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Para - 11  
P. - 6

Right of Nation state  
to expel

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Sahabganj	1961 - 20%
2011	34.61%
Pakur	1961 - 22.2%
2011	35.86%

A 1958 SC 4104 - lies upon the person who is the foreign nation or, his citizenship is in doubt

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**(CIVIL WRIT JURISDICTION)**

**W.P.(PIL) 6547 OF 2022**

Para - 32 of Sanowal judgment (a) Duty of Central govt. to defend its borders.

**Danyaal Danish**

**Petitioner**

Christians - 6748% increase in Santal Naxal level - 231%

1994 (Supp) SCC 615

**State of Jharkhand & Ors.**

**Respondents**

Article 21 only - does not include right to stay in the Country

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 5 AND 6**

I, Pratap Singh Rawat, son of Shri Hira Singh Rawat, aged about 57 years, do hereby swear and affirm as follows:-  
*Foreigner's Act 1946*  
*trying to reside within particular place*  
*imposing any restrictions on his movements.*

1. That I am filing this Affidavit on behalf of the Respondent No.5 and 6 and I am currently posted as Under Secretary in the

Ministry of Home Affairs and I am well acquainted with the facts and circumstances of the case.

2. That I am competent and duly authorized on behalf of the Respondent No. 5 and 6 to swear this Affidavit.
3. That I have myself gone through the contents of the Public Interest Litigation in which this Affidavit is being filed and have fully and completely understood the same.
4. That instead of giving a para wise reply to the writ petition, the Answering Respondent craves the leave of the Hon'ble Court to bring on record certain facts for just adjudication of the instant matter.
5. At the outset, it is submitted that the Respondent recognizes the seriousness of the issue at hand and does not wish to take this litigation in an adversarial manner. The Government of India is concerned and alert about the matter regarding illegal migration in parts of Jharkhand and has taken various steps to address the same. It is submitted that the Respondent, through the present affidavit seek to only place the legal position before this Hon'ble Court and is ready and willing to take all measures within the confines of the laws of the country to further strengthen the existing framework.

6. That the problem of infiltration of Bangladeshi nationals into India has been endemic and various factors, viz, porosity of the border, presence of population right up to the zero line in many areas, facilitate easy assimilation and continuous illegal migration from Bangladesh. The Government of India has been constantly on the vigil and will continue to take appropriate measure to tackle the consistent problem.

7. That since illegal immigrants enter into the country without valid travel documents in clandestine and surreptitious manner, accurate data regarding number of such migrants living in the country, including in the state of Jharkhand is not available.

8. 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 immigrant' has been defined in sub-clause (1)(b) of section 2 of The Citizenship Act, 1955. Section 2(1)(b) reads as under: -

*"2. Interpretation.—(1) In this Act, unless the context otherwise requires,—*

(b) "Illegal migrant" means a foreigner who has entered into India—

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;

....."

9. So far as the Indian law governing the subjects like detention and deportation 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]

Parliament to make laws and for the Central Government to take executive / administrative decisions with regard to the said subjects. However, the implementation of the said laws in conducted through the aid of the State Governments in line with the principles of co-operative federalism and considering the nature of the issues involved.

10. That in the judgment of the Hon'ble Supreme Court in *State of Arunachal Pradesh v. Khudiram Chakma* [1994 Supp (1) SCC 615] following *Louis De Raedt* [(1991) 3 SCC 554, it was held a foreigner cannot assert any 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. It is submitted that it was held that 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.

**11.** 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.

**12.** 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 fulfill 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.

**13.** 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.

14. In respectful submission of the Central Government, such decisions regarding imposing restrictions on movements and deportation of illegal migrants are plenary power exercised by the country as a part of governance of a sovereign nation. As a process of plenary policy making and are taken based on several executive and administrative considerations, it has been consistently held that a matter in which international ramifications emerge, the issue would not be justiciable.

15. That "burden of proof", if any question arises whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description, has been examined by the Hon'ble Supreme Court in Sarbananda Sonowal judgement dated 12.07.2005 [Writ Petition (Civil) 131 of 2000 - Sarbananda Sonowal Vs Union of India & Anr]. Hon'ble Court has observed that:

*17. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order*

to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Some times the place of birth of his grand parents may also be relevant like under Section 6-A(1)(d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.



