

# **Report of social audit**

**on**

**the issues of Indo-Bangladesh border villagers**



# **Report of the Social Audit on Issues of Indo-Bangladesh Border Villagers**



**Banglar Manabadhikar Suraksha Mancha (MASUM)**

# Report of the social audit on issues of Indo-Bangladesh border villagers

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# Foreword

Creation of space to let the wretched speak is a cornerstone in the narrative of justice. With the initiative of Social Audit, MASUM tried their best to manufacture a scope for the same. Renowned panelists at the social audit listened to the deposes and testimonies and came up with their valuable opinions. The main purpose behind the initiative is to shed light on the cases of human rights violations where the victims have been denied justice from the various quarters of the authority. This will strengthen the possibilities of a movement on the issue of violations of human rights near the India-Bangladesh Border. We tried our best to hear and understand the cases put forth to us by the victims and tried to incorporate the reflection of the same in the report. Our system in place to monitor the progress of the individual cases, needs to be dealt with minutely. On our benches, we observed that many victims are denied justice for silly reasons e.g. the police report never arrived before court etc. Many cases are dismissed due to the same. The victims are losing their confidence in the criminal justice system due to its insensitive attitude and unnecessary delay in deliverance of justice. This does away with the very basics of the purposes of the justice system. We have covered these issues with exhaustive details, and those interested in the subject can get a glimpse into the condition of the people residing near the India-Bangladesh Border.



India has been an independent country for 75 years now. The colonial hangover of insensitivity and highhandedness of the administration is still very much prevalent. But, we must note the provision to defend the rights of the citizens and avenues to get justice for the victims of such violations are deeply embedded in India's constitution. The administration and the judiciary must be sensitized to make the process of the implementation of such provisions smoother and prompt.

India has been a signatory on various international covenants and declarations, Universal Declaration of Human Rights, 1948 and ICCPR, ICESCR 1966 being important among those. These covenants have laid the cornerstone for the legal basis of human rights. Despite being a signatory India has failed to live up to the ideals of the covenants which is, of course, deeply agonizing. Even in the Constitution of India the Article 14

ensures “Right to Equality”. But one section of the population is being treated with indifference just due to the fact that they were born near an international border. Our concerted efforts are required to force the government to hear the plights of India’s citizens.

We are publishing this report on the occasion of International Human Rights Day in hope that this effort will bring forth the situations our fellow citizens at the border are going through. It is a task every section of civil society must take up to ensure the “Right to life” of those people.

Thanking you



J. Malay Sengupta

Chairperson, Social Audit on issues of Indo-Bangladesh border villagers

&

Former Acting Chief Justice, Sikkim High Court

# Preface

***“Torturers must never be allowed to get away with their crimes, and systems that enable torture should be dismantled or transformed.”***

**-UN Secretary-General António Guterres**

The history of the Government of India since 1947 is marred by the incidents of human rights violations by its security forces. Due to its long and populous border region, contradiction between the security forces guarding it and the local population has always been evident.

It is no secret that under the enormous weight of such contradictions, the marginalized were crushed. The poor, the toiling, the disparaged and the struggling masses of people alongside them - their maladies as wide as the barbed-wire fencing between two sovereigns; their loss as great as the distance between them. Given the opportunity, it might be comprehensible for them to narrate their stories of disasters and severely disproportionate triumphs. But it is incomprehensible for them to recount their losses.

This all began with the fateful decision of partition in the Indian sub-continent when the British were about to leave the turf. It is known to us that artificial and barbed wire borders have been a cause of trouble and discomfort for the population near the area. In case of the Indo-Bangladesh border in particular, the issues have become more evident due to its dense population, continuous landscape and socio-economic kinship of the regions on both sides of the border.

Officially many steps have been taken through intergovernmental talks. This was supposed to make things better on the ground. In the executive summary of one such agreement it was mentioned, *“This historic agreement will contribute to enhanced bilateral cooperation. It will result in better management and coordination of the border and strengthen our ability to deal with smuggling, illegal activities and other trans-border crimes.”* It was thought that these agreements will contribute to the establishment of a peaceful border which will further the demands of humanitarian benefits. But have these changes been reflected on the ground? We will get to know that in our report.

Without knowing a brief history of the force bordering the Indo-Bangladesh Border, it is difficult to imagine the multitudes of the problems the population is facing. This border is guarded by the Border Security force (BSF) which was established during the Indo-Pakistan war of 1965. In 1968, the BSF Act was passed by the parliament. BSF has made an identity for itself of being trigger-happy around the World. It is to be noted that in 2010 a Canadian letter signed by Eric Verner (First Secretary, Migration) denied VISA to a BSF ex-constable mentioning that the organization is a 'notoriously violent paramilitary unit- engaged in systematic attacks on civilians. Such is the reputation of BSF abroad. Though this is not the only parameter to understand the violation, it can be an early entry point to enter the details of violence and violations committed by the force.

Through great events in history, we have come closer to adapting moralities in defense of human rights which were later forged into legal guidelines. One of the oldest roots of such morality and guideline is the 'Magna Carta' or the 'Great Charter', the emergence of which has been a milestone in the establishment of modern democracy. The 'Great Charter' granted and protected the rights of free citizens to own and inherit property and to be protected from excessive tax. Since then, we have come across great distances to guarantee the freedom of all human beings and their equality in dignity and rights as laid down under Article 1 of the Universal Declaration of Human Rights which was proclaimed on December 10, 1948, known in history as the Human Rights Day.

Before the Universal Declaration of Human Rights was adopted, the scale of justice and equity was massively crooked in favor of those who had the power to seal the fates of the common man with just a flick of the finger. As the era of the dictators ended at the end of World War II, the scales gradually proceeded to be equal between the 'haves' and the 'have-nots' with regard to rights to life, livelihood and dignity. And suddenly, the Eisenhowers, Nixons and Pinochets of the World were made liable for waging war as an attack on Human Rights. The scales of powers suddenly did not look so crooked; the structure of authority suddenly collapsed under the demands for a dignified living of the masses.

