

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

Writ Petition (C) No. \_\_\_\_\_ Of 2025

(PIL Under the Article 32 of the Indian Constitution)

IN THE MATTER OF:

Rohingya Human Rights Initiative

(ROHRIngya) & Ors

...Petitioners

Versus

Government of NCT of Delhi & Ors

...Respondents

WITH

I.A. \_\_\_\_\_ OF 2025

APPLICATION SEEKING INTERIM RELIEF

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

Filed on: 08.01.2025

ADVOCATE FOR THE PETITIONER: SATYA MITRA

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...Respondents

OFFICE REPORT ON LIMITATION

1. The petition is/are within time.
2. The petition is barred by time and there is delay of ..... days in filing the same against order dated and petition for condonation of ..... days delay has been filed.
3. There is delay of ..... days in refilling the petition and petition for condonation of..... days delay in refilling has been filed.

BRANCH OFFICER

Place: New Delhi

Date: 08.01.2025

PROFORMA FOR FIRST LISTING

SECTION \_\_\_\_\_

The case pertains to (Please tick/check the correct box):

Central Act: N.A.

Section:

Central rule: N.A.

Rule no(s): N.A.

State Act:

Section:

State Rule:

Impugned Interim Order date: N.A.

Impugned Final Order/Decree Date:

High court name:

Name of Judges: Hon'ble Justice

Tribunal/Authority (Name):  
N.A.

1. Nature of matter:      Civil  Criminal

2. (a) Petitioner/Appellant No.1: Rohingya Human Rights Initiative

(ROHRIngya)

(b) E-mail ID:

(c) Mobile Phone Number:

3. (a) Respondent No.1: Government of NCT of Delhi

(b) E-mail ID: N.A.

(c) Mobile Phone Number: N.A.

4. (a) Main category classification: N.A.

(b) Sub classification: N.A.

5. Not to be listed before: N.A.

6. Similar/Pending matter:

a. Similar disposed of matter with citation, if any, & case details: No similar matter is disposed of.

b. Similar pending matter with case details: No similar case is pending: SLP Diary No. 59574 of 2024

7. Criminal matters:

a. Whether accused/convict has surrendered: Yes  No

b. FIR No.:

c. Police Station:

d. Sentence Awarded:

e. Sentence Undergone:

8. Land Acquisition Matters:

a. Date of section 4 notification: N.A.

b. Date of section 6 notification: N.A.

c. Date of section 17 notification: N.A.

9. Tax Matters: State the tax effect: N.A.

10. Special Category (first petitioner/appellant only):

Senior citizen > 65 years SC/ST  Woman/Child

Disabled  Legal Aid case  In custody

11. Vehicle No. (In case of Motor Accident Claim matters): N.A.



Date: 08.01.2025

(Satya Mitra)

AOR for Petitioner

Registration No. 1852

E-mail id: satyamidra2003@yahoo.co.in

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**SYNOPSIS**

**Notice issued in 3 similar Writ Petitions in Supreme Court**

**Kept for final hearing**

**Fresh SLP Diary No. 59574 of 2024 recently filed in SC**

1. There are 3 Writ Petitions pending in the Supreme Court as of today where **notices have been issued** and the **counter affidavits of the government are on record**. These Writ Petitions are
  - I. **Writ Petition 859 of 2013**; Jafar Ullah Vs. UOI
  - II. **Writ Petition No. 870 of 2017**; Mohammad Yunus vs. UOI
  - III. **Writ Petition No. 660 of 2021**; Fazal Abdali Vs. UOI
  
2. Fresh SLP Diary No. 59574 of 2024, Social Jurist vs. Municipal Corporatoin of Delhi, recently filed in Supreme Court.

**Union of India and Delhi Government admit**

**Rohingyas have the same rights as Indian citizens**

3. These are **Writ Petition 859 of 2013**; Jafar Ullah Vs. UOI In 2012 subsequent to a 2012 research mission in which health activists visited various Rohingya refugee settlements in Delhi and Haryana, a PIL petition was filed in this Hon'ble Court in 2013, the petitioners



prayed for amongst others orders, granting facilities of healthcare, sanitation, living conditions, access to public services and **Education for Rohingya refugees.**

4. In the abovementioned matter this Court through order dated 09.04.2018 directed the Respondents to reply to the allegations stated in the abovementioned PIL and to file a comprehensive status report with respect to the living conditions of the refugees which is reproduced herein:

*Learned counsel for the petitioner submits that the Rohingyas who are residing in camps in Mewat at Haryana and Kalindi Kunj at Delhi, are **deprived of basic rights** and amenities which are necessary for existence of human beings. This submission, however, is refuted by Mr. Tushar Mehta, learned Additional Solicitor General, appearing for the Union of India as well as for NCT of Delhi and Mr. B.K. Satija, learned counsel for the State of Haryana. A prayer is made by Mr. Tushar Mehta, learned Additional Solicitor General and Mr. B.K. Satija, learned counsel to grant some time to file comprehensive report which shall be 'data based'. We do not intend to illustrate the 'data', but we are sure that the report shall show the data of matters that have been debated in the Court. The comprehensive status report shall be filed as per the direction given herein-above within four weeks hence. The report shall be filed three days before the next date of hearing, after serving a copy of the same to the learned counsel for the petitioners.*

5. Affidavit dated 15.03.2018 was filed by the Union of India which is at Annexure P-3 (Page 30-35) and whose relevant extracts are reproduced herein:

*14. I state and submit that so far as the Rohingyas started to have already entered in the territory of India and staying in various parts of the country are concerned, **there has been no reported case wherein either medical help or education is denied to anyone.** Wherever, medical facilities are available, **the same are provided to anyone** who visits medical health care center or Government hospitals **without the medical facilities requiring such persons to prove its citizenship.***

6. Another Affidavit dated 09.04.2018 was filed by the Union of India, Ministry of Health and Family Welfare which is at Annexure P-4 (Page 36- 41 ) and is reproduced as under:

*6. That, it has been observed from the reports of both the teams that in terms of providing the medical, sanitation and other facilities, **there is no discrimination being made between members of the Rohingya community and the other slum dwellers who are Indian citizens who reside in nearby areas.** In close geographical proximity to the Rohingya camps, there are slums where Indian citizens belonging to economically weak sections reside. **By and large it has been observed that the very facilities, in respect of health, sanitation, medication, education etc that are being made available to Indian citizens residing in neighbouring areas are also made available to and/or are not denied to members of the Rohingya community who have entered India and are residing in camps.***

*7. The subject matter of health, sanitation, etc. being a State subject, the Union of India is taking immediate Steps to interact with the respective State Governments so that **all residents, including Indian citizens residing in neighbouring areas can avail of better health, hygiene and sanitation facilities.** The Union of India requests the permission of this Hon'ble Court to file a comprehensive report after receiving reports in this regard from the concerned State Governments.*

*8. However, **it is emphatically submitted that there is no discrimination practiced with regard to the availability of***

health, sanitation, medication and education etc. amongst Rohingya illegal immigrants and Indian citizens living in the similarly placed/neighbouring areas. It is respectfully submitted that it would not be proper, justified or legal for the Petitioners or any of the parties to insist on any superior or better facilities than the facilities received / availed of by the Indian citizens in the same area or in the nearby neighbouring areas. It is respectfully submitted that the prevailing ground realities and pressure on available resources be taken into account in this regard.

7. Pursuant to the order dated 09.04.2018 of this Hon'ble court UOI filed its status report dated 08.05.2018 which is at Annexure P-5 (Page 42 to 47) and is reproduced as under:

*7. That as per the order of this Hon'ble Court dated 09.04.2018, in order to make a more comprehensive study of the conditions on site, a fresh team was constituted comprising the members of Ministry of Health and Family Welfare ( Hereafter referred to as 'MoHFW') and a representative from the Ministry of Home Affairs ( hereinafter referred to as 'MHA'). The said team visited the camps at Mewat District, Haryana on 23.04.2018 and on 24.04.2018, the same team inspected the camps of Kalinidi Kunj, Delhi. The team members, inter alia, interviewed women residing in these camps to know the status of the health facilities extended to them. The members made inquiries with the leaders of both the camps with regard to the education, medical and sanitation facilities at the camps. The team inspected the sanitation, water, medical and other facilities which are being provided by the Government. As per the observations given in the inspection reports, reasonably available facilities are provided to the Rohingya illegal migrants. The answering respondent most humbly submits that no discrimination has been made between the Rohingya refugees and the other slum dwellers (resident Indians) of nearby areas. This is with respect to health, sanitation, medical and educational facilities. It is respectfully submitted that any assessment of facilities extended to the said illegal immigrants must take into consideration the pre-existing*

*pressure on resources qua lawful citizens of the country. In any event, despite the constraints, **there is no discrimination observed against the Rohingyas with respect to the availability of facilities.***

**Delhi Government agrees Rohingyas and citizens**

**Have the same rights**

8. The GNCTD pursuant to the orders of this Hon'ble Court dated 19.03.2018 and 09.04.2018 GNCTD filed it's compliance report dated 04.05.2018 of the committee on the status of Health facilities for Rohingyas staying at Kanchankunj, Kalindikunj, Delhi. Which is at Annexure P-6 (Page 48 to 54) and whose relevant parts are reproduced herein:

*Findings:*

*(4) School- All children attend school as per information provided by their guardians. **No reports of any discrimination for admission in schools were reported by the inhabitants.** The Government school is one Kilometer away and the Rohingyas prefer sending their children to nearby private schools where the cost of education is supported by Local NGO's*

*Concluding Remarks:*

*The Committee also visited neighbouring slum areas inhabited by Indian citizens and observed that the **Rohingyas though being illegal migrants are not discriminated against and had been provided with basic facilities for healthcare, water, sanitation, education etc.** before the fire incident which were not less than the services/facilities provided to Indian citizens living in nearby slums. No specific health related grievance or dissatisfaction was aired by any of the inhabitants during the interviews. It was found that the local administration is providing emergency services*

*after the fire incident. All measures had been taken to provide relief facilities to the Rohingyas.*

9. Therefore, based on the affidavits submitted by the Union of India and the GNCTD, it can be inferred that neither the Union of India nor the Government of NCT of Delhi is denying educational facilities to the children of Rohingya refugees.
10. Pursuant to the affidavits filed by the Union Of India, GNCTD and The State of Haryana this Hon'ble court on 11.05.2018 directed as under:

*...we issue the following directions:-*

- i. As far as Nuh Block, District Mewat, Haryana is concerned, the Sub-Divisional Magistrate or the equivalent authority of District Mewat, Haryana and in respect of Kanchankunj, Kalindikunj, Delhi, the concerned jurisdictional Revenue Magistrate, Delhi are appointed as the nodal officers. The said position is accepted by Mr. Tushar Mehta, learned ASG.*
- ii. Parents or any relative or a guardian of WP(C) 859/2013 28 a child or a patient, can go with a grievance to the Nodal Officer, if any facility, as stated in the Status Report is denied to him/her. The Nodal Officer shall do the needful, as stated in the Status Report.*

11. **Writ Petition No. 870 of 2017**; Mohammad Yunus vs. UOI. This public interest litigation was filed under Article 32 of the constitution of india related to the challenge the order dated 08.08.2017 of the UOI under Article 21 of the Constituion of India because it gives direction to the authorities to deport Rohingya

Refugees. In this matter the Supreme Court Judgement 2021 INSC 239 is relevant and the relevant extracts are reproduced herein:

*“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”*

12. **Writ Petition No. 660 of 2021**; Fazal Abdali Vs. UOI this is a Public Interest Petition filed under Article 32 of the Constitution of India seeking Food Security for all Refugees and Asylum Seekers. In this matter notice has been issued on 29.11.2021.

### **Rohingya children denied education in public schools**

13. This Petition under Article 32 of the Constitution of India is being filed in respect of the refusal by the Respondents to admit Rohingya children in schools in Delhi thus denying these children the right to education which is a fundamental right.

### **Refugees: higher legal standing than mere foreigners**

14. There are approximately **22,000 Rohingyas** in India. All of these are given refugee identity cards of the United Nations High Commission for Refugees (**UNHCR**). These cards are given after an extensive interview of the Rohingyas to determine and confirm that they are not merely foreigners but that they are, in fact, Rohingyas who have

█

**fled from persecution** in Myanmar and who have had to leave their homeland and come to India in fear of persecution in their own country. Had they not run away from their country and come to India, they might have been killed, raped, tortured and they were forced to flee based on a well founded apprehension of persecution.

### **ICJ: Victims of genocide**

15. The International Court of Justice declared that Rohingyas are victims of genocide in the case Gambia v. Myanmar whose relevant extracts are reproduced herein:

*70. In view of the fundamental values sought to be protected by the Genocide Convention, the Court considers that the rights in question in these proceedings, in particular the right of the Rohingya group in Myanmar and of its members to be protected from killings and other acts threatening their existence as a group, are of such a nature that prejudice to them is capable of causing irreparable harm.*

*71. The Court notes that the reports of the Fact-Finding Mission (see paragraph 55 above) have indicated that, since October 2016, the Rohingya in Myanmar have been subjected to acts which are capable of affecting their right of existence as a protected group under the Genocide Convention, such as mass killings, widespread rape and other forms of sexual violence, as well as beatings, the destruction of villages and homes, denial of access to food, shelter and other essentials of life. As indicated in resolution 74/246 adopted by the General Assembly on 27 December 2019, this has caused almost 744,000 Rohingya to flee their homes and take refuge in neighbouring Bangladesh (UN doc. A/RES/74/246, 27*

*December 2019, preambular para. 25). According to the 2019 detailed findings of the Fact- Finding Mission, approximately 600,000 Rohingya remained in Rakhine State as of September 2019 (United Nations, Detailed Findings of the Independent International Fact- Finding Mission on Myanmar, UN doc. A/HRC/42/CRP.5, 16 September 2019, paras. 4, 57, 107, 120, 158 and 212).*

72. *The Court is of the opinion that the Rohingya in Myanmar remain extremely vulnerable. In this respect, the Court notes that in its resolution 74/246 of 27 December 2019, the General Assembly reiterated “its grave concern that, in spite of the fact that Rohingya Muslims lived in Myanmar for generations prior to the independence of Myanmar, they were made stateless by the enactment of the 1982 Citizenship Law and were eventually disenfranchised, in 2015, from the electoral process” (UN doc. A/RES/74/246, 27 December 2019, preambular para. 14).*

### **Impugned Delhi Government circular dated 23.12.24**

#### **Detect and remove Rohingya children**

16. By circular dated 23.12.24 which is given below, the Delhi Government effectively called for denying Rohingyas their right to education and also called for identification and eviction of Rohingya children from public schools in Delhi. The language used was diplomatic but the real intent of the Delhi Government behind the order was communal and anti-refugee, i.e., to remove particularly Rohingya children from the public schools in Delhi. This circular is at Annexure P-1 and reads as under:



*“Government of National Capital Territory Delhi*

*Directorate of Education: School Branch*

*Old Secretariat: Delhi-110054*

*No. DE 23(399)/Sch.Br./2024/1072*

**CIRCULAR**

*Dated:23-12-2-24*

*Sub: Regarding Verification of Documents for Admissions in DoE Schools.*

*Every year, several lakh students apply for admission to Government Schools. To enhance convenience for students and their parents/guardians and to promote transparency, the Directorate of Education (DoE) continuously works towards streamlining the admission process, making it more accessible and user-friendly.*

*However, schools must ensure strict admission procedures, verification of students' documentation **to prevent illegal Bangladeshi migrants' enrollment**, implementation of greater scrutiny **to detect and prevent unauthorized admissions of illegal Bangladeshi migrants in particular**.*

*Accordingly, all the Heads of Govt., Govt. Aided & Unaided Recognized Private Schools of DoE are directed to ensure that when admitting migrant children into schools, it is essential to follow a thorough careful process to ensure that all necessary documentation is submitted, verified and handled properly.*

*All the Heads of Govt., Govt. Aided & Unaided Recognized Private Schools of DoE are further directed that in case of any doubt, the matter must be referred to local police and revenue authority.*

*DDE (Districts/ Zones) must submit weekly report of all such cases to School Branch (HQ),*

**L**

*DoE*

*This has been issued with prior approval of the Competent Authority.*

*Sd/- 23.12.24*

*(Sanjay Subhas Kumar)*

*All Heads of Govt., Govt. Aided & Unaided Recognized Private Schools under DoE through DEL-E*

*No. DE.23(399)/Sch.Br./2024/1072*

*Dated: 23-12-2029*

*Copy to:*

- 1. PS to Secretary (Education).*
- 2. PA to Director (Education).*
- 3. All DDES (District/Zone) to ensure compliance.*
- 4 DDE (ASB/PSB) for issuing similar directions.*
- 5. System Analyst (MIS) for uploading on MIS.*
- 6. Guard File.*

*Sd/- 23-12-20*

*(V. Selvarasu)*

*OSD (School).”*

## **Respondents deny children the right to education**

### **Many media reports confirm this**

17. On 29.12.24 it was reported by the German news agency DW in the newspapers as under:

***Many Rohingya children in India are struggling to access education, as New Delhi considers them "illegal foreigners."***

*Aisha, a 7-year-old Rohingya girl, wakes up every morning chasing her elder sister Asma as the latter gets ready for school in Khajuri Khas, a locality in northeastern Delhi.*

*Aisha pleads with her elder sister to take her along most days, but her wish is never met. **She was denied admission to the same school where her sister studies in seventh grade.***

*Their father, Hussain Ahmad, a Rohingya refugee who fled Myanmar with his family in 2017, struggles to explain to Aisha why the school authorities have refused her enrollment.*

*It pains him to see her plead — a constant reminder of the hurdles they face.*

***"I have been running from one public school to another to get my daughter admitted, but she has been denied everywhere," said Ahmad, a construction worker. "They are depriving her of education. I feel very helpless."***

***Ahmad said he had submitted all the necessary documents, including United Nations documentation, required for refugee children's enrollment in school. However, the school authorities have stopped considering these papers for admission.***

#### **BARRIERS TO EDUCATION**

***For the past two years, Ahmad said, "authorities have started demanding Indian documents like Aadhaar [a biometric identity card], which we, as refugees, don't possess. Our UNHCR card has become useless," referring to the document issued by the UN refugee agency.***

*Ahmad's experience resembles those of other Rohingya families in Khajuri Khas. A few meters from his home, Sarwar Kamal, another Rohingya refugee who works as a mobile repair technician, has been making rounds of government schools in the area to secure admission for his 10-year-old daughter.*

*"I couldn't get a proper education, and I don't want the same fate for my children," Kamal told DW. "I am worried they are shattering the dreams of our children."*

*Around 40 Rohingya families have lived in this colony ever since they fled persecution in Myanmar.*

*Most of these families stay in small, rented rooms in the narrow alleys of the densely populated area of Khajuri Khas. In this locality, **17 children have been denied admission in the last two years, according to a petition filed with India's Supreme Court.***

*An estimated 40,000 Rohingya people live in India, with 20,000 of them registered with the UNHCR. Most fled Myanmar in 2017, when the Southeast Asian nation's military unleashed a violent crackdown in what many describe as a genocide against the Rohingya Muslims in western Rakhine state.*

*India does not have a national policy on refugees and considers the Rohingya to be "illegal foreigners." India is one of the few countries that is not a signatory to the 1951 UN Refugee Convention.*

#### **ANTI-ROHINGYA SENTIMENT GROWING IN INDIA**

*Meanwhile, the anti-Rohingya sentiment is growing in the South Asian nation. While Prime Minister Narendra Modi's Bhartiya Janata Party (BJP) is often associated with the anti-Rohingya narrative, it is by no means alone. The Aam Aadmi Party, which has governed Delhi for over a decade, has also used anti-Rohingya rhetoric to bolster its support ahead of elections.*

*Atishi Marlena, the chief minister of Delhi, has accused the BJP-led government of settling "a large number of illegal Rohingyas" across the capital.*

*Sabber Kyaw Min, the founder of the Rohingya Human Rights Initiative, is alarmed by the politicization of the Rohingya issue.*

*Min said this kind of political narrative targeting Rohingyas is adding to the fears of an already marginalized community.*

*"This education ban is politically motivated. The leaders of different political parties are portraying us as an enemy for their politics," Min told DW. At least 676 Rohingya people are currently being held in immigration detention centers across India, according to a 2024 report by Azadi Project and Refugees International.*

*Half of them are women and children, the report said.*

*Children find alternative schooling*

*In Khajuri Khas, children who are unable to attend regular schools have joined an alternative school — a small religious seminary established by Mohammad Syed, a Rohingya refugee.*

*The seminary, supported by the local Muslim community, operates out of a small rented room where Syed provides religious education, including lessons on the Quran. The students also learn Urdu, which helps them to communicate with the locals in the area.*

*"I stepped in when I learned our children are being denied education. These Rohingya students have dreams of having a good life but they are being discriminated for who they are," said Syed.*

*Vinod Kumar Sharma, the principal of the school that refused admission to 7-year-old Aisha, said his school cannot be blamed, as the authorities have set the rules for admitting refugee children. "I can't give admission to the students. I don't have the authority to do it," Sharma told DW.*

*"If they want to get admission, their families need to approach and take permission from higher authorities in the education department."*

*Rohingya take legal battle to top court*

*Refugees in this Delhi colony are not alone, however..*

*Emanuel Mohd, a community leader in the Nuh camp in the state, has started offering free tuition for 90 students who have been denied admission in schools.*

*"Parents are anxious about the future of their children. Education is the only means of building a better future," Mohd told DW.*

*In October, the Delhi High Court refused to hear a plea to enroll Rohingya children in local government schools. The court noted that since the Rohingya have not been legally granted entry into India, the matter falls under the purview of India's Home Ministry.*

*Ashok Agarwal, the lawyer who filed the petition, was disappointed with the court's decision. He stressed that the Indian constitution guarantees education as a fundamental right to every child in the country, irrespective of their citizenship status.*

*Agarwal is challenging the high court decision in the Supreme Court, and hopes the top court will soon set a date for hearing the case.*

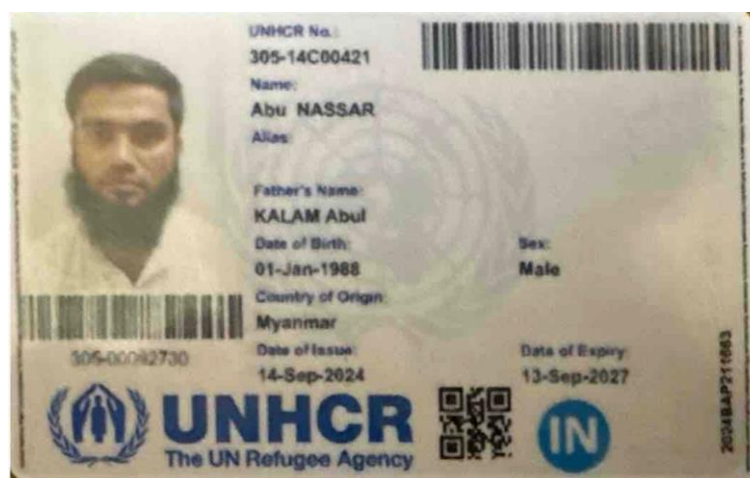
*Back at Ahmad's home in Khajuri Khas, Asma has taken on the responsibility of teaching her younger sister, Aisha, as she waits for the day when the school gates finally open for her, too.*

### **All have UNHCR Identity Cards**

18. It can be inferred from the report given above that although most Rohingya families have a **UNHCR (United Nations High Commission for Refugees) identity cards** meaning thereby that this United Nations Agency in India has certified that they are genuinely the children of refugees, however still these identity cards are being ignored by the authorities who ask for all sorts of other identity cards such as Aadhaar Cards which are not being given to refugees. This denial of admission into public schools has been

going on since 2019. It is stated in the report that it is not only the central government but also the Delhi government that has been using “anti-Rohingya rhetoric”. Thus, the respondents have politicised the narrative regarding education for refugee children.

### **A copy of the UNHCR Identity Card**



**Refugees, though foreigners,**

**have constitutionally protected rights**

**National Human Rights Commission Vs State of Arunachal Pradesh .  
(1996 SCC (1) 742)**

19. In the landmark decision of National Human Rights Commission Vs State of Arunachal Pradesh that was concerned with the situation of Chakma refugees in Arunachal Pradesh, held that Article 21 of the Indian Constitution accords equal protection even to those who are considered ‘illegal immigrants’. Considering this, denying the children of Rohingya refugees access to education prohibits their

right to a life of dignity and is a direct violation of Article 21. The relevant extracts of the abovementioned judgement is given below:

*20. We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty-bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics. Besides, by refusing to forward their applications, the Chakmas are denied rights, constitutional and statutory, to be considered for being registered as citizens of India.*

### **Relevance of International Law**

20. Many of these conventions reproduced below include non-discrimination clauses, indicating that the rights should also apply to non-nationals, including refugees. This has specific implications for refugee rights in India. Firstly, it creates an international obligation for India to adhere to the treaties it has signed. Secondly,



# S

it establishes a domestic obligation, such as under Article 51, which encourages compliance with international law. Article 51 mandates that the state should foster respect for international law and treaty obligations. Lastly, international law can help interpret constitutional guarantees, where the language allows, as clarified by the Indian Supreme Court in the Tractor Export case. Therein, the Court ruled that statutes should be interpreted in line with international law principles unless a clear intention to the contrary is expressed.

## **Convention on the Rights of Child (CRC)**

21. Convention on the Rights of Child (CRC) obligates state parties as under

*Article 2(1): States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

*(1) Recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*

*(2) States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:*

*(a) To diminish infant and child mortality;*

*(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;*

*(c) To combat disease and malnutrition, including within the framework of primary health care, though, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;*

*(d) To ensure appropriate pre-natal and postnatal health care for mothers;*

***(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;***

*(f) To develop preventive health care, guidance for parents and family planning education and services. 54.*

***Article 28(1):** States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:*

***a) Make primary education compulsory and available free to all;***

*b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*

*c) Make higher education accessible to all on the basis of capacity by every appropriate means;*

***d) Make educational and vocational information and guidance available and accessible to all children;***

*e) Make measures to encourage regular attendance at schools and the reduction of drop-out rates.*

### **International Covenant on Economic, Social and Cultural Rights**

*Article 13(1): The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. [ ... ]*

22. In clear violation of these international norms, the Government of Delhi has not guaranteed the Rohingya children the fundamental right to education.

### **Impugned Delhi High Court order dated 29.10.24**

#### **No application of mind to rights of refugees**

23. The Delhi High Court by order dated 29.10.24 dismissed the Writ Petition filed by Social Jurist seeking the implementation of the rights to education for Rohingya children. The order is as under:

*1. Present public interest petition has been filed seeking directions to the respondent to grant admission to all Myanmar Rohingya Refugee children in schools nearby to their residents.*

*2. Since the Rohingyas are foreigners who have not been officially and legally granted entry into India, the present writ petition stands disposed of with a direction to the petitioner to make a representation with the Ministry of Home Affairs, Government of India which is directed to decide the same in accordance with law as expeditiously as possible*

**Article 21(A) and Right to Education Act:****Education “to all children”****Not only to children who are citizens of India**

24. Article 21 (A) of the Constitution of India is as under:

*21A. Right to education: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. This Article requires the State to provide education “to all children” and not only to children who are citizens of India.*

25. Further, The Right to Education Act (2009) guarantees free and compulsory education for all children ages 6-14.

*Section 8(c) state that: ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;*

26. Thus, both Article 21A and The Right to Education Act are silent with respect to the citizenship of the child and thus the term “compulsory education” means obligation of the Government to ensure free education to all. Further, especially for children belonging to disadvantaged groups such as refugees without them being discriminated against for being refugees and prevented from pursuing and completing their education on such discriminatory grounds.

27. Petitioners state that the current widespread discrimination against Rohingya refugees is also extensively found in health services, food, sanitation, housing, etc. Refugee families are not permitted to enter government hospitals or government health institutions or get any free services there. Similarly, all refugee families are excluded from the Public Distribution System benefits such as subsidized grains, the benefits of the ICDS Scheme, the Aanganwadi system and other such benefits available to Indian citizens under the Food Security Act, 2013. Hence, this Petition has been filed so that discrimination against refugee families in terms of basic economic rights comes to an end.

### **Reliefs Sought**

- A. For a writ, order or direction to the Respondents quashing circular dated **23.12.2024** at **Annexure P-1** of the Delhi Government.
- B. For a direction to the Respondents to grant admission to all Rohingya children free of cost whether or not the family has the Aadhar card and to allow children to participate in all examinations including 10<sup>th</sup>, 12<sup>th</sup> and graduation without government insistence on the Aadhaar Card.

**X**

- C. For a direction to Respondents to extend all government benefits of education, free health services in government hospitals, subsidized food in PDS shops as available to Antyodya Anna Yojana (poorest of the poor) category, benefits under the Food Security Act, 2013 such as services in the Aanganwadis, etc. to Rohingya families as are available to other citizens, irrespective of citizenship.
- D. For a direction to the Respondents to carry out surveys in the areas where the refugees live and to proactively facilitate admission of refugee children in Government schools/private schools, government/private hospitals free of cost.
- E. Pass any other order, direction, writ that this Hon'ble Court deems fit in the interest of justice.