18. *Though in a criminal case the general rule is that the burden of proof is on the prosecution but if any fact is especially within the knowledge of the accused, he has to lead evidence to prove the said fact. In Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC404 it was held as follows:*

*"Section 106 is an exception to S. 101. The latter with its illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and S. 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or of the judgement at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word "especially" stresses that. It means facts that are pre-eminently or exceptionally within his knowledge."*

19. Section 9 of the Foreigners Act regarding burden of proof is basically on the same lines as the corresponding provision is in U.K. and some other Western nations and is based upon sound legal principle that the facts which are peculiarly within the knowledge of a person should prove it and not the party who avers the negative.

16. That the term "External aggression" was comprehensive discussed by the Hon'ble Supreme Court in Sarbananda Sonowal judgement dated 12.07.2005 [Writ Petition (Civil) 131 of 2000 – Sarbananda Sonowal Vs Union of India & Anr]. Vide para 32 of the judgement, Hon'ble Court has observed that:

✓ 32. The foremost duty of the Central Government is to defend the borders of the country, prevent any trespass and make the life of the citizens safe and secure. The Government has also a duty to prevent any internal disturbance and maintain law and order.

38. *This being the situation there can be no manner of doubt that the State of Assam is facing "external aggression and internal disturbance" on account of large scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of Union of India to take all measures*

17. That the Hon'ble Supreme Court has also examined the restrictions on rights of aliens in Sarbananda Sonowal judgement dated 12.07.2005 [Writ Petition (Civil) 131 of 2000 - Sarbananda Sonowal Vs Union of India & Anr]. Hon'ble Court has observed that:

53. *In State of Arunachal Pradesh v. Khudi Ram Chakma 1994(Supp.) SCC 615, following Louis De Raedt (supra), 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.

**18.** 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 geographically and topographically difficult nature of its borders which our country shares with many countries.

**19.** 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.

**20.** It is submitted that the detection and deportation of illegal migrants after due process of nationality verification is a continuous process which is to be carried out in accordance with the procedure established by law. It is submitted that the Central Government has adopted a multi-pronged approach to ensure effective surveillance and domination of international

borders to check infiltration of illegal migrants. Physical infrastructure like border fencing, floodlighting and construction of border roads and establishment of border outposts has been created.

It is submitted that vulnerable border outposts are regularly reviewed and strengthened by deploying additional manpower, special surveillance equipment and other force multipliers. A technological solution in the form of Comprehensive Integrated Border Management System (CIBMS) has been implemented in some vulnerable border areas.

**21.** That Section 3 of the Foreigners Act 1946 empowers the Central Government to make orders 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. In terms of Section 3(2)(e) of the Foreigners Act 1946, Central Government may by order provide that the foreigner 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.

22. It is submitted that Para 11 of the Foreigners Order 1948 deals with the power to impose restrictions on movements, etc. and as per this para, the civil authority may, by order in writing, direct that any foreigner shall comply such conditions as may be specified in the order in respect of-(1) his place of residence and (2) his movements.

23. It is submitted that Section 3(2)(c) of the Foreigners Act 1946 empowers the Central Government to provide that the foreigner shall not remain in India or in any prescribed area therein. As per Section 5 of the Passport (Entry into India) Act 1920, the Central Government may, by general or special order, direct the removal of any person from India who, in contravention of any rule made under Section 3, prohibiting entry into India without passport, has entered therein, and thereupon any officer of the Government shall have all reasonable powers necessary to enforce such directions.

24. It is submitted that in line with collaborative federal approach to the issue at hand, the Central Government has in making orders of the nature specified in Section 3(2)(e) and

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3(2)(c) of the Foreigners Act 1946 for restriction and deportation of foreign nations, Section 5 of the Passport (Entry into India) Act 1920 and under the Foreigners Order 1948, entrusted the function of executive implementation to the State Governments, vide Notification S.O. No.590 [F.No.4/3/56-(I)F.I] dated 19th of April 1958 under Article 258(1) of the Constitution of India. Further Union Territory Administrations have been directed under Article 239 of the Constitution of India to execute these powers of the Central Government vide Notification S.O. No.591 [F. No. 4/3/56-(I) F.I] dated 19th of April 1958.