This year, India completed 75 years of Independence with a vigor that nonetheless resembled the Platinum Jubilee Celebration of Indian Independence. The day before what is known as Independence Day, we have the 'Partition Horrors Remembrance Day' to promote solidarity with people whose losses mounted in heaps in exchange for independence. The Indian Legal System has certainly earmarked milestones to ensure social

order and abolition of discrimination on the basis of caste, sex, religion, race and place of birth. But what the country still awaits, inter alia, is a fair shake with regard to social equality and against the subjugation of citizens by the state, the guarantor of Human Rights itself.

However, the last few years have cast a shadow of gloom on the state of democracy in India. A report released by the Human Rights Measurement Initiative in June 2022 revealed that India has performed worse than average on parameters that evaluated every country's performance to ensure Human Rights as per International Law. The country scored a 3.6/10 on the Assembly and Association Index and 3.5/10 on Opinion and Expression Index giving an insight into the decaying state of Indian Democracy to the World.

These indexes are testimonies to the dismantlement of Constitutional safeguards that the makers of the Indian Constitution had guaranteed to the people who are a part of the religious and ethnic minority and subaltern social strata. In the bygone years, India has witnessed organized and enormous political crackdowns on students, public intellectuals, activists, professors, lawyers and people from all spheres of life who stood as the defenders of Human Rights and the protectors of fundamental rights of the citizens. Several such activists still languish in jails, awaiting a fair trial while the 'Pillars of Democracy' in India continue to watch the butchery of the Principles of Natural Justice like a muted spectator.

It is not to be disregarded that India has made significant progress as a nation which geared the country towards progress in the last 75 years of its independence. Nonetheless, the violations of Human Rights have been a chain that binds the free citizen of India to dirt.

The residents in the villages adjoining Indo-Bangladesh borders live in a state of undeclared emergency every day of the year. The citizens are constantly at the receiving end of arbitrary violence by the BSF, custodial torture and death, and extrajudicial killings on top of poverty and government negligence. The apathy of the state apparatus towards these residents has increasingly pushed them towards further pauperization and has forced them to live like second-class citizens with no entitlement to even basic human rights.

MASUM has closely worked on documenting and acting upon the violations of human rights in the hands of the government officials and forces in the resident villages adjoining the Indo-Bangladesh border for 25

years. Not only does the organization analyze the various dynamics of the cause-and-effect relationship of such atrocities but they also take forward steps to ensure that the government recognizes such violations and fulfills its liability in Torts by awarding compensation and delivering necessary justice to the victims. The organization's backbone comprises victims, locals, human rights and other activists, lawyers, social workers and people from the progressive society who think and believe that the people's will is the primary parameter of the measure for democracy.

It is highly essential to bring to the forefront such stories of the victim-residents at the borders to claim that our country is far from representing the people's will. After all, democracy must never be the scepter of the monarch; it must always be the crown jewel of the commons.

# Introduction

The Indo-Bangladesh border, which is the longest Indian border with any of its neighboring countries (4096 km), is a man-made border established after independence arising out of political settlements. The socioeconomic and religious conditions of the people living across the West Bengal – Bangladesh border are similar. As a legal requirement, the borderlines delineating India and Bangladesh demarcate territorial boundaries and recognize each other's sovereign power. India reportedly has a positive relationship with its neighboring country Bangladesh, and the boundaries are meant to enable inter-state collaboration and regional stability.

However, research has revealed the exact opposite. Due to their "trigger-happy" attitude, the Border Security Forces have established a reign of terror over every area in which they have been stationed. The fundamental rights guaranteed by the Indian Constitution have been repeatedly violated, as evidenced by the borders. Particularly, because the BSF views the human residents of the border as subordinates, rights relevant to people's way of life and livelihood have been lost.

Despite numerous recommendations from more than 100 nations in the UPR for India to ratify UNCAT (United Nations Convention Against Torture) and India's commitment to do so, it has still not done so. As a result, there is no reliable article that currently exists to stop the widespread use of violence and torture. The International Covenant on Civil and Political Rights (ICCPR) was approved by the Indian government on April 10, 1979. According to the ICCPR, every state party that is a part of the Covenant is required to acknowledge the inherent dignity of every person, and the Covenant commits to fostering the conditions necessary for citizens to exercise their civil and political rights and liberties to the fullest extent possible. India doesn't appear to be adhering to the ICCPR's rules.

MASUM has filed many applications under the RTI (Right to Information Act 2005) to the eight West Bengal border districts that share a border with Bangladesh in an effort to gather information about the brutality, torture, extrajudicial killings, and enforced disappearances that are a part of the everyday experiences of the residents living along the border. Consequently, people's civil and political liberties are fully denied.

Local governance fails to grasp these egregious violations of human rights, and it is for this reason that the Government of India has been advised multiple times in the Universal Periodic Review (UPR) to ratify the United Nations Convention Against Torture (UNCAT). India is yet to follow through on its promise to do the same. Human rights organizations always fight to protect these people's rights so that they at least have the bare minimum resources to continue their fight for survival, while civil society remains silent out of self-interest.

The border people are mainly dependent on agriculture, and despite having their own land, they are not able to cultivate it freely as the border guards BSF impose illegal restrictions to cultivate their land. It's a misconception that Barbed wire is placed on the border to demarcate the borders of the country, given that the process is undemocratic. Administrative officials never discuss issues with the border residents. According to international law, the barbed wire has to be within 150 yards of the actual border (IBP) which is never followed in the case of the Indo-Bangladesh border. As a result, in many places, this distance is 500 meters to 1 kilometer and in some places, it is 5 to 10 kilometers.

The vast area on the other side of the barbed wire is Indian territory; therefore, the frontiersmen who own the land are Indian. The administrative authority never thought of those people living in the border areas before installing the barbed wire. Moreover, they were assured by the Government that there would be a gate to their land which would be open for 12 hours. The poor farmers believed that and many of them were forced to give lands to the government to install the barbed wire fence.

Later, they were assured special benefits with regards to compensation for the land which has not been implemented to date. Those farmers were named "Land Looser" by the central government. Even today, people move around to the concerned departments for compensation. After the installation of barbed wire, the rules of the border guards became more extensive and inhumane. Instead of 12 hours, the gates open only 3 times a day for an hour - 7-8 am, 12-1 pm and 3-4 pm respectively. In this short time, the cultivator has to go to his land, cultivate and return. Otherwise, they would be stuck outside the borders of the country where there is no shelter from the sun or water. In the para 2.3.3 of the report of the Parliamentary standing committee on Border security, it was duly mentioned that if land is acquired for the purpose of

fencing the affected families must be adequately compensated and rehabilitated. But that hardly has been the case.

