in four households. Her son works as a cab driver and her daughter has completed 12th class. She wants her daughter to pursue BA from Delhi University. They live in the *pucca* house on the left side of the road since 1965.

Case Narrative III: The third stakeholder was a man, named *Mithiles*, aged 35 years, residing on the right side of the road. The researcher met him on his roadside small scrap shop on a wheeled – cart. He earns approximately Rupees 200 a day. He lives with his wife and two sons near the *Kushknalla*. He told the researcher that they were displaced during the construction of the road in 2009. Their homes were demolished by the bulldozers overnight without any prior notice given to them. They do not work as ironsmiths anymore. They live along with other approximately 250 families besides the *nallah* in *kuccha* homes without any electricity, water and lavatory facilities.

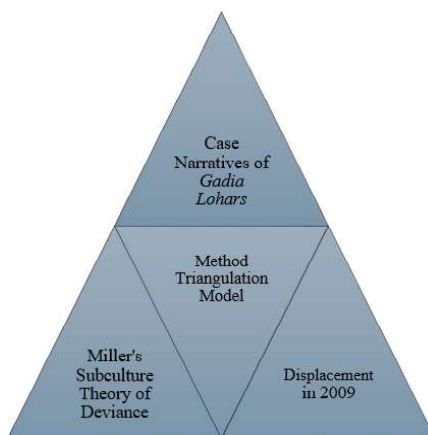


Gadia Lohar children outside the Samarpan Foundation tuition.



Perusal of the Data Collected

The researcher has applied the ‘Method Triangulation Model’, which would be an assimilation of the three research methods to establish the inter-relationship among them. The research will analyze the case narratives of *Gadia* Lohar Denotified tribes of Prem Nagar (Kotla), the effect of their displacement in 2009 and the application of **Walter B. Miller’s Subculture Theory of Deviance**.



Method Triangulation Model.

The case narratives collected by the researcher suggests that the traditional practices of *Gadia* Lohar Denotified Tribes are not merely their occupation, but also a socio-religious practice for some of them. The myth that “no matter how much the government tries to settle these communities down by giving them lands or houses, they still prefer nomadic lifestyle.” – does not hold true now. They lack the livelihood security; but their new generation is oriented towards education. Still some reports suggest that they are involved in petty offences, like theft, also, but when the researcher asked them about this, they denied the allegations outrightly citing that they are good citizens now and are trying to be the part of so - called mainstream society by gaining education.¹⁰ They also told the researcher that some of them also holds the Other Backward Classes (OBC) Caste Certificate in NCT of Delhi.¹¹

The researcher through its field work observed that this community prefers to live in small groups on the roadsides. They also keep themselves

¹⁰Sarthak, “Socio – Economic Status of Women of Denotified & Nomadic Communities in Delhi” 19 (submitted to National Commission for Women, 2016).

¹¹Supra note 7 at 4.



isolated from other communities. These settlements have not been recognized by the Government of Delhi.

For the beautification of the city during the Commonwealth Games, in 2009 the community was evicted and dispossessed. The matter was taken to the court. In the Writ Petition of Sudama Singh & Others v. Government of Delhi & Anr.¹², the Hon'ble Court on 11th February, 2010 upheld the Gadia Lohars' right to adequate housing. The Delhi Government cannot demolish the settlements on the ground of 'right to way' without providing proper rehabilitation to the victims. The demolition was against the 2000 Scheme framed by Delhi Government for rehabilitation of the slum dwellers. However, till 2024 they have not been rehabilitated.

In the recent development, the left side of the road settlement have been decided by the Delhi Government to be relocated on the outskirts of NCT of Delhi in Nangloi. The residents of *Lohar Basti* claims that the living conditions in Nangloi site is very poor. The matter is pending before the court.

According to the **Subculture Theory of Deviance by Walter B. Miller**, delinquency is the result of lower - class subculture. The 'lower – class' has some 'distinctive cultural system' which includes 'three focal concerns' – 'toughness', 'smartness' and 'excitement'.¹³ In the words of Miller, "The 'smartness' involves the 'capacity to outsmart' and expressed in repertoire of the hustler and the petty thief. Low – skilled workers require the ability to endure repetitive routine and tolerate culture of poverty."¹⁴ The outside of works helps to deal with the dissatisfaction produced by the traditional work and therefore, the poor prefer to live in a world of their own.¹⁵ Thus, the 'cultural deprivation'¹⁶ leads to an apparent kind of malice, an enjoyment of the discomfiture of others.

In the light of the case narratives collected and the observations made by the researcher during her field work, most of the members of *Gadia Lohar* Denotified Tribes does not have adequate educational qualification as well

¹²2010 SCC OnLine Del 612.

¹³Micheal Haralambos and Robin Heald, *Sociology: Themes and Perspectives* 500 (Oxford University Press, New Delhi, 51st impression, 2017).

¹⁴Supra note 13 at 500-501.

¹⁵Supra note 13 at 187.

¹⁶ 'Theory of cultural deprivation' is where a person of lower class has inferior norms, values, skills and knowledge, as compared to middle-class people, which increases the gap between the two classes.



as not any vocational training. Further, factory - made iron tools and utensils are posing a substantial threat to the traditional occupation of Lohars and so, they have to explore other sources of livelihood. Consequently, some of them are working as household helpers, or as labourers at construction sites, or selling earthen pots and utensils. The observation made by researcher also shows that the most of the community members living on left side of the road have washing machines, refrigerators, water coolers, cooking gas and tiled flooring. They are also suspected by police officials in the commission of petty offences.

On the other hand, the displaced members living on the right of the road face psychological impact, poor sanitation, lack of medical facilities and basic amenities. They suffer from diseases, like malaria, typhoid and dengue, more often.

So, the Denotified Tribes of the area are double jeopardized, *firstly* by the lack of education; and *secondly* by the stigmatization of the society for belonging to the Denotified Tribes.

Suggestions

The above study strongly emphasises on the need of rehabilitation of the community living in ‘informal settlements’ since several decades. For this purpose, the Government of Delhi shall survey the area and implement the Chief Minister Awas Yojna – “*Jahan Jhuggi, Vahin Makkan*”. Such rehabilitation shall be accompanied with the space for market – area for Gadia Lohars to sell their manufactured goods. Their products should be promoted under “Vocal for Local” Initiative (started by NITI Aayog).

The basic amenities, like electricity, water, lavatory and medical facilities, must be ensured. The compensation should be provided for the loss due to forced eviction and displacement to the victims. It is also the need of the hour that a massive awareness programme must be launched to sensitize both the police and the public that these Tribes are ‘not criminal by birth’.

Conclusion

The *Gadia Lohar* Denotified Tribe is one of the most vulnerable community and are treated as ‘strangers’ in their own land. Their processes of marginalization and dispossession have a long history. In a race to rise as a modern nation, India tried to wipe out its embarrassing colonial pasts, the groups or communities who does not fit into the notion of an ‘ideal citizen’ are subjected to historical stigmatization.



The ‘right to adequate housing’ guaranteed under Article 25 of the Universal Declaration of Human Rights, 1948 and Article 21 of the Constitution of India (1950) are clearly violated in the present case. Apart from this, despite the Delhi High Court’s decision¹⁷ the victims of the community have neither been rehabilitated nor compensated. The research shows the sad reality of Delhi’s ‘Urbanization of Poverty’. In their struggle for recognition, identity crisis and positive rehabilitation, there also lies a strong demand for equal citizenship rights.

¹⁷Sudama Singh & Others v. Government of Delhi & Anr., 2010 SCC OnLine Del 612.