



2nd Vox Anatolis National Moot Court Competition

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National Law University and Judicial Academy Assam



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Base Proposition

1. Zedellin is a third-world country in the continent of Ghanapara, which was colonised for 200 years. After a prolonged independence struggle, Zedellin became an independent country. It was decided by the constitution makers of Zedellin that it will be a quasi-federal state. Subsequently, Zedellin was divided into 10 federal units, on the basis of its diverse range of languages and cultures. Xinaloa was one of these units. It was located in the south-east corner of Zedellin. If one looked at the geography of Zedellin, then its northern and western parts were bordered by oceans while in the east Zedellin had the Great Ulubari Mountain Range. Only the south-eastern portion of Zedellin was made up of plain lands and had accessible roads to the neighbouring countries. Xinaloa, being in the south-eastern part of the country shared the international border with Tescobar, which was also a third-world country.
2. Both, Tescobar and Zedellin became independent from colonial rule around the same time. While Zedellin got independence on 2nd February 1947, Tescobar gained independence on 21st October 1947, from the same colonial forces. While the leaders of Zedellin were inspired by the idea of progress, the same was not the case with Tescobar. As a result of which in the years that ensued, Zedellin reached new heights of progress and development, while Tescobar's economy suffered and nosedived in the abyss.
3. Because of the poor quality of life and very less economic opportunities, the citizens of Tescobar started immigrating into the Zedellian state of Xinaloa, around the year 1971. So massive was the scale of this immigration that within 20 years, the illegal immigrants comprised 20% of the population of Xinaloa. They controlled the unorganised labour sector of Xinaloa. Their presence started altering the state's demography and had posed an existential threat to the culture and language of Xinaloa.
4. When the Census Report of Zedellin was published in the year 2004, a panic wave ran through the entire state of Xinaloa. Residents of the state stared at an existential crisis and for the first time, protests erupted across the state. All Xinaloa Student's Union, a student's organisation became the centre of the anti-immigration protests. Such was the intensity of the protests that the state came to a stand still for 10 years. The state assembly elections were boycotted, twice. People gave up their jobs and in some areas massive riots took place.
5. In the year 2010, a revolutionary leader named Jitendra Lodhi became the Prime Minister of Zedellin. To end the impasse in Xinaloa and for the betterment of its people, he declared that a National Register of Citizens would be made in Xinaloa. This register would be compiled after conducting a long exercise by mobilising the entire state machinery. Detailed plans were made to ensure that the illegal immigrants could be pointed out and kept out of the list. The Union Cabinet passed the proposal of the Prime Minister and the exercise was conducted.

6. The NRC compilation exercise began in the year 2012, although the exercise was challenged in the Supreme Court of Zedellin, the court upheld its legality. After 2 years of survey, 3 drafts were made public, claims and counter-claims were entertained by the NRC authorities and on 31st December 2014, the final NRC list was published by the NRC authorities. Out of the 31,09,891 people who resided in the State of Xinaloa, the names of around 8,03,156 persons were excluded from the final NRC list. The Government of Zedellin provided such persons the option to appeal to the appropriate appellate authorities to prove their citizenship. It was a three-tier process that went through:-

1) The Foreigner's Tribunals

2) High Court of Xinaloa

3) Supreme Court of Zedellin.

7. On 4th August 2016, the Supreme Court of Zedellin heard the last NRC related appeal, marking the end of the judicial process to scrutinise citizenship claims. On 5th August 2016, the Union Government of Zedellin declared that a total of 6,89,131 persons were declared as foreign nationals after they had exhausted all the judicial remedies available to them to prove their citizenship. The Government also declared that such person will be deported back to Tescobar, their country of origin after a bilateral verification process between the two countries. The Government said that it would take around 3 years to complete the entire deportation process. 8. The indigenous people of Xinaloa, were happy that such a huge number of people were identified as Foreigners. But there was apprehension in a certain section of the Xinaloan society which feared that if the identified foreigners were allowed to roam free till they were deported then they might use that time to forge duplicate documents and diffuse themselves in other states of Zedellin.

9. All Xinaloa Student's Union, the students' group that led the anti-foreigners protest, petitioned to the Government of Zedellin on 12th August 2016, to take steps to ensure that the identified foreigner's don't get diffused in other states. Some salient points of their petition were:-

[I] The Union Government should build a detention centre in each of the 32 districts of Xinaloa with each detention centre having the capacity to hold 20,000 people, so that the 6,89,131 identified foreigners can be watched over and cannot get themselves diffused till the time they are deported back to Tescobar.