Not only this, but apart from the identity card given by the government, they have to get another identity card from the border guard force which may not be easily availed. They have to rush to the concerned offices for a week or more which hampers their daily routine of working in their fields. Even after receiving the identity card, the border guards continue to conduct strict surveillance. They raise objections and restrict them in their use of multiple cows, the use of tractors, the number of pesticides, and cultivation of crops (jute, maize, banana) of over three feet without providing a valid reason for the same.

The border guards are not only disrupting agriculture but also disrupting the way of life and violating the right to livelihood. Fishermen also fall victim to the atrocities of the BSF. CPWD (Central Public Works Department) IBBR (Indo-Bangladesh Border Road) roads, which are adjacent to the barbed wire, are not allowed to be used by border dwellers even during the day. The residents of such villagers are very likely to face abuses, degrading treatment and torture on using the roads.

The Border Guards decide the number of daily market goods; relatives of the villagers cannot visit homes without the permission of the BSF. The BSF also decides the menu and the number of invitees or guests in case of any events. In some areas, the current BJP government-led border guards have banned cow meat and the sale of cows on the Muslim-dominated border, not allowing them to sell beef even if they have licenses.

On the other side of the barbed wire, about 60,000 families continuously endure the unimaginable torture of life like in prison. Only they can depart or arrive from outside only when the gate is opened for an hour 3 times a day. Meanwhile, the gate is not opened before the specified time even if a lady is undergoing labor pain or other emergencies. Children face trouble while going to school or for tuitions. Young people are forced to choose their spouses among themselves because no one from outside will marry there.

Cattle smuggling is an age-old business here. Even if the government changes or a new political party takes over, this illegal trafficking continues like before. Even Phensedyl, a cough syrup, is smuggled in large quantities through border areas. Phensedyl is in huge demand in Bangladesh as an addictive drug. The ringleaders in the atrium of that trafficking ring are never caught. Only ordinary border dwellers are

caught, who are smuggling 30-40 Phensedyl, hiding the bottles in their bodies in exchange for BDT 200-300 per day. Those who are caught are being arbitrarily charged with Narcotics Drugs or Psychotropic Substances (NDPS) act. False cases are filed against common people who have nothing to do with these matters. As a result, border residents are always in fear of being accused in these cases, after which police officials pressurize them to pay bribes.

For the development of border areas of the country, B.A.D.P. (Border Area Development Programme) projects have been launched by the central government for many years which include the construction of school rooms in the field of education, construction of residential houses for schools, renovation of school grounds, construction of libraries, construction of primary health centers in the field of health, purchase of various medical pieces of equipment for the border residents and such other activities within their scope of work.

Organization of medical camps, development work on various issues related to farming, development of roads adjacent to border areas, sports, cultural events, construction of Anganwari centers in border areas, community hall construction and development work has been tendered for. Towards the same Rs. 7,84,00,00,000 has been allocated in the financial year 2020-2021. The allocation has been made to develop the area up to 10 km from the actual border. But in reality, B.A.D.P. money is not being spent at the necessary places on the border, it is being spent according to the orders of BSF and administrative officials. It is being spent on the development of the military infrastructure instead of spending on the livelihood of the people living on the border. The BSF found reasons not to register the name of the farmers and to not allow them to go to their land to cultivate.

According to a recent order from the Ministry of Home Affairs, the operational area of BSF has been increased from 15 km to 50 km in the three states of West Bengal, Assam and Punjab. This order of the Home Department was published in "The Gazette of India" on 11th October 2021, wherein there was a order of only 3 lines. The Home Department implemented such a big decision in such a rash manner which is undemocratic and, in a sense, unconstitutional and dictatorial decision.

While the Constitution of India has clearly demarcated the provisions for justice and equality, the laws are not always implemented on the ground and the reality of the lives of the border populace is that of threat

and uncertainty. The people in the villages of the border areas bear the brunt of indiscriminate suffering owing to their marginalization and disadvantaged backgrounds which have been starkly exposed by the umpteen failure of the entire democratic structure as well as the social security mechanisms.

The people residing in areas like North 24 Parganas' Hingaljanj, Hasnabad, Gaighata, Murshidabad's Raninagar, Lalgola, Nadia's Banpur or Tehatta, North Dinajpur's Raiganj or Goalpokhar and, Dinhata, Sitai, Haldibari and Sitalkuchi in the district of Coochbehar, feel that even though they exist in India they live as ousted citizens of the country. Hate crimes and speeches against minorities, especially Muslims have become commonplace incidents.

The border villages in West Bengal have become a hub of illegal activities. Smuggling of goods, human trafficking, enforced disappearances, land acquisition, torture and killing. Moreover, these crimes are conducted in broad daylight. The border guards who had been handed over the responsibilities of keeping vigilance in the borders are often part of the corruption as has been documented through many incidents. Oftentimes, the villagers are found to be killed by a BSF bullet or tortured to death. However, the corrupt police-BSF-politician nexus evades accountability while the innocent villagers, who perhaps had been forced to engage in a risky business due to dire poverty, sacrifice their lives in the process.

The Border Security Force (BSF) not only creates obstruction in allowing the border populace to farm in their own lands, but they also create objections with regards to the livelihood of the border populace. CPWD has built roads beside the barbed-wire fences, which are called the IBBR or the Indo-Bangladesh Border Road. The border populace is not allowed to use this road. Many of the residents in the border areas belong to the marginalized Muslim community. Muslims have the habit of consuming beef. However, the BSF personnel continue to disallow the selling or consumption of beef. Some of the victims have deposed before the bench that even if they have a governmental license to sell beef, the BSF does not allow them to do so.