**25.** It is submitted that the Central Government has laid down the aforementioned legal framework wherein all the State Governments and Union Territory Administrations are the on ground agencies responsible to take action regarding restriction of movements and deportation/removal/expulsion of illegally staying foreigners as per the provisions in the Passport (Entry into India) Act 1920, Foreigners Act 1946 and Foreigners Order 1948. Since the Central Government does not maintain a separate federal police force exclusively dedicated to the task of detection and deportation of illegally staying foreigners, action in this regard has been entrusted to the State/UT Police.



**26.** It is submitted that as per the existing procedure of deportation of foreign national, issued vide guidelines dated 24.04.2014 and 01.07.2019, in all cases where the foreigner is arrested and action is taken under the relevant Acts, the foreigner can be deported after completion of the sentence/court proceedings. In such cases, the foreigner can be deported by the State Government/UT Administration/ FRRO/FRO concerned immediately on completion of the sentence/court proceedings, if he/she has a valid travel document/passport and subject to no other court case pending against him/her and there is nothing adverse against him/her. In case the foreigner does not have a valid travel document/passport, it is necessary to obtain the requisite travel document from the Embassy/High Commission of the country concerned before he/she can be deported.

**27.** It is submitted that in such cases, the State Government/UT Administration/FRRO/FRO concerned may take up the matter regarding issuance of travel document in favour of the foreigner with the Ministry of External Affairs (Consular Division), Patiala House Annexe, Tilak Marg, New Delhi- 110001, with a copy to the Ministry of Home Affairs (Foreigners Division), with detailed particulars and photograph of the said foreigner

immediately on arrest of the foreign national or on filing of FIR, whichever is earlier.

**28.** It is submitted that the Ministry of Home Affairs vide letter No. 25022/28/2020-F.I dated 30.03.2021 has issued consolidated instructions to all State Governments / UT Administrations regarding issue of overstay and illegal migration of foreign nationals. The aforesaid instructions include Ministry of Home Affairs' earlier guidelines dated 24.04.2014 & 01.07.2019 regarding procedure to be followed for deportation of a foreign national and guidelines dated 09.01.2019 regarding Model Detention Center/Holding Center/Camp Manual. The above Detention Centre Manual provides for imposing restrictions on movement of foreign nationals who are awaiting deportation due to non-possession of valid travel documents in detention centers.

**29.** That the Hon'ble Supreme Court of India in its order dated 12.09.2018 and 20.09.2018 in I.A. No.105821/2018 in W.P.(Civil) No.406/2013 filed by Collaborative Network for Research and Capacity Building Guwahati, had directed the Union of India to prepare a Manual for detention centres. In pursuance of these orders, Ministry of Home Affairs had

circulated Model Detention Centre/Holding Centre/Camp Manual to all State Governments/UT Administrations, including the State Government of Jharkhand, for setting up detention centres as per requirement to restrict the movement of illegally staying foreign nationals so that they are physically available at all times for expeditious repatriation/deportation.

**30.** It is submitted that the illegal migrants need to be deported to their home country as per the laid down procedure. It is submitted that necessary action for deportation of the illegal migrants is to be taken by the concerned State Government as per procedure established by law. Pending their deportation proceedings, the movements of illegal migrants needs to be restricted in a detention Centre, to be established by State Government, to ensure their physical availability for deportation.

**31.** That the Answering Respondent has requested all the State Governments/Union Territory Administrations, including Government of Jharkhand, to take the following action with regard to the illegal immigrants:-

- (a) Periodic meetings may be convened at the level of the Chief Secretary and DGPs to review the enforcement of legal

provisions related to illegal migrants: Police authorities in the States/Union Territories and other law enforcement agencies may be constantly sensitized on the issue of illegal immigration of foreign nationals and be apprised of the legal provisions.