[II] The Union Government should finish the fencing of the porous Zedo-Tescobar international border to prevent further infiltration.

[III] The Union Government shall demand an amount of 1 trillion Gold Dragons(the standard international currency) from the Government of Tescobar as damages for its inability to stop its own citizens from infiltrating into its neighbouring country.

[IV] The Union Government should provide a Special Relief Package of 5 Trillion Gold Dragons to the State of Xinaloa, to help it build its economy and the required infrastructure for the same.

[V] Since the foreigners have been successfully identified and are thus naturally stripped of their voting rights, the Union Government should immediately conduct State Assembly Elections in Xinaloa and Bye-Elections to all the Loksabha Seats of Xinaloa. So that representatives can be chosen by the original citizens.

10. Mr. Jitendra Lodhi and his government was of the view that the demands raised by All Xinaloa Student's Union were legitimate in nature and thus decided to conduct fresh elections. Though the demand of making Tescobar pay 1 Trillion Gold Dragons was rejected for being extraneous in nature, the Union Government granted a special relief package of 5 Trillion Gold Dragons to the State of Xinaloa for re-building its economy. Regarding the demand of All Xinaloa Student's Union to incarcerate all the foreigner's in newly built detention centres, the Union Government decided that the 6,89,131 people who were declared as foreigner's by the courts and had exhausted all the their legal remedies were to be shifted to jails across Zedellin, because it was not possible to build 32 Detention Centres in such a short period of time, so that they cannot mix themselves up in the population of Zedellin. Pursuant to this the Home Ministry of the Union Government of Zedellin, on 16th August 2016, released an order vide., Ref.No:- HomeMin/Order/1021/X45 (also known as the "Foreigner's Order,2016) [**Annexure 1**] . By the virtue of this order all the declared foreigners were to be shifted across the 2396 Prisons, spread across 409 districts of Zedellin, till the time they were deported , after the completion of the bilateral verification process that was to be conducted by the national governments of Zedellin and Tescobar.

11. The process of shifting the foreigner's to the prisons across Zedellin was finished by 21st October 2016. But 10,086 of them had fled the watchful eye of the state and got themselves dissipated in the country, thus validating the concerns raised by Akhil Xinaloa Bhanua Samaj. Although the search for finding them out was on, 6,79,042 foreigners were now scattered across Prisons in Zedellin, waiting for deportation to Tescobar. Although Tescobar had categorically stated on 24th October,2016 that it believed that none of its citizens ever infiltrated into Zedellin.

12. In the meanwhile, Mr. Kustavo Kaviria, a convicted criminal who was lodged in the Tryganj Jail of Tinajpur District of West Tengal State wrote a letter to the Supreme Court of Zedellin, claiming violation of basic human rights against the Government of Zedellin in its treatment of the detained foreigners. Although he was a citizen of Zedellin who was serving his term in prison, he was supposedly moved by the inhuman treatment meted out to the foreign detainees who were incarcerated in the same jail which doubled as a detention centre[**Annexure-2**].

13. Invoking its epistolary jurisdiction, the Supreme Court of Zedellin took cognisance of the letter and sent notice to the Government of Zedellin to appear before it. The matter is scheduled for hearing on 10th November 2016.

The laws of Zedellin are *mutatis mutandis* to the laws of India.

Prepare arguments from both sides.

[Annexure 1]

Ministry of Home Affairs

Notification

Shrimatinagar, the 16th August, 2016

HomeMin/Order/1021/X45 :- In exercise of the powers conferred by Section 3 of the Foreigners Act, 1946 (XXXI of 1946), the Central Government is pleased to make the following order: -

1. Short title, commencement and extent.

(1) This Order may be called the Foreigners Order, 2013.

(2) It shall come into force at once.

(3) It extends to the whole of Zedellin.