Why is there such a difficult web of rules? Just for the protection of the borders? If the BSF is questioned, they answer that their main aim is to prevent illegal trade activities and illegal migration. According to the law, the BSF is to be posted in the actual borders. However, they are placed inside the villages. Thus, in the actual sense, the border remains unprotected. In recent times, the Ministry of Home Affairs gave out the notice that in West Bengal, Assam, and Punjab, the jurisdictional area of the BSF has been increased from

15 to 50 km. On 12th October 2021 in "The Gazette of India (Extraordinary)'s S.O.4198 (E), this statement from the MHA had been published, where tactfully they took such a big decision but wrote it only under 3 lines. It is to be noted that in Gujarat where previously jurisdiction of the security forces was up to 80 kilometers inside the border, was curtailed to 50 kilometers in the new directive. This is unconstitutional and undemocratic since without any discussion, it meddled in the affairs of the state.

The social audit was a plea to the citizens who have been or are bound to be affected by the arbitrary decision-making of the Central government to get organized and raise their voices in protest. This pedestal allowed the victims, and their kin to narrate the kind of abuse that they are subjected to but also helped every citizen question the immunity of the people who have been shielded in spite of their corruption. We hope this endeavour will help the government to understand the issues and act thereupon.

# Chapter I: Indo-Bangladesh relation and the question of the border populace

There is a sole entry-point of any discussion on “Indo-Bangladesh relations”: Partition of 1947. All the highs and lows of this dynamic interaction can be traced back to it. In 1971, when East Pakistan gained freedom from the Regime of West Pakistan, India stood as their ally. The communications between the two governments from the very beginning hinted toward a cordial relationship between these two important south Asian entities. While this relationship was maintained and revitalized from time to time, the people residing near the border on both sides are yet to get any share of it. On ground zero, this is one of the most fatal borders in the World. In two decades more than 1800 people have been killed along this border. Sadly, none of the victims have been provided justice.

The controversial shoot at sight policy of the BSF has come under scrutiny of many international watchdogs and human rights organizations on many occasions. While both the governments held many high-level talks and signed many treaties to bring down the casualties to ZERO, on the ground the commitment toward the same remains to be seen.

## The Beginning: 1947

***“...The only solution now lies in separation.  
The Viceroy thinks, as you will see from his letter,  
That the less you are seen in his company the better,  
So, we've arranged to provide you with other accommodation...”***

**-WH Auden in his poem *Partition***

All the adversities at the border we see today have a root much deeper. This all began with an Englishman dividing the territory of a historically developed nationality without much idea about the ground realities.

It has been alleged that “*to keep the partition unbiased*” the British government had chosen such a person who had no prior commitment to the region.

Thus, a tragedy fell upon the region, a tragedy that will remain in the collective consciousness of the nation for the years to come, and shape the future of the affected communities for decades. This event ensued into a bulk mass migration hitherto unseen in human history. Killings, Riots, rapes, loots and hooliganism became norm of the day. When the dust settled, the population across the border found themselves alienated from their ancestral roots.

Until 1971, these waves of migration were considered by the government as a part of historical consequence of the tragic partitions and the people crossing the border for the purpose of residence was considered legal. But, 1971 acted as the watershed line in the history of cross-border migration between India and Bangladesh. That was the beginning of “illegal Bangladeshi”, ‘*Ghuspetia*’ rhetoric which will go on to become the bone of discord among the two countries. The horror of partition is still haunting the population of the border in the form of torture, restriction, extra-judicial killing etc.

## Erection of Border fencing, Trigger-happy BSF and many dead bodies

With migration between two countries becoming illegal the Government of India went on to secure the terrain by putting up Barbed wire fences along the border. This event came up with a peculiar situation for the villagers residing along the border. The geography in most of the areas in this international border is marked with continuous fertile landscape devoid of any natural barrier. Thus, the area has many farmlands on which the livelihood of a good many people depend upon. Here we need to mention that the positioning of BSF is more interior than the actual International Border Pillar (IBP). The distance between the fencing and IBP too is more than 200 meters in many areas. Thus, a large section of farmlands gets cordoned off, and the locals face a hard time to get to their source of income.

In the Two hundred and third report of Parliamentary standing committee on home affairs of 2017 on border security it is mentioned that “...the ministry must try to shift the fence in as many areas as possible

to prevent any inconvenience to the people. However, wherever the houses are located right at the International Boundary line, the ministry will have to shift them to the hinterland and rehabilitate the affected households.” They also suggested to review the areas with such problems and come up with a proper plan of action within six months. Five years have passed by since the report. There is no change on the ground yet.

The Indo-Bangladesh border is not the only international land border that circumvents India. Among India’s neighbors who have land borders with India, with Nepal, Bhutan and Bangladesh we have cordial relations according to the government. Bangladesh and the Indian State of West Bengal have historical cultural, economic and societal ties. Many Indian citizens have ancestral roots in Bangladesh, and many more have relatives still residing there. But, while the Indian border with Nepal and Bhutan is open, peaceful and devoid of barbed wires, the border between India and Bangladesh is the mirror opposite. This is unfathomable to common senses the reason of such discrimination. But still, that is the case.

<b>Border</b>	<b>Border Guarding Force</b>	<b>No. of Battalions</b>	<b>No. of Border Out Posts</b>
India-Bangladesh (IBB)	Border Security Force	82	1011
India-Pakistan (IPB)	Border Security Force	57	656
India-China (ICB)	Indo-Tibetan Border Police	32	172
India-Nepal (INB)	Sashastra Seema Bal	31	473
India-Bhutan (IBhB)	Sashastra Seema Bal	16	157
India-Myanmar (IMB)	Assam Rifles	15	83 (CoBs)*

