IN THE SUPREME COURT OF INDIA
CIVIL ORIGNAL JURISDICTION
WRIT PETITION (CIVIL) NO. 1060 OF 2023

IN THE MATTER OF: -

PRIYALI SUR ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

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COUNTER AFFIDAVIT ON BEHALF OF UNION OF INDIA / RESPONDENT NO.1

I, Pratap Singh Rawat, s/o Shri Hira Singh Rawat, aged 56 years, working as Under Secretary, Government of India, Ministry of Home Affairs, do hereby solemnly affirm and state on oath as under:-

1. I am functioning as Under Secretary in the Ministry of Home Affairs, Union of India. In my official capacity and being duly authorised, I am fully conversant with the facts and circumstances of the subject matter of the writ petition. I state and submit that I have gone through, perused and understood the relevant records and material with respect to the subject matter of the petition based upon which I am filing this Affidavit to place the following legal as well as factual position for kind consideration of this Hon'ble Court.

2. I respectfully submit that I am filing this Affidavit to respectfully place on record the legal position emerging from the Constitution of India leading to the conclusion that the subject matter of the present petition and the prayers prayed for therein would fall within the exclusive domain of executive decision making / policy making of the Central Government and will not be justiciable.

3. I am filing this Affidavit in reply only for the limited purpose of satisfying the conscience of this Hon'ble Court that this is not a case where the constitutional court of the country which is essentially the

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custodian of Fundamental Rights of Indian citizens may consider intervening. I am, therefore, placing only limited facts before this Hon'ble Court by way of the present Affidavit. I, however, reserve my rights to file a further and a detailed Affidavit on behalf of the Central Government as and when so required / advised. At this stage, therefore, I am not dealing with the petition parawise. My not dealing with the petition para-wise may not be treated as my having admitted the correctness or otherwise of any of the contents thereof.

PRELIMINARY OBJECTIONS

4. The present writ seeks the following reliefs :

> *"a. To issue a writ of mandamus directing the respondents to release the Rohingyas who have been detained illegally and arbitrarily in jails/detention centres or juvenile homes, either without assigning a reason* ***or for violation of the provisions of the Foreigners Act****;*
>
> *b. To issue a writ, order or direction, to restrain the respondents from* ***arbitrarily detaining any Rohingya for being accused of being an illegal immigrant or under the Foreigner's Act****.*
>
> *c. Pass any such orders or directions as this Hon'ble court may deem fit and proper in the facts and circumstances of the present case."*

5. These prayers are liable to be rejected at the outset because they are contrary to settled principles of constitutional interpretation. Effectively, the prayers therein are seeking to provide ***illegal Rohingya migrants*** with the right to reside within the territory of India, which is expressly against Article 19. It is submitted that Article 19 is limited in its application only to citizens and cannot be

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extended to apply to foreigners. In ***Louis De Raedt vs Union of India*** **1991 3 SCC 554** it has been conclusively held as under:

> *"13. **The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental right under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta and Ors, [1955] 1 SCR 1284 that the power of the Government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution lettering this discretion.** It was pointed out that the legal position on this aspect is not uniform in all the countries but so far the law which operates in India is concerned, the Executive Government has unrestricted right to expel a foreigner. So far the right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case and it is not claimed that if the authority concerned had served a notice before passing the impugned order, the petitioners could have produced some relevant material in support of their claim of acquisition of citizenship, which they failed to do in the absence of a notice."*

On the strength of the above quoted paragraph alone, the present petition is liable to be dismissed.

Similar reliefs already rejected

6. It is submitted that issue relating to the release of illegal Rohingya migrants is already pending before this court in *W.P.(C) No. 793 of 2017* titled as ***Mohammad Salimullah & Anr. vs. Union of India &***

Ors. It is submitted that the two Interlocutory Applications being ***I.A. No. 142725 of 2018*** and ***I.A. No. 38048 of 2021*** were also filed in the above mentioned petition seeking release of **illegal Rohingya migrants** detained in the State of Assam and the State of Jammu and Kashmir respectively. I.A. No 142725 of 2018 was dismissed by this Hon'ble Court by order dated 04.10.2018. IA. No 38048 of 2021 was also dismissed by the Court by order/judgement dated 08.04.2021. In its judgement, the court had clearly stated that foreigners did not have a right to reside or settle in any part of India. A copy of the order/judgement dated 04.10.2018 in W.P.(C) No. 793 of 2017 titled as Mohammad Salimullah & Anr. vs. Union of India & Ors in I.A. No. 142725 of 2018 and I.A. No. 38048 of 2021 is attached herewith and marked as **Annexure R – 1**.

A copy of the order/judgement dated 08.04.2021 in W.P.(C) No. 793 of 2017 titled as Mohammad Salimullah & Anr. vs. Union of India & Ors in I.A. No. 38048 of 2021 is attached herewith and marked as **Annexure R – 2**.

7. It is submitted that recently this Hon'ble court in a *Habeas Corpus* petition being ***W.P.(Crl) No. 383 of 2023*** titled as ***Himar Kulsuma (Through Noor Alam) vs. Union of India & Ors.,*** which was filed by a person alleging to be Rohingya, seeking release from detention centre in Delhi. This Hon'ble Court, after taking note of the reply filed by the Respondent, held as follows: -

> *"**The petitioner is admittedly an illegal immigrant**. Her arrival in India is not traceable. In response to her prayer for release from the Detention Center, the respondents have taken a categoric stand that the petitioner would be required to be deported to her home country as per the procedure established by law after verification of nationality. Till such time, only her movements have been restricted so as to ensure that she remains available for deportation, as and when required. **It is not in dispute that the movements of the petitioner are***

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restricted to Sarai Rohila and for that purpose an appropriate order under Section 3(2) of the Foreigners Act, 1946 read with the provisions contained in the Foreigners Order, 1948 has been passed on 9th June, 2022. *That being so, the restriction on movements of the petitioner cannot be termed or declared as illegal confinement. No effective direction therefore can be issued. The writ petition is dismissed. "*

A copy of the order dated 15.12.2023 in W.P.(Crl) No. 383 of 2023 titled as Himar Kulsuma (Through Noor Alam) vs. Union of India & Ors., is attached herewith and marked as **Annexure R – 3**. Therefore, it is submitted that the present issue already stands decided against the Petitioner by this Hon'ble court.

No mandamus can be issued to Legislature / Statute cannot be partially suspended in application

8. It is submitted that the Petitioner in the instant writ essentially seeks to replace the pre-existing legislative scheme in the manner suitable to them. The Petitioner admits that the persons on behalf of whom the petition has been filed have entered India illegally and are otherwise subject to the provisions of the Foreigners Act and other allied Acts. However, despite the said admission, the Petitioner seeks an exemption from application of the said statutory regime by making an extra legislative claim of refugee status of the Rohingya community.

9. It is submitted that the Petitioner seeks to recognise a new legislative class of "refugees" which is not recognised under Indian law. As would be detailed hereinunder, the legislative scheme of the statutes in the country clearly establishes a binary division of foreigners in the country – either legal migrant [the one which comes in the country with valid travel documents] and an illegal migrant [the one

who enters the country illegally ***without valid travel documents***]. The Petitioner seeks the creation of a new class or otherwise seeks an exemption from the application of the applicable laws.

10. The prayer of the Petitioner amounts to re-writing of the statute or directing the Parliament to frame a law in a particular manner which is wholly beyond the powers of judicial review. It is trite law that the Courts cannot direct Parliament to make a law or to legislate in a particular way. In ***Madras Bar Association vs Union of India*** **2021 SCC Online SC 463** it has been held:

> *"74. A conspectus of the above judgments, inter alia, among many others, is that the judiciary in exercise of power of judicial review can strike down any legislation which violates fundamental rights or if it is beyond the legislative competence* ***but the courts cannot direct the legislature to frame or enact a law and in a particular manner.*** *The law declared by the Supreme Court is binding on all Courts in India in terms of Article 141 of the Constitution. The directions issued under Article 142 of the Constitution, are binding on every Court in terms of Article 141 of the Constitution. The legislature cannot be said to be Court within the meaning of Article 141 of the Constitution by any stretch of imagination. Article 144 of the Constitution mandates, civil and judicial authorities in India shall act in aid of the Supreme Court meaning thereby executive and judicial authorities shall act in aid of the Supreme Court. The legislature is neither civil or judicial authority who is mandated by the Constitution to act in the aid of Court.* ***The legislature is supreme so as to enact a law falling within its legislative competence. The directions of the court cannot compel the legislature to frame law in that particular manner only****. The legislature while enacting laws can legislate in a manner which is not in accordance with the directions issued by the Court to the legislature, even if the Court has specially chosen to do so.* ***The directions of this Court stop outside the four walls of legislature.*** *The*

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judiciary will step in only after a law is enacted to test the legality of a statue on the known principles of judicial review. The Judiciary cannot and should not usurp the powers vested with legislature. The Judiciary cannot legislate in the scheme of the constitution as propounded by many judgments including larger Bench Judgments, which are binding on the smaller strength benches. The directions of this Court in MBA-III are encroaching upon the field reserved for legislature."