## LIST OF DATES AND EVENTS

DATE	PARTICULARS
1982	The government of Myanmar officially classifies the Rohingya minority from Rakhine state of Myanmar as "Stateless Bengali Muslims."
11.12.1992	India ratifies the Convention on the Rights of the Child (CRC), which guarantees children the right to the highest attainable standard of health. Article 24 obligates states parties to diminish child and infant mortality, to provide medical assistance, to end malnutrition, and to ensure prenatal and postnatal care for all women.
09.01.1996	In <i>Human Rights Commission v. State of Arunachal Pradesh and Anr.</i> (1996 SCC (1) 743), the Court clarified that Article 21 also applies to illegal immigrants.
2002	Article 21A was added in the Indian Constitution guarantees the right to education as a fundamental right for children between the ages of 6 and 14 years.
01.04.2010	The RTE Act, enacted on 4 August 2009, mandates free and compulsory education for children aged 6 to 14, aligning with Article 21A of the Indian Constitution. India, joining 134 other nations, enshrined education as a fundamental right when it came into force on 1 April 2010.
06.2012	Ethnic violence erupts in Myanmar. The Rohingya people are targeted. Entire villages are destroyed, the military police conduct mass arrests, rape women, torture men, destroy schools, and torture people in custody. The violence sparks a wave of Rohingya refugees who flee Myanmar
2013	Writ Petition 859 of 2013, <i>Jafar Ullah vs. UOI</i> , arose from a 2012 research mission by health activists to Rohingya refugee settlements in Delhi and Haryana. The PIL, filed in 2013, sought orders for healthcare, sanitation, living conditions, public services, and education for the refugees.
15.03.2018	The Union of India filed an affidavit in Writ Petition 859 of 2013, asserting no reported denial of medical help or education. Medical facilities, it claimed, are accessible to all at healthcare centers and

	government hospitals, without the need for proof of citizenship.
09.04.2018,	the Union of India filed an affidavit stating that no discrimination exists between Rohingya refugees and nearby Indian slum dwellers regarding access to health, sanitation, and education. Facilities available to Indian citizens are also provided to Rohingyas in camps. The Union is coordinating with States to improve services for all, asserting no special treatment is due to the Rohingya.
09.04.2018	Following the Court's order on 19.03.2018, the GNCTD submitted a report regarding Rohingyas in Kanchankunj and Kalindikunj. It found no discrimination in school admissions, with children attending schools supported by local NGOs. Despite being illegal migrants, they receive basic healthcare, sanitation, and education.
08.05.2018	In compliance with the Court's 09.04.2018 order, a team from MoHFW and MHA visited Mewat (23.04.2018) and Kalindikunj camps (24.04.2018). The inspection report noted that basic facilities were provided to Rohingya migrants, with no discrimination observed.
11.05.2018	Order of this Hon'ble Court Passing directions
29.10.24	The Delhi High Court by order dated 29.10.24 dismissed the Writ Petition filed by Social Jurist seeking the implementation of the rights to education for Rohingya children
23.12.24	By circular dated 23.12.24 which is set out herein below the Delhi Government effectively called for denying Rohingyas their right to education and also called for identification and eviction of Rohingya children from public schools in India.
29.12.2024	On 29.12.24 it was reported by the German news agency DW that respondents are denying children of Rohingya refugees with the right to education.
	Hence this Public Interest Litigation



## IN THE SUPREME COURT OF INDIA

## CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2025

(P Under the Article 32 of the Indian Constitution)

IN THE MATTER OF:

1.	Rohingya Human Rights Initiative (ROHRIngya) Through Abu Nassar S/o Abul Kalam,R/o H Block, House No-15, Sharm Vihar, Sarita Vihar Delhi-110076	Petitioner No.1
2.	Md Javed S/o Ayub Mohammad R/oHouse No. 136, C Block, Gali No. 6, Khajoor Khas, New Delhi, 110094	Petitioner No.2
3.	Roqiya Begum D/o Ahmed Zakir R/o H Block, House No-15, Sharm Vihar, Sarita Vihar Delhi-110076	Petitioner No.3
Versus		

1.	Government of NCT of Delhi, Through the Directorate of Education Old Secretariat Building, Civil Lines , New Delhi-110054	Respondent No. 1
2.	Municipal Corporation of Delhi Through the Municipal Commissioner SPM Civic Centre, Minto Road, New Delhi-110002	Respondent No. 2
3.	Union of India, Through The Secretary, Ministry Of Human Resource Development, Govt. Of India, Shastri Bhawan, Delhi - 110001	Respondent No. 3

To,  
The Hon'ble, the Chief Justice of India  
And his companion justices of  
the Supreme Court of India,

Humble petition of the Petitioner herein,  
Most Respectfully Showeth

**MOST RESPECTFULLY SHOWETH:**

1. This Petition under Article 32 of the Constitution of India is being filed. The cause of action in this petition arises from the refusal of the Delhi Government, through its circular dated 23.12.2024 (Annexure P-1, page 25), to admit Rohingya refugee children into schools in Delhi. This refusal denies these children their fundamental right to education, as guaranteed under Article 21A of the Constitution.

- 1A The Petitioner submits that because of the abovementioned circular Rohingya Children are being identified and removed from school and subsequently are also being denied admission in Delhi Schools which is causing irreparable damage to the Rohingya Children.
2. Representation requesting the admission of Rohingya refugee children into local schools was submitted to the Ministry of Home Affairs on 4.11.2024. However, no action has been taken on the aforementioned representation.
3. The Petitioner No.1 is a local non-governmental, non-profit organization established by young Rohingya activists in New Delhi, India. It was officially registered as a Public Charitable Trust with the Government of India on 01.01.2017, under registration number 20 SR IIB. ROHRIngya's primary mission is to bring attention to human rights violations against minorities, particularly the Rohingya community, widely regarded as one of the most persecuted in the world. The organization operates in India while closely monitoring the conditions of Rohingyas globally and staying informed about the latest developments in the Rohingya refugee crisis in Myanmar and Bangladesh. The above named organisation is approaching the Supreme court through one of its volunteer Abu Nassar who is a Arabic Teacher He is the son of Abul Kalam, and is currently residing at H-Block House No-15,Sharm Vihar, Sarita Vihar, Delhi-110076. His annual income is approximately 1.44 Lakhs per year. The petitioner doesn't have an email id and his Mobile Number is 9958606188. As a refugee the petitioner does not possess an Aadhar

card or Pan card but holds a UNHCR identification card with no: 305-14C00421. The Petitioner has approached this Hon'ble Court in public interest and is not seeking any relief for personal interest or for themselves. The petitioner is not involved in any civil, criminal or revenue litigation which has/could have a legal nexus with the issues involved in PIL.

4. The Petitioner 2 is a Rohingya refugee from Myanmar who currently resides at House No. 136, C Block, Gali No. 6, Khajoor Khas, New Delhi, 110094 and works as a daily wage labour his annual income is 1.5 Lakhs. As a refugee the petitioner does not possess an Aadhar card or Pan card but holds a UNHCR identification card with no: 305-10C01882. The Petitioner has approached this Hon'ble Court in public interest and is not seeking any relief for personal interest or for himself. The petitioner is not involved in any civil, criminal or revenue litigation which has/could have a legal nexus with the issues involved in PIL. The Mobile No of the Petitioner No.2 is 9315269526
5. The Petitioner 3 is a Rohingya refugee from Myanmar who currently resides at H-Block House No-15, Sharm Vihar, Sarita Vihar, Delhi-110076. and works as a tailor her annual income is 84,000 Thousand . As a refugee the petitioner does not possess an Aadhar card or Pan card but holds a UNHCR identification card with no:305-11C00378.

The Petitioner has approached this Hon'ble Court in public interest and is not seeking any relief for personal interest or for herself. The petitioner is not involved in any civil, criminal or revenue litigation which has/could have a legal nexus with the issues involved in PIL. The Mobile No. of the Petitioner No.3 is 9311902909.

6. The Respondent No.1 is the Government of NCT of Delhi through the Directorate of Education which has by circular dated 23.12.24 which is **at Annexure P-1 (Page 25)** The Delhi Government effectively called for denying Rohingyas their right to education and also called for identification and eviction of Rohingya children from public schools in Delhi.
7. The Respondent No.2 is the MCD of Delhi which runs schools in the state of delhi and is also affected by the abovementioned order and has also been reportedly denying education to Rohingya children.
8. The Respondent No.3 is the Union of India through the Directorate of Education.
9. That, the present writ Petition has been filed by the Petitioner in public interest under Article 32 of the Constitution of India and the Petitioners have no personal interest herein.
10. The Petitioner are filling the present Petition on their own and the litigation cost is being borne by the Petitioners.

11. That, a thorough research has been conducted in the matter raised through the present Writ Petition/PIL and the relevant available matters in this regard are being annexed herewith.
12. That, to the best of the Petitioner's knowledge and research, the issue raised herein was not dealt with or decided by this Hon'ble Court and that a similar or identical petition was not filed earlier by the Petitioners.

### **Factual Background**

#### **Notice issued in 3 similar Writ Petitions in Supreme Court**

#### **Kept for final hearing**

#### **Fresh SLP Diary No. 59574 of 2024 recently filed in SC**

13. There are 3 Writ Petitions pending in the Supreme Court as of today where **notices have been issued** and the **counter affidavits of the government are on record**. These Writ Petitions are
  - I. **Writ Petition 859 of 2013**; Jafar Ullah Vs. UOI
  - II. **Writ Petition No. 870 of 2017**; Mohammad Yunus vs. UOI
  - III. **Writ Petition No. 660 of 2021**; Fazal Abdali Vs. UOI
14. Fresh SLP Diary No. 59574 of 2024, Social Jurist vs. Municipal Corporatoin of Delhi, recently filed in Supreme Court.

**Union of India and Delhi Government admit**

**Rohingyas have same rights as Indian citizens**

15. These are **Writ Petition Civil 859 of 2013**; Jafar Ullah Vs. UOI In 2012 subsequent to a 2012 research mission in which health activists visited various Rohingya refugee settlements in Delhi and Haryana, a PIL petition was filed in this Hon'ble Court in 2013 the petitioners prayed for amongst other orders, granting facilities of healthcare, sanitation, living conditions, access to public services and **Education for Rohingya refugees.**
16. In the abovementioned matter this Court through order dated 09.04.2018 the Respondents to reply to the allegations stated in the abovementioned PIL and asked the respondents to file status report with respect to the living conditions of the refugees which is **at Annexure P-2** (Page 26 to 29).
17. Affidavit dated 15.03.2018 was filed by the Union of India which is **at Annexure P-3** (Page 30 to 35).
18. Another Affidavit dated 09.04.2018 was filed by the Union of India, Ministry of Health and Family Welfare which is **at Annexure P-4** (Page 36 to 41)

19. Pursuant to the order dated 09.04.2018 of this Hon'ble court UOI filed its status report dated 08.05.2018 which is **at Annexure P-5** (Page 42 to 47)

**Delhi Government agrees Rohingyas and citizens**

**Have the same rights**

20. The GNCTD pursuant to the orders of this Hon'ble Court dated 19.03.2018 and 09.04.2018 GNCTD filed its compliance report 04.05.2018 of the committee on the status of health facilities for Rohingyas staying at Kanchankunj, Kalindikunj, Delhi. Which is **at Annexure P-6** (Page 48 to 54).
21. Therefore, based on the affidavits submitted by the Union of India and the GNCTD, it can be inferred that neither the Union of India nor the Government of Delhi is denying educational facilities to the children of Rohingya refugees.
22. Pursuant to the affidavits filed by the Union of India, GNCTD and The State of Haryana this Hon'ble court on 11.05.2018 passed some directions. The abovementioned order is **at Annexure P-7** (Page 55-82)
23. **Writ Petition No. 870 of 2017**; Mohammad Yunus vs. UOI. This public interest litigation was filed under Article 32 of the constitution of india related to the challenge the order dated



08.08.2017 of the UOI under Article 21 of the Constitution of India because it gives direction to the authorities to deport Rohingya refugees. In this matter the Supreme Court Judgement 2021 INSC 239 which is **at Annexure P-8.**(Page 83 to 88)

24. **Writ Petition No. 660 of 2021**; Fazal Abdali Vs. UOI this is a Public Interest Petition filed under Article 32 of the Constitution of India seeking Food Security for all Refugees and Asylum Seekers. In this matter notice has been issued on 29.11.2021 which is **at Annexure P-9.**(Page 89)

#### **Rohingya children denied education in public schools**

25. This Petition under Article 32 of the Constitution of India is being filed in respect of the refusal by the Respondents to admit Rohingya children in schools in delhi and hence, denying these children the right to education which is a fundamental right.

#### **Refugees: higher legal standing than mere foreigners**

26. There are approximately **22,000 Rohingyas** in India. All of these are given refugee identity cards of the United Nations High Commission for Refugees (**UNHCR**). These cards are given after an extensive interview of the Rohingyas to determine and confirm that they are not merely foreigners but that they are, in fact, Rohingyas who have

**fled from persecution** in Myanmar and who have had to leave their homeland and come to India in fear of persecution in their own country. Had they not run away from their country and come to India, they might have been killed, raped, tortured and were forced to flee based on this well founded apprehension of persecution.

### **ICJ: Victims of genocide**

27. The International Court of Justice declared that Rohingyas are victims of genocide in the case Gambia v. Myanmar which is **at Annexure P-10.** (Page 90 to121)

### **Impugned Delhi Government circular dated 23.12.24**

#### **Detect and remove Rohingya children**

28. By circular dated 23.12.24 which is given below, the Delhi Government effectively called for denying Rohingyas their right to education and also called for identification and eviction of Rohingya children from public schools in India. The language used was diplomatic but the real intend of the Delhi Government behind the order was communal and anti-refugee and to remove particularly Rohingya children from the public schools in Delhi. This circular is **at Annexure P-1** (Page 25)

## **Respondents deny children the right to education**

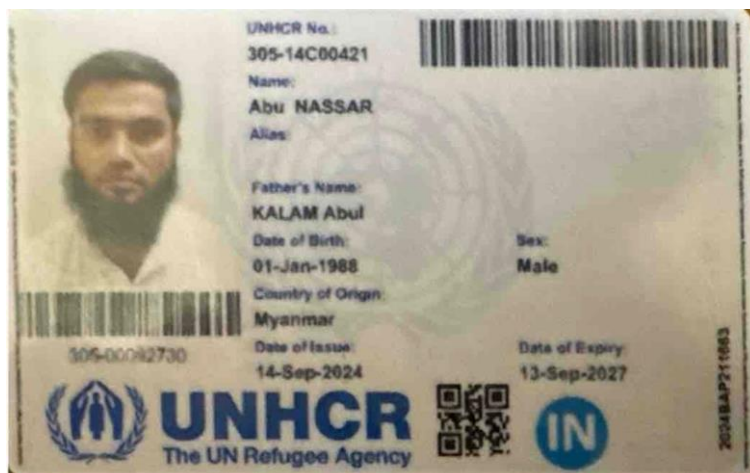
### **Many media reports confirm this**

29. On 29.12.24 it was reported by the German news agency DW that Many Rohingya children in India are struggling to access education, as New Delhi considers them "illegal foreigners". The abovementioned media report is **at Annexure P-11** (Page 122-125)

### **All have UNHCR Identity Cards**

30. It can be seen from the report mentioned above that although most Rohingya families have a **UNHCR (United Nations High Commission for Refugees) identity cards** meaning thereby that this United Nations Agency in India has certified that they are genuinely the children of refugees, and yet these identity cards are being ignored by the authorities who ask for all sorts of other identity cards such as Aadhaar Cards which are not being given to refugees. This denial of admission into public schools has been going on since 2019. It is stated in the report that it is only the central government but also the Delhi government that has been using "anti-Rohingya rehtoric". Thus, the respondents have politicised the narrative regarding education for refugee children. An example of the UNHCR Identity card is **at Annexure P-12** (Page 126-12 )

### A copy of the UNHCR Identity Card



**Refugees, though foreigners,**

**have constitutionally protected rights**

**National Human Rights Commission Vs State of Arunachal Pradesh .  
(1996 SCC (1) 742)**

31. In the landmark decision of National Human Rights Commission Vs State of Arunachal Pradesh that concerned the situation of Chakma refugees in Arunachal Pradesh, held that Article 21 of the Indian Constitution accords equal protection even to those who are considered 'illegal immigrants'. Considering this, denying the children of Rohingya refugees access to education prohibits their right to a life of dignity and is a direct violation of Article 21. The abovementioned judgment is **at Annexure P-13.**(Page 12 -13 )

## Relevance of International Law

32. Many of these conventions reproduced below include non-discrimination clauses, indicating that the rights should also apply to non-nationals, including refugees. This has specific implications for refugee rights in India. Firstly, it creates an international obligation for India to adhere to the treaties it has signed. Secondly, it establishes a domestic obligation, such as under Article 51, which encourages compliance with international law. Article 51 mandates that the state should foster respect for international law and treaty obligations. Lastly, international law can help interpret constitutional guarantees, where the language allows, as clarified by the Indian Supreme Court in the Tractor Export case. Therein, the Court ruled that statutes should be interpreted in line with international law principles unless a clear intention to the contrary is expressed.

## Convention on the Rights of Child (CRC)

33. Convention on the Rights of Child (CRC) obligates state parties as under:

*Article 2(1): States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the*

*child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

*(1) Recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.*

*(2) States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:*

*(a) To diminish infant and child mortality;*

*(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;*

*(c) To combat disease and malnutrition, including within the framework of primary health care, though, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;*

*(d) To ensure appropriate pre-natal and postnatal health care for mothers;*

***(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;***

*(f) To develop preventive health care, guidance for parents and family planning education and services. 54.*

**Article 28(1):** *States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:*

**a) Make primary education compulsory and available free to all;**

*b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;*

*c) Make higher education accessible to all on the basis of capacity by every appropriate means;*

**d) Make educational and vocational information and guidance available and accessible to all children;**

*e) Make measures to encourage regular attendance at schools and the reduction of drop-out rates.*

### **International Covenant on Economic, Social and Cultural Rights**

*Article 13(1): The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. [ ... ]*

34. In clear violation of these international norms, the Government of Delhi has not guaranteed the Rohingya children the fundamental right to education.

### **Impugned Delhi High Court order dated 29.10.24**

#### **No application of mind to rights of refugees**

35. The Delhi High Court by order dated 29.10.24 dismissed the Writ Petition filed by Social Jurist seeking the implementation of the

rights to education for Rohingya children. Order dated 29.10.2024 is at **Annexure P-14** (Page 138-139)

**Article 21(A) and Right to Education Act:**

**Education “to all children”**

**Not only to children who are citizens of India**

36. Article 21 (A) of the Constitution of India is as under:

***21A. Right to education:**The State shall provide free and compulsory education **to all children** of the age of six to fourteen years in such manner as the State may, by law, determine. This Article requires the State to provide education “to all children” and not only to children who are citizens of India.*

37. Further The Right to Education Act (2009) guarantees free and compulsory education for all children ages 6-14.

*Section 8(c) state that:ensure that the **child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;***

38. Thus, both Article 21A and The Right to Education Act are silent with respect to the citizenship of the child. Therefore, the term “compulsory education” means obligation of the government to ensure free education to all especially children belonging to disadvantaged groups such as refugees that cannot be discriminated against and prevented from pursuing and completing their education on any grounds.



39. Petitioners state that the current widespread discrimination against Rohingya refugees is also to be extensively found in health services, food, sanitation, housing, etc. Refugee families are not permitted to enter government hospitals or government health institutions and get any free services there. Similarly, all refugee families are excluded from the Public Distribution System benefits such as subsidized grain, the benefits of the ICDS Scheme, the Aanganwadi system and other such benefits available to Indian citizens under the Food Security Act, 2013. Hence this Petition has been filed so that discrimination against refugee families in terms of basic economic rights comes to an end.

#### **GROUND**

40. Hence the Petitioner moves before this Hon'ble Court by way of this petition on, inter alia, following grounds:

A. **BECAUSE** in Human Rights Commission vs. State of Andhra Pradesh & Anr. (1996 SCC (1) 742) this Hon'ble Court held that Article 21 of the Indian Constitution affords equal protection even to those who are considered 'illegal immigrants'

B. **BECAUSE** through Affidavit of Union of India dated 15.03.2018, 09.04.2018 and Status Report dated 08.05.2018 in WP 859 of 2013 it was submitted by the Union of India that children of Rohingya refugees are not being denied educational facilities.

C. **BECAUSE** in compliance of orders dated 19.03.2018 and 09.04.2018 in WP(C) 859 of 2013 report dated 04.05.2018 was submitted by GNCTD that “Rohingyas are not being discriminated against and had been provided with basic facilities for healthcare, water, sanitation, education etc”

D. **BECAUSE** a three Judge bench of this court directed through order dated 11.05.2018 in W.P(C) No.859 of 2013 directed as under:

*...we issue the following directions:-*

*iii. As far as Nuh Block, District Mewat, Haryana is concerned, the Sub-Divisional Magistrate or the equivalent authority of District Mewat, Haryana and in respect of Kanchankunj, Kalindikunj, Delhi, the concerned jurisdictional Revenue Magistrate, Delhi are appointed as the nodal officers. The said position is accepted by Mr. Tushar Mehta, learned ASG.*

*iv. Parents or any relative or a guardian of WP(C) 859/2013 28 a child or a patient, can go with a grievance to the Nodal Officer, if any facility, as stated in the Status Report is denied to him/her. The Nodal Officer shall do the needful, as stated in the Status Report.*

E. **BECAUSE** Article 21A and The right to education act are silent with respect to the citizenship of the child and thus the term “compulsory education” means obligation of the Government to ensure free education to all especially children belonging to disadvantage group such as refugees and thus cannot be

discriminated against for being refugees and cannot be prevented from pursuing and completing education on any ground.

- F. **BECAUSE** in light of Article 51 of the Indian Constitution, the Respondents have an obligation under various international conventions, as mentioned above, to not discriminate against refugees in providing education. They are also required to make educational and vocational information and guidance available and accessible to all children.
- G. **BECAUSE** children in the Rohingya refugee camps in New Delhi and cannot attend public/private schools and have been rejected from attending school.
- H. **BECAUSE** the petitioner has not filed any other petition seeking same reliefs in this Hon'ble Court or any other High Court in the country.
- I. **BECAUSE** the Petitioner has no other alternate equally efficacious remedy than to approach this Hon'ble Court.

#### **PRAYER**

41 Therefore, in view of the facts and circumstances mentioned herein above. It is humbly requested to this Hon'ble Court to grant the following reliefs:

- A. For a writ, order or direction to the Respondents quashing circular dated 23.12.2024 at **Annexure P-1** of the Delhi Government.
- B. For a direction to the Respondents to grant admission to all Rohingya children free of cost whether or not the family has the Aadhar card and to allow children to participate in all examinations including 10th, 12th and graduation without government insistence on the Aadhaar Card.
- C. For a direction to Respondents to extend all government benefits of education, free health services in government hospitals, subsidized food in PDS shops as available to Antyodya Anna Yojana (poorest of the poor) category, benefits under the Food Security Act, 2013 such as services in the Aanganwadis, etc. to Rohingya families as are available to other citizens, irrespective of citizenship.
- D. For a direction to the Respondents to carry out surveys in the areas where the refugees live and to proactively facilitate admission of refugee children in Government schools/private schools, government/private hospitals free of cost.
- E. Pass any other order, direction, writ that this Hon'ble Court deems fit in the interest of justice.

**AND FOR THIS ACT OF KINDNESS, THE  
PETITIONERS AS IN DUTY BOUND SHALL EVERY  
PRAY.**

Drawn on: 08.01.2025

Drawn By: Manik Gupta

Filed By:



Satya Mitra

(AOR for the petitioner)

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (C) NO. \_\_\_\_ of 2025

IN THE MATTER OF

Rohingya Human Rights Initiative

(ROHRIngya) & Ors.

...Petitioners

Versus

Government of NCT of Delhi & Ors

...Respondents

AFFIDAVIT

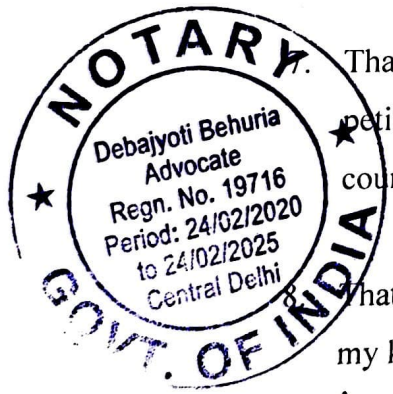
I, Abu Nassar, aged 37, S/o Abul Kalam , R/o H- Block House No-15, Sharm Vihar, Sarita Vihar Delhi -110076 do hereby solemnly state on oath as under:

1. That I am member of the Petitioner organization and have been authorized to file the above captioned petition/application and I am well conversant with the facts and circumstances of the case and as such and I am competent to swear this affidavit on behalf of myself and others.

That I have understood the contents of the accompanying Synopsis and List of Dates Pages B to Z and Petition from para 1 to 441 on pages 1 to 21 as shown and explained to me, I say that the same were filed under my instructions and that the contents thereof are true and correct to the best of my knowledge and nothing material has been concealed therein.

3. That I have filed the petition as Public interest Litigation. I have gone through the Public Interest Litigation Rules, notifications of Hon'ble Supreme Court of India and do hereby affirm that the present public Interest Litigation is in conformity thereof.

- 4. That the petitioner has no personal interest in the litigation and the petitioner neither would in any manner benefit from the relief sought in the present petition save as the member of general public. The petition is not guided by self-gain or gain of any person, institution, body or there is no motive other than of public interest in filing the present petition.
- 5. That I have done whatsoever enquiry/investigation which was in my power to do to collect all data/material which was relevant for this court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/maternal/information which may have enabled this court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.
- 6. That the Annexures to the Petition are true and correct copies of the respective originals.



That the Petitioner has not filed any other or similar petition/application before this Hon'ble Court or before any other court.

That the contents of the writ petition are true and correct to the best of my knowledge and belief and no part of it is false.

*[Handwritten Signature]*

*[Handwritten Signature]*  
Deponent

NOTARIAL REG. No. 19716  
Sr. No. 7100  
Date 20 JAN 2025  
Verified and signed at

20 JAN 2025  
Verification on this

that the contents of the paras of the above affidavit are true to my knowledge and belief and nothing material has been concealed therefrom

20 JAN 2025

VERIFIED THAT THE DEPONENT  
Smt./Km. *Abu Nallas*  
to, W/o, D/o. *Abu Kalam*  
Identified by Shri/Smt. *Mamta*  
as Solemnly affirmed before me at  
New Delhi on *20 JAN 2025* as SI/No. *7100*  
That the Contents of the affidavit which have  
been explained to him are true and  
correct to his knowledge.

*[Handwritten Signature]*  
Deponent

*I have Identified the deponent's Identity*  
*[Handwritten Signature]*  
has signed in my presence

Notary Public

## APPENDIX

**ARTICLES OF THE INDIAN CONSTITUTION**

**Article 21** - No person shall be deprived of his life or personal liberty except according to procedure established by law.

**Article 21A** -The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine

**Article 51**-The State shall endeavour to— (a) promote international peace and security; (b) maintain just and honourable relations between nations; (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and (d) encourage settlement of international disputes by arbitration.

**Convention on the Rights of Child (CRC)**

*Article 2(1): States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the*

*child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

*(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;*

*Article 28(1): States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:*

- a) Make primary education compulsory and available free to all*
- d) Make educational and vocational information and guidance available and accessible to all children;*

**International Covenant on Economic, Social and Cultural Rights**

*Article 13(1): The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. [ ... ]*



**GOVERNMENT OF NATIONAL CAPITAL TERRITORY DELHI  
DIRECTORATE OF EDUCATION: SCHOOL BRANCH  
OLD SECRETARIAT: DELHI-110054**

No. DE.23(399)/Sch.Br./2024/1072

Dated: 23-12-2024

**CIRCULAR**

**Sub: Regarding Verification of Documents for Admissions in DoE Schools.**

Every year, several lakh students apply for admission to Government Schools. To enhance convenience for students and their parents/guardians and to promote transparency, the Directorate of Education (DoE) continuously works towards streamlining the admission process, making it more accessible and user-friendly.

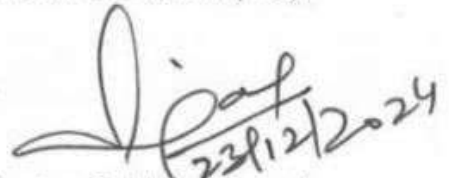
However, schools must ensure strict admission procedures, verification of students' documentation to prevent illegal Bangladeshi migrants' enrollment, implementation of greater scrutiny to detect and prevent unauthorized admissions of illegal Bangladeshi migrants in particular.