Source: TWO HUNDRED THIRD REPORT BORDER SECURITY: CAPACITY BUILDING AND INSTITUTIONS, 2017

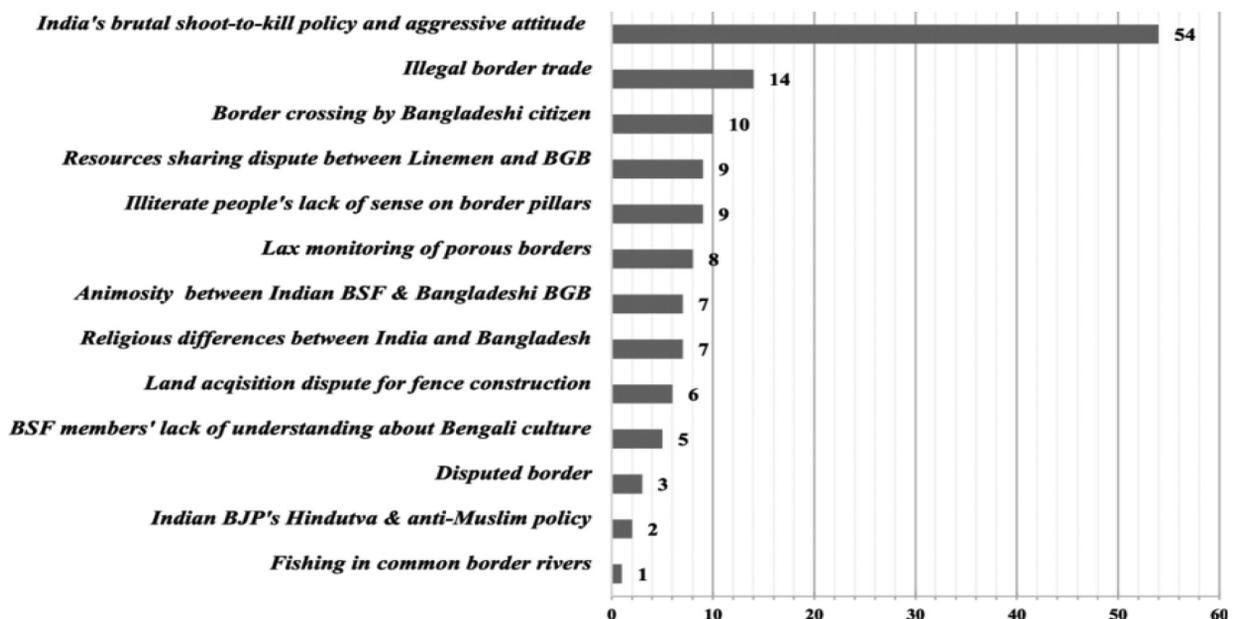
The BSF Act was enacted in accordance with the need of India and erstwhile East Pakistan Border in 1968. The situations on the ground have changed significantly since then. From the time of liberation war of Bangladesh and its inception, India and Bangladesh has enjoyed a friendly relationship. Still, the bordered is guarded by the BSF, while other friendly borders such as Indo-Nepal and Indo-Bhutan border is guarded by

the SSB. Why so? There is no logical answer of this question. Both the government has been involved in hundreds of talks but yet to make any real-time change of the situation on the ground.

Moreover, the BSF has taken the controversial policy of “shoot on sight” to curb “illegal migration and cross-border smuggling”. This policy endangers the very foundation of human rights and is tantamount to summary execution. Notably, in most of the cases of these killings, the BSF doesn’t even exhibit any recovered weapons to justify their common version of “self-defense”. This power of killing anybody on sight with or without any reason makes the border one of the deadliest places on the face of planet Earth.

## Border death and the case of Felani Khatun

There are a number of reports on the exact number of killings at the border in the hands of BSF in the last two decades. On January 7th 2011 15 years old Felani Khatun was trying to cross the border for the purpose of going to their home along with her father. While her father was able to cross the barbed wire, Felani was not fast enough as she was shot dead by on-duty BSF personnel Amiya Ghosh. The body hung on the barbed wires for around four and a half hours.



Source: researchgate.net (Survey of 2016)

After 30 hours the body was handed over to BGB (Border Guards Bangladesh). The picture of Felani's body hanging from the barbed wire became a symbolic order for all of those who were killed in the border violence. The media and the global rights groups gathered in protest. We filed writ petition (criminal) 141/2015 before the Supreme Court asking for proper and impartial investigation of Felani's murder. Though the Court has received affidavit of the concerned respondent parties, justice is yet to arrive. We filed another writ petition (Civil) 218/2012 before the Supreme Court in connection to a number of cases of BSF killings and torture. This case too, is hung at the final hearing stage.

The current modus operandi in place for the grievance redressal seems out of place. In special BSF courts where the alleged crimes by the BSF personnel are tried are run by the BSF employees only. Thus, even if the verdict is given against the perpetrator, usually the degree of punishment fails to meet the degree of alleged committed crime. Thus, a serious restructuring must be in order to get numerous families justice, otherwise there are more Felani Khatun stories in store in the future.

# CHAPTER II: Constitutional failure and Issues of the Indo-Bangladesh border populace

The resident villagers of the border areas bear the brunt of indiscriminate suffering owing to their marginalization and disadvantaged backgrounds which have been starkly exposed by the umpteen failures of the entire democratic structure as well as the social security mechanisms. While the Constitution of India has demarcated the provisions for justice and equality, the laws are never implemented on the ground and the reality of the lives of the border populace is that there is a looming sense of threat, and uncertainty that dominates their lives. The constitutional rights of the people are constantly being disregarded outright, trampled upon, and uprooted in the border areas. Almost all the instances of constitutional violations against these people are met with impunity from the government forces, where the victims don't get justice.

## Violation of Article 14 (Right to Equality)

The right to equality of the Indo-Bangladesh bordering populace has been continuously infringed. Most of the people are belonging to the Muslim community and Scheduled caste, Scheduled Tribe community and are being discriminated against by the administration and border guards. The Indo-Bangladesh border villagers are also accused of being traffickers and cross-border smugglers, due to which, their life and livelihood are illegally restricted by the BSF and the administration. Innocent people are always checked physically by the border guards regularly and are even physically assaulted for no particular reason. However, within the Indo- Nepal and Indo-Bhutan borders, there are no such incidents of restriction, checking, or torture upon the villagers. But the villagers living along the border of Bangladesh are being treated differently with different administrative rules. The contrast here is remarkable, which also violates Goal Number 16 of Sustainable Development Goals (SDG) of the UN, where the Government of India is a party and obliged to adhere to the goals.