In ***State of Himachal Pradesh vs Satpal Saini* 2017 11 SCC 42** the above point has been reinforced and reiterated as follows:

"12. The judiciary is one amongst the three branches of the State; the other two being the executive and the legislature. Each of the three branches is co-equal. Each has specified and enumerated constitutional powers. The judiciary is assigned with the function of ensuring that executive actions accord with the law and that laws and executive decisions accord with the Constitution. The courts do not frame policy or mandate that a particular policy should be followed. The duty to formulate policies is entrusted to the executive whose accountability is to the legislature and, through it, to the ***people. The peril of adopting an incorrect policy lies in democratic accountability to the people. This is the basis and rationale for holding that the court does not have the power or function to direct the executive to adopt a particular policy or the legislature to convert it into enacted law****. It is wise to remind us of these limits and wiser still to enforce them without exception."*

11. It is submitted that most recently, this Hon'ble Court, sitting in a combination of five judges, in the context of a similar prayer for creation of new legislative class, in ***Supriyo @ Supriya Chakraborty & Anr. Versus Union of India*, Writ Petition (Civil) No. 1011 of 2022**, held as under :

"J. Chandrachud –

208. If this Court takes the second approach and reads words into the provisions of the SMA and provisions of other allied laws such as the ISA and HSA, it would in effect be entering into the realm of the legislature. **The submissions of the petitioners indicate that this Court would be required to extensively read words into numerous provisions of the SMA and other allied laws. The Court is not equipped to undertake an exercise of such wide amplitude because of its institutional limitations. This Court would in effect be redrafting the law(s) in the garb of reading words into the provisions.** It is trite law that judicial legislation is impermissible. We are conscious that the court usually first determines if the law is unconstitutional, and then proceeds to decide on the relief. However, in this case, an exercise to determine whether the SMA is unconstitutional because of under-inclusivity would be futile because of the limitations of this Court's power to grant a remedy. **Whether a change should be brought into the legislative regime of the SMA is for Parliament to determine. Parliament has access to varied sources of information and represents in itself a diversity of viewpoints in the polity. The Court in the exercise of the power of judicial review must be careful not to tread into the legislative domain.** It is clarified that this Court has not adjudicated upon the validity of any laws other than the SMA, the FMA, the Adoption Regulations, and the CARA Circular.

J. Bhat –

87. **The provisions of SMA are incapable of being "reading down", or interpreted by "reading up" in the manner suggested by the petitioners. We have supplemented the Chief Justice's conclusions, with further reasoning briefly below.**

104. Lastly, there is no known rule by which a word or group of words, in one provision, can have two different meanings. The effect of the petitioner's argument would be to say that

generally, provisions of SMA should be read in a gender neutral manner (spouse for wife and husband; persons instead of the male and female, etc). Whilst it could in theory be possible to read such provisions in the manner suggested, their impact on specific provisions such as the separate lists for wives and husbands for purposes of age, determining prohibited degrees of relationships, and remedies such as divorce and maintenance, leads to unworkable results. ***Most importantly, the court, in its anxiety to grant relief, would be ignoring provisions that deal with and refer to personal laws of succession that are, Sections 19, 20, 21 and 21A. This court cannot look at a text containing words with two optional meanings in the same provision.***

105. Likewise, with regard to the FMA, the petitioners' sought that certain conditions and provisions be read in gender neutral terms, to enable same-sex marriage. FMA too, is a secular legislation wherein Section 4107 states that a marriage between "parties" may be solemnized under this Act, provided that at least one of the two parties is a citizen of India. However, "bride" and "bridegroom" are used in Section 4 (relating to the age of the parties at time of solemnization), the Third and Fourth Schedule (which prescribe the declarations by both parties and certification of marriage). ***In our view, the conditions for such marriages, under Section 4(1)(c) of FMA specifically require the parties to be a 'bride' and a 'bridegroom', i.e., it is gendered in nature. Furthermore, the terms "husband" and "wife" are used in Section 13 and 18 in relation to the solemnisation of marriage and provisions where matrimonial reliefs (as under the SMA) are available under the FMA. The Petitioners' prayer therefore, that this Court read the references to "husband" or "wife" or "spouse" with "or spouse" in the same manner as discussed in relation to the SMA above, is unsustainable****."*

12. It is further submitted that enacting a law is the function of Parliament and State Legislatures, and therefore the Hon'ble Courts directing the Legislature to frame a law would be a violation of the basic principle of "Separation of Powers" which states that the executive, legislature and judiciary should function independently of each other. Under the Indian Constitution, the Supreme Court and the High Courts have the power to protect fundamental rights and to interpret law. It is respectfully submitted that the Constitution does not give power to Courts to direct the framing of a law, which is settled by a judgment of Hon'ble Supreme Court in the case of ***Lok Prahari vs Union of India***, reported as **(2018) 4 SCC 699** has, *inter alia*, held as follows (para 63, SCC):

> *"**63.** At the outset, we must make it clear that Prayers 1(2) and 3 seek directions to the respondents for amendment of the provisions of the 1951 RP Act.*
>
> ***xxx***
>
> ***64**. Amendment of the 1951 RP Act is a matter exclusively within the domain of Parliament. **It is well settled that no court could compel and no writ could be issued to compel any legislative body to make a law. It must be left to the wisdom of the legislature.** Prayers 1(2) and 3, insofar as they seek directions in the nature of mandamus to consider amendment of the 1951 RP Act cannot be granted."*

13. Furthermore, it is submitted that this Hon'ble Court in ***Ashwini Kumar vs. Union of India & Anr,*** reported as **(2020) 13 SCC 585** observed as follows: -

> *"13. The most significant impact of the doctrine of separation of powers is seen and felt in terms of the institutional independence of the judiciary from other organs of the State. Judiciary, in terms of personnel, the Judges, is independent. Judges unlike members of the legislature represent no one, strictly speaking not even the citizens. Judges are not accountable and answerable as the political executive is to the*

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legislature and the elected representatives are to the electorate. This independence ensures that the Judges perform the constitutional function of safeguarding the supremacy of the Constitution while exercising the power of judicial review in a fair and even-handed manner without pressure and favours. ***As an interpreter, guardian and protector of the Constitution, the judiciary checks and curbs violation of the Constitution by the Government when they overstep their constitutional limits, violate the basic structure of the Constitution, infringe fundamental rights or act contrary to law. Power of judicial review has expanded taking within its ambit the concept of social and economic justice. Yet, while exercising this power of judicial review, the courts do not encroach upon the field marked by the Constitution for the legislature and the executive, as the courts examine legality and validity of the legislation or the governmental action, and not the wisdom behind the legislative measure or relative merits or demerits of the governmental action. Neither does the Constitution permit the courts to direct, advise or sermonise others in the spheres reserved for them by the Constitution, provided the legislature or the executive do not transgress their constitutional limits or statutory conditions.*** *Referring to the phrase "all power is of an encroaching nature", which the judiciary checks while exercising the power of judicial review, it has been observed [Asif Hameed v. State of J&K, 1989 Supp (2) SCC 364 : 1 SCEC 358 quoting with approval dissenting opinion of Frankfurter J. in Trop v. Dulles, 1958 SCC OnLine US SC 62 : 2 L Ed 2d 630 : 356 US 86 (1958). Frankfurter, J. had observed : (in SCC OnLine US SC para 58)"18. … '58. Rigorous observance of the difference between limits of power and wise exercise of power — between questions of authority and questions of prudence — requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a*

disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorised the Judges to sit in judgment on the wisdom of what Congress and the executive branch do.' [Asif Hameed, 1989 Supp (2) SCC 364, p. 374, para 58]"] ***that the judiciary must be on guard against encroaching beyond its bounds since the only restraint upon it is the self-imposed discipline of self-restraint. Independence and adherence to constitutional accountability and limits while exercising the power of judicial review gives constitutional legitimacy to the court decisions. This is essence of the power and function of judicial review that strengthens and promotes the rule of law."***

14. In this regard, the observations of this Hon'ble Court in the case of ***Common Cause v. Union of India,*** reported as **(2017) 7 SCC 158**, are relevant which note as under:

"18. There can be no manner of doubt that the parliamentary wisdom of seeking changes in an existing law by means of an amendment lies within the exclusive domain of the legislature and it is not the province of the Court to express any opinion on the exercise of the legislative prerogative in this regard. The framing of the Amendment Bill; reference of the same to the Parliamentary Standing Committee; the consideration thereof by the said Committee; the report prepared along with further steps that are required to be taken and the time-frame thereof are essential legislative functions which should not be ordinarily subjected to interference or intervention of the Court. The constitutional doctrine of separation of powers and the demarcation of the respective jurisdiction of the

Executive, the Legislature and the Judiciary under the constitutional framework would lead the Court to the conclusion that the exercise of the amendment of the Act, which is presently underway, must be allowed to be completed without any intervention of the Court. Any other view and any interference, at this juncture, would negate the basic constitutional principle that the legislature is supreme in the sphere of law-making. Reading down a statute to make it workable in a situation where an exercise of amendment of the law is pending, will not be justified either. ***A perception, however strong, of the imminent need of the law engrafted in the Act and its beneficial effects on the citizenry of a democratic country, by itself, will not permit the Court to overstep its jurisdiction. Judicial discipline must caution the Court against such an approach.***"

15. It is humbly submitted that the present petition is an attempt to enforce the suggestions of the Petitioner by way of an order of this Hon'ble Court. The petitioner through this petition is trying to circumvent the parliamentary procedure and is trying to do indirectly what they cannot do directly, which is not permissible under law. It is submitted that issues raised by the Petitioner have wide ranging ramifications and clearly fall within the legislative policy of the Parliament and the contours of judicial review would be suitably altered in such regard. It is submitted that this Hon'ble Court has consistently held that legislative choice over one option or the other cannot be questioned in Courts over its efficacy or otherwise.

16. It is submitted that further, the prayer of the Petitioner which seeks a suspension of the application of the Foreigners Act to the Rohingya community is wholly unsustainable. It is submitted that the Petitioner has based the claim on the argument that the application of the law under the Foreigners Act, 1946 and other allied Acts

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amounts to breach of rights under Article 14 and Article 21. Without prejudice to the fact that the Respondent question the application of any fundamental rights to illegal migrants, the application of statutory law, which has been upheld by this Hon'ble Court, cannot amount to breach of fundamental rights.