Accordingly, all the Heads of Govt., Govt. Aided & Unaided Recognized Private Schools of DoE are directed to ensure that when admitting migrant children into schools, it is essential to follow a thorough careful process to ensure that all necessary documentation is submitted, verified and handled properly.

All the Heads of Govt., Govt. Aided & Unaided Recognized Private Schools of DoE are further directed that in case of any doubt, the matter must be referred to local police and revenue authority.

DDE (Districts/ Zones) must submit weekly report of all such cases to School Branch (HQ), DoE.

This has been issued with prior approval of the Competent Authority.

  
(Sanjay Subhas Kumar)  
DDE (School)

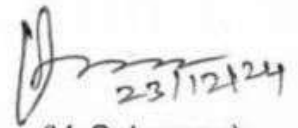
**All Heads of Govt., Govt. Aided & Unaided Recognized Private Schools under DoE through DEL-E.**

No. DE.23(399)/Sch.Br./2024/1072

Dated: 23-12-2024

Copy to:-

1. PS to Secretary (Education).
2. PA to Director (Education).
3. All DDEs (District/Zone) to ensure compliance.
4. DDE (ASB/PSB) for issuing similar directions.
5. System Analyst (MIS) for uploading on MIS.
6. Guard File.

  
(V. Selvarasu)  
OSD (School)

WP(C) 859/13

1

ITEM NO.2+12

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  
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.859/2013

JAFFAR ULLAH &amp; ANR.

Petitioner(s)

VERSUS

U.O.I &amp; ORS.

Respondent(s)

(With appln.(s) for exemption from filing O.T. and permission to file Annexures)

WITH W.P.(C) No.793/2017 (X)

(With appln.(s) for intervention, intervention/impleadment, permission to appear and argue in person, permission to file additional documents, impleading party and clarification/direction)

W.P.(C) No.870/2017 (PIL-W)W.P.(C) No.886/2017 (PIL-W)W.P.(C) No.919/2017 (PIL-W)

(With appln.(s) for appropriate orders/directions)

W.P.(C) No.916/2017 (PIL-W)W.P.(C) No.924/2017 (PIL-W)

(With appln.(s) for intervention/impleadment)

W.P.(C) No.955/2017 (PIL-W)

(With appln.(s) for clarification/direction)

Diary No(s).32692/2017 (PIL-W)W.P.(C) No.1111/2017 (PIL-W)

(With appln.(s) for permission to appear and argue in person and permission to file appln.(s) for direction)

W.P.(C) No.262/2018

(With appln.(s) for exemption from filing O.T., c/delay in refiling and grant of interim relief)

Date : 09-04-2018 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s)

Mr. Fazal Abdali, Adv.

Mr. Deepak Kumar Singh, Adv.

Ms. Jyoti Mendiratta, AOR

WP 793/17	Mr. Prashant Bhushan, AOR Ms. Cheryl D'Souza, Adv.
WP 870/17	Mr. Satya Mitra, AOR
WP 886	Dr. Ashwani Kumar, Sr. Adv. Ms. Sujeeta Srivastava, AOR Ms. K.G. Gopala Krishnan, Adv. Ms. Raushan Tara Jaswal, Adv.
WP 919/17	Mr. R.H.A. Sikander, Adv. Mr. Prateek Gupta, Adv. Mr. Mansoor Ali, Adv. Mrs. Sudha Gupta, AOR Ms. Lubna Ishrat Siddiqui, Adv.
WP 916/17	Mr. Kunal Chatterji, AOR Ms. Maitrayee Banerjee, Adv. Siddiqua Parveen, Adv.
WP 924/17	Mr. Sajjan Poovayya, Sr. Adv. Mr. Ashwini Kumar Upadhyay, Adv. Mr. Kapish Seth, Adv. Mrs. Deepeika Kalia, Adv. Mr. Priyadarshi Banerjee, Adv. Mr. Pratibhanu Singh Kharola, Adv. Mr. R. D. Upadhyay, AOR
WP 955/17	Mr. P.V. Surendra Nath, Sr. Adv. Ms. Resmitha R. Chandran, AOR Ms. Lekha Sudhakaran, Adv.
Diary No.32692/17	Mr. Purushottam Sharma Tripathi, AOR
WP 1111/17	Mr. M.K. Tiwari, Petitioner-in-person
WP 262/18	Mr. C.U. Singh, Sr. Adv. Mr. Ragenth Basant, Adv. Mr. P.V. Dinesh, AOR Ms. Sindhu T.P., Adv. Ms. Arushi Singh, Adv.
For Respondent(s)	Mr. Tushar Mehta, ASG Mr. Ajit Kr. Sinha, Sr. Adv. Mrs. Madhavi Divan, Adv. Mr. Rajat Nair, Adv. Mr. Saurabh Shamsheri, Adv. Mr. Kanu Agrawal, Adv. Mr. Manan Popli, Adv. Mr. Adit Khorana, Adv. Mr. Arijit Prasad, Adv. Ms. Niranjana Singh, Adv.

Mr. S. Wasim Quadri, Adv.  
Mr. B. V. Balaram Das, AOR

Mr. Tushar Mehta, ASG  
Mr. B.K. Satija, Adv.  
Mr. Sanjay Kumar Visen, AOR

Ms. Sushma Suri, AOR

Ms. Archana Pathak Dave, AOR

Mr. Suvidutt M.S., AOR

Mr. Somiran Sharma, AOR

Mr. Pranav Sachdeva, AOR

Mr. Debasis Misra, AOR  
Mr. Binay Kumar Jha, Adv.  
Mr. Parvez Bashista, Adv.  
Mr. D.K. Thakur, Adv.  
Mr. Rajnish Kumar, Adv.

Mr. Lakshmi Raman Singh, AOR

Mr. R.K. Raizada, Sr. Adv.  
Mr. Abhishek, AOR  
Mr. Rajendran, Adv.

Ms. Anitha Shenoy, Adv.  
Ms. Srishti Agnihotri, Adv.  
Mr. Abhishek Kaushik, Adv.  
Mr. Raghu Raghunath, Adv.  
Ms. Remya Raj, Adv.

Mrs. K. Enatoli Sema, Adv.  
Mr. Edward Belho, Adv.  
Mr. Amit Kumar Singh, Adv.  
Mr. K. Luikang Michael, Adv.  
Mr. Z.H. Isaac Haiding, Adv.

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

Learned counsel for the petitioner submits that the Rohingyas who are residing in camps in Mewat at Haryana and Kalindi Kunj at Delhi, are deprived of basic rights and amenities which are necessary for existence of human beings. This submission, however, is refuted by Mr. Tushar Mehta,

learned Additional Solicitor General, appearing for the Union of India as well as for NCT of Delhi and Mr. B.K. Satija, learned counsel for the State of Haryana.

A prayer is made by Mr. Tushar Mehta, learned Additional Solicitor General and Mr. B.K. Satija, learned counsel to grant some time to file comprehensive report which shall be 'data based'. We do not intend to illustrate the 'data', but we are sure that the report shall show the data of matters that have been debated in the Court. The comprehensive status report shall be filed as per the direction given herein-above within four weeks hence. The report shall be filed three days before the next date of hearing, after serving a copy of the same to the learned counsel for the petitioners.

At this juncture, Mr. Kunal Chatterji, learned counsel appearing on behalf of the West Bengal Commission for Protection of Child Rights has invited our attention to an application pertaining to children's right.

Mr. Tushar Mehta, learned Additional Solicitor General shall obtain instructions on the said application and make a submission on the next date of hearing.

Let the matter be listed on 9<sup>th</sup> May, 2018.

(Chetan Kumar)  
Court Master

(H.S. Parasher)  
Assistant Registrar

IN THE SUPREME COURT OF INDIA

[ CIVIL ORIGINAL JURISDICTION ]

I.A. NO. 14970 OF 2018

IN

WRIT PETITION [CIVIL] NO.793 OF 2017

**IN THE MATTER OF**

Mohammad Samluliah & Anr.

Petitioners

Versus

Union of India & ors.

Respondents

**AFFIDAVIT ON BEHALF OF RESPONDENT - UNION OF INDIA**

I Pramod Kumar s/o Shri Amar Nath aged about 53 years having my office at National Stadium, Ministry of Home Affairs, New Delhi, do hereby solemnly affirm and state as under:

1. I am functioning as Director (Foreigners 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 state and submit that at the outset I deny and dispute the contents of the captioned Interim Application which is solely based on newspaper reports though the deponent, in the affirmation, has said that the facts stated are "believed to be true to the best of my knowledge"

3. I respectfully submit that in view of the fact that the petition is based upon mere newspaper articles, I am advised not to deal with the Application parawise at this stage.
4. Before filing an Affidavit in Reply to the captioned I.A., I crave leave to refer to and rely upon the contents of the counter affidavit filed to the main petition earlier. The same may be treated as forming the part of the present reply also.
5. I state and submit that as I am not filing the Affidavit in Reply parawise, I am only dealing with the prayers made in the Interim Application at page 21 which are in three parts viz:
  - (a) No "push back" of Rohingya refugees take place;
  - (b) Grant of medical, health care and educational facilities;
  - (c) A direction by this Hon'ble Court to grant Refugee Identification Cards through Foreigner Regional Registration Officer [FRRO]
6. I state and submit that the allegations against the Border Security Forces are found to be completely false. The Central Government sought a report from the Border Security Force and it is found that the allegations made in the Interim Application with regard to the use of chilli and stun grenades are false, incorrect and far from truth. It is submitted that no such devises are used either as alleged or otherwise.
7. It is respectfully submitted that the Border Security Force (BSF) was raised on 01 December, 1965 and is presently guarding the Indo-Pakistan and Indo-Bangladesh Border. As per BSF Act & Rules, the tasks of the PSF are:-
  - (i) Promote a sense of security, among the people living in the

border areas.

(ii) Prevent trans border crimes, un-authorized entry into or exit from the territory of India.

(iii) Prevent smuggling and any other illegal activity.

To complete the assigned tasks, BSF takes following peace time actions:-

(a) Dominates the routes of ingress and egress through International Boundary and establishes Border Out-Posts (BOPs).

(b) Policing and patrolling along the borders to ensure that borders of the country are not violated/ breached.

(c) Effective anti-smuggling and anti-infiltration measures like establishing observation posts, laying ambushes and patrolling etc. along the borders.

(d) Promotes sense of security among the border population by establishing its presence in the remote border areas and getting involved in the welfare of the border community by sponsored or Government undertaking programmes.

(e) Co-ordination with the counterpart to ensure peace and tranquility on the borders.

8. It is respectfully submitted that BSF is performing its duties in challenging circumstances to- (a) promote a sense of security among the people living in the border areas, (b) ensure the security of the nation by preventing un-authorized entry into or exit from the territory of India and (c) prevent trans-border crimes including smuggling and other illegal activity.

9. I respectfully submit that India is already facing serious problem of infiltration because of its porous border with other countries which is the root cause of spread of terrorism in the country which is taking thousands of lives of innocent citizens and security personnel. Securing the borders of any



sovereign nation, in accordance with law, is an essentially executive function and this Hon'ble Court would not issue a writ directing not only the Central Government but all State Governments having a common border to ensure that foreigners enter the territory of India.

10. It is further respectfully submitted that as per the provisions in the Passport (Entry into India) Act, 1920 and the Passport (Entry into India) Rules, 1950, every foreigner entering India must be in possession of a valid national passport or any other internationally recognised travel document establishing his/her nationality and identity and bearing (a) his/her photograph, and (b) a valid visa for India granted by an authorised Indian representative abroad.
11. It is therefore respectfully submitted that the steps being taken by any border guarding force is strictly in accordance with the law, in larger public interest and in the interest of nation.
12. I respectfully submit that all agencies tasked with the function of guarding the borders of our nations are discharging their duties strictly in accordance with law and complying with the human rights in larger national interest.
13. I respectfully submit that as already pointed out in the counter a signatory to the United Nations filed earlier India is not Convention of 1951 relating to the Status of Refugees and the Protocol of 1967 issued thereunder. The obligation of non refoulment is essentially covered by the provisions of the aforesaid convention to 1951 to which India is not a signatory. submitted that considering the very peculiar geographical situation existing namely India sharing its land border with China, Pakistan, Bangladesh, Bhutan, Nepal, Myanmar, it is not in the interest of the national security for this Hon'ble Court to issue a direction as sought for.

14. I state and submit that so far as the Rohingyas stated to have already entered in the territory of India and staying in various parts of the country are concerned, there has been no reported case wherein either medical help or education is denied to anyone. Wherever, medical facilities are available, the same are provided to anyone who visits medical health care centre or Government hospitals without the medical facilities requiring such person to prove its citizenship.

So far as the third prayer with regard to identification cards is concerned, the said issue is essentially in the domain of policy making and governance by the executives. However, it is respectfully pointed out that India being not a signatory to United Nations Convention of 1951 relating to the Status of Refugees and the Protocol of 1967 issued thereunder and there being no law passed by the Parliament with regard to refugees, there cannot be any issuance of refugees identification card to any person.

It is submitted that neither the Ministry of Home Affairs nor the Foreign Regional Registration Officers [FRRO] / Foreign Registration Officers [FRO] have issued such refugee identification card to any person.

15. I respectfully submit that comparison with Sri Lankan Tamilian refugees based upon which prayer is sought to be made is ill founded and misconceived. The following facts will satisfy this Hon'ble Court that there is no comparable parity between the two cases as the case of Sri Lankan Tamilian refugees stands on different footing as narrated hereunder:

16. As regards the submission' in the Interim Application to extend the relief facilities granted to Sri Lankan Tamil refugees to Rohingyas, it is respectfully submitted that grant of certain relief facilities to the Sri Lankan Tamil Refugees has its genesis in the Indo-Ceylon Agreement of 1964. According to the bilateral agreement between the Government of India and the

Government of Ceylon (now Sri Lanka) signed on 30.10.1964, 5.25 lakh persons of Indian origin settled in Sri Lanka along with their natural increase were to be repatriated in a period of 15 years. Declared objective of the agreement was that all persons of Indian origin in Ceylon (now Sri Lanka) who have not been recognized either as citizens of Ceylon or as citizen of India should become citizens either of Ceylon or of India.

17. It is further respectfully submitted that by further agreement signed between the two countries in January, 1974, India agreed for the repatriation of another 75000 persons of Indian origin along with their natural increase within a period of 2 years after the Therefore, persons of the first agreement had been repatriated. under the Indo-Sri Lanka Agreements of 1964 and 1974, the Government of India had agreed to repatriate and grant Indian citizenship to six lakh persons of Indian origin together with their natural increase by 1981-82. It is submitted that rehabilitation assistance was given to such persons of Indian origin as per a bilateral agreement between the two nations. It is further respectfully submitted that as a result of an accord between the Government of India and the Government of Sri Lanka in January, 1986, the Government of Sri Lanka had agreed to grant Sri Lankan citizenship to 94,000 persons out of 6 lakhs persons originally to be granted Indian citizenship as per 1964 and 1974 agreements.

DEPONENT

#### VERIFICATION

Verified and signed on this 15 MAR 2018 day of March, 2018. That contents of para 1 to 17 of the above affidavit is true and correct to my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

**IN THE SUPREME COURT OF INDIA**  
**CIVIL ORIGINAL JURISDICTION**  
**WRIT PETITION(C) No. 859 of 2013**

IN THE MATTER OF:

JAFFAR ULLAH & ANR. ...PETITIONERS

**VERSUS**

UNION OF INDIA AND ORS. ...RESPONDENTS

**AFFIDAVIT ON BEHALF OF RESPONDENT NO.1,**  
**UNION OF INDIA, MINISTRY OF HEALTH AND FAMILY**  
**WELFARE:**

I, Ajay Kumar, aged about 44 years, working as Under-Secretary in the Ministry of Health and Family Welfare, Government of India at New Delhi, do hereby solemnly affirm and state on oath as under:



1. That, in my above mentioned official capacity, I am conversant with the facts of the case and competent as well as duly authorized to file Affidavit on behalf of the Respondent No.1.

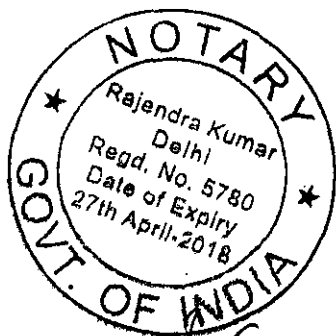
*(Signature)*  
**AJAY KUMAR**  
Under Secretary  
Ministry of Health & F.W.  
Govt. of India  
New Delhi

2. That, I have read and understood the contents of the Petition and deny all the contentions, statements, submissions made therein except whatever have been specifically admitted herein below.

3. Briefly stated, the present petition has been filed invoking jurisdiction of this Hon'ble Court under article 32 read with Article 142 of the Constitution of India, seeking the implementation of the Janani Suraksha Yojna (hereinafter referred to as JSY) and other Government facilities for the Rohingyas immigrants presently living at Kalandi Kunj, New Delhi and Village Salheri, District Mewat, Haryana.

4. The above mentioned petition was listed before this Hon'ble Court on 19.03.2018 wherein this Hon'ble Court has passed following order:

".....enable Ms. Madhavi Divan, learned counsel appearing on behalf of the Union of India to file a comprehensive status report. Needless to say, the report shall be passed on facts and after visit to site".

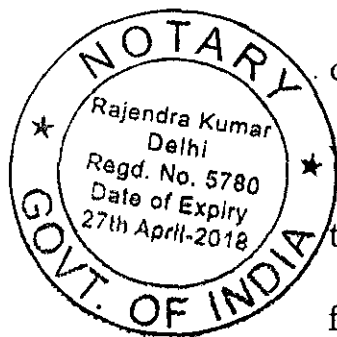


(AJAY KUMAR)  
Under Secretary  
Ministry of Health & F.W.  
Govt. of India

5. I state and submit that in respectful compliance of the aforesaid order, the Union of India is to file a comprehensive Status Report.

6. That, as per the order dated 19.03.2018 of this Hon'ble Court, two teams were constituted to visit the sites. The first team was headed by Dr. Sumita Ghosh, Deputy Commissioner (Maternal Health), Ministry of Health & Family Welfare. This team visited the camp near Kalindi Kunj (Kanchan Kunj), New Delhi on 3<sup>rd</sup> April 2018. The team met the inhabitants of the refugee camps, interviewed them at length and also inspected various facilities which are being provided by the Government.

5. That, the second team headed by Dr. Dinesh Baswal, Deputy Commissioner (Maternal Health), Ministry of Health & Family Welfare visited the Village Salheri, District Mewat, Haryana on 4<sup>th</sup> April 2018 and inspected the conditions of the inhabitants of the refugee camp. The team members interalia, interviewed pregnant women to know the status of the health facilities. The team inspected the sanitation, water, medical and other facilities which are being provided by the Government.

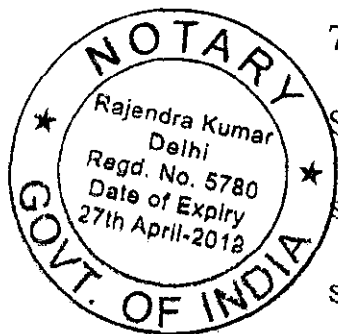


*Smf*  
(AJAY KUMAR)  
Under Secretary  
Ministry of Health & F.W.  
Govt. of India  
New Delhi

The reports made by the said teams have been received by the Union of India.

6. That, it has been observed from the reports of both the teams that in terms of providing the medical, sanitation and other facilities, there is no discrimination being made between members of the Rohingya community and the other slum dwellers who are Indian citizens who reside in nearby areas. In close geographical proximity to the Rohingya camps, there are slums where Indian citizens belonging to economically weak sections reside. By and large it has been observed that the very facilities, in respect of health, sanitation, medication, education etc that are being made available to Indian citizens residing in neighbouring areas are also made available to and /or are not denied to members of the Rohingya community who have entered India and are residing in camps.

7. The subject matter of health, sanitation, etc. being a State subject, the Union of India is taking immediate steps to interact with the respective State Governments so that all residents, including Indian citizens residing in neighbouring areas can avail of better health, hygiene and sanitation facilities. The Union of India requests the

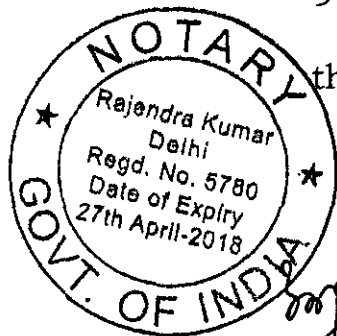


*[Signature]*  
(AJAY KUMAR)  
Under Secretary  
Ministry of Health & F.W.  
Govt. of India  
New Delhi

permission of this Hon'ble Court to file a comprehensive report after receiving reports in this regard from the concerned State Governments.

8. However, it is emphatically submitted that there is no discrimination practiced with regard to the availability of health, sanitation, medication and education etc. amongst Rohingya illegal immigrants and Indian citizens living in the similarly placed/neighbouring areas. It is respectfully submitted that it would not be proper, justified or legal for the Petitioners or any of the parties to insist on any superior or better facilities than the facilities received / availed of by the Indian citizens in the same area or in the nearby neighbouring areas. It is respectfully submitted that the prevailing ground realities and pressure on available resources be taken into account in this regard.

9. A comprehensive Status report will be filed soon after the receipt of the action taken report by the State



(AJAY KUMAR)  
Under Secretary  
Ministry of Health & F.W.  
Govt. of India



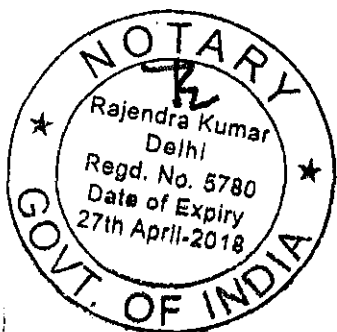
Governments for which the Union of India seeks four weeks' time from this Hon'ble Court.

*[Signature]*  
Deponent  
(AJAY KUMAR)  
Under Secretary  
Ministry of Health & F.W.  
Govt. of India

**VERIFICATION: -**

Verified at New Delhi on this <sup>9<sup>th</sup></sup> day of April, 2018, that the contents stated herein above, in Affidavit are true and correct as per my knowledge and belief and based on the official records made available to deponent and no part thereof, is incorrect or false and nothing has been concealed therefrom.

*[Signature]*  
Deponent  
(AJAY KUMAR)  
Under Secretary  
Ministry of Health & F.W.  
Govt. of India  
New Delhi



ATTESTED  
*[Signature]*  
RAJENDRA KUMAR  
NOTARY, DELHI-R-5780 Ph. 9212491892  
GOVERNMENT OF INDIA 9899446209  
SUPREME COURT OF INDIA  
COMPOUND, NEW DELHI  
Register (N./SI) No. *[Signature]*

09.04.2018

STATE THAT THE DEPENDENT HAS EXPLAINED TO THE DEPENDENT EXECUTANT WHO IS SEEMED PERFECT TO UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON 09.04.2018 IDENTIFIED BY IDENTIFY THE EXECUTANT/DEPENDENT WHO HAS SIGNED IN MY PRESENCE

IDENTIFY THE EXECUTANT  
DEPENDENT WHO WAS  
SIGNED IN THE PRESENCE OF

## Annexure P-5

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION(C) No. 859 of 2013

IN THE MATTER OF:

JAFFAR ULLAH &amp; ANR.

HON'BLE THE CHIEF JUSTICE OF INDIA

...PETITIONERS

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

COMPLIANCE REPORT ON BEHALF OF  
RESPONDENT NO.1, UNION OF INDIA, MINISTRY OF  
HEALTH AND FAMILY WELFARE:

INDEX

Sr. No.	Annexure	Particulars	Page No.
1.		Affidavit on behalf of the Respondent No. 1.	1-5
2.	Annexure -R/1(1)	The copy of the order dated 09.04.2018	6-9
3.	Annexure -R/1(2)	The Copy of the Report in the sealed envelope for the consideration of the Hon'ble Court	
4.			

Through

Sh.  
(Advocate)



**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION(C) No. 859 of 2013**

IN THE MATTER OF:

JAFFAR ULLAH & ANR.

...PETITIONERS

**VERSUS**

UNION OF INDIA AND ORS.

...RESPONDENTS

**COMPLIANCE REPORT ON BEHALF OF RESPONDENT**

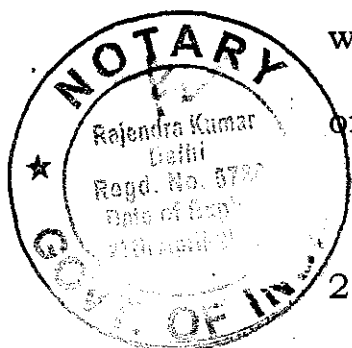
**NO.1, UNION OF INDIA, MINISTRY OF HEALTH AND**

**FAMILY WELFARE:**

I, Ajay Kumar, aged about 44 years, working as Under-Secretary in the Ministry of Health and Family Welfare, Government of India at New Delhi, do hereby solemnly affirm and state on oath as under:

1. That, in my above mentioned official capacity, I am conversant with the facts of the case and competent as well as duly authorized to file present Compliance Report on behalf of the Respondent No.1.

2. That, I have read and understood the contents of the Petition and deny all the contentions, Statements, Submissions made therein except whatever have been admitted herein below.



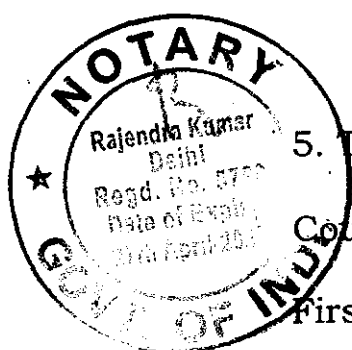
*Ajay Kumar*  
 (AJAY KUMAR)  
 Under Secretary  
 Ministry of Health & F.W.  
 Govt. of India  
 New Delhi

3. Briefly stated that the present petition has been filed invoking jurisdiction of this Hon'ble Court under article 32 read with Article 142 of the Constitution of India, seeking the implementation of the Janani Suraksha Yojna (hereinafter referred to as JSY) and other Government facilities for the Rohingyas refugees presently residing at Kalindi Kunj, New Delhi and Village Salheri, District Mewat, Haryana.

4. The above mentioned petition was listed before this Hon'ble Court on 09.04.2018 wherein this Hon'ble Court has passed following order:

".....to file comprehensive report which shall be 'data based...".

A copy of the said order is enclosed herewith as ANNEXURE R/1(1) at Pg.\_\_\_\_\_.



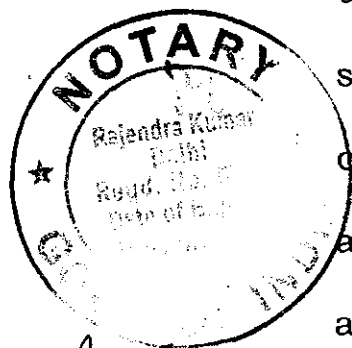
5. That, as per the order dated 19.03.2018 of this Hon'ble Court, two teams had been constituted to visit the sites. First team was headed by Dr. Sumita Ghosh, Deputy Commissioner (Maternal Health), Ministry of Health & Family Welfare. This team visited the Kalindi Kunj (Kanchan Kunj) site, New Delhi on 3<sup>rd</sup> April 2018. The

(AJAY KUMAR)  
Under Secretary  
Ministry of Health & F.W.  
Govt. of India  
New Delhi

team met the inhabitants of the refugee camps, interviewed them and also inspected various facilities which are being provided by the State Government.

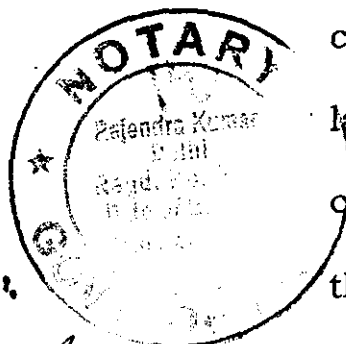
6. That, the second team was constituted under the chairmanship of Dr. Dinesh Baswal, Deputy Commissioner (Maternal Health), Ministry of Health & Family Welfare. The team had inspected the Village Salheri, District Mewat, Haryana on 4<sup>th</sup> April 2018. The team visited the site and inspected the conditions of the inhabitants of the refugee camp. The team members had taken the interview of the women to know the status of the health facilities. The team inspected the sanitation, water, medical and other facilities which are being provided by the Government.