## **Violation of Article 19(1) (d) & (g) (Freedom to move freely & Freedom of profession)**

Most of the people on the Indo-Bangladesh border are associated with agricultural activities. People have to cross over the fence or border outpost to reach their agrarian fields for harvesting and cultivation. In a few cases even they have to cross the fences to go to the market. During this they have to mortgage their citizenship identities to posted personnel of BSF. The administration or BSF decides the timings for entry and exit from their land. The roads along the border are generally propagated as the property of the bordering guards; the guards restricting movements of the citizens, making obscene remarks to womenfolk and school-going children, and nevertheless suspicious about the whole gentry as smugglers or subversives, are overall making the lives of these border villagers being controlled by the BSF personnel. The civil administration of the state government is whimsically promulgating section 144 of the Criminal Procedure Code continuously throughout the border for the last five decades. This administrative act is infringing the constitutional guarantee of free movement of the citizens of India. Border guards also restrict the agricultural activities of the farmers by putting a restriction on the cultivation of profitable crops.

## **Violation of Article 21 (Right to life and liberty)**

The presence of the heavily armed Border Security Force is another context of the Indo-Bangladesh border; the socio-lingual and cultural character of the BSF is different from the citizenry living along the border. The positioning and stationing of the BSF close to the civil habitation are creating difficulties for civil life. Moreover, in a few places, they have been stationed 10 to 15 kilometers inside the actual border. The contextual part of the economic reality of unfeeling by the government machinery aggravated with the stationing of unsympathetic force within the close proximity of civil habitation creates many social and other forms of malice. Although, a miniscule section of the populace are indulged with illegal and illegitimate acts of smuggling and other activities, BSF makes it a point to justify their regular subjugation and inhumane torture. The evident forms of human rights violations are extra judicial killings and intense physical torture but the hidden issues of their arrogant acts and behavior can only match foreign invaders in nature. In an attempt to improve border security and halt the tide of illegal trade that sometimes includes narcotics and weapons, the Indian government beefed up the BSF presence along the Bangladesh

border. Their methods have been universally violent and disproportional to the threat they face; anybody caught outside after dark in the border area is liable to be shot on sight. BSF personnel have no respect for basic human rights. They routinely make a mockery out of the right to life, the right to free movement and the right to due process. The BSF has allotted itself the role of the executioner when it comes to dealing with legal or illegal movements of the bordering populace, regularly expressing the belief that they have the right to kill criminals at the border. The Border Security Force posted on the Indo-Bangladesh border is corrupt and involved in several illegal activities; for instance, misuse of power, use of excessive force and severe human rights violations like torture, killings, trafficking, and facilitating cross-border illegal trade. It has been reported that on average, about 200 civilians are being killed at this border in a year.

# CHAPTER III: Report of the Independent Social Audit

## Inquiring into Human Rights Violations of Border Populace

A social audit was conducted by Banglar Manabdhikar Suraksha Mancha on 25th June, 2022 at Felani Khatun Bhawan (Anandamoyee Bhawan) Serampore, where several cases pertaining to human rights violations were presented before 3 benches comprising of 8 panelists. The panelists were former justices, doctors, social activists, mental health activists, lawyers, professors and journalists who had earned name and respect for the work that they have done in their respective fields. A total of 45 victims of torture and human rights violations had been presented before the panelists. The panelists gave opinions, suggestions and recommendations after hearing the cases which had not been resolved for many years and the oppressed person and their families didn't get justice from the courts and the administrative authorities. The Social Audit was chaired by three benches of panelists, who respectively witnessed cases on the subject of:

Extra-judicial killings: 09 cases

BSF torture: 08 cases

BSF firing: 01 case

Pellet firing by BSF: 02 cases

Custodial death: 03 cases

Government negligence: 03 cases

Torture on a minor: 03 cases

Sexual Harassment: 02 cases

Verbal Abuse and Confiscation of Property: 01 case

BSF Restriction: 12

The 3 benches comprising the panelists had been divided into violation of Article 21, Article 19 of the Indian Constitution and Sustainable Development Goal 16. The general observations which had been presented in the report had been unanimously agreed upon by the panelists. The victims who had been present at the

social audit are a part of the Indo-Bangladesh border populace where human rights are neglected, trampled upon and disregarded in general. This social audit presented a real picture of how bloody the Indo-Bangladesh border is, in front of the panelists and the general public.

On the basis of the individual narratives narrated by the victims, the panelists members presented their individual observations and recommendations which had been summed up into a preliminary report. This preliminary report had been released before the media representatives at Calcutta Press Club on 26.06.2022 on the occasion of International Day in Support of Victims of Torture, in the presence of the panelists and a few of the victims. The panelists in the 3 benches have had several compelling findings as well as recommendations which have starkly underlines the systemic ignorance of the victims of torture, specifically in the borders. The social audit has showcased how individual victims have been ignored, and relegated the margins, both metaphorically and realistically.

The cases show violation of fundamental rights under Indian Constitution, civil and criminal jurisprudence and international laws. These violations prove the apathy of governments, dysfunction of Human Rights Institutions, immunity in the system, irresponsible attitude of government officials, and omission of duty of public officers – even in judiciary.

The following observations are a summary of the general views that the honorable panelists who heard the testimony about the alleged violations of Article 19, Article 21 and Sustainable Development Goals 16 on the Indo-Bangladesh bordering people all agreed upon.

# The Social Audit

The social audit was established in response to the abuses of the borderland peoples' fundamental rights. The social audit focuses on violations of Indian constitution articles 21 and 19, as well as SDG 16 and the people affected by the Indo-Bangladesh border. The social audit concept arose from our belief that civic society has a responsibility to hear the major players and experiences that have contributed to this catastrophe.

The benches have several compelling findings and recommendations in these categories that are similar in many instances. In cases of extrajudicial killings, the guidelines of Supreme Court, the NHRC and the Minnesota Protocol on investigation of unlawful death (2016) has been violated time and again. Though most cases of killings by the BSF are reported as measure to self-defense, in the absence of procedural investigation and lack of proper post mortem examinations into the matter, records speak otherwise. The BSF personnel are trigger happy; our findings show that BSF violates the UN Code of Conduct for Law Enforcement Officials (1979) and even their own laws from the BSF Act (1968). We have observed 3 cases among our selective lists, where the BSF has engaged in firing of bullets and pellets on unarmed citizens without any warning. Further, they flout the guidelines laid down by the CrPC, apex court and NHRC by targeting the unarmed victims with intentions of killing as they are almost always shot in the upper and sensitive body parts. The benches also recommend banning pellet guns which may not be as fatal as bullet guns but have had severe health impacts on the victims.