- (b) Police authorities and other law enforcement agencies may be advised to keep a strict vigil and take appropriate prompt action to detect, identify and intercept illegal immigrants settled in the State/UT concerned. Adequate powers are vested with State Governments/UT Administrations/FRROs/FROs for detection, restriction and deportation of illegally staying foreign nationals.
- (c) Suitable penal action may be taken against the illegally staying foreign nationals under Section 4 and 5 of the Passport (Entry into India) Act 1920 and Section 13, 14 and 14-A of the Foreigners Act 1946. Action may also be taken against those who abet (illegal stay) under Section 14-C of the Foreigners Act 1946.
- (d) After completion of the legal proceedings, the movement of such illegal migrants may be restricted in detention/holding centres by issue of appropriate order under Section 3(2)(e)

of the Foreigners Act 1946, read with Paragraph 11 of the Foreigners Order 1948. Detailed instructions in this regard and provisions of the Model Detention Centre/Holding Centre/Camp Manual have been issued by the Ministry of Home Affairs in 2019.

- (e) If the illegal migrant has obtained fake Indian documents, immediate necessary action may be taken to cancel such fake documents. In case the illegal migrant has obtained Aadhaar card fraudulently, suitable action for deactivation (suspension) of Aadhaar number may be taken as indicated in the Standard Operating Procedure (SOP) of the Unique Identification Authority of India (UIDAI), circulated by the Ministry of Home Affairs in 2019.
- (f) In all such cases appropriate action may be taken immediately for deportation of the foreign national concerned in terms of the detailed procedure for deportation/repatriation of a foreign national issued by the Ministry of Home Affairs in 2019.

**32.** It is submitted that amongst a large number of steps, the Central Government seeks to highlight the following steps taken

by the Central Government to contain illegal immigrants in Indo-Bangladesh border:

(i) Ministry of Home Affairs has undertaken an exercise for identification and deportation of illegally overstaying foreigners in India. Several meetings have been chaired by Union Home Secretary with stakeholders to review the progress in this regard. In this direction, following two Committees have been formed for identification and deportation of overstaying foreigners:

- (I) For identifying overstaying foreigners since 01.01.2011, all State Governments/UT Administrations have been requested to constitute a "Committee" under the chairpersonship of Home Secretary of the State Governments/UT Administrations, including FRRO concerned, SP (Special Branch/Intelligence), District SP (FRO) and Representative of NIC (IVFRT State Coordinator) as members.
- (II) For identifying overstaying foreigners prior to 01.01.2011, it was decided to constitute "Task Forces"

(iv) The for the ICPs in each state under the Senior Officer of Home or Police Department of the State concerned, including In-charge ICP, Representative of nodal FRRO, SP (Special Branch/Intelligence), District SP (FRO) & Representative of NIC (IVFRT State Coordinator) as members.

(ii) The demographic data and corresponding available images in respect of these illegally overstaying foreigners have been uploaded on e-FRRO portal, through which registration and other visa related services were granted by FRROs/FROs. In November, 2020, Commissioner, Bureau of Immigration has requested all DGPs/IGPs of all States/UTs to sensitize concerned FROs/SPs of the district for utilizing the above facility in e-FRRO to locate/trace illegally staying foreigners in their jurisdiction.

(iii) Union Home Secretary has also asked Chief Secretaries/ Administrators of all States/UTs in January, 2021, to sensitize all District SPs/FROs to utilize the e-FRRO facility to locate/trace and deport the illegally staying foreigners in their jurisdiction.

- (iv) The demographic data and corresponding available images in respect of these illegally overstaying foreigners were also shared with the Ministries/Departments running flagship welfare projects, viz MGNREGA, Ration Cards and PDS distribution network, Driving Licence, Registration of Vehicles, PAN database, NATGRID database and CCTNS/ICJS database, for matching with their available database with the request to share the details for further action by the Government.
- (v) The Commissioner, Bureau of Immigration, shared the biographic data of the 145 overstaying foreigners along with addresses of EPIC, with State Government of Jharkhand in 2021, with the request to direct the District Police authorities to conduct field enquiries to locate these individuals and establish their identity as Indian or foreigner. In case of foreigner, State Government was advised to initiate legal proceedings, as per law, for his/her deportation.
- (vi) Subsequently, details of 203 potential matched cases against 75 criminal records pertaining to Jharkhand were shared with DGP, Jharkhand in May 2021 with the request



to direct the District Police authorities to conduct enquiries to establish the identity of the under-trial/convicted individuals as Indian or foreigner.