2. Definitions In this order:-

(1) “Identified Foreign National from Xinaloa [IFNX] ” means any person whose name was left out of the National Register of Citizens’ List published on 31st December,2010;

(2) “ Declared Foreign National from Xinaloa [DFNX] ” means any Identified Foreign National from Xinaloa who exhausted his legal remedies but still couldn’t prove himself a citizen of Zedellin by appealing to the appropriate appellate authorities;

(3) “Detention Centre” means the 2396 Prisons located in 409 Districts of Zedellin where the DFNX will be detained till they are deported after following the due process of law;

3. Order regarding the detention Declared Foreign Nationals from Xinaloa [DFNX]

(1) The State Authorities are hereby instructed to detain DFNX in 2396 Prisons located in 409 districts.

(2) Such prisons shall act as “Detention Centres” for such DFNXs’, till the time the detainees are deported back to Tescobar.

(3) DFNX shouldn’t be allowed to do non-punitive labour and thus earn money .

(4) The DFNX families shall be kept in separate prisons to ensure that every attempt to escape fails.

(5) Authorities of the detention centres are hereby instructed to take all such necessary steps to ensure that the detainees can in no possible way escape detention till they are deported.

[Annexure 2]

To

The Hon'ble Chief Justice

Supreme Court of Zedellin

Srimatinagar City, Zedellin

Pin Code:- 000001

Sub:- Violation of Basic Human Rights because of National Register of Citizens and because of the steps taken by the Government of Zedellin pursuant to the Home Ministry order vide., Ref.No:- HomeMin/Order/1021/X45

Dear Sir,

I don't understand the intricacies of law or what drives the law making spirit of a nation. But no law or legal exercise shall be such that it deprives humans of humanity. Our great nation was formed on the cornerstone of several great ideas but the spirit that pervades all such ideas is humanity. The entire National Register of Citizen Exercise (NRC Exercise) was driven by a spirit of ultra-nationalism to find out illegal immigrants and to detain them. The Government has successfully detained several thousand people but I don't see any future for them in the horizon. Tescobar, the country from which they have alleged that these people have come has categorically denied to recognise such persons as their citizens. Which makes me think about the future of all the detained foreign nationals. I know that this court has earlier upheld the legality of the NRC Exercise but the consequences of such a legal exercise has put into jeopardy the future of 6,79,042 people. A consequential analysis of this legal exercise will definitely raise several questions on the morality of such an exercise. When did our constitutional morality become so weak that it cannot see through the nebulousness of legality. Have we forgotten that procedure established by law, doesn't only mean positive law but envisages a higher law that is just, fair and reasonable. When you peel off all the attributes from a man, one by one, what remains is an attributeless living being, the mirror image of God as some religions say, a living being who has all the basic inviolable rights like you. Rights, the conception of which marked the dawn of the era of Juridical Sciences. Rights, which are inviolable in nature. Rights, which constitute the basic limbs and faculties which makes life liveable. Rights, which know not the boundaries made by man. Right, which are available to citizens and aliens alike.

Today I write to you to tell you that the Great Nation of Zedellin has deprived human beings of these rights. A man named Mohammad Shankar been declared a foreigner along with his son and daughter, who are 8 and 5 years old. His wife was killed in the 2009 anti-foreigner riots that took place in Xinaloa. Both of his children have been kept in separate prisons. They are being deprived of their right to education. Which nation does that sir?

He is lodged in jail and has been informed that he won't be allowed to earn money by working and making use of his skills and faculties, this violates his right to livelihood. They are not providing him with proper health facilities also, this violates his right to health. He is not a convicted criminal but they barge into his detention rooms and this violates his right to privacy. I am not well versed in law but one of my co-detainees informed that these rights come under the purview of Article 21 of the Constitution of Zedellin. The very constitution that gives you the powers by the virtue of which you have declared him as a foreigner. And many more like Mohammad Shankar are languishing in jails without committing any crime. Since the declaration by Tescobar has put their future at the risk of being stateless, I would humbly request you to cleave down the tentacles of legality with the sword of constitutional morality and thus scrap the NRC exercise on a moral basis.

Although convicted criminals and under trial prisoners are treated as per the Jail manual there is no legal document that guides the treatment that should be legally meted out to the detained foreigners. The only document that talks about the conduct of the Jail Authorities towards the detained foreigners is the *Foreigners Order 2016* (HomeMin/Order/1021/X45). It is an instrument that creates discrimination and takes away the basic human rights. I would thus humbly request you to declare it unconstitutional and thus void.

Yours truly,

Kustavo Kaviria

Inmate No: 9X11Y26Z11

Triganj Jail