India and Refugee status

17. It is reiterated that India is not a signatory to the 1951 Refugee Convention and to the Protocol relating to the Status of Refugees, 1967. As such, whether or not any class of persons are to be recognised as refugees is a pure policy decision. It is submitted that there cannot be any recognition of refugee status outside the legislative framework and such declaration of refugee status cannot be made by judicial order. ***As a developing country with the largest population in the world and with limited resources, priority is required to be given to the country's own citizens***. Therefore, there cannot be any blanket acceptance of foreigners as refugees especially where the vast majority of such foreigners have entered the country illegally. In ***Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665** the court illustrated the dangers of unchecked immigration with the following words:

> *"56. There was a large-scale influx of persons from the then East Pakistan into India before the commencement of December 1971 Indo-Pak War. On 3-11-1971, one month before the actual commencement of the war, Dr. Nagendra Singh, India's representative in the Sixth Committee of the General Assembly on the Definition of Aggression, made a statement, wherein he said:*
>
> > *"... The first consideration, in the view of the Indian Delegation, is that aggression must be comprehensively defined. Though precision may be the first virtue of a good definition, we would not like to sacrifice the requirement of a comprehensive definition*

of aggression at any cost. There are many reasons for holding this view. Aggression can be of several kinds such as direct or indirect, armed in nature or even without the use of any arms whatsoever. There can be even direct aggression without arms. …

We would accordingly support the categorical view expressed by the distinguished delegate of Burma, the UK and others that a definition of aggression excluding indirect methods would be incomplete and therefore dangerous.

***

For example, there could be a unique type of bloodless aggression from a vast and incessant flow of millions of human beings forced to flee into another State. If this invasion of unarmed men in totally unmanageable proportion were to not only impair the economic and political well-being of the receiving victim State but to threaten its very existence*, I am afraid, Mr Chairman, it would have to be categorised as aggression. In such a case, there may not be use of armed force across the frontier since the use of force may be totally confined within one's territorial boundary, but if this results in inundating the neighbouring State by millions of fleeing citizens of the offending State, there could be an aggression of a worst order. …*

What I wish to convey, Mr Chairman, is the complexity of the problem which does not permit of a four-line definition of aggression much less an ad interim declaration on it."

[See Vol. 11 (1971) Indian Journal of International Law, p. 724.]

This shows that the stand of our country before the UNO was that influx of large number of persons from across the border into India would be an act of aggression.

> *79. In State of Arunachal Pradesh v. Khudiram Chakma [1994 Supp (1) SCC 615] following Louis De Raedt [(1991) 3 SCC 554 : 1991 SCC (Cri) 886] , it* ***was held that the fundamental right of a foreigner is confined to Article 21 for life and liberty and does not include the right to reside and stay in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of the country. After referring to some well-known and authoritative books on international law it was observed that the persons who reside in the territories of countries of which they are not nationals, possess a special status under international law. States reserve the right to expel them from their territory and to refuse to grant them certain rights which are enjoyed by their own nationals like right to vote, hold public office or to engage in political activities.*** *Aliens may be debarred from joining the civil services or certain profession or from owning some properties and the State may place them under restrictions in the interest of national security or public order. Nevertheless, once lawfully admitted to a territory, they are entitled to certain immediate rights necessary to the enjoyment of ordinary private life. Thus, the Bangladeshi nationals who have illegally crossed the border and have trespassed into Assam or are living in other parts of the country have no legal right of any kind to remain in India and they are liable to be deported.*

In ***Assam Sanmilita Mahasangha v. Union of India,*** **(2015) 3 SCC 1,** the following observations were made and would be relevant to the present case as well:

> *"30. It will be seen that, in the present case, the petitioners in the various writ petitions represent an entire People—the tribal and non-tribal population of the State of Assam.* ***In their petition, they have raised a plea that the sovereignty and integrity of India is itself at stake as a massive influx of illegal migrants from a neighbouring***

country has affected this core Constitutional value. That, in fact, it has been held in Sonowal case [Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665] that such an influx is "external aggression" within the meaning of Article 355 of the Constitution of India, and that the Central Government has done precious little to stem this tide thereby resulting in a violation of Article 355*. As a result of this huge influx, periodic clashes have been taking place between the citizens of India and these migrants resulting into loss of life and property, sounding in a violation of Articles 21 and 29 of the Constitution of the Assamese people as a whole. Not only is there an assault on the life of the citizenry of the State of Assam but there is an assault on their way of life as well.* ***The culture of an entire People is being eroded in such a way that they will ultimately be swamped by persons who have no right to continue to live in this country****. The petitioners have also argued that this Hon'ble Court in Sonowal case [Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665] has specifically held in para 79 thereof that: (SCC p. 723)*

"79. … Bangladeshi nationals who have illegally crossed the border and have trespassed into Assam or are living in other parts of the country have no legal right of any kind to remain in India and they are liable to be deported."

They have also raised a fervent plea that Article 14 also continues to be violated as Section 6-A(3) to (5) are not time bound but are ongoing."

18. It is submitted that therefore a constitutional position that must be adopted cannot be based out on an internationalised universalist approach, rather it has to be deeply grounded in the Indian experience with illegal migration and the Indian statutory framework. As per existing framework in India, all foreign nationals

(including any alleged asylum seekers) are governed by the provisions contained in The Foreigners Act, 1946, The Registration of Foreigners Act, 1939, The Passport (Entry into India) Act, 1920, The Citizenship Act, 1955, and rules and orders made thereunder. It is submitted that matters relating to admission into and emigration and expulsion from India, extradition, passports and visas, citizenship, naturalisation and aliens, etc. form part of the Union List (List I) contained in the Seventh Schedule to the Constitution. As per Article 246 of the Constitution, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I (Union List) in the Seventh Schedule. The Foreigners Act, 1946, The Registration of Foreigners Act, 1939, the Passport (Entry into India) Act, 1920 and the Citizenship Act, 1955 have been enacted by the Parliament in terms of the above mentioned provisions in the Constitution and the Central Government can take executive/ administrative decisions with regard to these subjects.

19. The immigration policy of any country is variable in two aspects :

a. It is variable in comparison to other countries – Every sovereign country is free to decide for themselves;

b. It is variable in point of time – Every sovereign country may make legislative choices as per the needs and requirements of the specific country at a particular time.

It is submitted that legislative policy of India is a product of a variety of non-justiciable factors such as economy, national security, population growth, foreign policy, etc. It is therefore submitted that in such matters, the petition of the present nature is strictly not maintainable.

Plenary power of the Parliament and the Executive

20. It is a matter of settled international law and global comparative constitutional law that the legislative questions concerning

citizenship and immigration policy of a country are deeply embedded in the geo-political events and the historical experience of successive Legislatures and are hence, matters which have perceptible foreign policy implications. The factors which necessitate the decisions concerning such policy are beyond any conceivable judicially manageable standards and belong to an arena which ought to remain outside the rigours of substantive judicial review.

21. It is submitted that the right of a country to admit or to expel a foreigner from its territory according to the interests of the nation State is a well-established principle as a matter of international law. The right of admission or expulsion has been characterized as an inherent attribute of the sovereignty of every country.

22. In fact, the issue of extending any privilege to any non-citizens is deeply embedded in the concept of sovereignty itself. The concept of sovereignty includes the right of a nation, as per its discretion, to allow, disallow or remove non-citizens. The said sovereign decisions are based on factors which do not have any judicial character and may hence, be beyond the rigours of judicial review. It is submitted that the immediate recognition of such sovereign powers the division of the world into nation states, which have the monopoly over the legitimacy of mobility beyond the territorial boundaries of such nation-states.

23. Therefore, whether an alien may lawfully be admitted or expelled is a matter within the discretionary power of the Legislature or the Executive as per the prevailing laws in any nation State. It is submitted that Constitutional Courts across the world have held that matter such as admission or expelling of foreigners/aliens fall squarely within the legislative and the executive wing of the State — and such wings have the sole power to regulate all aspects of the same and the lack of justiciability of such decisions is basic attribute of sovereignty.

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24. It is submitted that the grant of any status qua immigration to persons or a class of persons coming from a particular country is not just a national issue but essentially, inter alia, an outcome of political decisions of the State in respect of maintaining its foreign relations with the State in question and/or with any other foreign States. Such a decision is often a product of complex interplay of diverse factors such as social, economic, cultural and often extra-legal or extra judicial considerations. In light of the above, prayers in the nature of the present which seek to alter the existing regime are not maintainable.

Inapplicability of International treaties in the present context

25. It is submitted that in order to further the case, the Petitioners have also relied upon a large number of un-ratified or partially ratified international instruments to further their claims. In this regard, it is submitted that the same are wholly inapplicable as the domestic statutory law in India clearly does not recognise "refugees" and in fact expressly recognises only legal or illegal immigrant. Therefore, any international instrument stating anything contrary, would be wholly inapplicable since domestic law supersedes international – as a basic principle of international law itself.

26. It is submitted that the most important overarching interpretative principle in this regard was laid down by this Hon'ble Court in ***Gramophone Company of India v. Birendra Bahadur Pandey*, (1984) 2 SCC 534**. In this case the question of law before the Court arose out of a treaty between India and Nepal that allowed a right of innocent passage to Nepal in order to facilitate Nepal's international trade (*id.* At 536-37). Justice O. Chinappa Reddy, speaking for a unanimous 3-judge bench of the Court, held as follows –

> *"The doctrine of incorporation also rcognizes the position that the rules of international law are incorporated into*

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> *national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament. ... National courts cannot say yes if Parliament has said no to a principle of international law. ... National courts being organs of the national State and not organs of international law must perforce apply national law if international law conflicts with it."*

27. It is submitted that the quoted observation of this Hon'ble Court discloses two important rules of interpretation that the Court has endorsed so far as the use of international law in domestic statutory interpretation is concerned, -

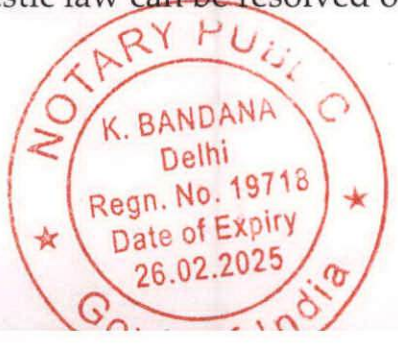
a. so far as practicably possible, Indian courts will try to interpret domestic laws in a manner that avoids confrontation with well-established principles of international law; and

b. If such a conflict cannot be avoided, then domestic law will prevail over international law.