In these cases, there has been a gross violation of the norms already fixed by the Directorate of Health Services, IMA and Istanbul Protocol, a manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (2004). The members of the benches recommended that the Government of India should ratify the UNCAT (the United Nations Convention Against Torture) that it signed in 1997, as already our Law Commission, NHRC, Supreme Court asked the Government to do so.

In other graver violations of basic rights of the residents of borderland, we observe three cases of custodial deaths and two cases of sexual harassment and exploitation from the list. The members of the social audit

emphasized the need to sensitize the Border forces and the police towards the dignity of an individual at all times and women and children to be precise.

Additionally, a significant number of the cases on our list demonstrate serious limitations on the lifestyles and means of support of the borderland population. As also noted by the panelists in this report, there are twelve instances of restriction cases from our selection where arbitrary imposition on lives and livelihood are prevalent. The borderlands are insecure regions where the people not only suffer at the hands of BSF but also from the weak governmental administration.

### The Benches

The following observations are a summary of the general views that the honorable panelists who heard the testimony about the alleged violations of Article 19, Article 21 and Sustainable Development Goals 16 on the Indo-Bangladesh bordering people all agreed upon.

**The first bench** concentrated on and discussed situations in which Article 21 of the Indian Constitution was violated, which states that "no person should be deprived of his life or personal liberty unless in accordance with the method prescribed by law." The panelists members summarized the cases after going over them and questioning the deceased's family members. The deceased person's kin are frequently not notified of the complaint's or case's progress, which inhibits them from seeking redress. The autopsy report frequently does not include or preserve the actual injuries that the deceased's relatives have mentioned. It begs the question of whether the investigation was carried out in the presence of family members in accordance with certain provisions of the Criminal Procedure Code of 174,176.176 A.

Cases of extrajudicial killings are transferred from the Judicial Magistrate's court to the BSF's Staff Security Court, where the judge, the prosecution and the accused themselves are BSF officers. Furthermore, the court is not open to the general public. This clearly violates Indian Laws' prescribed procedure. Forensics must examine gunshot wounds in BSF firing incidents in order to better understand and record the killing's nature. Hospitals where torture and firing by BSF victims were treated often did not issue medico-legal certificates (MLCs). If the victim of such torture is hospitalized, the authorities have a duty to provide him or her with an MLC.

According to the bench, in one presented case of custodial death, the victim did not undergo a medical examination while in jail custody, which clearly violates the procedure for producing an Inspection Memo, as determined in landmark *DK Basu vs. The State of West Bengal* judgment and section 53 of CrPC make it mandatory.

It has been noted that in many cases where compensation has been declared by the National Human Rights Commission, the compensation has not been issued to the victim or his or her kin. Neither the Union Government nor the West Bengal Government take any affirmative action in regards to non-compliance. It has been observed that there exists a clear nexus between the police, BSF, customs, and local political parties when it comes to extrajudicial killings and livelihood violations in bordering villages. These nexus members make easy money by facilitating smuggling and illegal trade across borders.

Judicial benches have unanimously observed that BSF issues their own identity cards in many bordering villages illegally, restricting the free movement of living villagers, resulting in severe livelihood losses.

**The Second Bench** focused on and discussed situations involving violations of the Indian Constitution's Article 19, which outlines and ensures six fundamental freedoms to the Indian citizens:

Freedom of speech and expression

Freedom to assemble peacefully and without arms

Freedom to form Associations and Unions

Freedom to move freely throughout the territory of India

Freedom to reside and settle in any part of India

Freedom to practice any profession or to carry on any occupation, trade or business.

The bench observed that the border dwellers of India-Bangladesh border depend on agriculture. Despite having their own lands, they are unable to cultivate freely, as the border guards, BSF impose illegal restrictions on cultivating their lands. Villagers must cross barbed-wire gates guarded by BSFs to access their agricultural land.

Generally, there are three hours of border gate openings a day, from 7-9am, 12-1pm, and 4-5pm. BSF officers refuse to open the gates on schedule and abuse and harass the people when they request them to

do so. It was reported by the kin and the victims that villagers who arrive a little late are verbally abused and physically assaulted by the BSF. Managing agricultural work within such a short time frame is very challenging for farmers. When needed, farmers cannot enter their fields. Last 4 to 5 years the BSF personnel did not open the gate daily. A new rule and regulation have been put in place by them regarding the opening of fencing gates every two days. Furthermore, the farmers are forced to do many undue activities for the BSF before entering their respective lands. There is a complaint among farmers that the gate is not opened in time. It may take hours for a senior officer to approve their entry that BSF guards are impromptu opening and closing the gate. If they return from the field late, their permission to enter is granted by a senior officer after hours spent waiting near the gate.

The farmers complained before the benches that in the last three years, the BSF has issued embargoes on crops of more than 3 feet in height, such as corn and jute, which were attempted on their lands. Fertilizers are not permitted to be carried in adequate quantities by the villagers, and they are often mixed with soil at the gate in an inordinate amount by the security forces. It is not allowed to enter farms with more than two cows. A border fence prevents the villagers from growing profitable crops on either side of the fence for security reasons. As a result of this harassment, farmers are suffering heavy losses from agriculture, and they are forced to migrate to various parts of India in search of employment.

**The Third Bench** focused on the gross violation of Sustainable Development Goal 16, which entitles, Goal 16: "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Significantly reduce all forms of violence and related death rates everywhere". The bench focuses on following cases:

Brutal Physical Assault

Inhuman Torture and custodial death

Sexual assault

BSF torture

Hitting People

Vandalize the Houses

Unexplained violence by BSF personnel

Extra-Judicial Killing

Livelihood Violation

According to the **Third bench** in one case in which the BSF committed sexual harassment, the victims were suffering from severe mental trauma exacerbated by social stigma and police inaction. There is a systematic failure on the part of the police to file complaints or FIRs against the BSF in cases of BSF torture. In most cases, there is no evidence of the torture committed by the BSF.