7. That, as per the order of this Hon'ble Court vide dated 09.04.2018, in order to make a more comprehensive study of the conditions on site, a fresh team was constituted comprising the members of Ministry of Health and Family Welfare (hereinafter referred to as 'MoHFW') and a representative from the Ministry of Home Affairs (hereinafter referred to as 'MHA'). The said team visited the camps at Mewat District, Haryana on 23.04.2018 and



(AJAY KUMAR)  
Under Secretary  
Ministry of Health & F.W.  
Govt. of India  
New Delhi

on 24.04.2018, the same team inspected the camps of Kalindi Kunj, Delhi. The team members, inter alia, interviewed women residing in the camps to know the status of the health facilities extended to them. The members made inquiries with the leaders of both the camps with regard to the education, medical and sanitation facilities at the camps. The team inspected the sanitation, water, medical and other facilities which are being provided by the Government. As per the observations given in the inspection reports, reasonably available facilities are provided to the Rohingya illegal migrants. The answering respondent most humbly submits that no discrimination has been made between the Rohingya refugees and the other slum dwellers (resident Indians) of nearby areas. This is with respect to health, sanitation, medical and educational facilities. It is respectfully submitted that any assessment of facilities extended to the said illegal immigrants must take into consideration the pre-existing pressure on resources qua lawful citizens of the country. In any event, despite the constraints, there is no discrimination observed against the Rohingyas with respect to the availability of facilities.



*(Signature)*  
(AJAY KUMAR)  
Under Secretary  
Ministry of Health & F.W.  
Govt. of India  
New Delhi

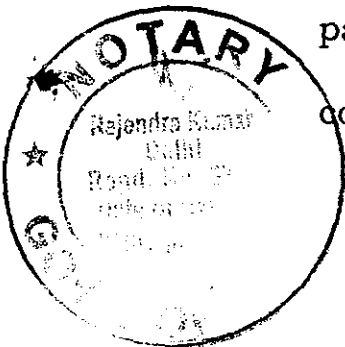
8. That, it is humbly prayed to this Hon'ble Court to accept the report as directed by this Hon'ble Court. The report is submitted in the sealed envelope for the kind consideration of the Hon'ble Court.

9. The facts and the circumstances stated herein above are true and correct based on the records and the same shall be taken on record.

*[Signature]*  
Deponent  
(AJAY KUMAR)  
Under Secretary  
Ministry of Health & F.W.  
Govt. of India  
New Delhi

**VERIFICATION: -**

Verified at New Delhi on this 8 day of May, 2018, that the contents stated herein above Compliance Report are true and correct as per my knowledge and belief and based on the official records made available to me and no part thereof, is incorrect or false and nothing has been concealed therefrom.



*[Signature]*  
Deponent  
Ministry of Health & F.W.  
Govt. of India  
New Delhi

ATTESTED

RAJENDRA KUMAR  
NOTARY, DELHI-R-5780  
GOVERNMENT OF INDIA  
SUPREME COURT OF INDIA  
COMPOUND, NEW DELHI  
Ph. 0212491692  
9899446202  
Register Pg./Sl. No. ....

Filed by  
(G.S. Makker)  
Counsel for Respondent No. 1

DECLARED THAT THE CONTENTS EXPLAINED TO THE DEPONENT EXECUTANT WHO IS SEEMED PERFECTLY UNDERSTAND & AFFIRMED DEPOSED BEFORE ME AT DELHI ON... IDENTIFIED BY... IDENTIFY THE EXECUTANT/DEPONENT WHO HAS SIGNED IN MY PRESENCE

**IDENTIFIED**

## Annexure P-6

## Report- (Delhi)

Compliance Report of the Committee on the present status of health facilities for the Rohingyas staying at Kanchankuni, Kalindikunj, Delhi, in compliance of the orders dated 19.03.2018 and 09.04.2018 of the Hon'ble Supreme Court of India the Ministry of Health & Family Welfare constituted a committee. The members of the Committee have visited Kanchankunj, Madanpur Khadar, Near Kalindikunj, Delhi to observe the present status of health facilities and other basic amenities available for the Rohingyas.

**Details of the Committee**

S.NO.	Composition of the Committee
1.	Dr. (Mrs.) Sunita Ghosh, Dy. Commissioner, MH (RCH), MOH&FW
2.	Dr. Raghuram Rao, Dy. Director (TB), MOH&FW
3.	Mr. Ashutosh Anarid, Under Secretary, MHA
4.	Dr. Bimlesh Yadav, SPO (MH), Government of, Delhi, Representative of Government of Delhi.

**Piace of visit** - Kanchankunj, Madanpur Khadar, Near Kalindikunj, Delhi.

On 3<sup>rd</sup> April 2018, the fact-finding Committee visited the Rohingya inhabited area to examine the living conditions and basic health facilities provided to the inhabitants at Kanchankunj near Kalindikunj:

The Committee met a number of inhabitants and held a focus group discussion on various issues. To name a few: -

Ms Minara, Mr. Abdul Kareem.

Ms. Noor Fatima

Mr. Mohammad Hasan.

Smt. Zuhara Khatoon

Mr. Kabeer

Ms. Sura Khatoon.

Ms. Fatima (Shop keeper)

Ms. Tasnima W/o Abdullah.



The Committee visited Abul Fazal Primary Urban Health Centre and discussed with Dr. Mudassar Ansari, In-charge of this Centre and talked about the various services and about various medicines being provided by the clinic.

The Committee also visited the Polyclinic of Madanpur Khaddar, Delhi Govt to inspect the health facilities that are being provided to the local people.

Further meeting was held with key officers Chief District Medical Officer (CDMO), Additional Chief District Medical Officer (CDMO), and local Medical Committee of the South East district under Jurisdiction of which the camp belongs. Discussions were held on various health issues and services being provided to address them in Kanchankunj area.

### **Findings.**

- (1) Population- The settlement has approximately. 52 households with total population of around 250.
- (2) Housing: Semi pakka, small houses, some of them double storied, made up of wood, tin, asbestos, boards etc.
- (3) Sanitation and Hygiene: Water supply is available through two hand pumps and potable water through tankers is also being supplied in the area, free of cost. Total six sanitary latrines, 3 each for males and females were found in the camp. Vector control measures are being taken by the Delhi Government regularly.
- (4) School All children attend schools as per information provided by their guardians. No reports of any discrimination for admission in schools were reported by the inhabitants. The Government school is one kilometre away and the Rohingyas prefer sending their children to nearby private schools where the cost of education is supported by local NGOs.
- (5) Access to health care system: -

**A.** List of Health facilities in the nearby locality is as under: -

- a) MCW Center Madanpur Khaddar (MCD)
- b) Polyclinic Madanpur Khaddar (Delhi Govt)
- c) SPUHC. Abul Fazal (NRHM) 4km (Delhi Govt)
- d) AAMC Abul Fazal part-2 (3km) (Delhi Govt)
- e) AAMC Shaheen Bagh 4 km (Delhi Govt)
- f) DGD Batla House 7 km (Delhi Govt)

- g) Rural Health Center of HAH Centenary Hospital (Majeedia) (Pvt) (2-3 km)
- h) Safdarjung Hospital (10km) (Central Govt)
- i) Al Sifa Hospital (6km) Abul Fazal.
- J) Majeedia Hospital (10km)
- k) Mobile van from Jamla Hamdard (Pvt) visits the area once a week.

### **B. Immunization:**

Every month Delhi. Government Dispensary (DGD) Srinivaspuri conducts 10-12 sessions of immunization at 10 different sites covering all blocks of JJ Colony and Kanchankunj. Most of the children were found to have received age-appropriate immunization. Cards of some children were also verified. ANMs visit the camp for vaccinations during pulse polio campaign, Routine Immunization services are mainly provided by the MCW Centre Madanpur Khaddar, nearby health center.

**C. Maternal Health:** ANC care and Investigations are being provided at nearby health facilities / Centers. Mother and child protection (MCP) Cards were examined and found to bear MCTS/ RCH number (Mother and child tracking system). Birth certificates issued by MCD to the children were also examined.

However, most of the deliveries are taking place at home and only complicated cases go to Safdarjung Hospital, which is about 10 km away. When enquired about the factors for home deliveries, the response received was that they prefer not to go to any health facility for normal delivery.

**D. Family planning:** in spite of the access, and availability of all family planning services being provided by the local health authorities, acceptance of family planning methods was limited.

**E. Outreach services:** ANM for Maternal and Family Planning Community Outreach services has also been made available by the local health authorities. In addition, Mobile Health Van comes once a week from Jamia Hamdard (Pvt) centre to treat minor illness. For major illness, the inhabitants visit nearby public/trust / private health facilities.

There is no reported incidence of Maternal or Child death in the last 5 years.

However, there was a fire Incident on 15:04.2018 at the said camp where temporary shelters of Rohingyas were burnt. The inhabitants reported that it was an incident of short-circuit and the fire had started from the toilet area and had spread elsewhere. Reportedly there was no loss of life or serious injury. The whole habitation had been burnt to ashes.

The Committee members visited the place again on 24.04.2018 and met the Rohingyas inhabiting the area, local district administration, local health staff and the representatives of the NGOs.

Post the fire incident, the District Disaster Management Authority (DDMA) Committee headed by the Additional District Magistrate (South-East) and Sub Divisional Magistrate (Sarita Vihar) provided immediate rescue and relief operations.

Temporary tents in the adjoining open space were built to provide provisional shelter to the affected families. 15 days

Centralised Accident & Trauma Services (CATS) ambulance was stationed at the site to provide medical aid to anybody in need.

Delhi Government had provided food to all people post the fire incident.

Through Delhi Urban Shelters Board, mobile toilets have been stationed at the site. just 8 for 230 people

Temporary electricity connections have been provided through BSES to all the tents.

- Delhi Jal Board has been providing round the clock drinking water facilities to the affected people

It is evident that the relevant authorities have taken the above-mentioned relief measures promptly and in a well-coordinated manner and without any discrimination or bias against the Rohingyas.

The settlement has approximately 52 households with total population of around 230.

Currently canvas tents have been erected for the Rohingyas temporarily.

Water supply is available through a hand pump and potable water through tankers is also being supplied in the area, free of cost.

Two temporary sanitary latrines have been constructed at the makeshift site.

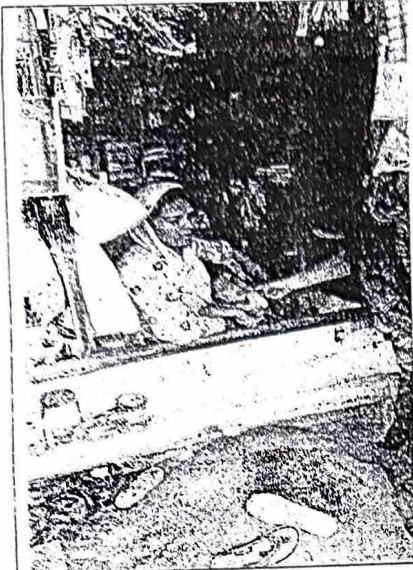
Concluding remarks:

The Committee also visited neighbouring slum areas inhabited by Indian citizens and observed that the Rohingyas though being illegal migrants are not discriminated against and had been provided with basic facilities for healthcare, water, sanitation, education etc. before the fire incident which were not less than the services/facilities provided to Indian citizens living in nearby slums. No specific health related grievance or dissatisfaction was aired by any of the inhabitants during the interviews. It was found that the local administration is providing emergency services after the fire incident. All measures had been taken to provide relief facilities to the Rohingyas.

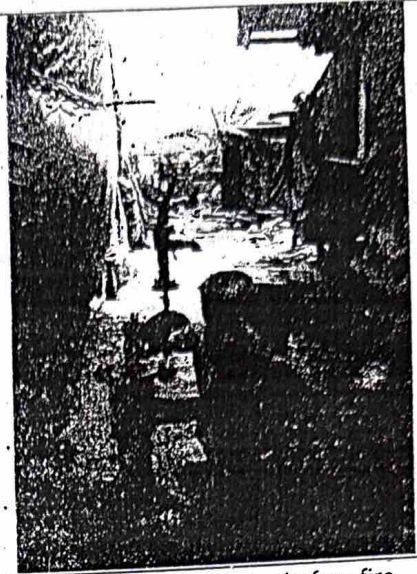
Enclosed:

List of photos taken during both the visits are attached.

Delhi Kanchankunj, Near Kalindikunj (before fire incident)



Shop run by Rohingya immigrant at camp site before the fire incident



Hand Pump for drinking water before fire incident

परिवार कल्याण दिल्ली  
सरकार

मातृ एवं  
शिशु  
सुरक्षा  
कार्ड

MCTS Mother No. PHC/15/11  
MCTS Child No. 116

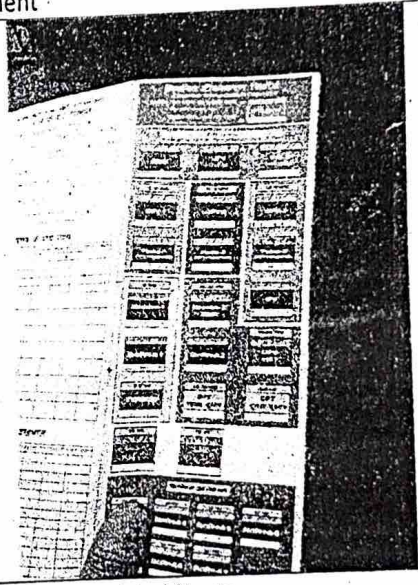
परिवार का परिचय

पिता का नाम YASHU & Co पत्नी का नाम PHC  
पता Gate no. 2, Bhopal  
शे. की श्रेणी अपेक्षित, सामानिक, शैक्षणिक, शैक्षणिक, शैक्षणिक

सामंजसता का विवरण

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अनुसूचित जाति का विवरण  अनुसूचित जाति का विवरण   
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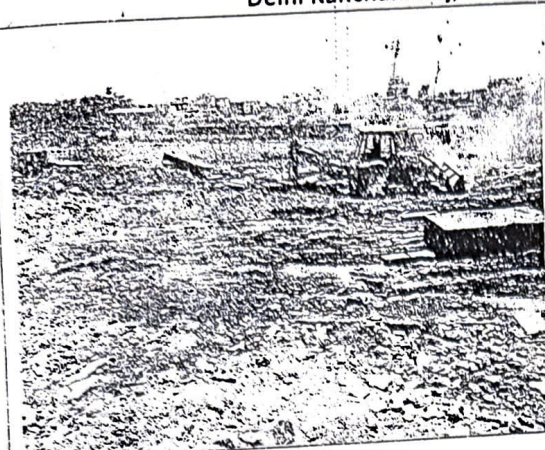
जन्म का विवरण ATF/15/11  
पिता का नाम PHC/15/11



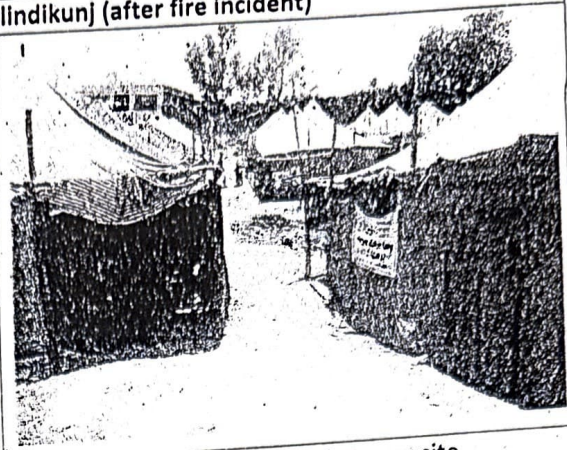
Mother & Child Protection Card with camp inhabitants



Delhi Kanchankunj, Near Kalindikunj (after fire incident)



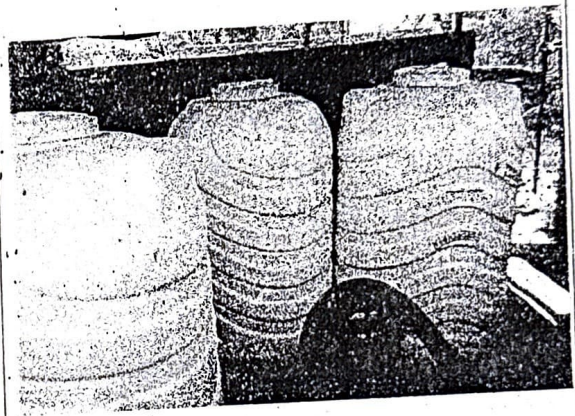
Camp Site after Fire Incident



Temporary Tents established at new site



Hand Pump at new site



Water Storage Tank at new site

WP(C) 859/2013

1

R E V I S E D

ITEM NOS.33+13

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  
R E C O R D O F P R O C E E D I N G SWrit Petition (Civil) No. 859/2013

JAFFAR ULLAH &amp; ANR.

Petitioners

VERSUS

UNION OF INDIA &amp; ORS.

Respondents

WITH

W.P.(C) No. 793/2017 (X)

(and IA No.87282/2017-INTERVENTION APPLICATION NAME OF MR. TUSHAR MEHTA, ADVOCATE MAY BE SHOWN IN THE LIST and IA No.88305/2017-INTERVENTION/IMPLEADMENT and IA No.89024/2017-INTERVENTION/IMPLEADMENT and IA No.89100/2017-INTERVENTION/IMPLEADMENT and IA No.90627/2017-INTERVENTION APPLICATION and IA No.93032/2017-INTERVENTION/IMPLEADMENT and IA No.93270/2017-INTERVENTION/IMPLEADMENT and IA No.94489/2017-INTERVENTION/IMPLEADMENT and IA No.97090/2017-INTERVENTION APPLICATION and IA No.97091/2017-PERMISSION TO APPEAR AND ARGUE IN PERSON and IA No.100563/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.107396/2017-impleading party and IA No.107402/2017-INTERVENTION APPLICATION and IA No.130783/2017-INTERVENTION APPLICATION[ D.NO.32692/2017 TO BE TAKEN UP WITH THIS MATTER] and IA No.132156/2017-INTERVENTION APPLICATION and IA No.14970/2018-CLARIFICATION/DIRECTION)

W.P.(C) No. 870/2017 (PIL-W)

(FOR ADMISSION)

W.P.(C) No. 886/2017 (PIL-W)W.P.(C) No. 919/2017 (PIL-W)

(FOR ADMISSION and IA No.97138/2017-APPROPRIATE ORDERS/DIRECTIONS)

W.P.(C) No. 916/2017 (PIL-W)W.P.(C) No. 924/2017 (PIL-W)

(FOR ADMISSION and IA No.104649/2017-INTERVENTION/IMPLEADMENT and IA No.104654/2017-INTERVENTION/IMPLEADMENT)

W.P.(C) No. 955/2017 (PIL-W)

(FOR ADMISSION and IA No.101081/2017-CLARIFICATION/DIRECTION)

Diary No(s). 32692/2017 (PIL-W)W.P.(C) No. 1111/2017 (PIL-W)

(FOR ADMISSION and IA No.119942/2017-PERMISSION TO APPEAR AND ARGUE IN PERSON and IA No.119939/2017-PERMISSION TO FILE APPLICATION FOR DIRECTION)

W.P.(C) No. 262/2018 (PIL-W)

(FOR ADMISSION and IA No.33189/2018-GRANT OF INTERIM RELIEF and IA No.33187/2018-EXEMPTION FROM FILING O.T. and IA No.33186/2018-CONDONATION OF DELAY IN REFILEING)

W.P.(C) No. 442/2018 (PIL-W)

(FOR ADMISSION and I.A. No. 66802/2018-CLARIFICATION/DIRECTION)

Date : 11-05-2018 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioners

Mr. Colin Gonsalves, Sr. Adv.  
Ms. Sneha Mukherjee, Adv.  
Mr. Fazal Abdali, Adv.  
Mr. Deepak Singh, Adv.  
Ms. Jyoti Mendiratta, AOR

Mr. Prashant Bhushan, AOR  
Ms. Cheryl D'Souza, Adv.

Mr. P.V. Surendra Nath, Sr. Adv.  
Mr. Subhash Chandran K.R., Adv.  
Ms. Resmitha R. Chandran, AOR  
Ms. Yogamaya M.G., Adv.  
Ms. Lekha, Adv.

Mr. P.V. Dinesh, AOR  
Mr. Sindhu T.P., Adv.

Mr. Bijan Ghosh, Adv.

Mr. Purushottam Sharma Tripathi, AOR  
Ms. Sangeeta Madan, Adv.  
Mr. Mukesh Kumar Singh, Adv.  
Mr. Ravi Chandra Prakash, Adv.  
Ms. Vani Vyas, Adv.  
Mr. L. Nidhiram Sharma, Adv.  
Mr. Shantanu Jugtawat, Adv.

Dr. Ashwani Kumar, Sr. Adv.  
Ms. Sujeeta Srivastava, AOR  
Ms. Raushan Tara Jaswal, Adv.  
Mr. R.G. Gopalakrishnan, Adv.

Mr. Colin Gonsalves, Sr. Adv.  
Mr. Fazal Abdali, Adv.  
Mr. Satya Mitra, AOR

Mr. Sajjan Poovayya, Sr. Adv.  
Mr. Priyadarshi Banerjee, Adv.  
Mr. Pratubhanu S. Kharola, Adv.  
Mr. R.D. Upadhyay, AOR

Mr. Mehmood Pracha, Adv.



Mr. R.H.A. Sikander, Adv.  
 Mr. Prateek Gupta, Adv.  
 Mr. Mohd. Danish, Adv.  
 Mr. Mohd. Shakim, Adv.  
 Mrs. Sudha Gupta, AOR  
 Mr. A. Chariha, Adv.

Mr. Kunal Chatterji, AOR  
 Ms. Maitrayee Banerjee, Adv.

**Petitioner-in-person**

**For Respondents/  
 Applicants**

Mr. Tushar Mehta, ASG  
 Mrs. Madhavi Divan, Adv.  
 Mr. Rajat Nair, Adv.  
 Mr. Kanu Agrawal, Adv.  
 Mr. Arijit Prasad, Adv.  
 Mr. S.S. Shamsbery, Adv.  
 Mr. B.V. Balaram Das, AOR  
 Mr. Gurmeet Singh Makker, AOR  
 Ms. Niranjana Singh, Adv.  
 Mr. S. Wasim Quadri, Adv.

Mr. Suhaan Mukerji, Adv.  
 Ms. Astha Sharma, Adv.  
 Mr. Vishal Prasad, Adv.  
 Mr. Amjid Maqbool, Adv.  
 Mr. Amit Verma, Adv.  
 M/s. PLR Chambers & Co., AOR

Mrs. G. Indira, Adv.

Ms. Anitha Shenoy, Adv.  
 Ms. Srishti Agnihotri, Adv.  
 Ms. Remya Raj, Adv.

Mrs. K. Enatoli Sema, Adv.  
 Mr. Edward Belho, Adv.  
 Mr. Amit Kumar Singh, Adv.  
 Mr. K. Luikang Michael, Adv.

Mr. Debasis Misra, AOR  
 Mr. Manohar Singh Bakshi, Adv.  
 Mr. Binay Kumar Jha, Adv.  
 Mr. Parvez Bashista, Adv.  
 Ms. Alpana Sharma, Adv.

Mr. B.K. Satija, AAG, Haryana  
 Mr. Sanjay Kumar Visen, AOR

Ms. Sushma Suri, AOR

Ms. Archana Pathak Dave, AOR

Mr. Suvidutt M.S., AOR

Mr. Pranav Sachdeva, AOR

Mr. Lakshmi Raman Singh, AOR

Dr. Rajeev Dhawan, Sr. Adv.

Mr. Subhasish Bhowmick, Adv.

Mrs. Honey Verma, Adv.

Mr. Goldy Goyal, Adv.

Mr. Yatish Mohan, Adv.

Ms. Vinita Y. Mohan, Adv.

Mr. Sumant Jha, Adv.

Dr. K.N. Tripathy, Adv.

Mr. Somiran Sharma, AOR

Mr. Amit Kumar, Adv.

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

In pursuance of our earlier order, the compliance Report of the Committee on the present status of health facilities for the Rohingyas staying at Nuh Block, District Mewat, Haryana and Kanchankunj, Kalindikunj, Delhi has been filed. With regard to the habitation, health service delivery, water, sanitation, hygiene, electricity and education in respect of Nuh Block, District Mewat, Haryana, the Report states thus:-

"1. Habitation:

The members visited 2 (two) settlements of Rohingyas within Nuh Block of Mewat District i.e. Ferozpur Namak and Shahpur Nangli.

The members of the Rohingya community are residing in Camps made of neat rows of huts with

electricity connection and water provision. The hutments are made up of bamboo, plastic sheets (Tirpal) etc. There are open spaces all around and the camps are well spread out.

2. Health service delivery:

The settlements visited have following health facilities in and around the Nuh Block:

- Sub Centre (SC) Ferozpur Namak, which has recently been made functional as a Health & Wellness Center to provide comprehensive primary health care services (distance from Ferozpur Namak - 500 meters)
- Community Health Centre (CHC), Nuh (distance from Ferozpur Namak - 4 Kms distance)
- Primary Health Centre (PHC), Nuh (distance from Ferozpur Namak - 4 kms)
- Saheed Hasan Khan Mewati Medical College - 8 kms away from Ferozpur Namak.

The above health centres are providing all primary, secondary and tertiary health care services as per standard National/State guidelines. The Rohingyas have equal access to these health services as any other citizen in the district.

The ANM visits the camps once a week and provides basic primary health care like screening for communicable diseases, ante natal check-up, immunization etc. The ladies of the Rohingyas have home deliveries. On being enquired about its reason, it was stated that they prefer home

deliveries rather than going to the hospitals. Only in case of any complication, the pregnant women are taken to the hospitals.

The Health services are being provided by trained and competent health care providers. It was observed that the ANM providing outreach services at the visited sites had an experience of over 6 years and had adequate knowledge and skills to meet the health needs of the population. The Primary Health Centre Medical Officer and the Sub Centre ANM also had enough supplies of drugs required for providing outreach health camps.

The ANM had detailed knowledge and data of the population required for providing maternal, child health, family planning services. Eligible Couple list and 0-2 year age group children list were maintained by ANM. No Maternal Death or child death was reported.

Pregnant women, lactating mothers and children (6 months - 6 years) of the Rohingya community are registered with the Anganwadi worker and have availed benefits under the Supplementary Nutrition Programme (SNP), medicines like Albendazole, iron folic acid, etc. are being distributed by ANMs and Anganwadis.

Ferozepur Namak camp has a total population of 301, of which 43 children are in the age group of 0-2 years. Shahpur Nangli camp has a population of 507 of which 85 are in the age group of 0-2 years. So, the birth rate is quite high in the population. Even though family planning services are being provided to the eligible couples by the ANM, the usage of family

planning methods is low by the inhabitants.

Regular screening for communicable diseases are undertaken and no case of TB, Malaria or Dengue was reported from the sites visited. No disease outbreak was reported.

Health Camps, Routine immunization programme and intensified pulse polio programme were conducted for these population at monthly intervals and all records were maintained at the Sub Centre.

For example:

(a) Ferozepur Namak:

i. On 24.3.2018 Five Pregnant women and Eleven children were immunized.

ii. On 21.4.2018 One Pregnant woman and four children were immunized.

iii. Anganwadi: 25 got SNP, 35 immunizations, 13 pregnant women and 15 lactating mothers availed of other benefits.

(b) Shahpur Nangli:

i. On 21.4.2018 in the health camp, there was an OPD of 81 patients of which 21 females and 19 male patients were provided treatment.

ii. Anganwadi: 30 got SNP, 8 immunization, 6 pregnant women and 4 lactating mothers availed of other benefits.

The Rohingyas has access to the free ambulance services for health emergencies provided by the State Government.

### 3. Water, Sanitation and Hygiene:

The camp at village Ferozpur Namak has one piped water supply provided through the panchayat. The water was found to be potable and the site for water delivery was hygienic and well maintained. The waste water gets drained to a common drain (nullah) behind the camp. In village Shahpur Nangli camp, water supply is provided by tankers through the Panchayat and one water tank with 14000 liters capacity was found in the camp. The tanks were found to be clean and well maintained and no water seepage or water collection around the tank was observed. However, the community requested for one more water tank for summer season for the inhabitants of the Shahpur Rohingyas.

Each and every hut in the site visited had its own toilet and open defecation was not a practice. The overall hygiene of the visited camps was found to be good and there was no collection of garbage/solid waste in open/visible areas.

### 4. Electricity:

The camp at village Ferozpur Namak, and Shahpur Nangli both had electricity supply. The electricity was available for around 12 hours a day on an average. This was the pattern in the entire district based on the availability of power supply received by the district. Some of the huts had refrigerator, air cooler etc. One of the huts was also converted to a local shop for selling daily utilities which even had a computer installed.

5. Education:

The Committee visited Govt. Secondary School, Ferozpur Namak, where the children of the Rohingyas are studying. There are around 500 children and 19 teachers. In this primary school there are 41 Rohingya children who are studying and all the facilities are being provided to these children similar to Indian citizens without any discrimination. The Rohingya children are given the mid-day meals at-par with the local children. The school administration also provides them all facilities including free books, bags, etc.

In the Government Secondary School visited at Ferozpur Namak, 39 children in Class II, 6 children in Class III and one child in Class IV are pursuing their education. The Committee interacted with the class II girl children, who are regularly going to the school.