28. It is submitted that further, in ***Tractoroexport, Moscow v. Tarapore & Co.*, (1969) 3 SCC 562, 571**, a 3-judge bench of the Court, held as under :

> *"If statutory enactments are clear in meaning, they must be construed according to their meaning **even though they are contrary to the comity of nations or international law.**"*

29. It is submitted that the blanket use of international law as a tool for domestic constitutional interpretation is particularly troublesome from a sovereignty and democracy perspective. Justice Reddy held in ***Gramophone Company* supra**, held that national courts are organs of national state and as such cannot be held to be bound by international law. If such is the case then logically international law will have to be set aside if the conflict between international and domestic law can be resolved only in the favor of domestic law.



30. It is submitted that it is clear from above, this Hon'ble Court has held international treaties and conventions cannot be used for constitutional interpretation if India is not a signatory to the same or if the domestic law is in conflict with the principles of the international instrument. Therefore, if the treaties and conventions that are being so used are in any way inconsistent with any domestic law (which would perforce include any constitutional provisions), the same would be inapplicable.

31. It is submitted that further, it is not judicial question to decide which rules of international law the people want to bind themselves with. It is submitted that the signing and ratification of international treaties and conventions are constitutional functions exclusively reserved for the Union Executive and the Parliament. A unanimous 5-judge bench of this Court, in ***Maganbhai Ishwarbhai Patel v. Union of India,*** **(1970) 3 SCC 400, 412,** speaking through Justice Hidayatullah (as his lordship then was) has held that, "*A treaty really concerns the political rather than the judicial wing of the State.*" A judicial exercise by the Court to bind the people and their government, by a process of interpretation, with a rule of international law that they themselves have so far not decided to bind themselves with or have perhaps even positively decided not to be bound with, comes in conflict with the long standing and respected principle of separation of powers.

Misplaced reliance on the LTV regime

32. It is submitted that the claims of the Petitioners with regard the Long Term Visa regime are wholly misplaced. It is submitted that the claims made by the Petitioner that the non-application of the same to Rohingya community amounts to breach of Article 14 is wholly erroneous. It is submitted that the said submission would mean that any person from anywhere in the world, allegedly claiming to be

persecuted can come to the country illegally and then seek a long term visa. It is submitted that the same would be completely at odds with the Parliamentary and Executive policy of the country in this regard.

33. It is submitted that the claim of the Petitioners to seek "equality" with Tibetian and Srilankan people is constitutionally unsustainable. The said claim effectively amounts to claiming Article 14 amongst "foreigners" which is completely erroneous position of law. It is submitted that in no jurisdiction in the world can one set of "foreigners" ever claim Article 14 [non-arbitrariness] rights inter-se with other set of "foreigners". It is the inherent right of any sovereign nation to deal with "foreigners" and the policy of immigration in the manner that it deems appropriates as per its needs. It is submitted that if different sets of "foreigners" are allowed to claim non-arbitrariness rights against each other in terms of treatment, the entire machinery of immigration in any country would collapse.

34. It is submitted that decision of the present nature are premised on a wide array of factors, which is clear from the 20.03.2019 SOP [Annexure P - 3] itself. The said SOP notes as under :

> *"The matter will then be examined by the Ministry of Home Affairs in consultation with Security Agencies and the Ministry of External Affairs. Ministry of Home Affairs will consider all the inputs including the report of the FRRO concerned as well as inputs of Security Agencies and the Ministry of External Affairs and arrive at a decision on grant of LTV.*
>
> *In such cases. LTV will be granted initially for a period of one year from the date of issue. Details of cases in which LTV is granted will be shared by MHA with MEA, State Governments & UT Administrations and security agencies.*

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All such refugees should preferably be housed in designated camps/ shelters at least until decision on grant of LTV is made. Their activities should also be closely monitored by involving local law enforcement"

35. It is submitted that the LTV regime exists for a specific purpose and not for the world at large. It is submitted that the exemptions granted therein are to be provided for in limited situations depending upon factors of immigration policy of the country which is based on considerations of statecraft, foreign policy, economic policy, social policy and other extra judicial considerations.

36. It is submitted that further, the present petition before this Hon'ble Court concerning the present issue have been purportedly filed in "public interest" with regard to the above mentioned reliefs. It is respectfully submitted that matters concerning the sovereign plenary power of the Parliament and the Executive, especially in regard to immigration policy and the contours thereof, cannot be questioned before this Hon'ble Court by way of a public interest petition.

37. It is submitted that the cardinal principle of locus standi has been diluted by this jurisprudence evolved by this Hon'ble Court only in limited fact situations which cannot be extrapolated to include the present challenge to seek suspension of the existing legislative regime placed by the Indian Parliament in the domain of issues concerning citizenship/immigration. It is therefore submitted that the scope of public interest petitions, and the maintainability thereof, especially in matters concerning immigration policy must be decided as question of law by this Hon'ble Court.

CONSTITUTIONAL AND STATUTORY POSITION

38. It is submitted that so far as the question of imposing restriction on movements or deportation of any illegal migrant is concerned, the

question will be as to whether the illegal migrants in question should be permitted to reside and settle down in the territory of India and whether a writ can be issued under Article 32 by this Hon'ble Court having the effect of an illegal migrant residing in India.

39. It is submitted that India, as a matter of policy, does not support any kind of illegal migration or overstay either into its own territory or illegal migration of its citizens to foreign territories. The expression 'illegal migrant' has been defined in sub-clause (1)(b) of section 2 of The Citizenship Act, 1955.

40. So far as the Indian law governing the subjects like imposing restriction on movements and deportation of illegally staying foreign nationals is concerned, it is submitted that the subjects like foreign affairs, all matters which bring the Union into relations with any foreign country, diplomatic relations, citizenship, extradition, admission into and emigration and expulsion from India etc. form part of the Union List [List I] contained in the Seventh Schedule to the Constitution read with Article 246 of the Constitution. It is thus, within the domain of Parliament to make laws and for the Central Government to take executive / administrative decisions with regard to the said subjects.

41. I state and submit that earlier the measures governing the foreigners were found in -

(i) The Foreigners Act, 1864; and

(ii) The Registration of Foreigners Act, 1939

which provide for regulating registration of foreigners, formalities connected therewith etc. since the said provisions were found to be inadequate, the Parliament enacted the Foreigners Act, 1946 with an object which is reflected in the following Statement of Objects and Reasons:

"Statement of Objects and Reasons

At present the only permanent measures governing foreigners specifically are the Registration of Foreigners Act, 1939 and the Foreigners Act, 1864. The Act of 1939 provides for the making of rules to regulate registration of foreigners and formalities connected therewith, their movement in, or departure from, India. The Act of 1864 provides for the expulsion of foreigners and their apprehension and detention pending removal and for a ban on their entry into India after removal; the rest of the Act which provides for report on arrival, travel under a licence and certain incidental measures can be enforced only on the declaration of an emergency. The powers under this Act have been found to be ineffective and inadequate both during normal times and during an emergency.

The needs of the war emergency were met by the enactment of a Foreigners Ordinance in 1939 and the promulgation under it of the Foreigners Order and the Enemy Foreigners Order. Even at that time the need for more satisfactory permanent legislation was recognised but it was decided to postpone consideration of such a measure until after the war. The Ordinance was, therefore, replaced by the Foreigners Act, 1940, the life of which was to expire on the 30th September, 1946, but has recently been extended by the Foreigners Act (Amendment) Ordinance, 1946, up to the 25th March, 1947.

Meanwhile the question of permanent legislation, more or less on the lines of the Act of 1940 has been examined, in consultation with the Provincial Governments. All Provincial Governments agree that such permanent legislation in repeal of the Act of 1864, is necessary. The Bill in the main reproduces the provisions of the Foreigners Act of 1940."

Section 2(a) defines the term "Foreigners" as under:

*"2(a) "**foreigner**" means a person who is not a citizen of India"*

Section 3 of the Act empowers the Central Government to make an Order "either generally or with respect of foreigners or with respect of any particular foreigner or any prescribed class or description of foreigner". Section 3 of the Act reads as under:

> *"3. Power to make orders. —*
> *(1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure there from or their presence or continued presence therein.*
>
> *(2) In particular and without prejudice to the generality of the foregoing powers, orders made under this section may provide that the foreigner —*
>
> *(a) shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;*
> *(b) shall not depart from India or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;*
> *(c) shall not remain in India, or in any prescribed area therein;*
> *(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;*
> *(d) shall remove himself to, and remain in, such area in India as may be prescribed;*
> *(e) shall comply with such conditions as may be prescribed or specified*
> *(i) **requiring him to reside in a particular place;***
> ***(ii) imposing any restrictions on his movements;***
> *(iii) requiring him to furnish such proof of his identify and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;*

(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;

(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;

(vi) prohibiting him from association with persons of a prescribed or specified description;

(vii) prohibiting him from engaging in activities of a prescribed or specified description;

(viii) prohibiting him from using or possessing prescribed or specified articles;

(ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

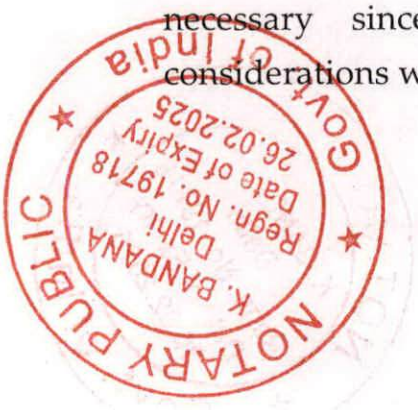
(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or prescribed or specified restrictions or conditions;

(g) shall be arrested and detained or confined;

and may make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under Clause (e) for Clause (f) of sub-section (2)."