(vii) The Commissioner, Bureau of Immigration, shared 02 matching records from Driving Licenses database with DGP, Jharkhand in June 2021, with the request to with the request to direct the District Police authorities to conduct enquiries to establish the identity of the under-trial/convicted individuals as Indian or foreigner.

(viii) A Committee was constituted under the Chairmanship of Registrar General of India, with CEO, UIDAI, Joint Secretary (Foreigners) and Joint Director (IB) as members, for deliberation on functioning of Unique Identification Authority of India. The Committee gave its report in July, 2022. The Committee gave recommendations, including to develop a mechanism to capture the demographic and biometrics data of identified illegal immigrants as per UIDAI standards so that it can serve as a negative list for non-issuance of Aadhaar by UIDAI in future.

(ix) In this regards, MHA constituted a Committee under the Chairmanship of Additional Secretary (Women Safety), for

standardization of biometric collection (finger prints, facial and iris) by different Government agencies/ Departments.

The Committee *inter-alia* recommended that all organizations may follow the relevant ISO standards for biometric collection, as is currently being done by UIDAI, Passport Department (MEA) and NCRB. The recommendations of the Committee have been circulated to all stakeholders for necessary action.

- (x) MHA vide its communication dated 21.11.2022, has issued advisory to UIDAI, BOI, MEA and NCRB to ensure that collection and sharing of biometric data is carried out in the standardized manner as per the recommendation. Further, the biometric shall be captured in secure and interoperable manner and to use prescribed ISO standard only.
- (xi) It was also recommended that UIDAI shall explore developing a portal for receiving of data of illegal residents, who already have Aadhaar numbers, from Law Enforcement Agencies (LEA). UIDAI shall take necessary steps to deactivate Aadhaar of such illegal residents as per Aadhaar (Enrolment & Update) Regulations, 2016. In case of deactivation of such Aadhaar numbers by UIDAI, the

concerned agencies may also be intimated. UIDAI developed the portal for Law Enforcement Agencies (LEA) to facilitate receipt of information through LEAs on suspected cases of illegally obtained Aadhaar, deactivation of same after field enquiry as per the procedure followed by UIDAI for such cases and preparation of a negative list to ensure that those individuals are not issued Aadhaar anytime in future.

(xii) In January, 2023, MHA requested all the State Governments/Union Territory Administration, FRROs to nominate a nodal officer and provide the requisite details directly to UIDAI.

(xiii) Government has developed a portal called "Foreigners Identification Portal" (FIP), accessible at <https://identification.mha.gov.in.>, for uploading of the biometric data of illegal foreigners. The purpose of the portal is to enable the States/UTs/FRROs to identify the illegal migrations for their repatriation to their home country and also to prevent them from fraudulently obtaining Indian Identity documents. Deputy Inspector General of Police, Special Branch, Jharkhand, has been

nominated by State Government of Jharkhand as Nodal Officer for Foreigners' Identification Portal.

(xiv) In January, 2024, Union Home Secretary apprised DGsP of all States/UT Administrations on the importance of Foreigners Identification Portal and requested their personal attention on the following:

- (a) Launching rigorous efforts for identifying and taking up deportation proceedings of illegal overstaying foreigners, using DPM;
- (b) Launch special campaign for capturing the biographic and biometric details of illegal migrants in identified pockets, where a large number of illegal foreigners are starving; and
- (c) Share the information on UIDAI portal regarding detection of fraudulently obtained Indian identity documents.

(xv) An application/module, namely "District Police Module (DPM) has been developed by the Government to search the overstaying foreigners' data District-wise. The access has been given to all the District Superintendents of Police/Foreigners' Registration Officers/District Crime

Records Bureau for their respective jurisdictions in order to effectively trace/locate these overstaying foreigners. The hardware for accessing the District Police Module has been delivered to all locations in the States/UTs, including the State of Jharkhand.