Shahpur Nangli Rohingya settlement had a Madrasa and many prefer to sent their children to Madarsa.

Copy of attendance register and relevant photographs are enclosed in Annexures.

The Committee also visited another slum in the vicinity, namely Madina Basti inhabited by local Indian citizens. In comparison to the Rohingyas, the overall hygiene and sanitation was not found to be satisfactory. There was no electricity connection. Water supply was scarce even though the inhabitants were living in the area for over 15 years. Outreach services for immunization and ante natal care are being

provided to the residents. Three children, present during that time of visit, were found to be home delivered. The inhabitants had valid Aadhaar card and Election ID card.

**Concluding Remark:**

The Committee had an overall observation that the Rohingyas are not being discriminated against despite being illegal migrants. They are being provided with basic facilities for health care, water, sanitation and education. The quality and comprehensiveness of the services provided are not less than those provided to the Indian citizens and are within the available infrastructure and resources of the District."

In respect of Kanchankunj, Kalindikunj, Delhi, the Committee has with regard to access to health care system, recorded its findings as under:-

**"Access to health care system:-**

**A. List of Health facilities in the nearby locality is as under:-**

- a) MCW Center Madanpur Khaddar (MCD)
- b) Polyclinic Madanpur Khaddar (Delhi Govt.)
- c) SPUHC. Abul Fazal (NRHM) 4 km (Delhi Govt.)
- d) AAMC Abul Fazal Part-2 (3 km) (Delhi Govt.)
- e) AAMC Shaheen Bagh 4 km (Delhi Govt.)
- f) DGD Batla House 7 km (Delhi Govt.)
- g) Rural Health Center of HAH Centenary Hospital (Majeedia) (Pvt.) (2-3 km)



- h) Safdarjung Hospital (10 km) (Central Govt.)
- i) Al Sifa Hospital (6 km) Abul Fazal
- j) Majeedia Hospital (10 km)
- k) Mobile van from Jamia Hamdard (Pvt.) visits the area once a week.

B. Immunization:- Every month Delhi Government Dispensary (DGD) Srinivaspuri conducts 10-12 sessions of immunization at 10 different sites covering all blocks of JJ Colony and Kanchankunj. Most of the children were found to have received age appropriate immunization. Cards of some children were also verified. ANMs visit the camp for vaccinations during pulse polio campaign. Routine Immunization services are mainly provided by the MCW Center Madanpur Khaddar, nearby health center.

C. Maternal Health:- ANC care and investigations are being provided at nearby health facilities/Centers. Mother and child protection (MCP) Cards were examined and found to bear MCTS/RCH number (Mother and child tracking system). Birth certificates issued by MCD to the children were also examined.

However, most of the deliveries are taking place at home and only complicated cases go to Safdarjung Hospital, which is about 10 km away. When enquired about the factors for home deliveries, the response received was that they prefer not to go to any health facility for normal delivery.

D. Family Planning:- In spite of the access and availability of all family planning services

being provided by the local health authorities, acceptance of family planning methods was limited.

E. Outreach services:- ANM for Maternal and Family Planning Community Outreach services has also been made available by the local health authorities. In addition, Mobile Health Van comes once a week from Jamia Hamdard (Pvt.) centre to treat minor illness. For major illness, the inhabitants visit nearby public/trust/private health facilities.

There is no reported incidence of Maternal or Child death in the last 5 years."

It is submitted by Mr. Colin Gonsalves, learned senior counsel and Mr. Prashant Bhushan and Ms. Sneha Mukherjee, learned counsel appearing for the petitioners that school children are not getting books and other benefits. They have also projected that as far as the health care system is concerned, the facilities are denied to them, because of lack of proper identity.

Dr. Rajeev Dhawan, learned senior counsel would submit that human rights are extremely sacred and the same have to be given full play in the completest sense in respect of a non-citizen also, for Article 21 of the Constitution which embraces human rights and human rights correspondingly responds to the said article, and hence, there cannot be any discord between the two concepts.

Dr. Ashwini Kumar, learned senior counsel appearing for the petitioners in Writ Petition (Civil) No. 886/2017 would submit that India being a civilized and developed democracy has to stand by the fundamental concept and essential conception of human rights. Mr. P.V. Dinesh, learned counsel for the petitioners in Writ Petition (Civil) No. 262/2018 with anguish and concern, submitted his experience in a camp.

We do not intend to enter into all the issues that have been canvassed before us. We may clearly state that the same shall be addressed to at the time of final hearing of the writ petitions and the interlocutory applications.

However, for the present, we issue the following directions:-

(i) As far as Nuh Block, District Mewat, Haryana is concerned, the Sub-Divisional Magistrate or the equivalent authority of District Mewat, Haryana and in respect of Kanchankunj, Kalindikunj, Delhi, the concerned jurisdictional Revenue Magistrate, Delhi are appointed as the nodal officers. The said position is accepted by Mr. Tushar Mehta, learned ASG.

(ii) Parents or any relative or a guardian of

a child or a patient, can go with a grievance to the Nodal Officer, if any facility, as stated in the Status Report is denied to him/her. The Nodal Officer shall do the needful, as stated in the Status Report.

At this juncture, Mr. Kunal Chatterji, learned counsel for the West Bengal Commission for Protection of Child Rights submitted that there is difficulty in uniting the children of Rohingyas who are separated from their parents. Mr. Tushar Mehta, learned ASG shall obtain instructions in the matter and if there is any problem in this regard, the concerned authority of the Union of India can apprise the Commission so that an appropriate view can be taken.

Let the matter be listed on 23.8.2018.

(Deepak Guglani)  
Court Master

(H.S. Parasher)  
Assistant Registrar

ITEM NOS.33+13

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  
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No. 859/2013

JAFFAR ULLAH &amp; ANR.

Petitioners

VERSUS

UNION OF INDIA &amp; ORS.

Respondents

WITH

W.P.(C) No. 793/2017 (X)

(and IA No.87282/2017-INTERVENTION APPLICATION NAME OF MR. TUSHAR MEHTA, ADVOCATE MAY BE SHOWN IN THE LIST and IA No.88305/2017-INTERVENTION/IMPLEADMENT and IA No.89024/2017-INTERVENTION/IMPLEADMENT and IA No.89100/2017-INTERVENTION/IMPLEADMENT and IA No.90627/2017-INTERVENTION APPLICATION and IA No.93032/2017-INTERVENTION/IMPLEADMENT and IA No.93270/2017-INTERVENTION/IMPLEADMENT and IA No.94489/2017-INTERVENTION/IMPLEADMENT and IA No.97090/2017-INTERVENTION APPLICATION and IA No.97091/2017-PERMISSION TO APPEAR AND ARGUE IN PERSON and IA No.100563/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS and IA No.107396/2017-impleading party and IA No.107402/2017-INTERVENTION APPLICATION and IA No.130783/2017-INTERVENTION APPLICATION[ D.NO.32692/2017 TO BE TAKEN UP WITH THIS MATTER] and IA No.132156/2017-INTERVENTION APPLICATION and IA No.14970/2018-CLARIFICATION/DIRECTION)

W.P.(C) No. 870/2017 (PIL-W)

(FOR ADMISSION)

W.P.(C) No. 886/2017 (PIL-W)W.P.(C) No. 919/2017 (PIL-W)

(FOR ADMISSION and IA No.97138/2017-APPROPRIATE ORDERS/DIRECTIONS)

W.P.(C) No. 916/2017 (PIL-W)W.P.(C) No. 924/2017 (PIL-W)

(FOR ADMISSION and IA No.104649/2017-INTERVENTION/IMPLEADMENT and IA No.104654/2017-INTERVENTION/IMPLEADMENT)

W.P.(C) No. 955/2017 (PIL-W)

(FOR ADMISSION and IA No.101081/2017-CLARIFICATION/DIRECTION)

Diary No(s). 32692/2017 (PIL-W)W.P.(C) No. 1111/2017 (PIL-W)

(FOR ADMISSION and IA No.119942/2017-PERMISSION TO APPEAR AND ARGUE IN PERSON and IA No.119939/2017-PERMISSION TO FILE APPLICATION FOR DIRECTION)

W.P.(C) No. 262/2018 (PIL-W)

(FOR ADMISSION and IA No.33189/2018-GRANT OF INTERIM RELIEF and IA No.33187/2018-EXEMPTION FROM FILING O.T. and IA No.33186/2018-CONDONATION OF DELAY IN REFILEING)

W.P.(C) No. 442/2018 (PIL-W)

(FOR ADMISSION and I.A. No. 66802/2018-CLARIFICATION/DIRECTION)

Date : 11-05-2018 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioners

Mr. Colin Gonsalves, Sr. Adv.  
Ms. Sneha Mukherjee, Adv.  
Mr. Fazal Abdali, Adv.  
Mr. Deepak Singh, Adv.  
Ms. Jyoti Mendiratta, AOR

Mr. Prashant Bhushan, AOR  
Ms. Cheryl D'Souza, Adv.

Mr. P.V. Surendra Nath, Sr. Adv.  
Mr. Subhash Chandran K.R., Adv.  
Ms. Resmitha R. Chandran, AOR  
Ms. Yogamaya M.G., Adv.  
Ms. Lekha, Adv.

Mr. P.V. Dinesh, AOR  
Mr. Sindhu T.P., Adv.

Mr. Bijan Ghosh, Adv.

Mr. Purushottam Sharma Tripathi, AOR  
Ms. Sangeeta Madan, Adv.  
Mr. Mukesh Kumar Singh, Adv.  
Mr. Ravi Chandra Prakash, Adv.  
Ms. Vani Vyas, Adv.  
Mr. L. Nidhiram Sharma, Adv.  
Mr. Shantanu Jugtawat, Adv.

Dr. Ashwani Kumar, Sr. Adv.  
Ms. Sujeeta Srivastava, AOR  
Ms. Raushan Tara Jaswal, Adv.  
Mr. R.G. Gopalakrishnan, Adv.

Mr. Colin Gonsalves, Sr. Adv.  
Mr. Fazal Abdali, Adv.  
Mr. Satya Mitra, AOR

Mr. Sajjan Poovayya, Sr. Adv.  
Mr. Priyadarshi Banerjee, Adv.  
Mr. Pratubhanu S. Kharola, Adv.  
Mr. R.D. Upadhyay, AOR

Mr. Mehmood Pracha, Adv.

Mr. R.H.A. Sikander, Adv.  
 Mr. Prateek Gupta, Adv.  
 Mr. Mohd. Danish, Adv.  
 Mr. Mohd. Shakim, Adv.  
 Mrs. Sudha Gupta, AOR  
 Mr. A. Chariha, Adv.

Mr. Kunal Chatterji, AOR  
 Ms. Maitrayee Banerjee, Adv.

**Petitioner-in-person**

**For Respondents/  
 Applicants**

Mr. Tushar Mehta, ASG  
 Mrs. Madhavi Divan, Adv.  
 Mr. Rajat Nair, Adv.  
 Mr. Kanu Agrawal, Adv.  
 Mr. Arijit Prasad, Adv.  
 Mr. S.S. Shamsbery, Adv.  
 Mr. B.V. Balaram Das, AOR  
 Mr. Gurmeet Singh Makker, AOR  
 Ms. Niranjana Singh, Adv.  
 Mr. S. Wasim Quadri, Adv.

Mr. Suhaan Mukerji, Adv.  
 Ms. Astha Sharma, Adv.  
 Mr. Vishal Prasad, Adv.  
 Mr. Amjid Maqbool, Adv.  
 Mr. Amit Verma, Adv.  
 M/s. PLR Chambers & Co., AOR

Mrs. G. Indira, Adv.

Ms. Anitha Shenoy, Adv.  
 Ms. Srishti Agnihotri, Adv.  
 Ms. Remya Raj, Adv.

Mrs. K. Enatoli Sema, Adv.  
 Mr. Edward Belho, Adv.  
 Mr. Amit Kumar Singh, Adv.  
 Mr. K. Luikang Michael, Adv.

Mr. Debasis Misra, AOR  
 Mr. Manohar Singh Bakshi, Adv.  
 Mr. Binay Kumar Jha, Adv.  
 Mr. Parvez Bashista, Adv.  
 Ms. Alpana Sharma, Adv.

Mr. B.K. Satija, AAG, Haryana  
 Mr. Sanjay Kumar Visen, AOR

Ms. Sushma Suri, AOR

Ms. Archana Pathak Dave, AOR

Mr. Suvidutt M.S., AOR

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electricity connection and water provision. The hutments are made up of bamboo, plastic sheets (Tirpal) etc. There are open spaces all around and the camps are well spread out.

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Dr. Rajeev Dhawan, learned senior counsel would submit that human rights are extremely sacred and the same have to be given full play in the completest sense in respect of a non-citizen also, for Article 21 of the Constitution which embraces human rights and human rights correspondingly responds to the said article, and hence, there cannot be any discord between the two concepts.



Dr. Ashwini Kumar, learned senior counsel appearing for the petitioners in Writ Petition (Civil) No. 886/2017 would submit that India being a civilized and developed democracy has to stand by the fundamental concept and essential conception of human rights. Mr. P.V. Dinesh, learned counsel for the petitioners in Writ Petition (Civil) No. 262/2018 with anguish and concern, submitted his experience in a camp.

We do not intend to enter into all the issues that have been canvassed before us. We may clearly state that the same shall be addressed to at the time of final hearing of the writ petitions and the interlocutory applications.

However, for the present, we issue the following directions:-

(i) As far as Nuh Block, District Mewat, Haryana is concerned, the Sub-Divisional Magistrate or the equivalent authority of District Mewat, Haryana and in respect of Kanchankunj, Kalindikunj, Delhi, the concerned jurisdictional Revenue Magistrate, Delhi are appointed as the nodal officers. The said position is accepted by Mr. Tushar Mehta, learned ASG.

(ii) Parents or any relative or a guardian of

a child or a patient, can go with a grievance to the Nodal Officer, if any facility, as stated in the Status Report is denied to him/her. The Nodal Officer shall do the needful, as stated in the Status Report.

At this juncture, Mr. Kunal Chatterji, learned counsel for the West Bengal Commission for Protection of Child Rights submitted that there is difficulty in uniting the children of Rohingyas who are separated from their parents. Mr. Tushar Mehta, learned ASG shall obtain instructions in the matter and if there is any problem in this regard, the concerned authority of the Union of India can apprise the Commission so that an appropriate view can be taken.

Let the matter be listed on 23.8.2018.

(Deepak Guglani)  
Court Master

(H.S. Parasher)  
Assistant Registrar



**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)**

**ORDER**

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.5

Court 4 (Video Conferencing)

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Civil) No(s).660/2021

FAZAL ABDALI

Petitioner(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

(FOR ADMISSION and IA No.69238/2021-EXEMPTION FROM FILING  
AFFIDAVIT)

Date : 29-11-2021 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD  
HON'BLE MR. JUSTICE A.S. BOPANNAFor Petitioner(s) Ms. Amiy Shukla, AOR  
Mr. Fazal Abdali, In-person  
Mr. Sadiq Noor, Adv.

For Respondent(s)

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

Issue notice.

(SANJAY KUMAR-I)  
AR-CUM-PS(SAROJ KUMARI GAUR)  
COURT MASTER

Signature Not Verified

Digitally signed by  
Sanjay Kumar  
Date: 2024.11.29  
17:56:02IST  
Reason: [ ]

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,  
ADVISORY OPINIONS AND ORDERS

APPLICATION OF THE CONVENTION  
ON THE PREVENTION AND PUNISHMENT  
OF THE CRIME OF GENOCIDE

(THE GAMBIA *v.* MYANMAR)

REQUEST FOR THE INDICATION  
OF PROVISIONAL MEASURES

**ORDER OF 23 JANUARY 2020**

**2020**

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,  
AVIS CONSULTATIFS ET ORDONNANCES

APPLICATION DE LA CONVENTION  
POUR LA PRÉVENTION ET LA RÉPRESSION  
DU CRIME DE GÉNOCIDE

(GAMBIE *c.* MYANMAR)

DEMANDE EN INDICATION  
DE MESURES CONSERVATOIRES

**ORDONNANCE DU 23 JANVIER 2020**

## Official citation:

*Application of the Convention on the Prevention and Punishment  
of the Crime of Genocide (The Gambia v. Myanmar),  
Provisional Measures, Order of 23 January 2020,  
I.C.J. Reports 2020, p. 3*

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## Mode officiel de citation :

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du crime de génocide (Gambie c. Myanmar),  
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23 JANUARY 2020

ORDER

APPLICATION OF THE CONVENTION  
ON THE PREVENTION AND PUNISHMENT  
OF THE CRIME OF GENOCIDE

(THE GAMBIA *v.* MYANMAR)

REQUEST FOR THE INDICATION  
OF PROVISIONAL MEASURES

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APPLICATION DE LA CONVENTION  
POUR LA PRÉVENTION ET LA RÉPRESSION  
DU CRIME DE GÉNOCIDE

(GAMBIE *c.* MYANMAR)

DEMANDE EN INDICATION  
DE MESURES CONSERVATOIRES

23 JANVIER 2020

ORDONNANCE

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## INTERNATIONAL COURT OF JUSTICE

YEAR 2020

2020  
23 January  
General List  
No. 178

23 January 2020

APPLICATION OF THE CONVENTION  
ON THE PREVENTION AND PUNISHMENT  
OF THE CRIME OF GENOCIDE

(THE GAMBIA *v.* MYANMAR)

REQUEST FOR THE INDICATION  
OF PROVISIONAL MEASURES

## ORDER

*Present: President YUSUF; Vice-President XUE; Judges TOMKA, ABRAHAM, BENNOUNA, CAŇADO TRINDADE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, CRAWFORD, GEVORGIAN, SALAM, IWASAWA; Judges ad hoc PILLAY, KRESS; Registrar GAUTIER.*

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

*Makes the following Order:*

1. On 11 November 2019, the Republic of The Gambia (hereinafter “The Gambia”) filed in the Registry of the Court an Application instituting proceedings against the Republic of the Union of Myanmar (hereinafter “Myanmar”) concerning alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the “Genocide Convention” or the “Convention”).

## 5 APPLICATION OF THE GENOCIDE CONVENTION (ORDER 23 I 20)

## 2. At the end of its Application, The Gambia

“respectfully requests the Court to adjudge and declare that Myanmar:

- has breached and continues to breach its obligations under the Genocide Convention, in particular the obligations provided under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI;
- must cease forthwith any such ongoing internationally wrongful act and fully respect its obligations under the Genocide Convention, in particular the obligations provided under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI;
- must ensure that persons committing genocide are punished by a competent tribunal, including before an international penal tribunal, as required by Articles I and VI;
- must perform the obligations of reparation in the interest of the victims of genocidal acts who are members of the Rohingya group, including but not limited to allowing the safe and dignified return of forcibly displaced Rohingya and respect for their full citizenship and human rights and protection against discrimination, persecution, and other related acts, consistent with the obligation to prevent genocide under Article I; and
- must offer assurances and guarantees of non-repetition of violations of the Genocide Convention, in particular the obligations provided under Articles I, III (a), III (b), III (c), III (d), III (e), IV, V and VI.”

3. In its Application, The Gambia seeks to found the Court’s jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention.

4. The Application contained a Request for the indication of provisional measures submitted with reference to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

5. At the end of its Request, The Gambia asked the Court to indicate the following provisional measures:

- “(a) Myanmar shall immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent all acts that amount to or contribute to the crime of genocide, including taking all measures within its power to prevent the following acts from being committed against [any]

## 6 APPLICATION OF THE GENOCIDE CONVENTION (ORDER 23 I 20)

member of the Rohingya group: extrajudicial killings or physical abuse; rape or other forms of sexual violence; burning of homes or villages; destruction of lands and livestock, deprivation of food and other necessities of life, or any other deliberate infliction of conditions of life calculated to bring about the physical destruction of the Rohingya group in whole or in part;

- (b) Myanmar shall, in particular, ensure that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, do not commit any act of genocide, of conspiracy to commit genocide, or direct and public incitement to commit genocide, or of complicity in genocide, against the Rohingya group, including: extrajudicial killing or physical abuse; rape or other forms of sexual violence; burning of homes or villages; destruction of lands and livestock, deprivation of food and other necessities of life, or any other deliberate infliction of conditions of life calculated to bring about the physical destruction of the Rohingya group in whole or in part;
- (c) Myanmar shall not destroy or render inaccessible any evidence related to the events described in the Application, including without limitation by destroying or rendering inaccessible the remains of any member of the Rohingya group who is a victim of alleged genocidal acts, or altering the physical locations where such acts are alleged to have occurred in such a manner as to render the evidence of such acts, if any, inaccessible;
- (d) Myanmar and The Gambia shall not take any action and shall assure that no action is taken which may aggravate or extend the existing dispute that is the subject of this Application, or render it more difficult of resolution; and
- (e) Myanmar and The Gambia shall each provide a report to the Court on all measures taken to give effect to this Order for provisional measures, no later than four months from its issuance.”

6. The Registrar immediately communicated to the Government of Myanmar the Application containing the Request for the indication of provisional measures, in accordance with Article 40, paragraph 2, of the Statute of the Court, and Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing by The Gambia of the Application and the Request for the indication of provisional measures.

7. Pending the notification provided for by Article 40, paragraph 3, of the Statute, the Registrar informed all States entitled to appear before the



Court of the filing of the Application and the Request for the indication of provisional measures by a letter dated 11 November 2019.

8. Since the Court included upon the Bench no judge of the nationality of either Party, each Party proceeded to exercise the right conferred upon it by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case. The Gambia chose Ms Navanethem Pillay and Myanmar Mr. Claus Kress.

9. By letters dated 12 November 2019, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of its Rules, the Court had fixed 10, 11 and 12 December 2019 as the dates for the oral proceedings on the Request for the indication of provisional measures.

10. By a letter dated 9 December 2019, a copy of which was immediately communicated to Myanmar, The Gambia submitted to the Court the text of the following additional provisional measure requested from the Court:

“The Gambia requests that Myanmar be ordered to grant access to, and cooperate with, all United Nations fact-finding bodies that are engaged in investigating alleged genocidal acts against the Rohingya, including the conditions to which the Rohingya are subjected.”

11. At the public hearings, oral observations on the Request for the indication of provisional measures were presented by:

*On behalf of The Gambia:* H.E. Mr. Abubacarr Marie Tambaou,  
Mr. Payam Akhavan,  
Mr. Andrew Loewenstein,  
Ms Tafadzwa Pasipanodya,  
Mr. Arsalan Suleman,  
Mr. Pierre d’Argent,  
Mr. Paul Reichler,  
Mr. Philippe Sands

*On behalf of Myanmar:* H.E. Ms Aung San Suu Kyi,  
Mr. William Schabas,  
Mr. Christopher Staker,  
Ms Phoebe Okowa.

12. At the end of its second round of oral observations, The Gambia asked the Court to indicate the following provisional measures:

“(a) Myanmar shall immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent all acts that amount to or contribute to the crime of genocide, including taking all measures within its power to prevent the following acts from being committed against any member of the Rohingya group: extrajudicial killings or physical abuse; rape or other forms of sexual violence; burning of homes

## 8 APPLICATION OF THE GENOCIDE CONVENTION (ORDER 23 I 20)

or villages; destruction of lands and livestock, deprivation of food and other necessities of life, or any other deliberate infliction of conditions of life calculated to bring about the physical destruction of the Rohingya group in whole or in part;

- (b) Myanmar shall, in particular, ensure that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, do not commit any act of genocide, of conspiracy to commit genocide, or direct and public incitement to commit genocide, or of complicity in genocide, against the Rohingya group, including: extrajudicial killing or physical abuse; rape or other forms of sexual violence; burning of homes or villages; destruction of lands and livestock, deprivation of food and other necessities of life, or any other deliberate infliction of conditions of life calculated to bring about the physical destruction of the Rohingya group in whole or in part;
- (c) Myanmar shall not destroy or render inaccessible any evidence related to the events described in the Application, including without limitation by destroying or rendering inaccessible the remains of any member of the Rohingya group who is a victim of alleged genocidal acts, or altering the physical locations where such acts are alleged to have occurred in such a manner as to render the evidence of such acts, if any, inaccessible;
- (d) Myanmar and The Gambia shall not take any action and shall assure that no action is taken which may aggravate or extend the existing dispute that is the subject of this Application, or render it more difficult of resolution;
- (e) Myanmar and The Gambia shall each provide a report to the Court on all measures taken to give effect to this Order for provisional measures, no later than four months from its issuance; and
- (f) Myanmar shall grant access to, and cooperate with, all United Nations fact-finding bodies that are engaged in investigating alleged genocidal acts against the Rohingya, including the conditions to which the Rohingya are subjected.”

13. At the end of its second round of oral observations, Myanmar requested the Court:

- “(1) to remove the case from its List;
- (2) in the alternative, to reject the request for the indication of provisional measures submitted by The Gambia.”

\* \* \*

14. In its Application, The Gambia seeks protection for “all members of the Rohingya group who are in the territory of Myanmar, as members of a protected group under the Genocide Convention”. According to a 2016 Report of the United Nations High Commissioner for Human Rights, Rohingya Muslims “self-identify as a distinct ethnic group with their own language and culture, and claim a longstanding connection to Rakhine State”; however, “[s]uccessive Governments [of Myanmar] have rejected these claims, and the Rohingya were not included in the list of recognized ethnic groups. Most Rohingya are stateless.” (United Nations, Situation of Human Rights of Rohingya Muslims and other Minorities in Myanmar, UN doc. A/HRC/32/18, 29 June 2016, para. 3.)

15. The Court’s references in this Order to the “Rohingya” should be understood as references to the group that self-identifies as the Rohingya group and that claims a longstanding connection to Rakhine State, which forms part of the Union of Myanmar.

## I. PRIMA FACIE JURISDICTION

### 1. General Introduction

16. The Court may indicate provisional measures only if the provisions relied on by the Applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case (see, *inter alia*, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Provisional Measures, Order of 3 October 2018*, *I.C.J. Reports 2018 (II)*, p. 630, para. 24).

17. In the present case, The Gambia seeks to found the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article IX of the Genocide Convention (see paragraph 3 above). The Court must therefore first determine whether those provisions prima facie confer upon it jurisdiction to rule on the merits of the case, enabling it — if the other necessary conditions are fulfilled — to indicate provisional measures.

18. Article IX of Genocide Convention provides:

“Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”

19. The Gambia and Myanmar are parties to the Genocide Convention. Myanmar deposited its instrument of ratification on 14 March 1956,

without entering a reservation to Article IX, but making reservations to Articles VI and VIII. The Gambia acceded to the Convention on 29 December 1978, without entering any reservation.

2. *Existence of a Dispute relating to the Interpretation, Application or Fulfilment of the Genocide Convention*

20. Article IX of the Genocide Convention makes the Court's jurisdiction conditional on the existence of a dispute relating to the interpretation, application or fulfilment of the Convention. A dispute between States exists where they hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations (see *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 115, para. 22, citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74). The claim of one party must be "positively opposed" by the other (*South West Africa (Ethiopia v. South Africa; Liberia v. South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328). The Court cannot limit itself to noting that one of the parties maintains that a dispute exists, and the other denies it (cf. *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 810, para. 16). Since The Gambia has invoked as a basis of the Court's jurisdiction the compromissory clause in an international convention, the Court must ascertain whether the acts complained of by the Applicant are capable of falling within the provisions of that instrument and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain (*Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1159, para. 47). The Court also recalls that, "[i]n principle, the date for determining the existence of a dispute is the date on which the application is submitted to the Court" (see, for example, *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I)*, p. 271, para. 39).

\* \*

21. The Gambia contends that a dispute exists with Myanmar relating to the interpretation and application of the Genocide Convention and the fulfilment by Myanmar of its obligations "to prevent genocide and to desist from its own acts of genocide". Specifically, The Gambia asserts that in October 2016 the Myanmar military and other Myanmar security forces began widespread and systematic "clearance operations" against

the Rohingya group, during the course of which they committed mass murder, rape and other forms of sexual violence, and engaged in the systematic destruction by fire of Rohingya villages, often with inhabitants locked inside burning houses, with the intent to destroy the Rohingya as a group, in whole or in part. The Gambia alleges that, from August 2017 onwards, such genocidal acts continued with Myanmar's resumption of "clearance operations" on a more massive and wider geographical scale.