42. It is respectfully submitted that as evident from the express and conscious use of expressions in Section 3, the legislative intent is clear, which is to confer an administrative and executive discretion upon the Central Government to take steps with regard to either "all foreigners" or "with respect to any particular foreigner" or "any specified class or description of foreigners". This discretion is necessary since the parameters, circumstances and other considerations will vary in each case as explained above.



43. The Central Government has, in exercise of its power under the aforesaid Act, made the Foreigners Order, 1948.

44. I state and submit that the provisions of the Act of 1946 in general and that of Section 3(2)(c) in particular not only statutorily empowers but considering the intent, purpose and spirit of the entire Act, casts an obligation upon the Central Government to deport a person who is an illegal migrant.

45. I state and submit that the scope and purview of The Foreigners Act, 1946 fell for consideration of the Hon'ble Constitution Bench of this Hon'ble Court in the case of ***Hans Muller of Nurenburg vs Superintendent, Presidency Jail, Calcutta & ors.*** reported in **AIR 1955 SC 367**. While examining the scheme, scope, ambit and powers conferred upon the Central Government under the said Act, the Constitutional Bench of this Hon'ble Court, inter alia, was pleased to hold as under:

> *"**19.** We do not agree and will first examine the position where an order of expulsion is made before any steps to enforce it are taken. The right to expel is conferred by Section 3(2)(c) of the Foreigners Act, 1946 on the Central Government and the right to enforce an order of expulsion and also to prevent any breach of it, and the right to use such force as may be reasonably necessary "for the effective exercise of such power" is conferred by Section 11(1), also on the Central Government. There is, therefore, implicit in the right of expulsion a number of ancillary rights, among them, the right to prevent any breach of the order and the right to use force and to take effective measures to carry out those purposes. Now the most effective method of preventing a breach of the order and ensuring that it is duly obeyed is by arresting and detaining the person ordered to be expelled until proper arrangements for the expulsion can be made. Therefore, the right to make arrangements for an expulsion includes the right to make arrangements for preventing any evasion or breach of the order, and the Preventive Detention Act confers the power to use the means of preventive detention as one of the methods of achieving this end. How far it is necessary to take this step in a*

given case is a matter that must be left to the discretion of the Government concerned, but, in any event, when criminal charges for offences said to have been committed in this country and abroad are levelled against a person, an apprehension that he is likely to disappear and evade an order of expulsion cannot be called either unfounded or unreasonable. Detention in such circumstances is rightly termed preventive and falls within the ambit of the Preventive Detention Act and is reasonably related to the purpose of the Act.

....

35. *The Foreigners Act confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains."*

46. Following the said judgment, this Hon'ble Court, in the case of ***Mr. Louis De Raedt & Ors vs Union Of India And Ors.*** **reported in (1991) 3 SCC 554** was pleased to hold, inter alia, as under:

*"**13.** The next point taken on behalf of the petitioners, that the foreigners also enjoy some fundamental rights under the Constitution of this country, is also of not much help to them. The fundamental right of the foreigner is confined to Article 21 for life and liberty and does not include the right to reside and settle in this country, as mentioned in Article 19(1)(e), which is applicable only to the citizens of this country. It was held by the Constitution Bench in Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta [(1955) 1 SCR 1284 : AIR 1955 SC 367 : 1955 Cri LJ 876] that the power of the government in India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering this discretion. It was pointed out that the legal position on this aspect is not uniform in all the countries but so far the law which operates in India is concerned, the executive government has unrestricted right to expel a foreigner. So far the right to be heard is concerned, there cannot be any hard and fast rule about the manner in*

which a person concerned has to be given an opportunity to place his case and it is not claimed that if the authority concerned had served a notice before passing the impugned order, the petitioners could have produced some relevant material in support of their claim of acquisition of citizenship, which they failed to do in the absence of a notice."

47. It is submitted that having respectfully pointed out the scheme of the statutory power and obligation of the Central Government to deport the illegal migrants, the Central Government respectfully wishes to place the following facts for kind consideration of this Hon'ble Court with regard to the issues raised in the present case.

48. It is submitted that the said expansive theory and the robust scheme of rights available to Indian citizens under Article 14 or Article 21, cannot be extended in toto to foreigners and especially to illegal migrants. The Hon'ble Supreme Court in ***Charles Sobraj v. Supdt., Central Jail*, (1978) 4 SCC 104**, held as under:

*"**16. The court must not rush in where the jailer fears to tread.** While the country may not make the prison boss the sole sadistic arbiter of incarcerated humans, the community may be in no mood to hand over central prisons to be run by courts. **Each instrumentality must function within its province**. We have no hesitation to hold that while Sobraj has done litigative service for prison reform, he has signally failed to substantiate any legal injury. **We, therefore, dismiss the writ petition, making it clear that strictly speaking the petitioner being a foreigner cannot claim rights under Article 19, but we have discussed at some length the import of Articles 14, 19 and 21 because they are interlaced and in any case apply to Indian citizens.**"*

49. It is submitted that the Central Government has unfettered discretion in matter concerning deportation of illegal migrants. Illegal migrants are to be differentiated from foreigners in the

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colloquial sense who have arrived in India with valid documents. Further, the separation from extradition from deportation is to be highlighted. The Hon'ble Supreme Court in the case of ***Hans Muller of Nurenburg v. Superintendent, Presidency Jail,*** **AIR 1955 SC 367**, noted as under:

> *"35. The Foreigners Act confers the power to expel foreigners from India.* ***It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains.***
>
> *39. In the case of expulsion, no idea of punishment is involved, at any rate, in theory, and if a man is prepared to leave voluntarily he can ordinarily go as and when he pleases.* ***But the right is not his. Under the Indian law, the matter is left to the unfettered discretion of the Union Government and that Government can prescribe the route and the port or place of departure and can place him on a particular ship or plane. (See Sections 3(2)(b) and 6 of the Foreigners Act).*** *Whether the captain of a foreign ship or plane can be compelled to take a passenger he does not want or to follow a particular route is a matter that does not arise and we express no opinion on it. But assuming that he is willing to do so, the right of the Government to make the order vis a vis the man expelled is absolute.*
>
> *40.* ***This may not be the law in all countries.*** *Oppenheim, for example, says that in England, until December 1919, the British Government had*
>
> *"no power to expel even the most dangerous alien without the recommendation of a court, or without an Act of Parliament making provision for such expulsion, except during war or on an occasion of imminent national danger or great emergency". (Oppenheim's International Law, Vol. 1, 7th Edn., p. 631).*
>
> ***But that is immaterial, for the law in each country is different and we are concerned with the law as it obtains in our land. Here the matter of expulsion has to be viewed from three points of view: (1) does the Constitution permit***

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the making of such a law? (2) does it place any limits on such laws? and (3) is there in fact any law on this topic in India and if so, what does it enact? We have already examined the law making power in this behalf and its scope, and as to the third question the law on this matter in India is embodied in the Foreigners Act which gives an unfettered right to the Union Government to expel....

.....42. ***Our conclusion is that the Foreigners Act is not governed by the provisions of the Extradition Act.*** *The two are distinct and neither impinges on the other. Even if there is a requisition and a good case for extradition, Government is not bound to accede to the request.* ***It is given an unfettered right to refuse. Section 3(1) of the Extradition Act says—***

"the Central Government may, if it thinks fit".

Therefore, if it chooses not to comply with the request, the person against whom the request is made cannot insist that it should. The right is not his; and the fact that a request has been made does not fetter the discretion of Government to choose the less cumbrous procedure of the Foreigners Act when a foreigner is concerned....."

50. It is submitted that as a custodian of the fundamental rights of the citizens of India and while exercising its writ jurisdiction under Article 32 of the Constitution [which can be invoked only for enforcement of Fundamental Rights], this Hon'ble Court would kindly consider Article 14 of the Constitution. Article 14 reads as under:

> *"**14. Equality before law.**—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."*

The Constitutional guarantee flowing from Article 14 of the Constitution, ensures that any citizen within the territory of India has the right to be treated equally before the law.

51. It is the contention of the petitioner that law used to justify the detention of Rohingyas is arbitrary and not validly based in law as it deals with foreigners at large and not refugees hence it is against the scheme of Article 14 as it treats unequal as equal. In this regard it is submitted that such contention is misplaced as the provisions of Foreigners Act, 1946 applies to all foreigners. The definition of "foreigner" can be derived from section 2 sub-clause (a) of the Foreigners Act, 1946.

52. As is evident, the definition of "foreigner" is all-encompassing, covering any person who is not a citizen of India. It is not and cannot be the case of the petitioners herein that the Rohingyas are Indian citizens. Once it is accepted that Rohingyas are illegal migrants, the provisions of the Foreigners Act 1946 would apply to them in full force. Therefore, the prayer in the present writ petitions would essentially amount to putting the act itself in abeyance as regards the Rohingyas. The same ought not to be permitted by the Court. In ***Rev. Mons Sebastiao Fransisco Xavier Dos Remedios Monterio v. State of Goa*, (1969) 3 SCC 419**, it was held as under :

> *"6. The argument overlooks one cardinal principle of International Law and it is this Rev. Father Monteiro by his declaration retained his Portuguese nationality. His sojourn in India was subject to such laws as existed in India in general and in Goa in particular.* ***It cannot be doubted that the reception and residence of an alien is a matter of discretion and every State has, by reason of its own territorial supremacy, not only the legal right but also the competence to exclude aliens from the whole or any part of its territory. This proposition is so well-grounded in International Law that every country has adopted the passport system, which document certifies nationality and entry into any State is only possible with the concurrence of that State. Again a State exercises territorial supremacy over persons in its territory, whether its own subjects or aliens and can***

> ***make laws for regulating the entry, residence and eviction of aliens.*** *Therefore, the application of the Foreigners Act, the Registration of Foreigners Act and the Orders passed under them, to Rev. Father Monteiro was legally competent. A considerable body of writers on International Law support the proposition and it is sufficient to refer only to Oppenheim (Vol. I) pp. 675/676 and Brierly Law of Nations p. 217. If authority were needed the proposition would be found supported in the decision of the Privy Council in Musgrove v. Chun Teeong Toy [1891 AC 272] . The Lord Chancellor in that case denied that an alien excluded from British territory could maintain an action in a British Court to enforce such a right."*

53. It is submitted that this Hon'ble Court in the case ***State of W.B. v. Anwar Ali Sarkar*** reported in ***(1952) 1 SCC 1,*** held that in order to pass the test of Article 14, two conditions must be fulfilled namely; -

I. that the classification must be founded on an intelligible differentia which distinguished those that are grouped together from others and

II. that that differentia must have a rational relation to the object sought to be achieved by the Act

54. It is submitted that the stance of the Central Government concerning illegal Rohingya migrants is actuated on tangible factors. It is submitted that there exists an intelligible differentia between citizens and foreigners; and foreigners and illegal migrants. It is to be further noted that the case of illegal migration of Rohingyas is different from that of human trafficking. Rohingyas have fled Myanmar on their own and illegally entered into India knowing well that they were illegally entering into India.