(xvi) A meeting was convened under the chairmanship of Union Home Secretary on 02.02.2024 with DGsP of all State Governments/UTs and concerned stakeholders, to discuss the work plan and efforts with respect to identification and deportation of illegally staying foreigners and illegal migrants and use of District Police Module (DPM) and Foreigners Identification Portal (FIP).

(xvii) That the Border guarding forces conduct regular patrolling, lays nakas and establish observation posts and carry out anti-tunnelling exercises to stop illegal infiltration.

(xviii) With regard to the extent of border fencing which has been carried out it is humbly submitted that:

(a) India shares 4096.7 kilometers of International Border (land/ riverine) with Bangladesh. The border is porous, criss-crossed by rivers, hilly and mountainous terrains.

- (b) Out of 4096.7 kilometers, the feasible length for construction of fence is about 3922.243 kilometers and non-feasible length is about 174.5 kilometers. About 82.13% fence work has been completed infeasible length, and in stretch 45.88 kilometers, fence work is in progress. The non-feasible gaps (riverine/nallah gaps etc.) will be covered by deploying Technological Solution. In addition, 81 BSF Battalion has been deployed along Indo-Bangladesh Border to prevent illegal activities, trans-border, infiltration and exfiltration.
- (c) To secure the Indo-Bangladesh Border, Government of India has taken multi-prolonged steps to cover the remaining border either by fence or by technological solutions. Further, to cover the vulnerable stretches, Government of India had sanctioned a Low Cost Technological Solutions (LCTS) project to cover the length of 281 kilometers along India-Bangladesh Border out of which approx. 200 km has been completed.

**33.** That with regards to the Border Security Force (BSF), the following is submitted:

- (i) That BSF is an Armed Force of the Union of India for ensuring security of borders of India and the matters connected therewith.
- (ii) That Despite critical challenges of geography and demography, BSF is ensuring security of border 24x7x365 days through effective and judicious use of manpower and technical gadgets.
- (iii) That Illegal migration is a cause of concern, which has been controlled quite effectively over the years and BSF has been able to apprehend 3732 BD nationals in 2023 and 1973 in 2024 (till 31 July 2024).
- (iv) That Besides above, BSF has taken following steps on Indo-Bangladesh Border to stop illegal immigration from across the border:-
  - (a) Detailed vulnerability mapping has been carried out to strengthen surveillance by deploying additional manpower, Spl Surveillance Equipment, vehicles etc.

- (b) Surveillance equipment like Hand Held Thermal Imager (HHTI), Night Vision Device (NVD), Twin Telescope, UAVs etc. are being used as force multipliers for effective area domination on Indo-Bangladesh borders. Integrated Surveillance technology equipped with CCTV / PTZ Cameras, IR sensors and infrared alarm with Command and Control system have also been installed at selected patches of the international border.
- (c) Effective domination of the borders by carrying out round the clock surveillance of the border, viz. patrolling, laying nakas, manning observation posts all along the IB.
- (d) Installation of Border Flood Lights along border security fence to light up the area during hours of darkness.
- (e) Use of Water crafts / Boats and floating BOPs for domination of riverine area of IB.
- (f) Strengthening of intelligence (Int) network and coordination with sister agencies to identify and apprehend touts.



- (g) Simultaneous Co-ordinated Patrolling (SCP) is conducted jointly with Border Guard Bangladesh on Indo-Bangladesh border.
- (h) Comprehensive Integrated Border Management System (CIBMS) has been installed as pilot project in Dhubri (Assam).
- (i) Erection of additional cattle fence along with domination line in fenced / unfenced patches. In highly sensitive areas, high wire mesh fence has been erected.
- (j) Strengthening of existing border fence with Galvanized Iron Pipes / Bamboo strips / iron rod etc.
- (k) Domination of Ghats (ferry points) in hinterland on riverine streams.
- (l) Conducting of joint patrolling / joint ops / mobile check post with local police and other sister agencies.
- (m) Infiltration zone have been identified and suspected routes are being dominated effectively with HHTI.
- (n) Utilization of intruder alarm system like IRIDS.
- (o) Illumination of dark patches in unfenced area with temporary lights / solar lights.