22. The Gambia maintains that, prior to filing its Application, it made clear to Myanmar that the latter's actions constituted a violation of its obligations under the Genocide Convention, but that Myanmar "has rejected and opposed any suggestion that it has violated the Genocide Convention". In this connection, The Gambia argues that it has made several statements in multilateral settings whereby it clearly addressed the situation of the Rohingya in Rakhine State, including allegations of breaches by Myanmar of the Genocide Convention, and expressed its readiness to take this issue to the Court. The Gambia adds that Myanmar was aware that the Independent International Fact-Finding Mission on Myanmar established by the Human Rights Council of the United Nations (hereinafter the "Fact-Finding Mission") welcomed the efforts of States, in particular Bangladesh and The Gambia, and the Organisation of Islamic Cooperation (hereinafter the "OIC") "to encourage and pursue a case against Myanmar before the International Court of Justice under the Convention on the Prevention and Punishment of the Crime of Genocide" (United Nations, *Report of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/42/50, 8 August 2019, para. 107). According to The Gambia, Myanmar completely rejected the Fact-Finding Mission reports and the conclusions contained therein. Finally, The Gambia emphasizes that its claims against Myanmar regarding breaches by the latter of its obligations under the Genocide Convention were specifically communicated to Myanmar by a Note Verbale sent on 11 October 2019, to which Myanmar did not respond.

\*

23. Myanmar contends that the Court does not have jurisdiction under Article IX of the Genocide Convention. It first argues that there is no dispute between the Parties in view of the fact that the proceedings before the Court were instituted by The Gambia, not on its own behalf, but rather as a "proxy" and "on behalf of" the OIC. It further argues that no such dispute existed at the time of the filing of the Application. In this regard, Myanmar asserts that the allegations contained in the OIC documents and statements regarding the situation of the Rohingya mentioned



by The Gambia could not give rise to a dispute between the Parties as they did not amount to allegations of violations of the Genocide Convention made by The Gambia against Myanmar. It also contends that the Court cannot infer the existence of a dispute between the Parties from The Gambia's Note Verbale of 11 October 2019 and the absence of any response by Myanmar before the filing of the Application on 11 November 2019. In Myanmar's opinion, the Note Verbale in question did not call for a response as it did not formulate specific allegations of violations of the Convention, and, in any event, such a response could not be expected within a month.

24. Myanmar concludes that, in the absence of a dispute, the Court's lack of jurisdiction is manifest and the case should be removed from the General List.

\* \*

25. With regard to Myanmar's contention that, in bringing before the Court its claims based on alleged violations of the Genocide Convention, The Gambia acted as a "proxy" for the OIC in circumvention of Article 34 of the Statute, the Court notes that the Applicant instituted proceedings in its own name, and that it maintains that it has a dispute with Myanmar regarding its own rights under the Convention. In the view of the Court, the fact that The Gambia may have sought and obtained the support of other States or international organizations in its endeavour to seise the Court does not preclude the existence between the Parties of a dispute relating to the Genocide Convention.

26. Turning to the question whether there was a dispute between the Parties at the time of the filing of the Application, the Court recalls that, for the purposes of deciding this issue, it takes into account in particular any statements or documents exchanged between the Parties (see *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012 (II), pp. 443-445, paras. 50-55), as well as any exchanges made in multilateral settings (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011 (I), p. 94, para. 51 and p. 95, para. 53). In so doing, it pays special attention to "the author of the statement or document, their intended or actual addressee, and their content" (*ibid.*, p. 100, para. 63). The existence of a dispute is a matter for objective determination by the Court; it is a matter of substance, and not a question of form or procedure (*Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I), p. 270, paras. 35-36).

27. The Court notes that, on 8 August 2019, the Fact-Finding Mission published a report which affirmed its previous conclusion "that Myanmar incurs State responsibility under the prohibition against genocide" and

welcomed the efforts of The Gambia, Bangladesh and the OIC to pursue a case against Myanmar before the Court under the Genocide Convention (United Nations, *Report of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/42/50, 8 August 2019, paras. 18 and 107). On 26 September 2019, The Gambia stated during the general debate of the seventy-fourth session of the General Assembly of the United Nations that it was ready to lead concerted efforts to take the Rohingya issue to the International Court of Justice (United Nations, *Official Records of the General Assembly*, UN doc. A/74/PV.8, 26 September 2019, p. 31). Myanmar addressed the General Assembly two days later, characterizing the Fact-Finding Mission reports as “biased and flawed, based not on facts but on narratives” (United Nations, *Official Records of the General Assembly*, UN doc. A/74/PV.12, 28 September 2019, p. 24). In the Court’s view, these statements made by the Parties before the United Nations General Assembly suggest the existence of a divergence of views concerning the events which allegedly took place in Rakhine State in relation to the Rohingya. In this regard, the Court recalls that

“a disagreement on a point of law or fact, a conflict of legal views or interests, or the positive opposition of the claim of one party by the other need not necessarily be stated *expressis verbis* . . . the position or the attitude of a party can be established by inference, whatever the professed view of that party” (*Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 315, para. 89).

28. In addition, the Court takes into account The Gambia’s Note Verbale of 11 October 2019, in which The Gambia, referring to the reports of the Fact-Finding Mission, wrote that it “underst[ood] Myanmar to be in ongoing breach of [its] obligations under the [Genocide] Convention and under customary international law” and “insist[ed] that Myanmar take all necessary actions to comply with these obligations”. The Court observes that this Note Verbale specifically referred to the reports of the Fact-Finding Mission and indicated The Gambia’s opposition to the views of Myanmar, in particular as regards the latter’s denial of its responsibility under the Convention. In light of the gravity of the allegations made therein, the Court considers that the lack of response may be another indication of the existence of a dispute between the Parties. As the Court has previously held, “the existence of a dispute may be inferred from the failure of a State to respond to a claim in circumstances where a response is called for” (*Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, *Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016 (I)*, p. 271, para. 37).

29. As to whether the acts complained of by the Applicant are capable of falling within the provisions of the Genocide Convention, the Court recalls that The Gambia contends that Myanmar's military and security forces and persons or entities acting on its instructions or under its direction and control have been responsible, *inter alia*, for killings, rape and other forms of sexual violence, torture, beatings, cruel treatment, and for the destruction or denial of access to food, shelter and other essentials of life, all with the intent to destroy the Rohingya group, in whole or in part. In The Gambia's view, these acts are all attributable to Myanmar, which it considers to be responsible for committing genocide. The Gambia contends that Myanmar has also violated other obligations under the Genocide Convention, "including by attempting to commit genocide; conspiring to commit genocide; inciting genocide; complicity in genocide; and failing to prevent and punish genocide". The Court notes that Myanmar, for its part, denied that it has committed any of the violations of the Genocide Convention alleged by The Gambia, arguing in particular the absence of any genocidal intent.

30. For the purposes of the present proceedings, the Court is not required to ascertain whether any violations of Myanmar's obligations under the Genocide Convention have occurred. Such a finding, which notably depends on the assessment of the existence of an intent to destroy, in whole or in part, the group of the Rohingya as such, could be made by the Court only at the stage of the examination of the merits of the present case. What the Court is required to do at the stage of making an order on provisional measures is to establish whether the acts complained of by The Gambia are capable of falling within the provisions of the Genocide Convention. In the Court's view, at least some of the acts alleged by The Gambia are capable of falling within the provisions of the Convention.

31. The Court finds therefore that the above-mentioned elements are sufficient at this stage to establish *prima facie* the existence of a dispute between the Parties relating to the interpretation, application or fulfilment of the Genocide Convention.

### 3. *The Reservation of Myanmar to Article VIII of the Convention*

32. Myanmar further submits that The Gambia cannot validly seise the Court as a result of Myanmar's reservation to Article VIII of the Genocide Convention, which specifically deals with the right of any of the Contracting Parties to the Convention to seise any competent organ of the United Nations. According to the Respondent, this provision applies to the Court, being a competent organ of the United Nations. In its view, only this provision enables States parties not specially affected to bring a claim before the Court for alleged breaches of the Convention by another State party. Myanmar therefore submits that the valid seisin of the Court



by The Gambia, on the basis of Article VIII, is a necessary precondition to the exercise of the Court's jurisdiction under Article IX of the Genocide Convention. In light of its reservation to Article VIII, Myanmar concludes that the Court should not assume jurisdiction in the present case.

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33. The Gambia submits that Myanmar's argument based on its reservation to Article VIII of the Genocide Convention should be rejected as it would amount to depriving Article IX of any substance. In particular, the Applicant contends that the Respondent has not explained how its argument could be reconciled with Myanmar's consent to Article IX and to the Court's jurisdiction.

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34. The Court recalls that Myanmar has made a reservation to Article VIII of the Genocide Convention, which reads as follows: "With reference to article VIII, the Union of Burma makes the reservation that the said article shall not apply to the Union."

Article VIII of the Genocide Convention provides:

"Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III."

35. The Court considers that, although the terms "competent organs of the United Nations" under Article VIII are broad and may be interpreted as encompassing the Court within their scope of application, other terms used in Article VIII suggest a different interpretation. In particular, the Court notes that this provision only addresses in general terms the possibility for any Contracting Party to "call upon" the competent organs of the United Nations to take "action" which is "appropriate" for the prevention and suppression of acts of genocide. It does not refer to the submission of disputes between Contracting Parties to the Genocide Convention to the Court for adjudication. This is a matter specifically addressed in Article IX of the Convention, to which Myanmar has not entered any reservation. Article VIII and Article IX of the Convention can therefore be said to have distinct areas of application. It is only Article IX of the Convention which is relevant to the seisin of the Court in the present case (cf. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993, p. 23, para. 47*).

36. In view of the above, Myanmar's reservation to Article VIII of the Genocide Convention does not appear to deprive The Gambia of the possibility to seise the Court of a dispute with Myanmar under Article IX of the Convention.

#### 4. *Conclusion as to Prima Facie Jurisdiction*

37. In light of the foregoing, the Court concludes that, prima facie, it has jurisdiction pursuant to Article IX of the Genocide Convention to deal with the case.

38. Given the above conclusion, the Court considers that it cannot accede to Myanmar's request that the case be removed from the General List for manifest lack of jurisdiction.

## II. QUESTION OF THE STANDING OF THE GAMBIA

39. Myanmar accepts that, because of the *erga omnes partes* character of some obligations under the Convention, The Gambia has an interest in Myanmar's compliance with such obligations. It disputes, however, that The Gambia has the capacity to bring a case before the Court in relation to Myanmar's alleged breaches of the Genocide Convention without being specially affected by such alleged violations. Myanmar argues that "it is the right of an injured State to decide if, and eventually how, to invoke the responsibility of another State, and that the right of non-injured States to invoke such responsibility is subsidiary". The Respondent submits that Bangladesh, as the State being specially affected by the events forming the subject-matter of the Application, would be the State entitled to invoke the responsibility of Myanmar, but that Bangladesh is prevented from doing so in light of its declaration made with regard to Article IX of the Genocide Convention.

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40. The Gambia contends that, since the obligations under the Genocide Convention are obligations *erga omnes partes*, any State party to the Genocide Convention is entitled to invoke the responsibility of another State party for the breach of its obligations, without having to prove a special interest. The Gambia argues that the fact of being party to a treaty imposing obligations *erga omnes partes* suffices to establish its legal interest and legal standing before the Court. In this regard, it refers to the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, in which the Court recognized the capacity of Belgium to bring a claim before the Court in relation to alleged breaches of *erga omnes partes* obligations by Senegal under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punish-

ment (hereinafter the “Convention against Torture”), without determining whether Belgium had been specially affected by those breaches. The Gambia also submits that if a special interest were required with respect to alleged breaches of obligations *erga omnes partes*, in many cases no State would be in a position to make a claim against the perpetrator of the wrongful act.

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41. The Court recalls that in its Advisory Opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, it observed that

“[i]n such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d’être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.” (*I.C.J. Reports 1951*, p. 23.)

In view of their shared values, all the States parties to the Genocide Convention have a common interest to ensure that acts of genocide are prevented and that, if they occur, their authors do not enjoy impunity. That common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention. In its Judgment in the case concerning *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, the Court observed that the relevant provisions in the Convention against Torture were “similar” to those in the Genocide Convention. The Court held that these provisions generated “obligations [which] may be defined as ‘obligations *erga omnes partes*’ in the sense that each State party has an interest in compliance with them in any given case” (*Judgment, I.C.J. Reports 2012 (II)*, p. 449, para. 68). It follows that any State party to the Genocide Convention, and not only a specially affected State, may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes*, and to bring that failure to an end.

42. The Court concludes that The Gambia has *prima facie* standing to submit to it the dispute with Myanmar on the basis of alleged violations of obligations under the Genocide Convention.

### III. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE LINK BETWEEN SUCH RIGHTS AND THE MEASURES REQUESTED

43. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits thereof. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, pp. 421-422, para. 43).

44. At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which The Gambia wishes to see protected exist; it need only decide whether the rights claimed by The Gambia on the merits, and for which it is seeking protection, are plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested (*ibid.*, p. 422, para. 44).

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45. In its Application, The Gambia states that it seeks to assert the rights of “all members of the Rohingya group who are in the territory of Myanmar, as members of a protected group under the Genocide Convention”, including the “rights of the Rohingya group to exist as a group”, to be protected from acts of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide, in accordance with Article III of the Convention. The Gambia adds that it “also seeks to protect the *erga omnes partes* rights it has under the Convention, which mirror the *erga omnes* obligations of the Convention with which it is entitled to seek compliance”.

46. The Gambia contends that, for the purposes of the indication of provisional measures, the rights it asserts in the present case are plausible, and that their protection coincides with the very object and purpose of the Convention. The Gambia affirms that, based on the evidence and material placed before the Court, the acts of which it complains are capable of being characterized at least plausibly as genocidal. The Applicant maintains that the evidence of the specific genocidal intent (*dolus specialis*) can be deduced from the pattern of conduct against the Rohingya in Myanmar and refers, in this regard, to the inference of such intent drawn by the Fact-Finding Mission in its reports. In The Gambia’s view, the Court should not be required, before granting provisional measures, to ascertain whether the existence of a genocidal intent is the only plausible

inference to be drawn in the given circumstances from the material put before it, a requirement which would amount to making a determination on the merits. In this regard, the fact that some of the alleged acts may also be characterized as crimes other than genocide would not be inconsistent with and should not exclude the plausible inference of the existence of the said genocidal intent.

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47. Myanmar does not specifically address the question whether, for the purposes of the indication of provisional measures, the rights asserted by The Gambia are at least plausible. The Respondent rather contends that the Court should indicate provisional measures only if the claims put forward by The Gambia, based on the facts alleged in its Application, are plausible. Myanmar argues that, for that purpose, a “plausible claim” under the Genocide Convention must include evidence of the required specific genocidal intent. For Myanmar, “it is this subjective intent that is the critical element distinguishing genocide from other violations of international law such as crimes against humanity and war crimes”. Myanmar maintains that the Court should take into account the exceptional gravity of the alleged violations in assessing whether the required level of plausibility is met. It submits that the Court should therefore determine whether it is plausible that the existence of a genocidal intent is the only inference that can be drawn from the acts alleged and the evidence submitted by the Applicant. In this respect, the Respondent explains that if the information and the materials invoked in support of the Application may provide evidence indicating alternative inferences that can be drawn from the alleged conduct, other than an inference of a genocidal intent, the Court should conclude that the claims are not plausible.

48. On that basis, Myanmar states that, in the present case, the Applicant has not provided sufficient and reliable evidence to establish that the acts complained of were plausibly committed with the required specific genocidal intent. The Respondent argues that alternative inferences, other than a genocidal intent to destroy, in whole or in part, the Rohingya group as such, may be drawn from the alleged conduct of Myanmar vis-à-vis the Rohingya.

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49. The Court observes that, in accordance with Article I of the Convention, all States parties thereto have undertaken “to prevent and to punish” the crime of genocide. Article II provides that

“genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”

50. Pursuant to Article III of the Genocide Convention, the commission of the following acts, other than genocide itself, are also prohibited by the Convention: conspiracy to commit genocide (Article III, para. (b)), direct and public incitement to commit genocide (Article III, para. (c)), attempt to commit genocide (Article III, para. (d)) and complicity in genocide (Article III, para. (e)).

51. The obligation to prevent and punish genocide set out in Article I of the Convention is supplemented by the distinct obligations which appear in the subsequent articles, especially those in Articles V and VI requiring the enactment of the necessary legislation to give effect to the provisions of the Convention, as well as the prosecution of persons charged with such acts. In so far as these provisions concerning the duty to punish also have a deterrent and therefore a preventive effect or purpose, they too meet the obligation to prevent genocide (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 109, para. 159 and p. 219, para. 426).

52. The Court further observes that the provisions of the Convention are intended to protect the members of a national, ethnical, racial or religious group from acts of genocide or any other punishable acts enumerated in Article III. The Court also considers that there is a correlation between the rights of members of groups protected under the Genocide Convention, the obligations incumbent on States parties thereto, and the right of any State party to seek compliance therewith by another State party (cf. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II), p. 426, para. 51). In the Court’s view, the Rohingya in Myanmar appear to constitute a protected group within the meaning of Article II of the Genocide Convention.

53. In the present case, the Court notes that, at the hearings, Myanmar, referring to what it characterizes as “clearance operations” carried out in Rakhine State in 2017, stated that

“it cannot be ruled out that disproportionate force was used by members of the Defence Services in some cases in disregard of international humanitarian law, or that they did not distinguish clearly enough between [Arakan Rohingya Salvation Army] fighters and civilians”,



and that “[t]here may also have been failures to prevent civilians from looting or destroying property after fighting or in abandoned villages”.

54. The Court also notes that the United Nations General Assembly, in its resolution 73/264 adopted on 22 December 2018, expressed

“grave concern at the findings of the independent international fact-finding mission on Myanmar that [. . .] there [was] sufficient information to warrant investigation and prosecution so that a competent court may determine liability for genocide in relation to the situation in Rakhine State, that crimes against humanity and war crimes have been committed in Kachin, Rakhine and Shan States, including murder, imprisonment, enforced disappearance, torture, rape, sexual slavery and other forms of sexual violence, persecution and enslavement, that children were subjected to and witnessed serious human rights violations, including killing, maiming and sexual violence, that there are reasonable grounds to conclude that serious crimes under international law have been committed that warrant criminal investigation and prosecution and that the military has consistently failed to respect international human rights law and international humanitarian law”.

By the same resolution, the General Assembly condemned

“all violations and abuses of human rights in Myanmar, as set out in the report of the fact-finding mission, including the widespread, systematic and gross human rights violations and abuses committed in Rakhine State, including the presence of elements of extermination and deportation and the systematic oppression and discrimination that the fact-finding mission concluded may amount to persecution and to the crime of apartheid”.

It also

“strongly condemn[ed] the grossly disproportionate response of the military and the security forces, deplore[d] the serious deterioration of the security, human rights and humanitarian situation and the exodus of more than 723,000 Rohingya Muslims and other minorities to Bangladesh and the subsequent depopulation of northern Rakhine State, and call[ed] upon the Myanmar authorities to ensure that those responsible for violations of international law, including human rights violations and abuses, are held accountable and removed from posi-

tions of power” (UN doc. A/RES/73/264, 22 December 2018, paras. 1-2).

55. In this connection, the Court recalls that the Fact-Finding Mission, to which the General Assembly refers in its above-mentioned resolution, stated, in its report of 12 September 2018, that it had “reasonable grounds to conclude that serious crimes under international law ha[d] been committed that warrant[ed] criminal investigation and prosecution”, including the crime of genocide, against the Rohingya in Myanmar (United Nations, *Report of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/64, 12 September 2018, paras. 83 and 84-87). The Court notes that, regarding the acts perpetrated against the Rohingya in Rakhine State, the Fact-Finding Mission, in its 2018 detailed findings, observed that

“[t]he actions of those who orchestrated the attacks on the Rohingya read as a veritable check-list: the systematic stripping of human rights, the dehumanizing narratives and rhetoric, the methodical planning, mass killing, mass displacement, mass fear, overwhelming levels of brutality, combined with the physical destruction of the home of the targeted population, in every sense and on every level” (United Nations, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2, 17 September 2018, para. 1440).

The Fact-Finding Mission concluded that “on reasonable grounds . . . the factors allowing the inference of genocidal intent [were] present” (United Nations, *ibid.*, para. 1441). The Fact-Finding Mission reiterated its conclusions, based on further investigations, in its report of 8 August 2019 (United Nations, *Report of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/42/50, 8 August 2019, para. 18). The Court further notes that the Fact-Finding Mission, in its 2018 detailed findings, also asserted, based on its overall assessment of the situation in Myanmar since 2011, and particularly in Rakhine State, that the extreme levels of violence perpetrated against the Rohingya in 2016 and 2017 resulted from the “systemic oppression and persecution of the Rohingya”, including the denial of their legal status, identity and citizenship, and followed the instigation of hatred against the Rohingya on ethnic, racial or religious grounds (United Nations, *Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/39/CRP.2, 17 September 2018, paras. 458-748). The Court also recalls that following the events which occurred in Rakhine State in 2016 and 2017, hundreds of thousands of Rohingya have fled to Bangladesh.



56. In view of the function of provisional measures, which is to protect the respective rights of either party pending its final decision, the Court does not consider that the exceptional gravity of the allegations is a decisive factor warranting, as argued by Myanmar, the determination, at the present stage of the proceedings, of the existence of a genocidal intent. In the Court's view, all the facts and circumstances mentioned above (see paragraphs 53-55) are sufficient to conclude that the rights claimed by The Gambia and for which it is seeking protection — namely the right of the Rohingya group in Myanmar and of its members to be protected from acts of genocide and related prohibited acts mentioned in Article III, and the right of The Gambia to seek compliance by Myanmar with its obligations not to commit, and to prevent and punish genocide in accordance with the Convention — are plausible.

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57. The Court now turns to the issue of the link between the rights claimed and the provisional measures requested.

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58. The Gambia submits that the provisional measures it requests (see paragraph 12 above) are directly linked to the rights which form the subject-matter of the dispute. In particular, the Applicant asserts that the first two provisional measures have been requested to ensure Myanmar's compliance with its obligation to prevent genocide and to uphold the rights of The Gambia to protect the Rohingya group against total or partial destruction, and that the four other provisional measures requested are aimed at protecting the integrity of the proceedings before the Court and The Gambia's right to have its claim fairly adjudicated.

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59. Myanmar does not dispute the link of the provisional measures requested with the rights under the Genocide Convention for which protection is sought by the Applicant, except with regard to the fifth and sixth provisional measures requested. The Respondent claims that these last two measures would go beyond the specific purpose of preserving the respective rights of the Parties pending a final decision by the Court. Furthermore, with regard to the sixth provisional measure, Myanmar argues that the indication of such a measure would circumvent Myanmar's reservation to Article VIII of the Genocide Convention.

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60. The Court has already found (see paragraph 56 above) that the rights asserted by The Gambia under the Genocide Convention are plausible.

61. The Court considers that, by their very nature, the first three provisional measures sought by The Gambia (see paragraph 12 above) are aimed at preserving the rights it asserts on the basis of the Genocide Convention in the present case, namely the right of the Rohingya group in Myanmar and of its members to be protected from acts of genocide and other acts mentioned in Article III, and the right of The Gambia to have Myanmar comply with its obligations under the Convention to prevent and punish acts identified and prohibited under Articles II and III of the Convention, including by ensuring the preservation of evidence. As to the fourth and fifth provisional measures requested by The Gambia, the question of their link with the rights for which The Gambia seeks protection does not arise, in so far as such measures would be directed at preventing any action which may aggravate or extend the existing dispute or render it more difficult to resolve, and at providing information on the compliance by the Parties with any specific provisional measure indicated by the Court.

62. As to the sixth provisional measure requested by The Gambia, the Court does not consider that its indication is necessary in the circumstances of the case.

63. The Court concludes, therefore, that a link exists between the rights claimed and some of the provisional measures being requested by The Gambia.

#### IV. RISK OF IRREPARABLE PREJUDICE AND URGENCY

64. The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences (*Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018 (II)*, p. 645, para. 77).

65. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused before the Court gives its final decision. The condition of urgency is met when the acts susceptible of causing irreparable prejudice can “occur at any moment” before the Court makes a final decision on the case. The Court must therefore consider whether such a risk exists at this stage of the proceedings (*ibid.*, pp. 645-646, para. 78).

66. The Court is not called upon, for the purposes of its decision on the Request for the indication of provisional measures, to establish the

existence of breaches of the Genocide Convention, but to determine whether the circumstances require the indication of provisional measures for the protection of rights under this instrument. It cannot at this stage make definitive findings of fact, and the right of each Party to submit arguments in respect of the merits remains unaffected by the Court's decision on the Request for the indication of provisional measures.

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67. The Gambia contends that there is a risk of irreparable prejudice to the rights of the Rohingya and to its own rights under the Genocide Convention, as well as urgency. According to The Gambia, not only have the Rohingya been subjected to genocidal acts in the recent past, but there is a grave danger of further such acts because the Government of Myanmar continues to harbour genocidal intent and to commit crimes against members of the Rohingya group. The Gambia thus argues that the Rohingya remaining in Myanmar face grave threats to their existence, placing them in urgent need of protection.

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68. Myanmar denies that there exists a real and imminent risk of irreparable prejudice in the present case. Myanmar first asserts that it is currently engaged in repatriation initiatives for the return of displaced Rohingya presently in Bangladesh, with the support of international actors, whose support would not be forthcoming if there was an imminent or ongoing risk of genocide. Myanmar also argues that it is engaged in a range of initiatives aimed at bringing stability to Rakhine State, protecting those who are there or who will return there, and holding accountable those responsible for past violence — actions which are inconsistent with it allegedly harbouring genocidal intent. Finally, Myanmar stresses the challenges it is facing, *inter alia*, in ending an ongoing “internal armed conflict” with the Arakan Army in Rakhine State. It submits that the indication of provisional measures by the Court might reignite the 2016-2017 “internal armed conflict” with the Arakan Rohingya Salvation Army, and undermine its current efforts towards reconciliation.

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69. The Court recalls that, as underlined in General Assembly resolution 96 (I) of 11 December 1946,

“[g]enocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of

mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations”.

The Court has observed, in particular, that the Genocide Convention “was manifestly adopted for a purely humanitarian and civilizing purpose”, since “its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality” (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*, p. 23).

70. In view of the fundamental values sought to be protected by the Genocide Convention, the Court considers that the rights in question in these proceedings, in particular the right of the Rohingya group in Myanmar and of its members to be protected from killings and other acts threatening their existence as a group, are of such a nature that prejudice to them is capable of causing irreparable harm.

71. The Court notes that the reports of the Fact-Finding Mission (see paragraph 55 above) have indicated that, since October 2016, the Rohingya in Myanmar have been subjected to acts which are capable of affecting their right of existence as a protected group under the Genocide Convention, such as mass killings, widespread rape and other forms of sexual violence, as well as beatings, the destruction of villages and homes, denial of access to food, shelter and other essentials of life. As indicated in resolution 74/246 adopted by the General Assembly on 27 December 2019, this has caused almost 744,000 Rohingya to flee their homes and take refuge in neighbouring Bangladesh (UN doc. A/RES/74/246, 27 December 2019, preambular para. 25). According to the 2019 detailed findings of the Fact-Finding Mission, approximately 600,000 Rohingya remained in Rakhine State as of September 2019 (United Nations, *Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/42/CRP.5, 16 September 2019, paras. 4, 57, 107, 120, 158 and 212).

72. The Court is of the opinion that the Rohingya in Myanmar remain extremely vulnerable. In this respect, the Court notes that in its resolution 74/246 of 27 December 2019, the General Assembly reiterated

“its grave concern that, in spite of the fact that Rohingya Muslims lived in Myanmar for generations prior to the independence of Myanmar, they were made stateless by the enactment of the 1982 Citizenship Law and were eventually disenfranchised, in 2015, from the electoral process” (UN doc. A/RES/74/246, 27 December 2019, preambular para. 14).

The Court further takes note of the detailed findings of the Fact-Finding Mission on Myanmar submitted to the Human Rights Council in September 2019, which refer to the risk of violations of the Genocide Con-

vention, and in which it is “conclude[d] on reasonable grounds that the Rohingya people remain at serious risk of genocide under the terms of the Genocide Convention” (United Nations, *Detailed Findings of the Independent International Fact-Finding Mission on Myanmar*, UN doc. A/HRC/42/CRP.5, 16 September 2019, para. 242; see also paras. 58, 240 and 667).

73. The Court takes note of the statement of Myanmar during the oral proceedings that it is currently engaged in repatriation initiatives to facilitate the return of Rohingya refugees present in Bangladesh and that it intends to promote ethnic reconciliation, peace and stability in Rakhine State, and to make its military accountable for violations of international humanitarian and human rights law. In the view of the Court, however, these steps do not appear sufficient in themselves to remove the possibility that acts causing irreparable prejudice to the rights invoked by The Gambia for the protection of the Rohingya in Myanmar could occur. In particular, the Court notes that Myanmar has not presented to the Court concrete measures aimed specifically at recognizing and ensuring the right of the Rohingya to exist as a protected group under the Genocide Convention. Moreover, the Court cannot ignore that the General Assembly has, as recently as on 27 December 2019, expressed its regret that “the situation has not improved in Rakhine State to create the conditions necessary for refugees and other forcibly displaced persons to return to their places of origin voluntarily, safely and with dignity” (UN doc. A/RES/74/246, 27 December 2019, preambular para. 20). At the same time the General Assembly reiterated

“its deep distress at reports that unarmed individuals in Rakhine State have been and continue to be subjected to the excessive use of force and violations of human rights and international humanitarian law by the military and security and armed forces, including extrajudicial, summary or arbitrary killings, systematic rape and other forms of sexual and gender-based violence, arbitrary detention, enforced disappearance and government seizure of Rohingya lands from which Rohingya Muslims were evicted and their homes destroyed” (*ibid.*, preambular para. 16).