55. It is submitted that considering the seriousness of situation, Advisory has been issued by MHA to States/UTs to identify illegal

migrants/persons from Rakhine State (known as Rohingyas) and also keep a watch on their activities for preventing any untoward incident. All States/UT Administrations have been advised to sensitize all the law enforcement and intelligence agencies for taking prompt steps in identifying the illegal migrants and initiate the deportation processes expeditiously and without delay. It is submitted that the decision of the Central Government is based on such intelligible differentia and therefore, cannot be subject to challenge under Part III. In ***Ghulam Sarwar v. Union of India*, AIR 1967 SC 1335**, the Hon'ble Supreme Court has held as under:

> *"18. The formula underlying the doctrine of classification has become so crystallised that it is unnecessary to refer to decisions. The principle is stated thus: "The classification must be found on intelligible differentia which distinguishes persons or things that are grouped from those left out of the group and that the differentia must have rational relation to the object sought to be achieved by the statute in question". What was the object of the order GSR 1418 issued by the President on 30-10-1962. There was a grave emergency. The Chinese attacked India and Pakistan was poised for an attack. There was a danger of internal sabotage.* ***So, it was necessary to screen the foreigners, and to guard against their acts of sabotage and espionage.*** *It was, therefore, necessary to issue a special order wider in scope than that of GSR 164 dated 3-11-1962 which was confined only to persons that had been deprived of certain rights under the Defence of India Ordinance.* ***There was a greater danger from foreigners, and, therefore, a more drastic order only could meet the requirements of national security. Compared to foreigners, nationals, with some unfortunate exceptions, can be relied upon to support the country's integrity and security. There is, therefore, a clear nexus between the classification of foreigners and the citizens and the object sought to be achieved thereby."***

56. It is submitted that the word "*refugee*" has not been defined under any statute which makes the claim of the petitioners regarding the status of the refugees as illusionary. The petitioner by way of invoking powers under Article 32 of the constitution cannot demand for creation of a new class as such decisions are in the exclusive domain of the legislature. Further, the Rohingyas being illegal migrants cannot claim protection under Part-III of the constitution as protections under Part -III are available to citizens of the country and not to illegal migrants.

57. It is submitted that as against the scheme of Article 14, the fundamental rights of Indian citizens under Article 21 of the Constitution of India also needs to be addressed first by the State. This Hon'ble Court, as a Custodian of the fundamental rights of the citizens of this country, has been pleased to interpret Article 21 of the Constitution very widely so as to include several facets of "life". This Hon'ble Court has read the term "life" to mean to live with human dignity, having a right to food, having a right to shelter, having a right to good environment, having a right to earn livelihood by lawful means etc. The State is bound to protect the said fundamental rights of its citizens.

It is submitted that the citizens of India cannot be deprived of any of their fundamental rights including the right under Article 21 of the Constitution and this will be a major consideration by the State while taking executive / administrative decision of policy.

58. I respectfully state and submit that the Constitution makes it imperative for the State to follow the Directive Principles of State Policy while discharging its executive functions of governance. Some of the relevant Articles contained in Part IV of the Constitution, which may assist this Hon'ble Court, are reproduced hereunder for ready reference:

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"38. State to secure a social order for the promotion of welfare of the people

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

"39. Certain principles of policy to be followed by the State:

*The State shall, in particular, direct its **policy** towards securing*

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused

and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

***"41. Right to work, to education and to public assistance in certain cases** :*

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

59. I respectfully submit that the State, in exercise of its sovereign executive functions, will have to take administrative policy decisions keeping the aforesaid Directive Principles in mind so as to ensure that first and the foremost, obligations of the State towards its citizens enshrined under Part III of the Constitution are discharged within the available national resources and while ensuring their safety and security.

60. I respectfully submit that the scheme of the Constitution makes it very clear that India, as a sovereign nation, has the first and the foremost constitutional duty and obligation towards its citizens to ensure that demographic and social structure of the country is not changed to their detriment, the resulting socio-economic problems do not occur to the prejudice of its citizens and most importantly resources of the nation are utilized to fulfil the fundamental rights of its own citizens and are not diverted to the detriment of the

citizens of India due to the influx of illegal migrants into the territory of India.

61. I respectfully state and submit that whenever the country faces a problem of influx of illegal migrants, the Central Government, in exercise of its executive functions, takes policy decision depending upon several facts, parameters, diplomatic and other considerations, potential dangers to the nation etc.

62. In respectful submission of the Central Government, such decisions regarding imposing restrictions on movements and deportation of illegal migrants are essentially executive decisions taken by the Government as a part of governance of a sovereign nation and as a process of policy making and are taken based on several executive and administrative considerations which would not be justiciable.

The fact situation, the potential threat to the internal and national security of the country, diversion of the national resources to the detriment of Indian citizens etc. differ from case to case and the Central Government takes its executive / administrative decision in discharge of its executive sovereign function based upon empirical data and objective facts by way of policy. This Hon'ble Court may not, therefore, accede to any prayer which may amount to re-writing or substituting an essential executive policy of the Central Government.

63. It is submitted that the question of imposing restrictions on movements and deportation depends upon the fact situation in each particular case which is dealt with by the Central Government in larger national interest. When such decisions are taken to protect and preserve the fundamental rights of the citizens of the country and on consideration of various non-justiciable factors, this Hon'ble Court may not invoke its jurisdiction under Article 32 of the Constitution of India.

64. It is submitted that the provisions of Convention Relating to the Status of Refugees, 1951 and Protocol Relating to the Status of

NOTARY PUBLIC K. BANDANA Delhi Regn. No. 19718 Date of Expiry 26.02.2025 Govt. of India

Refugees, 1967 cannot be relied upon by the petitioner since India is not a signatory of either of them. It is respectfully submitted that the obligation concerning the prohibition of return is a codified provision under the provisions of 1951 Convention referred to above.

65. It is submitted that this obligation is binding only in respect of the States which are parties to the Convention. Since India is not a party to the said Convention, or the said Protocol, the obligations contained therein are not applicable to India.

India being not a signatory to either the aforesaid Convention of 1951 or Protocol of 1967, is not bound by any of its provisions. It is respectfully submitted that while India is a party to the International Covenant on Civil and Political Rights, the scope of the said Covenant does not extend to the principles of *non-refoulement*.

66. It is submitted that so far as the International Convention on Protection of All Persons against Enforced Disappearances and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is concerned, it is respectfully submitted that apart from the fact that India is yet to ratify these Conventions [and, therefore, do not bind India], no situation has emerged, even hypothetically, to place reliance upon the same Conventions.

The above referred position makes it clear that in absence of any international treaty to which India is a signatory preventing India from exercising its power of deportation, the Petitioner cannot base its claim on any of international treaties / convenants.

67. Without prejudice to the aforesaid fact, it is pointed out that this Hon'ble Court would not undertake the exercise of examining treaties / Conventions since no writ can be issued under Article 32 of the Constitution based upon the same when it is evident that such an indulgence by the highest court of the country would encourage illegal influx of illegal migrants into our country and thereby

deprive the citizens of India of their fundamental and basic human rights.

68. It is submitted that the Petitioner has also claimed that some of the Rohingya migrants have obtained UNHCR refugee cards and that Government of India allows UNHCR mandate refugees to apply for visas. The contention of the petitioner in this regard is factually incorrect as Government of India does not recognize UNHCR card for the purpose of grant of visas.

69. It is submitted that so far as India is concerned, national security considerations rank the highest on country's list of priorities given its geopolitical influence in the region and its vulnerability to cross border infiltrations due to the porous nature of its borders which our country shares with many countries.

India has unfenced borders with Nepal, Bhutan, Bangladesh, , Myanmar etc. and has an easily navigable sea route with Pakistan as well as Sri Lanka making it vulnerable to a continuous threat of an influx of illegal migration and resultant problems arising therefrom.

70. I respectfully submit that India is already saddled with a very serious problem of illegal migrants and is attempting to address this situation in the larger interest of the nation and keeping the national resources of the country, requirements of India's own population, the national security concerns of India and several other facts in consideration which are based upon objective facts derived from empirical data which are in the knowledge and contemporaneous record of the Central Government.

71. It is submitted that due to an already existing large influx of illegal migrants from the neighbouring countries, the demographic profile of some of the bordering states has already undergone a serious change which is already causing the far-reaching complications in various contexts and is taking its toll and has a direct detrimental effect on the fundamental and basic human rights of country's own citizens.

72. I respectfully submit that so far as the Rohingya migrants are concerned, they claim to have entered into India [admittedly without any valid travel document and illegally] from Myanmar using porous border between India and Myanmar & Bangladesh. Since illegal migrants enters into the country without valid travel documents in a clandestine and surreptitious manner, it is not possible to collect accurate data of such illegal migrants living in various parts of the country. The detection, restriction and deportation of such illegally staying foreign nationals is a complex ongoing process.

73. I state and submit that while taking a decision, the Central Government obviously takes into consideration various factors inter alia, broad facts referred to above. It is submitted that continuance of Rohingyas' illegal migration into India and their continued stay in India, apart from being absolutely illegal, is found to be having serious national security ramifications and has serious security threats.