- (p) Coordination with the villagers and "Prahari Mitra" through regular meetings and interactions.
- (q) Use of dog squads including local dogs.
- (r) Extensive vehicle patrolling along the fence during night and laying of MCPs in depth area / junction points.
- (s) Regular Ops alert exercises are conducted in which additional manpower and resources from BSF HQrs locations are augmented on border.
- (t) Anti Human Trafficking Units have also been formed by BSF and operating in the border area.
- (v) That Apart from above, all the formations under Eastern Command, BSF are approaching concerned Civil Authorities for cancellation of Aadhaar card, PAN card, Driving license, Voter card etc. in respect of apprehended Bangladesh nationals and some of the Aadhaar cards have been cancelled by UIDAI.
- (vi) Although BSF has been impleaded in this case, however BSF has no jurisdiction in the state of Jharkhand and has a mandate to dominate in the border area upto 50 Kms from International Boundary, which is being done efficiently by

the BSF. BSF has been largely successful to control the infiltration attempts from across the border on the Indo-Bangladesh Border.

**34.** It is submitted that some illegal migrants are still able to enter into India in a clandestine and surreptitious manner, mainly due to difficult mountainous and riverine terrain in parts of the long international borders. The problem can be resolved only if the efforts and initiatives of the Government of India are supplemented, in full measures, by corresponding efforts of the State Government and thereafter the full cooperation and support of the district and sub-district (including panchayat and village level) functionaries. The revenue, police and intelligence machinery of the state government has a crucial role to play in identifying the illegal foreigners. It is respectfully submitted that in this case such support and cooperation of the State Government and its district and sub-district functionaries has been less than expected.

**35.** It is submitted that Santhal Pargana division comprises of six districts viz. Jamtara, Deoghar, Pakur, Godda, Dumka and Sahibganj. The infiltration is assessed to have taken place

through Sahibganj and Pakur districts mainly, which are contiguous to West Bengal. It has been reported that there has been increase in number of Madrassas in this region during past few years.

**36.** While the Santhal Pargana region had witnessed infiltration of Bangladesh nationals since Independence, of late alleged Bangladesh settlement in districts of Sahibganj and Pakur had been highlighted. The infiltrators preferred these areas because of common dialect which helped their integration

**37.** Further, instances have been reported of misuse of loopholes in existing land laws like transfer of tribal land to non-tribal through affidavit of 'Danpatra' (Gift), by Muslims to acquire land in the region have been reported. In one such instance, altercation occurred (Pakur, July 18, 2024) between tribals and Muslims, when a Muslim family took over a piece of land on the basis of Danpatra. However, linkages to Bangladesh immigrants in any of these land related cases have not been established, so far.

**38.** It is submitted that the data submitted by the petitioners, has been got verified from the Office of Registrar General of India (RGI). From the data it can be inferred that

- (a) The share of population of scheduled tribes in Santhal Pargana in the year 1951 was 44.67% which became 28.11% in 2011. However, quantum of decrease in tribal population due to outward migration, low child birth rate among tribal conversion to Christianity and other reasons needs also to be assessed.
- (b) Total population of Sahebganj district was 4,14,277 in 1961, out of which population of Muslim community was 82,483 i.e. 20% of total population. In 2011 the total population of Sahebganj is 11,50,567 whereas population of Muslim community is 3,98,243 which is 34.61% of the total population.
- (c) In the District of Pakur in the year 1961, the total population was 3,47,012 out of that 76428 i.e 22.02 % was the population of Muslim Community. In the year 2011, the population of Muslim community was 3,22,963 which is 35.86% of the total population.
- (d) After independence, till the year 2011, the share of population of Hindu community as proportion of the total population decreased by 4.28 percent at the national level, but in Santhal Pargana of Jharkhand, the proportion decreased by 22.42 percent. The share of population of scheduled tribes decreased from 44.67 to 28.11 percent of the total population.

At the national level, the Christian population growth rate was 231 percent while in Santhal Pargana it was more 6748 percent. The share of population of Muslim community increased by 4.31 percent at the national level, the number in Santhal Parganas increased by 13.3 percent.