74. Finally, the Court observes that, irrespective of the situation that the Myanmar Government is facing in Rakhine State, including the fact that there may be an ongoing internal conflict between armed groups and the Myanmar military and that security measures are in place, Myanmar remains under the obligations incumbent upon it as a State party to the Genocide Convention. The Court recalls that, in accordance with the terms of Article I of the Convention, States parties expressly confirmed their willingness to consider genocide as a crime under international law which they must prevent and punish independently of the context “of peace” or “of war” in which it takes place (*Application of the Convention*



on the *Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, *Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 615, para. 31). The context invoked by Myanmar does not stand in the way of the Court's assessment of the existence of a real and imminent risk of irreparable prejudice to the rights protected under the Convention.

75. In light of the considerations set out above, the Court finds that there is a real and imminent risk of irreparable prejudice to the rights invoked by The Gambia, as specified by the Court (see paragraph 56 above).

#### V. CONCLUSION AND MEASURES TO BE ADOPTED

76. From all of the above considerations, the Court concludes that the conditions required by its Statute for it to indicate provisional measures are met. It is therefore necessary, pending its final decision, for the Court to indicate certain measures in order to protect the rights claimed by The Gambia, as identified above (see paragraph 56).

77. The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are, in whole or in part, other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power in the past (see, for example, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*, *Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018 (II)*, p. 651, para. 96).

78. In the present case, having considered the terms of the provisional measures requested by The Gambia and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

79. Bearing in mind Myanmar's duty to comply with its obligations under the Genocide Convention, the Court considers that, with regard to the situation described above, Myanmar must, in accordance with its obligations under the Convention, in relation to the members of the Rohingya group in its territory, take all measures within its power to prevent the commission of all acts within the scope of Article II of the Convention, in particular: (a) killing members of the group; (b) causing serious bodily or mental harm to the members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and (d) imposing measures intended to prevent births within the group.

80. Myanmar must also, in relation to the members of the Rohingya group in its territory, ensure that its military, as well as any irregular

armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit acts of genocide, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide.

81. The Court is also of the view that Myanmar must take effective measures to prevent the destruction and ensure the preservation of any evidence related to allegations of acts within the scope of Article II of the Genocide Convention.

82. Regarding the provisional measure requested by The Gambia that each Party shall provide a report to the Court on all measures taken to give effect to its Order, the Court recalls that it has the power, reflected in Article 78 of the Rules of Court, to request the parties to provide information on any matter connected with the implementation of any provisional measures it has indicated. In view of the specific provisional measures it has decided to indicate, the Court considers that Myanmar must submit a report to the Court on all measures taken to give effect to this Order within four months, as from the date of this Order, and thereafter every six months, until a final decision on the case is rendered by the Court. Every report so provided shall then be communicated to The Gambia which shall be given the opportunity to submit to the Court its comments thereon.

83. The Gambia has further requested the Court to indicate measures aimed at ensuring the non-aggravation of the dispute with Myanmar. In this respect, the Court recalls that when it is indicating provisional measures for the purpose of preserving specific rights, it also possesses the power to indicate additional provisional measures with a view to preventing the aggravation or extension of the dispute whenever it considers that the circumstances so require (see *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011, I.C.J. Reports 2011 (II)*, pp. 551-552, para. 59). However, in the circumstances of the present case, and in view of the specific provisional measures it has decided to take, the Court does not deem it necessary to indicate an additional measure relating to the non-aggravation of the dispute between the Parties.

\* \* \*

84. The Court reaffirms that its “orders on provisional measures under Article 41 [of the Statute] have binding effect” (*LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109) and thus create international legal obligations for any party to whom the provisional measures are addressed.

\* \* \*

85. The Court further reaffirms that the decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of The Gambia and Myanmar to submit arguments and evidence in respect of those questions.

\* \* \*

86. For these reasons,

THE COURT,

*Indicates* the following provisional measures:

(1) Unanimously,

The Republic of the Union of Myanmar shall, in accordance with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, in relation to the members of the Rohingya group in its territory, take all measures within its power to prevent the commission of all acts within the scope of Article II of this Convention, in particular:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to the members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; and
- (d) imposing measures intended to prevent births within the group;

(2) Unanimously,

The Republic of the Union of Myanmar shall, in relation to the members of the Rohingya group in its territory, ensure that its military, as well as any irregular armed units which may be directed or supported by it and any organizations and persons which may be subject to its control, direction or influence, do not commit any acts described in point (1) above, or of conspiracy to commit genocide, of direct and public incitement to commit genocide, of attempt to commit genocide, or of complicity in genocide;

(3) Unanimously,

The Republic of the Union of Myanmar shall take effective measures to prevent the destruction and ensure the preservation of evidence related to allegations of acts within the scope of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide;



31 APPLICATION OF THE GENOCIDE CONVENTION (ORDER 23 I 20)

(4) Unanimously,

The Republic of the Union of Myanmar shall submit a report to the Court on all measures taken to give effect to this Order within four months, as from the date of this Order, and thereafter every six months, until a final decision on the case is rendered by the Court.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-third day of January, two thousand and twenty, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of The Gambia and the Government of the Republic of the Union of Myanmar, respectively.

*(Signed)* Abdulqawi Ahmed YUSUF,  
President.

*(Signed)* Philippe GAUTIER,  
Registrar.

Vice-President XUE appends a separate opinion to the Order of the Court; Judge CANÇADO TRINDADE appends a separate opinion to the Order of the Court; Judge *ad hoc* KRESS appends a declaration to the Order of the Court.

*(Initialed)* A.A.Y.

*(Initialed)* Ph.G.

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POLITICS | [MY\\_NM\\_R](#)

## Rohingya refugees in India struggle for children's future

Adil Bhat in New Delhi  
12/29/2024

Many Rohingya children in India are struggling to access education, as New Delhi considers them "illegal foreigners."



In Delhi's Khajuri Khas locality, Rohingya children who are unable to attend regular schools have joined a religious seminary

Image: Adil Bhat/DW

Aisha, a 7-year-old **Rohingya** girl, wakes up every morning chasing her elder sister Asma as the latter gets ready for school in Khajuri Khas, a locality in northeastern Delhi.

Aisha pleads with her elder sister to take her along most days, but her wish is never met. She was denied admission to the same school where her sister studies in seventh grade.

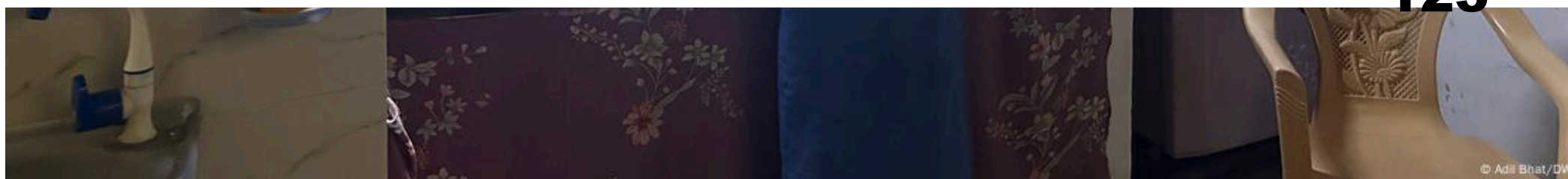
Their father, Hussain Ahmad, a Rohingya refugee who fled Myanmar with his family in 2017, struggles to explain to Aisha why the school authorities have refused her enrollment.

It pains him to see her plead — a constant reminder of the hurdles they face.

"I have been running from one public school to another to get my daughter admitted, but she has been denied everywhere," said Ahmad, a construction worker. "They are depriving her of education. I feel very helpless."







'I have been running from one public school to another to get my daughter admitted, but she has been denied everywhere,' said Ahmad

Image: Adil Bhat/DW

Ahmad said he had submitted all the necessary documents, including United Nations documentation, required for [refugee children's](#) enrollment in school. However, the school authorities have stopped considering these papers for admission.

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### Barriers to education

For the past two years, Ahmad said, "authorities have started demanding Indian documents like Aadhaar [a biometric identity card], which we, as refugees, don't possess. Our UNHCR card has become useless," referring to the document issued by the [UN refugee agency](#).

Ahmad's experience resembles those of other Rohingya families in Khajuri Khas. A few meters from his home, Arwar Kamal, another Rohingya refugee who works as a mobile repair technician, has been making rounds of government schools in the area to secure admission for his 10-year-old daughter.

"I couldn't get a proper education, and I don't want the same fate for my children," Kamal told DW. "I am worried they are shattering the dreams of our children."

Around 40 Rohingya families have lived in this colony ever since they fled persecution in Myanmar.

Most of these families stay in small, rented rooms in the narrow alleys of the densely populated area of Khajuri Khas. In this locality, 17 children have been denied admission in the last two years, according to a petition filed with [India's](#) Supreme Court.







Around 40 Rohingya families have lived in this colony ever since they fled persecution in Myanmar

Image: Adil Bhat/DW

An estimated 40,000 Rohingya people live in India, with 20,000 of them registered with the UNHCR. Most fled Myanmar in 2017, when the Southeast Asian nation's military unleashed a violent crackdown in what many describe as a genocide against the Rohingya Muslims in western Rakhine state.

[India does not have a national policy on refugees](#) and considers the Rohingya to be "illegal foreigners." India is one of the few countries that is not a signatory to the [1951 UN Refugee Convention](#).

## Anti-Rohingya sentiment growing in India

Meanwhile, the anti-Rohingya sentiment is growing in the South Asian nation. While [Prime Minister Narendra Modi's](#) Bharatiya Janata Party (BJP) is often associated with the [anti-Rohingya narrative](#), it is by no means alone. The Aam Aadmi Party, which has governed Delhi for over a decade, has also used anti-Rohingya rhetoric to bolster its support ahead of elections.

Atishi Marlena, the chief minister of Delhi, has accused the BJP-led government of settling "a large number of illegal Rohingyas" across the capital.

U Kyaw Min, the founder of the Rohingya Human Rights Initiative, is alarmed by the politicization of the Rohingya issue.

Min said this kind of political narrative targeting Rohingyas is adding to the fears of an already marginalized community.

"This education ban is politically motivated. The leaders of different political parties are portraying us as an enemy for their politics," Min told DW. At least 676 Rohingya people are currently being held in immigration detention centers across India, according to a 2024 report by Azadi Project and Refugees International.

Half of them are women and children, the report said.

## Children find alternative schooling

In Khajuri Khas, children who are unable to attend regular schools have joined an alternative school — a small religious seminary established by Mohammed Iqbal, a Rohingya refugee.

The seminary, supported by the local Muslim community, operates out of a small rented room where Iqbal provides religious education, including lessons on the Quran. The students also learn Urdu, which helps them to communicate with the locals in the area.

"I stepped in when I learned our children are being denied education. These Rohingya students have dreams of having a good life but they are being discriminated for who they are," said Iqbal.

Vinod Kumar Sharma, the principal of the school that refused admission to 7-year-old Aisha, said his school cannot be blamed, as the authorities have set the rules for admitting refugee children. "I can't give admission to the students. I don't have the authority to do it," Sharma told DW.

"If they want to get admission, their families need to approach and take permission from higher authorities in the education department."

## Rohingya take legal battle to top court

Refugees in this Delhi colony are not alone, however. In the neighboring state of Haryana, Rohingya children are being denied admission to schools after seventh grade.

Emanuel Mohd, a community leader in the Nuh camp in the state, has started offering free tuition for 90 students who have been denied admission in schools.

"Parents are anxious about the future of their children. Education is the only means of building a better future," Mohd told DW.

In October, the Delhi High Court refused to hear a plea to enroll Rohingya children in local government schools. The court noted that since the Rohingyas have not been legally granted entry into India, the matter falls under the purview of India's Home Ministry.



Ashok Agarwal, the lawyer who filed the petition, was disappointed with the court's decision. He stressed that the Indian constitution guarantees education as a fundamental right to every child in the country, irrespective of their citizenship status.



Ahmad fled Myanmar with his family in 2017

Image: Adil Bhat/DW

Agarwal is challenging the high court decision in the Supreme Court, and hopes the top court will soon set a date for hearing the case.

Back at Ahmad's home in Khajuri Khas, Asma has taken on the responsibility of teaching her younger sister, Aisha, as she waits for the day when the school gates finally open for her, too.

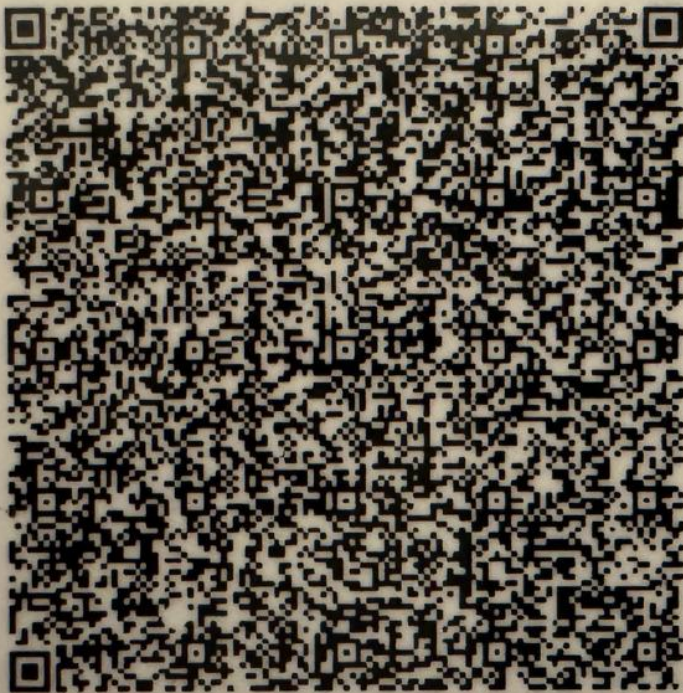
*Edited by: Srinivas Mazumdaru*



**Adil Bhat** India correspondent with a special focus on politics, conflict and human-interest stories.







The bearer of this card is a refugee under the mandate of the United Nations High Commissioner for Refugees. As a refugee, she/he should, in particular, be protected from arbitrary detention or forcible return to her/his country or to any other country where she/he would face threats to her/his life or freedom. During her/his stay in India, the bearer is subject to and has the obligation to respect national laws.

इस कार्ड का धारक संयुक्त राष्ट्र शरणार्थी उच्चायुक्त के जनादेश के तहत एक शरणार्थी है। एक शरणार्थी के रूप में, वह विशेष रूप से, मनमाने ढंग से हिरासत या अपने देश में या किसी अन्य देश में जहाँ उनके जीवन या स्वतंत्रता के लिए खतरे का सामना करना होगा; जबरन वापसी से रक्षा की जानी चाहिए। भारत में अपने प्रवास के दौरान, धारक को राष्ट्रीय कानून का सम्मान करने का दायित्व है।

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## Annexure P-13 (1996) 1 Supreme Court Cases 742

(BEFORE A.M. AHMADI, C.J. AND S.C. SEN, J.)

NATIONAL HUMAN RIGHTS COMMISSION . . Petitioner;

*Versus*

STATE OF ARUNACHAL PRADESH AND ANOTHER . . Respondents.

Writ Petition (C) No. 720 of 1995<sup>+</sup>, decided on January 9, 1996

**A. Constitution of India — Arts. 21 and 32 — Aliens — Human rights — State obliged to protect life and liberty of non-citizens also — Chakma refugees rehabilitation — Chakmas settled in State of Arunachal Pradesh — Threatened by a group of persons (All Arunachal Pradesh Students' Union) to leave the State — Held, threat violated Art. 21 — State duty-bound to protect the threatened Chakmas — State directed to pay costs quantified at Rs 10,000 to the petitioner — Protection of Human Rights Act, 1993, S. 18**



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**B. Citizenship Act, 1955 — S. 5(1)(a) — Registration as citizen of India — Application for to be made by non-citizen — Collector receiving the application obliged to forward it to Central Govt. — Refusal to forward the application would amount to denial of statutory as well as constitutional rights — Citizenship Rules, 1956, Rr. 7 to 12 — Constitution of India, Art. 11**

The Chakmas who migrated from East Pakistan (now Bangladesh) in 1964, first settled down in the State of Assam and then shifted to areas which now fall within the State of Arunachal Pradesh. They have settled there since the last about two and a half decades and have raised their families in the said State. Their children have married and they too have had children. The All Arunachal Pradesh Students' Union (AAPSU) gave out threats to forcibly drive them out to the neighbouring State which in turn was unwilling to accept them. The residents of the neighbouring State also threatened to kill them if they tried to enter their State. Faced with the prospect of annihilation the NHRC was moved, which, finding it impossible to extend protection to them, moved the Supreme Court for reliefs. Disposing of the petition

*Held :*

Our country is governed by Rule of Law. The State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty-bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics.

(Para 20)

*State of Arunachal Pradesh v. Khudiram Chakma*, 1994 Supp (1) SCC 615, *distinguished*

*Louis De Raedt v. Union of India*, (1991) 3 SCC 554 : 1991 SCC (Cri) 886, *relied on*

Therefore, first respondent, the State of Arunachal Pradesh, shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected and any attempt to forcibly evict or drive them out of the State by organised groups, such as the AAPSU, shall be repelled, if necessary by requisitioning the service of paramilitary or police force, and if additional forces are considered necessary to carry out this direction, the first respondent will request the



second respondent, the Union of India, to provide such additional force, and the second respondent shall provide such additional force as is necessary to protect the lives and liberty of the Chakmas. Except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein. The quit notices and ultimatums issued by the AAPSU and any other group which tantamount to threats to the life and liberty of each and every Chakma should be dealt with by the first respondent in accordance with law.

(Para 21)

Besides, by refusing to forward their applications, the Chakmas are denied rights, constitutional and statutory, to be considered for being registered as citizens of India. If a person satisfies the requirements of Section 5 of the Citizenship Act, he/she can be registered as a citizen of India. Section 5 can be invoked by persons who are not citizens of India but are seeking citizenship by registration. Such applications would have to be in the form prescribed by Part II of the Citizenship Rules, 1956. On a conjoint reading of Rules 8 and 9 it becomes clear that the Collector has merely to receive the application and forward it to the Central Government. It is only the authority constituted under Rule 8 which is empowered to



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register a person as a citizen of India. It follows that only that authority can refuse to entertain an application made under Section 5 of the Act. By virtue of their long and prolonged stay in the State, the Chakmas who migrated to, and those born in the State, seek citizenship under the Constitution read with Section 5 of the Act. By refusing to forward the applications of the Chakmas to the Central Government, the DC failed in his duty and also prevented the Central Government from performing its duty under the Act and the Rules.

(Paras 20, 19 and 17)

Therefore, the application made for registration as citizen of India by the Chakma or Chakmas under Section 5 of the Act, shall be entered in the register maintained for the purpose and shall be forwarded by the Collector or the DC who receives them under the relevant rule, with or without enquiry, as the case may be, to the Central Government for its consideration in accordance with law; even returned applications shall be called back or fresh ones shall be obtained from the persons concerned and shall be processed and forwarded to the Central Government for consideration. While the application of any individual Chakma is pending consideration, the first respondent shall not evict or remove the person concerned from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf.

(Para 21)

The first respondent shall pay to the petitioner cost of this petition which is quantified at Rs 10,000 within six weeks by depositing the same in the office of the NHRC, New Delhi.

(Para 21)

R-M/15614/C

**Advocates who appeared in this case:**

F.S. Nariman, Senior Advocate (Ms Bina Madhavan, P.H. Parekh, Subhash Sharma and Gopal Jain, Advocates, with him) for the Petitioner;

K.K. Venugopal, Senior Advocate (S. Atreya, Mukul Mudgal and Shahid Rizvi, Advocates, with him) for Respondent 1.

D.P. Gupta, Solicitor General (P. Parameswaran and Hemant Sharma, Advocates, with him) for Respondent 2.

***Chronological list of cases cited***

***in para(s)***

1. 1994 Supp (1) SCC 615, *State of Arunachal Pradesh v. Khudiram Chakma*

11, 16, 17

2. (1991) 3 SCC 554 : 1991 SCC (Cri) 886, *Louis De Raedt v. Union of India*

16

The Judgment of the Court was delivered by

**A.M. AHMADI, C.J.**— This public interest petition, being a writ petition under Article 32 of the Constitution, has been filed by the National Human Rights Commission (hereinafter called 'NHRC') and seeks to enforce the rights, under Article 21 of the Constitution, of about 65,000 Chakma/Hajong tribals (hereinafter called 'Chakmas'). It is alleged that these Chakmas, settled mainly in the State of Arunachal Pradesh, are being persecuted by sections of the citizens of Arunachal Pradesh. The first respondent is the State of Arunachal Pradesh and the second respondent is the Union of India.

**2.** The NHRC has been set up under the Protection of Human Rights Act, 1993 (No. 10 of 1994). Section 18 of this Act empowers the NHRC to approach this Court in appropriate cases.

**3.** The factual matrix of the case may now be referred to. A large number of Chakmas from erstwhile East Pakistan (now Bangladesh) were displaced by the Kaptai Hydel Power Project in 1964. They had taken shelter in Assam and Tripura. Most of them were settled in these States and became Indian



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citizens in due course of time. Since a large number of refugees had taken shelter in Assam, the State Government had expressed its inability to rehabilitate all of them and requested assistance in this regard from certain other States. Thereafter, in consultation with the erstwhile NEFA administration (North-East Frontier Agency — now Arunachal Pradesh), about 4012 Chakmas were settled in parts of NEFA. They were also allotted some land in consultation with local tribals. The Government of India had also sanctioned rehabilitation assistance @ Rs 4200 per family. The present population of Chakmas in Arunachal Pradesh is estimated to be around 65,000.

**4.** The issue of conferring citizenship on the Chakmas was considered by the second respondent from time to time. The Minister of State for Home Affairs has on several occasions expressed the intention of the second respondent in this regard. Groups of Chakmas have represented to the petitioner that they have made representations for the grant of citizenship under Section 5(1)(a) of the Citizenship Act, 1955 (hereinafter called "the Act") before their local Deputy Commissioners but no decision has been communicated to them. In recent years, relations between citizens of Arunachal Pradesh and the Chakmas have deteriorated, and the latter have complained that they are being subjected to repressive measures with a view to forcibly expelling them from the State of Arunachal Pradesh.

**5.** On 9-9-1994, the People's Union for Civil Liberties, Delhi brought this issue to the attention of the NHRC which issued letters to the Chief Secretary, Arunachal Pradesh and the Home Secretary, Government of India making enquiries in this regard. On 30-9-1994, the Chief Secretary of Arunachal Pradesh faxed a reply stating that the situation was totally under control and adequate police protection had been given to the Chakmas.

**6.** On 15-10-1994, the Committee for Citizenship Rights of the Chakmas (hereinafter called "the CCRC") filed a representation with the NHRC complaining of the persecution of the Chakmas. The petition contained a press report carried in *The Telegraph* dated 26-8-1994 stating that the All Arunachal Pradesh Students' Union (hereinafter called 'AAPSU') had issued "quit notices" to all alleged foreigners,



including the Chakmas, to leave the State by 30-9-1995. The AAPSU had threatened to use force if its demand was not acceded to. The matter was treated as a formal complaint by the NHRC and on 28-10-1994, it issued notices to the first and the second respondents calling for their reports on the issue.

**7.** On 22-11-1994, the Ministry of Home Affairs sent a note to the petitioner reaffirming its intention of granting citizenship to the Chakmas. It also pointed out that Central Reserve Forces had been deployed in response to the threat of the AAPSU and that the State Administration had been directed to ensure the protection of the Chakmas. On 7-12-1994, the NHRC directed the first and second respondents to appraise it of the steps taken to protect the Chakmas. This direction was ignored till September 1995 despite the sending of reminders. On 25-9-1995, the first respondent filed an interim



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reply and asked for time of four weeks' duration to file a supplementary report. The first respondent did not, however, comply with its own deadline.

**8.** On 12-10-1995 and again on 28-10-1995, the CCRC sent urgent petitions to the NHRC alleging immediate threats to the lives of the Chakmas. On 29-10-1995, the NHRC recorded a prima facie conclusion that the officers of the first respondent were acting in coordination with the AAPSU with a view to expelling the Chakmas from the State of Arunachal Pradesh. The NHRC stated that since the first respondent was delaying the matter, and since it had doubts as to whether its own efforts would be sufficient to sustain the Chakmas in their own habitat, it had decided to approach this Court to seek appropriate reliefs.

**9.** On 2-11-1995, this Court issued an interim order directing the first respondent to ensure that the Chakmas situated in its territory are not ousted by any coercive action, not in accordance with law.

**10.** We may now refer to the stance of the Union of India, the second respondent, on the issue. It has been pointed out that, in 1964, pursuant to extensive discussions between the Government of India and the NEFA administration, it was decided to send the Chakmas for the purposes of their resettlement to the territory of the present-day Arunachal Pradesh. The Chakmas have been residing in Arunachal Pradesh for more than three decades, having developed close social, religious and economic ties. To uproot them at this stage would be both impracticable and inhuman. Our attention has been drawn to a Joint Statement issued by the Prime Ministers of India and Bangladesh at New Delhi in February 1972, pursuant to which the Union Government had conveyed to all the States concerned, its decision to confer citizenship on the Chakmas, in accordance with Section 5(1)(a) of the Act. The second respondent further states that the children of the Chakmas, who were born in India prior to the amendment of the Act in 1987, would have legitimate claims to citizenship. According to the Union of India, the first respondent has been expressing reservations on this account. By not forwarding the applications submitted by the Chakmas along with their reports for grant of citizenship as required by Rule 9 of the Citizenship Rules, 1955, the officers of the first respondent are preventing the Union of India from considering the issue of citizenship of the Chakmas. We are further informed that the Union of India is actively considering the issue of citizenship and has recommended to the first respondent that it take all necessary steps for providing security to the Chakmas. To this end, central paramilitary forces have been made available for deployment in the strife-ridden areas. The Union Government favours a dialogue between the State Government, the Chakmas and all concerned within the State to

amicably resolve the issue of granting citizenship to the Chakmas while also redressing the genuine grievances of the citizens of Arunachal Pradesh.

**11.** The first respondent, in its counter to the petition, has contended before us that the allegations of violation of human rights are incorrect; that it has taken bona fide and sincere steps towards providing the Chakmas with



Page: 747

basic amenities and has, to the best of its ability, protected their lives and properties. It is further contended that the issue of citizenship of the Chakmas has been conclusively determined by the decision of this Court in *State of Arunachal Pradesh v. Khudiram Chakma*<sup>1</sup> (hereinafter called *Khudiram Chakma case*<sup>1</sup>). It is therefore contended that since the Chakmas are foreigners, they are not entitled to the protection of fundamental rights except Article 21. This being so, the authorities may, at any time, ask the Chakmas to move. They also have the right to ask the Chakmas to quit the State, if they so desire. According to the first respondent, having lost their case in this Court, the Chakmas have "raised a bogey of violation of human rights".

**12.** The first respondent has filed a counter to the stand taken by the Union of India. The first respondent denies that the Union of India had sent the CRPF Battalions of its own accord; according to it, they were sent pursuant to its letter dated 20-9-1994 asking for assistance. It has also denied that certain Chakmas were killed on account of economic blockades effected by the AAPSU; according to it, these casualties were the result of a malarial epidemic. The first respondent reiterates that the sui generis constitutional position of the State debars it from permitting outsiders to be settled within its territory, that it has limited resources and that its economy is mainly dependent on the vagaries of nature; and that it has no financial resources to tend to the needs of the Chakmas having already spent approximately Rs 100 crores on their upkeep. It has also been stated that the Union of India has refused to share its financial responsibility for the upkeep of the Chakmas.

**13.** Referring to the issue of grant of citizenship it is submitted as follows:

"It is submitted that under the Citizenship Act, 1955 and the Rules made thereunder a specific procedure is provided for forwarding the application for grant of citizenship. According to that after receiving the application, the DC of the area makes necessary enquiries about the antecedents of the applicant and after getting a satisfactory report forwards the case to the State Government which in turn forwards it to the Central Government. It is submitted that on enquiry if the report is adverse the DC would not forward it further. It is submitted that the applications, if any, made in this regard have already been disposed of after necessary enquiry. There is no application pending before the DC."

It may be pointed out that this stand of the first respondent is in direct contravention of the stand adopted by it in the representation dated 25-9-1995, submitted by it to the NHRC where it had stated:

"The question of grant of citizenship is entirely governed by the Citizenship Act, 1955 and the Central Government is the sole authority to grant citizenship. The State Government has no jurisdiction in the matter."