74. It is submitted that Central Government have received inputs about large number of illegal Rohingya migrants indulging in illegal activities like obtaining fake/ fabricated Indian Identity documents, indulging in human trafficking, indulgence into subversive activities in different parts of the county, which may pose a very serious and potential threat to the internal/ national security of India. Inputs have been received regarding large scale involvement of illegal Rohingya migrants in obtaining fake Indian identity documents like Voter ID cards, Aadhar card as Indian nationals and Indian passports by hiding their original nationality and bypassing the procedure established by law. This has increased the chances of their submerging with the Indian population and has further complicated the security challenges faced by the country.

75. It is submitted that the petitioner's advocate has attached with the petition true copies (certified by himself) of Ministry of Home

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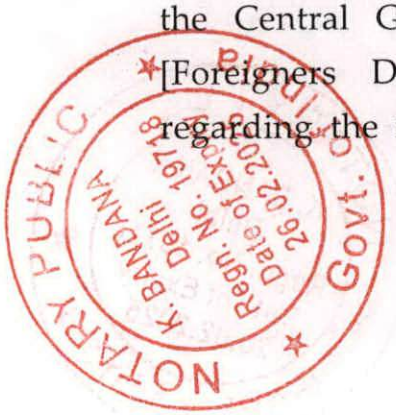
K. BANDANA
Delhi
Regn. No. 19718
Date of Expiry
26.02.2025
Govt. of India

Affair's Standard Operating Procedure (SOP) dated 29.12.2011 and 20.03.2019 (revised) of internal guidelines for procedure to be followed to deal with foreign nationals who claim to be refugees. It is submitted that the SOP dated 29.12.2011 which was superseded by a revised SOP dated 20.03.2019 are both classified documents under the existing laws. The reproduction of true copies of these official documents in this petition, prima-facie, is a serious breach which would have serious security and severe repercussions towards diplomatic relations with friendly countries, the possession of such classified documents needs to be investigated thoroughly. In view of the same, the Hon'ble Court may consider it appropriate Orders regarding the said issue.

76. It is respectfully submitted that India is a country with large population, surplus labour force, and has its complex social/cultural/economical infrastructure. It is submitted that providing facilities / privileges to illegal immigrants out of the existing national resources, apart from above referred direct threat to national security, would also have a direct adverse impact upon Indian citizens as it would deprive the Indian citizens of their legitimate share in the employment sector, subsidized housing, medical and educational facilities and would thereby culminate in hostility towards immigrants resulting into an inevitable social tension and law and order problems. The fundamental rights of Indian citizens would, therefore, be seriously violated.

77. I state and submit that under the scheme of the Foreigners Act, 1946 and in exercise of the powers contained therein, the Central Government has issued various orders providing for the procedure for imposing restrictions on movements and deportation of illegal immigrants. Such orders were passed from time to time. However, the Central Government, through Ministry of Home Affairs [Foreigners Division], had issued consolidated instructions regarding the issue of overstay and illegal migration of foreign



nationals to all State Governments and Union Territories on 30.03.2021. The instructions includes the procedure to be followed for imposing restrictions on movements, deportation, repatriation etc. of foreigner national / illegal immigrants. Whenever, deportation of an illegal migrant / prescribed class or description of migrant is decided, such deportation takes place as per the said procedure which is just and fair procedure established by law. Further, exit permits are also allowed for illegal migrants who have acquired papers for resettlement in third countries. These illegal migrants will be repatriated back to their country of origin or country of entry into India on production of valid travel documents.

78. In light of what is stated hereinabove, as the subject matter of the petition is not justiciable, as the fundamental rights of Indian citizens would be adversely effected, as there is serious national security threat/ concern and when a just and fair procedure prescribed by law exist for deportation, this Hon'ble Court may decline its interference leaving to the Central Government to exercise its essential executive function as per procedure established by law in larger interest of the country.

DEPONENT

(प्रताप सिंह रावत)
(PRATAP SINGH RAWAT)
अवर सचिव/Under Secretary
गृह मंत्रालय
Ministry of Home Affairs
भारत सरकार/Govt. of India

IDENTIFIED

VERIFICATION

Verified and signed on this 18th day of March, 2024. That contents of para 1 to 78 of the above affidavit is true and correct to my knowledge and belief and nothing material has been concealed therefrom.

NOTARY PUBLIC
K. BANDANA
Delhi
Regn. No. 19718
Date of Expiry
26.02.2025
Govt. of India

18 MAR 2024

DEPONENT

(प्रताप सिंह रावत)
(PRATAP SINGH RAWAT)
अवर सचिव/Under Secretary
गृह मंत्रालय
Ministry of Home Affairs
भारत सरकार/Govt. of India

ATTESTED
NOTARY PUBLIC DELHI
Govt. of India
Mob.: 9654768498

ITEM NO.3 COURT NO.1 SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 859/2013

JAFFAR ULLAH & ANR. Petitioner(s)

VERSUS

U.O.I & ORS. Respondent(s)

ONLY I.A.NO.142725/2018 APPLN. FOR CLARIFICATION/DIRECTIONS IN W.P. (C)NO.793/2017 IS LISTED

WITH
I.A.NO.142725/2018 IN W.P.(C) No. 793/2017 (X)

Date : 04-10-2018 This application was called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Parties Mr. Prashant Bhushan, AOR
Ms. Cheryl D'souza, Adv.
Ms. Pallavi Saxena, Adv.
Mr. Omana Kuttan K.K., Adv.
Ms. Roshni Shanker, Adv.
Mr. Aman, Adv.

Mr. P.V. Surendranath, Sr. Adv.
Ms. Reshmitha R. Chandran, AOR
Ms. Lekha Sudhakaran, Adv.

Mr. Tushar Mehta, ASG
Mr. Ajit Kr. Sinha, Sr. Adv.
Ms. Madhavi Divan, Adv.
Mr. S.S. Shamshery, Adv.
Mr. Rajat Nair, Adv.
Mr. Arijit Prasad, Adv.
Mr. S. Wasim Quadri, Adv.
Ms. Niranjana Singh, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Shuvodeep Roy, Adv.
Mr. Manan Popli, Adv.
Mr. Somnath Banerjee, Adv.
Mr. Gurmeet Singh Makker, AOR
Mr. B.V. Balramdas, AOR

Mr. Tushar Mehta, ASG
Mr. Ajit Kumar Sinha, Sr. Adv.

Mr. S.S. Shamshery, Adv.
Ms. Madhavi Divan, Adv.
Mr. G.S. Makker, AOR

Mr. Tushar Mehta, ASG
Mr. S.S. Shamshery, Adv.
Mr. Arijit Prasad, Adv.
Mr. Rajat Nair, Adv.
Mr. B.V. Balaram Das, AOR

Ms. Jyoti Mendiratta, AOR

NHRC

Ms. Anitha Shenoy, AOR
Ms. Srishti Agnihotri, Adv.

Mr. Somiran Sharma, AOR

Ms. Aishwarya Bhati, AOR
Mr. Rohit Kumar Singh, Adv.

Mr. Manoj K. Mishra, AOR
Mr. Umesh Dubey, Adv.
Mr. Jyoti Mishra, Adv.
Mr. Sukumar, Adv.

Mr. Sanjay Kumar Visen, AOR

Ms. Archana Pathak Dave, AOR

Mr. Suvidutt M.S., AOR

Mr. Pranav Sachdeva, AOR

Mr. Lakshmi Raman Singh, AOR

Mr. Debasis Misra, AOR
Mr. Binay Kumar Jha, Adv.
Md. Apzal Ansari, Adv.
Mr. R.S. Jha, Adv.

Mr. Fuzail Ahmad Ayyubi, AOR
Mr. Ibad Mushtaq, Adv.

Ms. Sushma Suri, AOR

Mr. Abhishek, AOR

Mr. Subhasish Bhowmick, AOR

UPON hearing the counsel the Court made the following

O R D E R

I.A. No.142725 of 2018

Having considered the matter and the statements made in the affidavit dated 04.10.2018 filed by the Ministry of Home Affairs, particularly, those contained in paragraph 11 thereof, the prayers made in the application (I.A. No.142725 of 2018) are rejected.

I.A. No.142725 of 2018 is accordingly dismissed.

(NEETU KHAJURIA)
COURT MASTER

(ASHA SONI)
ASSISTANT REGISTRAR

ANNEXURE R-2

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

INTERLOCUTORY APPLICATION NO.38048 OF 2021
IN
WRIT PETITION (CIVIL) NO.793 OF 2017

MOHAMMAD SALIMULLAH AND ANR. **Petitioner(s)**

VERSUS

UNION OF INDIA AND ORS. **Respondent(s)**

O R D E R

1. Pending disposal of their main writ petition praying for the issue of an appropriate writ directing the respondents to provide basic human amenities to the members of the Rohingya Community, who have taken refuge in India, the petitioners who claim to have registered themselves as refugees with the United Nations High Commission for refugees, have come up with the present interlocutory application seeking ***(i)*** the release of the detained Rohingya refugees; and ***(ii)*** a direction to the Union of India not to deport the Rohingya refugees who have been detained in the sub-jail in Jammu.

2. We have heard Sh. Prashant Bhushan, learned counsel and Sh. Colin Gonsalves, learned senior counsel appearing for the applicants/writ petitioners, Sh. Tushar Mehta, learned Solicitor General appearing for the

Union of India, Sh. Harish Salve, learned senior counsel appearing for the Union Territory of Jammu & Kashmir, Sh. Vikas Singh and Sh. Mahesh Jethmalani, learned senior counsel appearing for persons who seek to implead/intervene in the matter.

3. Sh. Chandra Uday Singh, learned senior counsel representing the Special Rapporteur appointed by the United Nations Human Rights Council also attempted to make submissions, but serious objections were raised to his intervention.