(e) Total population of Santhal Pargana in the year 1951 was 23,22,092, of which Hindus were 20,98,492 (90.37 percent), Muslims 2,19,240 (9.43 percent) and Christians 4,289 (0.18 percent). Of the total population, tribal people were 10,37,167 (44.67 percent). In the 2011 census, the total population of Santhal Pargana was 69,69,097 of which Hindus were 47,35,723 (67.95 percent), Muslims 15,84,285 (22.73 percent), Christians 2,93,718 (4.21 percent). Of the total population in 2011, tribal people were 19,59,133 (28.11. percent).

*Sub* (f) In Census 2011, there are 5857 Muslim tribes registered in Santhal Pargana.

**39.** It is submitted that various existing laws empower state government to prevent illegal immigration and initiate legal action against infiltrators. State Police in coordination with local law enforcement and administrative agencies by identifying vulnerable routes can stop illegal infiltration from Bangladesh.

However, in view of multi-dimensional nature of the issue, Intelligence Bureau can share infiltration related inputs with relevant authorities in state government.

**40.** That the answering respondent is guided by the federal structure and expects the State Government to function within the collaborative structure envisaged under the Constitution and the statutory framework in identifying the illegal migrants, as primary responsibility lies with the State Government. It is submitted that the Central Government is willing to work and assist the State Government.

**41.** It is most humbly submitted that the Answering Respondents have delegated to the State Governments/Union Territory Administrations, the powers and functions to make necessary arrangements for detention centers/camps as per their requirement. State Governments/UT Administration, as per their requirements, may set up such center/camp as per Model Detention Centre/Holding Centre/Camp Manual 2019.

**42.** That it is most humbly submitted that the Answering Respondents have taken all necessary steps and have delegated the powers to the State Governments/UT Administrations to take steps to control the illegal migrants from coming to India.

**43.** It is humbly submitted that the State Government of Jharkhand is duty bound and fully empowered to tackle the problems related to illegal immigrants, as power to deal with such cases has been delegated to them in accordance with provisions of the Constitution. State Government of Jharkhand has constituted the Committee for identification and deportation of overstaying foreigners under the Chairmanship of Additional Chief Secretary/Chief Secretary/Secretary, with FFRO Kolkata, SP (Special Branch), Jharkhand, SSP/SP(FRO) and Representative of NIC (IVFRT Coordinator) as members. In case any assistance is required by the State Government in this regard, the State Government may request to Central Government, as per the provisions of the Constitutions/law.

**44.** The answering respondent submits that the Government of India is serious in dealing with the matter regarding illegal migrations and has taken all necessary steps earnestly. While it is reiterated that primary responsibility of identification and detention of illegal migrants for being deported lies with the state government within the federal structure of the country, the center is willing to come forward and assist the Government of Jharkhand in all possible measures and it is for them to discharge



their responsibility of identification and detention. It is submitted that the Central Government is committed to carry out its constitutional duty with the utmost diligence and submits to the jurisdiction of this Hon'ble Court in this regard.

45. That I have gone through the contents of the instant affidavit and understood the same.

46. That the statements made in paragraphs ... 1-46 ... are true to my knowledge and those made in paragraphs ... are true to my information derived from the relevant records of the case which I believe to be true and rests are by way of humble submission before this Hon'ble court.

Verified, sworn and signed at Ranchi on 11<sup>th</sup> of September 2024

6345

*Pratap Singh Rawat*  
11/09/2024  
(प्रताप सिंह रावत)  
(PRATAP SINGH RAWAT)  
अवर सचिव/Under Secretary  
गृह मंत्रालय  
Ministry of Home Affairs  
भारत सरकार/Govt. of India

Oath Sl. No. ....  
Solemnly affirmed before me by deponent  
Who is identified by P. S. Rawat  
I have satisfied myself by examining the deponent that he/she understands the contents of the affidavit which has been read and explained before me or which has been read and explained to him/her. The deponent acknowledged the same to be correct.  
High Court of Jharkhand, Ranchi  
Date: 11/09/24

*[Signature]*  
Oath Commissioner  
11/09/24

I know the deponent  
*Ajay Kumar*  
TO Mr P. Palku  
R/N 316/24  
Dt 11/9/24