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**14.** It is further submitted by the first respondent that under the Constitution, the State of Arunachal Pradesh enjoys a special status and, bearing in mind its ethnicity, it has been declared that it would be administered under Part X of the Constitution. That is the reason why laws and regulations applicable during the British regime continue to apply even today. The settlement of Chakmas in large numbers in the State would disturb its ethnic balance and destroy its culture and identity. The special provisions made in the Constitution would be set at naught if the State's tribal population is allowed to be invaded by people from outside. The tribals, therefore, consider Chakmas as a potential threat to their tradition and culture and are, therefore, keen that the latter do not entrench themselves in the State. Besides, the financial resources of the State without Central assistance, which is ordinarily not forthcoming, would throw a heavy burden on the State which it would find well-nigh impossible to bear. In the circumstances, contends the first respondent, it is unfair and unconstitutional to throw the burden of such a large number of Chakmas on the State.

**15.** We are unable to accept the contention of the first respondent that no threat exists to the life and liberty of the Chakmas guaranteed by Article 21 of the Constitution and that it has taken adequate steps to ensure the protection of the Chakmas. After handling the present matter for more than a year, the NHRC recorded a prima facie finding that the service of quit notices and their admitted enforcement appeared to be supported by the officers of the first respondent. The NHRC further held that the first respondent had, on the one hand, delayed the disposal of the matter by not furnishing the required response and had, on the other hand, sought to enforce the eviction of the Chakmas through its agencies. It is to be noted that at no time has the first respondent sought to condemn the activities of the AAPSU. However, the most damning facts against the first respondent are to be found in the counter-affidavit of the second respondent. In the assessment of the Union of India, the threat posed by the AAPSU was grave enough to warrant the placing of two additional battalions of CRPF at the disposal of the State Administration. Whether it was done at the behest of the State Government or by the Union on its own is of no consequence; the fact that it had become necessary speaks for itself. The second respondent further notes that after the expiry of the deadline of 30-10-1994, the AAPSU and other tribal student organisations continued to agitate and press for the expulsion of all foreigners including the Chakmas. It was reported that the AAPSU had started enforcing economic blockades on the refugee camps, which adversely affected the supply of rations, medical and essential facilities, etc., to the Chakmas. Of course the State Government has denied the allegation, but the independent inquiry of the NHRC shows otherwise. The fact that the Chakmas were dying on account of the blockade for want of medicines is an established fact. After reports regarding lack of medical facilities and the spread of malaria and dysentery in Chakma settlements were received, the Union Government advised the first respondent to ensure normal supplies of essential commodities to the Chakma settlement. On



20-9-1995 the AAPSU, once again, issued an ultimatum citing 31-12-1995 as the fresh deadline for the ousting of Chakmas. This is yet another threat which the first respondent has not indicated how it proposes to counter.

**16.** It is, therefore, clear that there exists a clear and present danger to the lives and personal liberty of the Chakmas. In *Louis De Raedt v. Union of India*<sup>2</sup> and

*Khudiram Chakma case*<sup>1</sup> this Court held that foreigners are entitled to the protection of Article 21 of the Constitution.

17. The contention of the first respondent that the ruling of this Court in *Khudiram Chakma case*<sup>1</sup> has foreclosed the consideration of the citizenship of Chakmas is misconceived. The facts of that case reveal that the appellant and 56 families migrated to India in 1964 from erstwhile East Pakistan and were lodged in the Government Refugee Camp at Ledo. They were later shifted to another camp at Miao. In 1966, the State Government drew up the Chakma Resettlement Scheme for refugees and the Chakmas were allotted lands in two villages. The appellant, however, strayed out and secured land in another area by private negotiations. The State questioned the legality of the said transaction since, under the Regulations then in force, no person other than a native of that District could acquire land in it. Since there were complaints against the appellant and others who had settled on this land, the State, by order dated 15-2-1984, directed that they shift to the area earmarked for them. This order was challenged on the ground that Chakmas who had settled there were citizens of India and by seeking their forcible eviction, the State was violating their fundamental rights and, in any case, the order was arbitrary and illegal as violative of the principles of natural justice. On the question of citizenship, they invoked Section 6-A of the Act which, inter alia, provides that all persons of Indian origin who came before 1-1-1966 to Assam from territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985, and who had been ordinarily resident in Assam since their entry into Assam shall be deemed to be citizens of India as from 1-1-1966. Others who had come to Assam after that date and before 25-3-1971, and had been ordinarily resident in Assam since then and had been detected to be foreigners, could register themselves. It will thus be seen that the appellant and others claimed citizenship under this special provision made pursuant to the Assam Accord. The High Court held that the appellant and others did not fall under the said category as they had stayed in Assam for a short period in 1964 and had strayed away therefrom in the area now within the State of Arunachal Pradesh. On appeal, this Court affirmed that view. It is, therefore, clear that in that case, the Court was required to consider the claim of citizenship based on the language of Section 6-A of the Act. Thus, in *Khudiram Chakma case*<sup>1</sup>, this Court was seized of a matter where 57 Chakma families were seeking to challenge an order requiring them to vacate land bought by them in direct contravention of clause 7 of the Bengal Eastern Frontier Regulation, 1873. The issue of citizenship was raised in a narrower context



and was limited to Section 6-A(2) of the Act. The Court observed that the Chakmas in that case, who were resident in Arunachal Pradesh, could not avail of the benefit of Section 6-A of the Act which is a special provision for the citizenship of persons covered by the Assam Accord. In the present case, the Chakmas are seeking to obtain citizenship under Section 5(1)(a) of the Act, where the considerations are entirely different. That section provides for citizenship by registration. It says that the prescribed authority may, on receipt of an application in that behalf, register a person who is not a citizen of India, as a citizen of India if he/she satisfies the conditions set out therein. This provision is of general application and is not limited to persons belonging to a certain group only as in the case of Section 6-A. Section 5, therefore, can be invoked by persons who are not citizens of India but are seeking citizenship by registration. Such applications would have to be in the form prescribed by Part II of the Citizenship Rules, 1956 (hereinafter called "the Rules"). Under Rule 7, such



application has to be made to the Collector within whose jurisdiction the applicant is ordinarily resident. Rule 8 describes the authority to register a person as a citizen of India under Section 5(1) of the Act. It says that the authority to register a person as a citizen of India shall be an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Home Affairs, and also includes such officer as the Central Government may, by a notification in the Official Gazette, appoint and in any other case falling under the Rules, any officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Home Affairs, and also includes such other officer as the Central Government may, by notification in the Official Gazette, appoint. Rule 9 next enjoins the Collector to transmit every application received by him under Section 5(1)(a) to the Central Government through the State Government or the Union Territory administration, as the case may be, along with a report on matters set out in clauses (a) to (e) thereof. Rule 10 provides for issuance of a certificate to be granted to persons registered as citizens and Rules 11 and 12 provide for maintenance of registers. These are the relevant rules in regard to registration of persons as citizens of India.

**18.** From what we have said hereinbefore, there is no doubt that the Chakmas who migrated from East Pakistan (now Bangladesh) in 1964, first settled down in the State of Assam and then shifted to areas which now fall within the State of Arunachal Pradesh. They have settled there since the last about two and a half decades and have raised their families in the said State. Their children have married and they too have had children. Thus, a large number of them were born in the State itself. Now it is proposed to uproot them by force. The AAPSU has been giving out threats to forcibly drive them out to the neighbouring State which in turn is unwilling to accept them. The residents of the neighbouring State have also threatened to kill them if they try to enter their State. They are thus sandwiched between two forces, each pushing in opposite direction which can only hurt them. Faced with the prospect of annihilation the NHRC was moved, which, finding it impossible to extend protection to them, moved this Court for certain reliefs.



**19.** By virtue of their long and prolonged stay in the State, the Chakmas who migrated to, and those born in the State, seek citizenship under the Constitution read with Section 5 of the Act. We have already indicated earlier that if a person satisfies the requirements of Section 5 of the Act, he/she can be registered as a citizen of India. The procedure to be followed in processing such requests has been outlined in Part II of the Rules. We have adverted to the relevant rules hereinbefore. According to these Rules, the application for registration has to be made in the prescribed form, duly affirmed, to the Collector within whose jurisdiction he resides. After the application is so received, the authority to register a person as a citizen of India, is vested in the officer named under Rule 8 of the Rules. Under Rule 9, the Collector is expected to transmit every application under Section 5(1)(a) of the Act to the Central Government. On a conjoint reading of Rules 8 and 9 it becomes clear that the Collector has merely to receive the application and forward it to the Central Government. It is only the authority constituted under Rule 8 which is empowered to register a person as a citizen of India. It follows that only that authority can refuse to entertain an application made under Section 5 of the Act. Yet it is an admitted fact that after receipt of the application, the Deputy Collector (DC) makes an enquiry and if the

report is adverse, the DC refuses to forward the application; in other words, he rejects the application at the threshold and does not forward it to the Central Government. The grievance of the Central Government is that since the DC does not forward the applications, it is not in a position to take a decision whether or not to register the person as a citizen of India. That is why it is said that the DC or Collector, who receives the application should be directed to forward the same to the Central Government to enable it to decide the request on merits. It is obvious that by refusing to forward the applications of the Chakmas to the Central Government, the DC is failing in his duty and is also preventing the Central Government from performing its duty under the Act and the Rules.

**20.** We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty-bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. Those giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal obligations to safeguard the life, health and well-being of Chakmas residing in the State without being inhibited by local politics. Besides, by refusing to



forward their applications, the Chakmas are denied rights, constitutional and statutory, to be considered for being registered as citizens of India.

**21.** In view of the above, we allow this petition and direct the first and second respondents, by way of a writ of mandamus, as under:

(1) The first respondent, the State of Arunachal Pradesh, shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected and any attempt to forcibly evict or drive them out of the State by organised groups, such as the AAPSU, shall be repelled, if necessary by requisitioning the service of paramilitary or police force, and if additional forces are considered necessary to carry out this direction, the first respondent will request the second respondent, the Union of India, to provide such additional force, and the second respondent shall provide such additional force as is necessary to protect the lives and liberty of the Chakmas;

(2) except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein;

(3) the quit notices and ultimatums issued by the AAPSU and any other group which tantamount to threats to the life and liberty of each and every Chakma should be dealt with by the first respondent in accordance with law;

(4) the application made for registration as citizen of India by the Chakma or Chakmas under Section 5 of the Act, shall be entered in the register maintained for the purpose and shall be forwarded by the Collector or the DC who receives them under the relevant rule, with or without enquiry, as the case may be, to the Central



Government for its consideration in accordance with law; even returned applications shall be called back or fresh ones shall be obtained from the persons concerned and shall be processed and forwarded to the Central Government for consideration;

(5) while the application of any individual Chakma is pending consideration, the first respondent shall not evict or remove the person concerned from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf; and

(6) the first respondent will pay to the petitioner cost of this petition which we quantify at Rs 10,000 within six weeks from today by depositing the same in the office of the NHRC, New Delhi.

**22.** The petition shall stand so disposed of.

<sup>†</sup> Under Article 32 of the Constitution of India

<sup>1</sup> 1994 Supp (1) SCC 615

<sup>2</sup> (1991) 3 SCC 554 : 1991 SCC (Cri) 886



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 15242/2024

**SOCIAL JURIST, A CIVIL RIGHTS GROUP** .....Petitioner

Through: Mr. Ashok Agarwal, Mr. Kumar Utkarsh, Mr. Manoj Kumar, Ms. Ashna Khan and Ms. Gausica Iqbal, Advocates.

versus

**MUNICIPAL CORPORATION OF DELHI & ANR.....**Respondents

Through: Mr. V. Selvarasu, OSD School Branch, DoE/R-2.  
Ms. Beenashaw Soni, Senior Counsel, with Ms. Mansi Jain and Mr. Ann Joseph advocates for MCD.  
Mr. Santosh Kumar Tripathi, Senior Counsel (Civil) GNCTD with Mr. Rishabh Srivastava and Mr. Kartik Sharma, Advocates for R-2 (DOE).

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**ORDER**

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**29.10.2024**

1. Present public interest petition has been filed seeking directions to the respondent to grant admission to all Myanmar Rohingya Refugee children in schools nearby to their residents.
2. Since the Rohingyas are foreigners who have not been officially and legally granted entry into India, the present writ petition stands disposed of



with a direction to the petitioner to make a representation with the Ministry of Home Affairs, Government of India which is directed to decide the same in accordance with law as expeditiously as possible.

**MANMOHAN, CJ**

**TUSHAR RAO GEDELA, J**

**OCTOBER 29, 2024**  
**yrj**

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. No. \_\_\_\_\_ of 2025

IN

Writ Petition (C) No. \_\_\_\_\_ Of 2025

(PIL under Article 32 of the Indian Constitution)

IN THE MATTER OF

Rohingya Human Rights Initiative

(ROHRIngya) & Ors.

...Petitioners

Versus

Union of India & Ors

...Respondents

**APPLICATION SEEKING INTERIM RELIEF**

**TO,**

**THE HON'BLE THE CHIEF JUSTICE**

**OF INDIA AND HIS COMPANION JUDGES**

**OF THE HON'BLE SUPREME COURT OF INDIA**

The humbler petition of  
the petitioner Above-named

1. This Petition under Article 32 of the Constitution of India is being filed. The cause of action in this petition arises from the refusal of the Delhi Government, through its circular dated 23.12.2024 (Annexure P-1, page 25), to admit Rohingya refugee

children into schools in Delhi. This refusal denies these children their fundamental right to education, as guaranteed under Article 21A of the Constitution.

2. That the facts and contents of the Petition are not repeated herein for the sake of brevity and repetition and the same may be read as a part and parcel of this application.
3. Affidavit of Union of India dated 15.03.2018, 09.04.2018 and Status Report dated 08.05.2018 it was submitted by the Union of India that children of Rohingya refugees are not being denied educational facilities.
4. In compliance of orders dated 19.03.2018 and 09.04.2018 of this Hon'ble court in WP (C) 859 of 2013 report dated 04.05.2018 was submitted by GNCTD that "Rohingyas through being illegal migrants are not discriminated against and had been provided with basic facilities for healthcare, water, sanitation, education etc."
5. Despite the affidavits submitted by the GNCTD and the directions of this Hon'ble Court abovementioned, the Delhi Government issued a circular dated 23.12.2024, which has resulted in Rohingya children being barred from attending schools. Furthermore, an exercise will be conducted to remove such children from the schools.

6. The petitioner has a prima facie case on merits as expounded above and the writ petition.
7. Balance of convenience also lies in favour of the petitioners.
8. If the circular dated 23.12.2024 if not stayed will cause children of refugee's irreparable loss and injury.
9. Therefore, this is a case that satisfies the triple test of Prima facie case, irreparable harm and the balance of convenience in favour of the petitioner.

#### **PRAYER OF INTERIM RELIEF**

10. For the reasons mentioned above and in the interest of justice, it is prayed that this Hon'ble Court be pleased to:
  - a. Grant interim stay against the impugned circular dated 23.12.2024 at Annexure P-1 (Page 25) issued by the Delhi Government.
  - b. For an order directing the respondents to admit, and not to remove any Rohingya refugee children, in schools under their jurisdiction.
  - c. Pass any other order or further Order(s) as this Hon'ble Court may deem fit and proper in the interest of justice.

**AND FOR THIS ACT OF KINDNESS THE  
PETITIONERS AS IN DUTY BOUND SHALL EVER  
PRAY**

Filed on: 08.01.2025

Filed at: New Delhi



(Satya Mitra)

AOR for the Petitioner

Registration No: 1852

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
I.A. NO. \_\_\_\_\_ OF 2025  
IN  
WRIT PETITION (C) NO. \_\_\_\_ of 2025

IN THE MATTER OF

Rohingya Human Rights Initiative

(ROHRIngya) & Ors.

...Petitioners

Versus

Government of NCT of Delhi & Ors

...Respondents

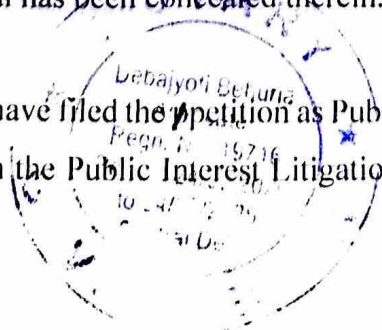
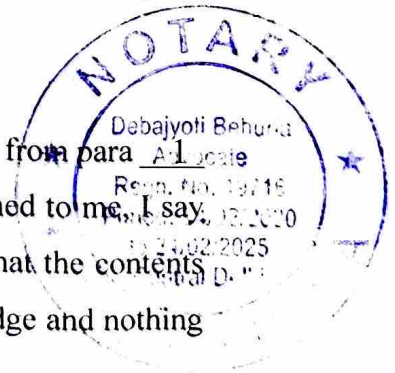
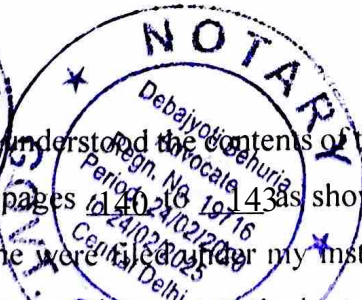
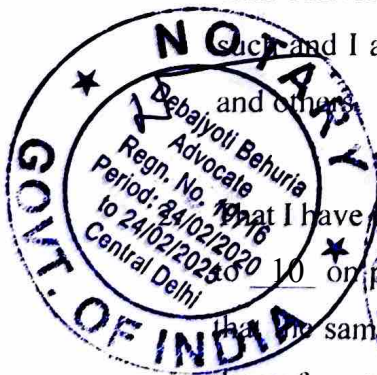
AFFIDAVIT

I, Abu Nassar, aged 37, S/o Abul Kalam , R/o H- Block House No-15, Sharm Vihar, Sarita Vihar Delhi -110076 do hereby solemnly state on oath as under:

1. That I am member of the Petitioner organization and have been authorized to file the above captioned petition/application and I am well conversant with the facts and circumstances of the case and as such and I am competent to swear this affidavit on behalf of myself and others.

that I have understood the contents of this application from para 1 to 10 on pages 140, 143 as shown and explained to me. I say that the same were filed under my instructions and that the contents thereof are true and correct to the best of my knowledge and nothing material has been concealed therein.

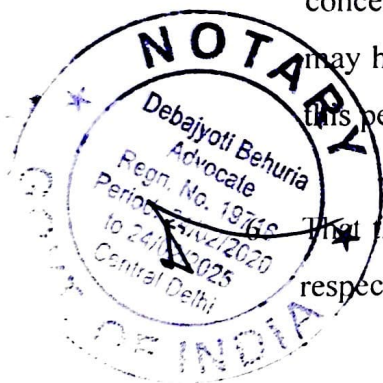
3. That I have filed the application as Public interest Litigation. I have gone through the Public Interest Litigation Rules, notifications of Hon'ble





Supreme Court of India and do hereby affirm that the present public Interest Litigation is in conformity thereof.

- 4. That the petitioner has no personal interest in the litigation and the petitioner neither would in any manner benefit from the relief sought in the present petition save as the member of general public. The petition is not guided by self-gain or gain of any person, institution, body or there is no motive other than of public interest in filing the present petition.
- 5. That I have done whatsoever enquiry/investigation which was in my power to do to collect all data/material which was relevant for this court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/maternal/information which may have enabled this court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.



That the Annexures to the Petition are true and correct copies of the respective originals.

- 7. That the Petitioner has not filed any other or similar petition/application before this Hon'ble Court or before any other court.
- 8. That the contents of the writ petition are true and correct to the best of my knowledge and belief and no part of it is false.

*Debjyoti Behuria*  
 NOTARIAL REG. No. 19769  
 Sr. No. 7099 Page No. 2206  
 Date.....

*Abdul*  
Deponent

Verification 20 JAN 2025

Verified and signed at 20 JAN 2025 that the contents of the paras of the above affidavit are true to my knowledge and belief and nothing material has been concealed therefrom

IDENTIFIED DEPONENT  
 I/She/Km. *Abu Nasir*  
 To, W/o, D/o, *Abul Kalam*  
 Identified by Shri/Smt. *Manik Behuria*  
 Solemnly affirmed before me at *Delhi* as Sl. No. *7099*  
 that the contents of the affidavit which have been read & explained to him are true and correct to this knowledge.

*I Identify*  
*Manik Behuria*  
 Identified the deponent who has signed in my presence

*Abdul*  
Deponent

20 JAN 2025  
7099

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

Writ Petition (C) No. \_\_\_\_\_ Of 2025

(PIL Under the Article 32 of the Indian Constitution)

IN THE MATTER OF:

Rohingya Human Rights Initiative

(ROHRIngya) & Ors

...Petitioners

Versus

Government of NCT of Delhi & Ors

...Respondents

**FILING MEMO**

<b>S.no</b>	<b>Particulars</b>	<b>Copies</b>	<b>Court Fee</b>
1.	Listing Performa		
2.	Synopsis and List of Dates		
3.	Writ Petition along with affidavit		
4.	Annexure P-1 TO P-14		
5.	I.A Seeking Interim Relief		
6.	Vakalatnama Along with UNHCR Card		



(Satya Mitra)

AOR for the Petitioner

Registration No: 1852

**IN THE SUPREME COURT OF INDIA**  
CIVIL/CRIMINAL/ORIGINAL/APPELLATE/JURISDICTION  
S.L.P.(C/Cr.)/Civil/Cr. Appeal/Writ Petition/T.P. No. \_\_\_\_ of 2024

In the matter of

Rohingya Human Rights Initiative (ROHRingya) & Ors Appellant(s)/ Petitioner(s)

**VERSUS**

Government of NCT of Delhi & Ors Respondent(s)

**VAKALATNAMA**

I/We A u r e n e u

Appellants(s)/Petitioner(s)/Respondent(s)/ Caveator (s)/ Opposite party in the above Suit/ Appeal/ Petition/ Reference do hereby appoint and retain **Mr Satya Mitra**, Advocate of the Supreme Court to act and appear for me/us in the above Suit/ Appeal/ Petition/ Reference and or my /our behalf to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of my application connected with the same of any decree order passed therein, including proceedings in taxation and application for Review, to file and obtain return of documents, and to deposit and receive money on my/ or behalf in the said Suit Appeal/ Petition Reference and in application of Review, and to represent me/us and to take all necessary steps on my /our behalf in the above matter, I/We agree to ratify all acts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 31 day of e e e r 2024



Accepted, Satisfied and Certified

APPELLANT(S)/ CAVREATOR(S)/ PETITIONER(S)/  
INTERVENOR(S)/ RESPONDENT(S)

(Satya Mitra)  
Advocate on Record, Supreme Court  
576, Masjid Road, Bhogal, Jangpura, New Delhi- 110014



**MEMO OF APPEARANCE**

To,

The Registrar,  
Supreme Court of India  
New Delhi

Sir,

Please enter my appearance on behalf on the Petitioner(s) /Appellant(s)/ Respondent(s)/  
Intervenor(s)/ Caveator(s) in the matter above mentioned.

Dated this the 31 day of e e e r 2024

Yours faithfully,

Place: New Delhi  
Dated:

  
(Satya Mitra)  
Advocate for Petitioner(s)/Appellant(s)/Respondent(s)/ Caveator(s)






# Rohingya Human Rights Initiative (ROHRIngya)

DATE 01.01.2025

## AUTHORIZATION LETTER

I am Sabber the Director of the Rohingya Human Rights Initiative (ROHRIngya). I hereby authorize Mohammad Javed, Roqiya Begum and Abu Nassar, members of our organization, to file pleadings on behalf of the organization in the Hon'ble Supreme Court of India.



  
Sabber

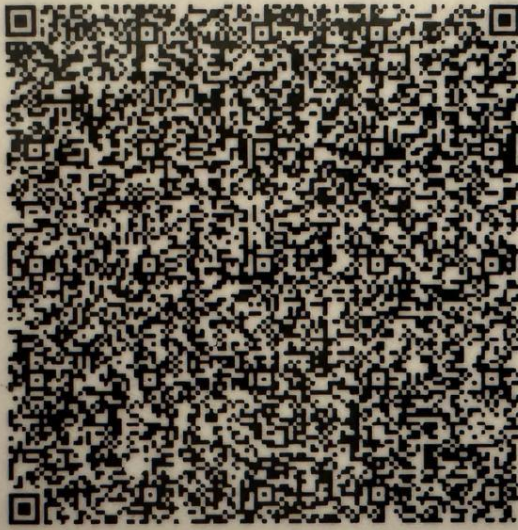
DIRECTOR

Address : B-31-32, 3rd Floor, J.J. Colony, Hastal, Uttam Nagar, New Delhi - 110059 | Tel : +91 9971599290

Website : [www.rohringya.org](http://www.rohringya.org) | Email : [info@rohringya.org](mailto:info@rohringya.org)

Facebook Page : Rohingya Human Rights Initiative (ROHRIngya)

Twitter ID : @ROHRIngya



The bearer of this card is a refugee under the mandate of the United Nations High Commissioner for Refugees. As a refugee she/he should, in particular, be protected from arbitrary detention or forcible return to her/his country or to any other country where she/he would face threats to her/his life or freedom. During her/his stay in India, the bearer is subject to and has the obligation to respect national laws.

इस कार्ड का धारक संयुक्त राष्ट्र शरणार्थी उच्चायुक्त के जनादेश के तहत एक शरणार्थी है। एक शरणार्थी के रूप में, वह विशेष रूप से, मनमाने ढंग से हिरासत या अपने देश में या किसी अन्य देश में जहाँ उनके जीवन या स्वतंत्रता के लिए खतरे का सामना करना होगा; जबरन वापसी से रक्ष की जानी चाहिए। भारत में अपने प्रवास के दौरान धारक को राष्ट्रीय कानून का सम्मान करने का दायित्व है।

Issued by: UNHCR India

B-2/16, Vasant Vihar  
New Delhi - 110057

Tel : (+91-11) 43530444

Email: [indne@unhcr.org](mailto:indne@unhcr.org)  
Web: [www.unhcr.org/in/](http://www.unhcr.org/in/)

UNHCR No.: 305-14C00421

Name: Abu NASSAR

Alias:

Father's Name: KALAM Abul

Date of Birth: 01-Jan-1988

Sex: Male

Country of Origin: Myanmar

Date of Issue: 14-Sep-2024

Date of Expiry: 13-Sep-2027

305-00092730

UNHCR The UN Refugee Agency

IN

2024BAP211663

الأمم المتحدة  
UNHCR  
The UN Refugee Agency

UNHCR  
The UN Refugee Agency

IN

2024BAP211663



Vertical text on the left edge of the card, likely containing identification or security information.



UNHCR No.:  
305-10C01882



Name:  
Mohammad JABED  
Alias:

Father's Name:  
AYUB Mohammad

Date of Birth:  
01-Jan-1985

Sex:  
M

Country of Origin:  
Myanmar

Date of Issue:  
01-Aug-2023

Date of Expiry:  
31-Jul-2025



305-00078684

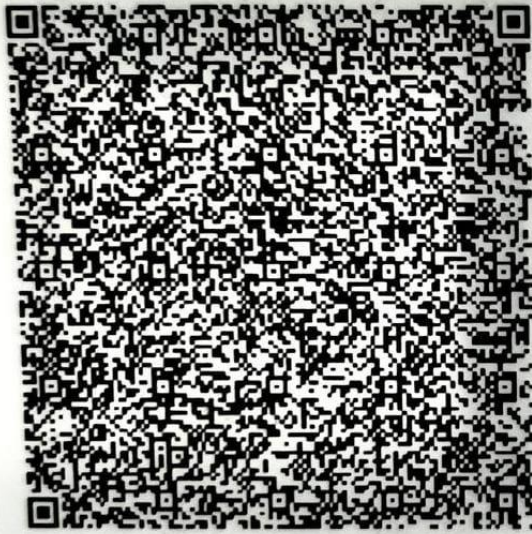


**UNHCR**  
The UN Refugee Agency



2023BAP217050

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इस कार्ड का धारक संयुक्त राष्ट्र शरणार्थी उच्चायुक्त के जनादेश के तहत एक शरणार्थी है। एक शरणार्थी के रूप में, वह विशेष रूप से, मनमाने ढंग से हिरासत या अपने देश में या किसी अन्य देश में, जहां उसकी/उसके जीवन या स्वतंत्रता के लिए खतरे का सामना करना होगा, जबकि वापसी से रक्षा की जाती यादिए भारत में अपने प्रवास के दौरान, धारक को राष्ट्रीय कानून का सम्मान करने का दायित्व है।

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UNHCR No.:  
305-11C00378

Name:  
Roqiya BEGUM

Alias:

Father's Name:  
AHMED Zakir

Date of Birth:  
01-Jan-1986

Sex:  
Female

Country of Origin:  
Myanmar

Date of Issue:  
19-Jan-2024

Date of Expiry:  
18-Jan-2026

305-00080025

 **UNHCR**  
The UN Refugee Agency





2023BAP206978