4. According to the petitioners, both of them are Rohingya refugees from Myanmar and they are housed in a refugee's camp. They claim to have fled Myanmar in December-2011 when ethnic violence broke out.

5. It appears that persons similarly placed like the petitioners are housed in refugee camps in New Delhi, Haryana, Allahabad, Jammu and various other places in India.

6. On 8.08.2017 the Ministry of Home Affairs, Government of India issued a letter to the Chief Secretaries of all the State Governments/UT Administrations, advising them to sensitize all the law enforcement and intelligence agencies for taking prompt steps and initiating deportation processes. It is this circular which prompted the petitioners to approach this Court with the above writ petition.

7. According to the petitioners, new circumstances have now arisen, as revealed by newspaper reports appearing in the first/second week of March,

2021, to the effect that about 150-170 Rohingya refugees detained in a sub-jail in Jammu face deportation back to Myanmar. The reports that appeared in The Wire, The Hindu, The Indian Express and The Guardian are relied upon to show that there are more than about 6500 Rohingyas in Jammu and that they have been illegally detained and jailed in a sub-jail now converted into a holding centre.

8. The contention of the petitioners is ***(i)*** that the principle of non-refoulement is part of the right guaranteed under Article 21 of the Constitution; ***(ii)*** that the rights guaranteed under Articles 14 and 21 are available even to non-citizens; and ***(iii)*** that though India is not a signatory to the United Nations Convention on the Status of Refugees 1951, it is a party to the Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights, 1966 and the Convention on the Rights of the Child 1992 and that therefore non-refoulement is a binding obligation. The petitioners also contend that India is a signatory to the Protection of All Persons against Enforced Disappearances, Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment.

9. Heavy reliance is placed upon a recent Judgment of International Court of Justice in ***The Gambia vs. Myanmar*** dated 23.01.2020 to show that even the International Court has taken note of the genocide of Rohingyas in Myanmar and that the lives of these refugees are in serious

danger, if they are deported. According to the petitioners, Rohingyas were persecuted in Myanmar even when an elected Government was in power and that now the elected Government has been over thrown by a military coup and that therefore the danger is imminent.

10. The Union of India has filed a reply contending *inter alia* ***(i)*** that a similar application in I.A. No.142725 of 2018 challenging the deportation of Rohingyas from the State of Assam was dismissed by this Court on 4.10.2018; ***(ii)*** that persons for whose protection against deportation, the present application has been filed, are foreigners within the meaning of Section 2(a) of the Foreigners Act, 1946; ***(iii)*** that India is not a signatory either to the United Nations Convention on the Status of Refugees 1951 or to the Protocol of the year 1967; ***(iv)*** that the principle of non- refoulement is applicable only to *"contracting States"*; ***(v)*** that since India has open/porous land borders with many countries, there is a continuous threat of influx of illegal immigrants; ***(vi)*** that such influx has posed serious national security ramifications; ***(vii)*** that there is organized and well-orchestrated influx of illegal immigrants through various agents and touts for monetary considerations; ***(viii)*** that Section 3 of the Foreigners Act empowers the Central Government to issue orders for prohibiting, regulating or restricting the entries of foreigners into India or their departure therefrom; ***(ix)*** that though the rights guaranteed under Articles 14 and 21 may be available to

non-citizens, the fundamental right to reside and settle in this country guaranteed under Article 19(1)(e) is available only to the citizens; ***(x)*** that the right of the Government to expel a foreigner is unlimited and absolute; and ***(xi)*** that intelligence agencies have raised serious concerns about the threat to the internal security of the country.

11. It is also contended on behalf of the Union of India that the decision of the International Court of Justice has no relevance to the present application and that the Union of India generally follows the procedure of notifying the Government of the country of origin of the foreigners and order their deportation only when confirmed by the Government of the country of origin that the persons concerned are citizens/nationals of that country and that they are entitled to come back.

12. We have carefully considered the rival contentions. There is no denial of the fact that India is not a signatory to the Refugee Convention. Therefore, serious objections are raised, whether Article 51(c) of the Constitution can be pressed into service, unless India is a party to or ratified a convention. But there is no doubt that the National Courts can draw inspiration from International Conventions/Treaties, so long as they are not in conflict with the municipal law. Regarding the contention raised on behalf of the petitioners about the present state of affairs in Myanmar, we have to state that we cannot comment upon something happening in another country.

13. It is also true that the rights guaranteed under Articles 14 and 21 are available to all persons who may or may not be citizens. But the right not to be deported, is ancillary or concomitant to the right to reside or settle in any part of the territory of India guaranteed under Article 19(1)(e).

14. Two serious allegations have been made in reply of the Union of India. They relate to ***(i)*** the threat to internal security of the country; and ***(ii)*** the agents and touts providing a safe passage into India for illegal immigrants, due to the porous nature of the landed borders. Moreover, this court has already dismissed I.A.No. 142725 of 2018 filed for similar relief, in respect of those detained in Assam.

15. Therefore, it is not possible to grant the interim relief prayed for. However, it is made clear that the Rohingyas in Jammu, on whose behalf the present application is filed, shall not be deported unless the procedure prescribed for such deportation is followed. Interlocutory Application is disposed of accordingly.

.....CJI
(S.A. BOBDE)

.....J.
(A.S. BOPANNA)

.....J.
(V. RAMASUBRAMANIAN)

New Delhi
April 08, 2021

ITEM NO.1502 Court 1 (Video Conferencing) SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

IA 38048/2021 in Writ Petition(s)(Civil) No(s). 793/2017

MOHAMMAD SALIMULLAH & ANR. Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(PRONOUNCEMENT OF ORDER IN IA NO. 38048/2021 IN WP(C) 793/2017[HEARD BY : HON'BLE THE CHIEF JUSTICE, HON'BLE A.S. BOPANNA AND HON'BLE V. RAMASUBRAMANIAN,JJ.]
IA No. 38048/2021 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 08-04-2021 This application was called on for pronouncement of judgment today.

For Petitioner(s)
Mr. Prashant Bhushan, AOR

For Respondent(s)
Mr. Pranav Sachdeva, AOR

Mr. Somiran Sharma, AOR

Mr. Suvidutt M.s., AOR

Ms. Archana Pathak Dave, AOR

Mr. Lakshmi Raman Singh, AOR

Mr. B. V. Balaram Das, AOR

Mr. Mohit Paul, AOR
Ms. Snaina Paul, Adv.

Mr. Harish Salve, Sr. Adv.

Mr. Harish Salve, Sr. Adv.
Ms. Taruna Ardhendumauli Prasad, AOR
Mr. Parth Awasthi, Adv.

Mr. Parth Awasthi, Adv.

Mr. Rajeev K. Panday, Adv.
Mr. Rajeev Maheshwaranand Roy, AOR
Mr. P. Srinivasan, Adv.

Mr. Chandrauday Singh, Sr. Adv.
Ms. Anjana Chandrashekar, AOR

Mr. Manoj K. Mishra, AOR
Mr. Umesh Dubey, Adv.
Mr. Prateek Som, Adv.
Mr. Alok Pandey, Adv.
Mr. D.N. Dubey, Adv.

Applicant-in-person

Mr. Abhishek, AOR

Mr. Subhasish Bhowmick, AOR

Mr. P.V. Surendranath, Sr. Adv.
Ms. Resmitha R. Chandran, AOR
Mr. Subhas Chandran, Adv.
Ms. Lekha Sudhakaran, Adv.
Mr. Sawan Kumar Shukla, Adv.

The Bench comprising Hon'ble the Chief Justice, Hon'ble Mr. Justice A.S. Bopanna and Hon'ble Mr. Justice V. Ramasubramanian pronounced the order.

In terms of the signed order, the interlocutory application is disposed of.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI KUMAR)
ASTT. REGISTRAR-cum-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL.) NO. 383 OF 2023

HIMAR KULSUMA (THROUGH NOOR ALAM) .....Petitioner(s)

Vs.

UNION OF INDIA & ORS. .....Respondent(s)

O R D E R

The petitioner is admittedly an illegal immigrant. Her arrival in India is not traceable. In response to her prayer for release from the Detention Center, the respondents have taken a categoric stand that the petitioner would be required to be deported to her home country as per the procedure established by law after verification of nationality. Till such time, only her movements have been restricted so as to ensure that she remains available for deportation, as and when required. It is not in dispute that the movements of the petitioner are restricted to Sarai Rohila and for that purpose an appropriate order under Section 3(2) of the Foreigners Act, 1946 read with the provisions contained in the Foreigners Order, 1948 has been passed on 9th June,

2022. That being so, the restriction on movements of the petitioner cannot be termed or declared as illegal confinement. No effective direction therefore can be issued.

The writ petition is dismissed.

Pending applications, if any, stand disposed of.

.....J.
(SURYA KANT)

.....J.
(DIPANKAR DATTA)

New Delhi;
15th December, 2023

ITEM NO.27 COURT NO.4 SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Criminal) No(s). 383/2023

HIMAR KULSUMA (THROUGH NOOR ALAM) Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(FOR ADMISSION)

Date : 15-12-2023 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Petitioner(s) Mr. Gautam Jha, AOR
Mr. Pankaj Kumar, Adv.
Mr. Kartik Jha, Adv.

For Respondent(s) Mr. Tushar Mehta, Solicitor General
Mr. K M Nataraj, A.S.G.
Mr. Kanu Agarwal, Adv.
Mr. Mayank Pandey, Adv.
Ms. Diksha Rai, Adv.
Mr. Kartigya Kait, Adv.
Mr. Gaurang Bhushan, Adv.
Ms. Bansuri Swaraj, Adv.
Mr. Anirudh Bhat, Adv.
Mr. Rajan Kumar Chourasia, Adv.
Dr. Reeta Vasishta, Adv.
Mr. Arvind Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

The writ petition is dismissed in terms of signed order.

Pending applications, if any, stand disposed of.

(NEETA SAPRA)
COURT MASTER (SH)

(PREETHI T.C.)
COURT MASTER (NSH)

(Signed order is placed on the file)