The benches observed the case, where sexual abuse was perpetrated on the victim. The victim recognized the culprit who was a BSF personnel accompanied by police officers. There was no action taken by the local police after the matter was reported to them, the administrative authority was indifferent. Despite their visits to the police station, the officers refused to take any action.

According to the panel, the Police-BSF blatantly uses false NDPS (Narcotic Drugs and Psychotropic Substances Act, 1985) cases to further victimize the victims. Police and BSF have used the NDPS Act repeatedly to harass people along the border boundaries. Arrested individuals are being arbitrarily charged with NDPS, common people who are not involved in these matters are also being accused of false charges. Therefore, border residents live in constant fear of being charged with these crimes after which police officials push them to pay bribes.

The benches observed that the BSF illegally took away the cell phone of the victim, though it was eventually retrieved after various steps, although it lost its functionality.

Now the question arises, what is the best way to push through or go back to the Supreme Court again and again, even when it rejects the petitions? To overcome all this resistance and achieve justice, what other measures can be taken? In order to get justice, what other paths must be taken?

These situations represent the bare truth of our nation, where one person's wrongdoings are covered up while another suffers. It has become impossible for the judicial system to defend its citizens from abuses of human rights. Aware that they will be protected at all costs, including by putting the lives of innocent bystanders at risk, the BSF personnel and its corrupt nexus wander around with complete impunity. The negligence of organizations or state agents in responding promptly to grave human rights breaches facilitates impunity. In these situations, both the institutions and every stage of the judicial or administrative proceedings have completely failed.

# Testimony of the Victims & the depositors and brief details of cases at the social audit

The victims and the depositors at the social audit testified the crimes and violations committed against them. The chilling accounts of their experiences was an intrinsic part of the social audit. It sheds light on the ground conditions of the border regions.

## Bench One

### **1. Prakash Barman – Chamta, Sitai (Testimony of the depositor Ms. Mamata Barman)**

Prakash Barman, son of Mr. Anil Barman, aged about 35 years, Gender- Male, Faith- Hindu, Police Station- Sitai, District- Cooch Behar, Type of crime: Extra Judicial Killing

*“On 12.11.2021 at about 2 am some BSF personnel with the West Chamta Border Out Post, 75 Battalion caught Mr. Barman and fired a bullet from point blank range which directly hit his head. After receiving the bullet, the body of Mr. Barman was lying there for more than about 9 hours. He died due to bleeding from the gunshot. He was not given any warnings. BSF fired at Mr. Barman from point blank range and the place of firing was one kilometer inside territory from the international border. Police officials of Sitai Police Station sent the body of the victim to the police station without taking him to the hospital at first or calling a doctor at the place of occurrence. As per the complaint of BSF, they fired for ‘Self Defense’.”*

On 15 November 2021 a complaint was lodged with the NHRC. On 25 November 2021 the NHRC registered the case vide case no. 4862/25/6/2021-AD. On 2 December 2021, the NHRC called for a report from the Director General of Police, West Bengal, District Magistrate, Coochbehar and Superintendent of Police, Coochbehar and Director General, Border Security Force. After that no communication from the NHRC side has been received.

### **2. Alamgir Sheikh – Char Basgara, Raninagar (Ms. Rubina Bibi, Wife of the victim)**

Alamgir Seikh (deceased), S/O Mr. Beraj Seikh aged 28 years, residing at Char Basgara, Police Station- Raninagar, District- Murshidabad, West Bengal, was tortured and killed by the BSF personnel at Out-Post no-V and VI under Harudanga BSF Company Head Quarters, under Battalion No.- 91, Police Station- Raninagar, Murshidabad.

*“On 10 April, 2011 at 10 p.m. when the victim went to his farmland to guard the crops, a few smugglers gathered in the same place intending to smuggle cattle. The BSF suspected the victim to be one of the smugglers and went ahead to assault one of these. The victim, apprehending the assault, tried to stop the BSF jawan from assaulting one of the smugglers when he was arbitrarily shot by the BSF with their service rifles.*

*With the assistance of some people, they admitted him to Rajshahi Medical College & Hospital, Bangladesh at about 1am on 12.04.2011 where he was declared dead at about 3 am on 12.04.2011. On 12.04.2011 Mr. Sadek Ali, son of Rahman Sheikh, one of the relatives of the victim submitted one written complaint before the Officer-in-Charge of Raninagar Police Station wherein he brought allegation that the victim was killed as a result of firing by the perpetrator BSF jawans. However, no step has been taken by the police according to the complaint.”*

### **3. Jiyarul Sardar (Testimony of the depositor Mr. Anarul Sardar, Brother of the victim)**

Late Mr. Jiarul Sardar, son of Late Muhammad Sardar of village- Bithari Pabankati, Post Office- Hakimpur, Police Station- Swarupnagar, District- 24 Parganas (North), was a victim to Extra-Judicial Killings by the BSF.

*“On 10 June, 2012 when the victim was playing carrom board at the local club while few of his co villagers were trying to push cattle to Bangladesh and they told Jiarul to wait for them at the club, and after the completion of their task, they would be back to their village together. At about 9.00 pm, suddenly, the posted Border Security Force personnel of 152 Battalion attached with Bithari Border Out Post of Tarali Camp resorted to indiscriminate firing.*

*It was alleged that the victim Jiarul had been shot at well inside the Indian Territory and BSF personnel dragged his body toward the border and then dumped it at the bank of a pond near Padma Bali – Suta Math. The family was not informed about the heartrending incident till next day; 11.06.2012 at about 6.00 a.m. One Mr. Rahan Sardar found the dead body lying at the said place while he was there to tie his cattle. Rahan Sardar informed the villagers about the incident and he also informed the villagers that at first instance few BSF personnel of Tarari Camp were also present at the vicinity. The villagers then contacted the Swarupnagar police station over telephone and reported it to them. At 9.00 am the second officer of Swarupnagar PS came with 4 other constables and took the body to police station and sent it to Basirhat Police Morgue for post mortem examination. The family received the body on the same day for last rites after the post mortem examination done at the said morgue. Swarupnagar police station registered an unnatural death case vide Swarupnagar PS U/D Case No. 16/12 of 11.06.2012 and later registered a case*

*after receiving a complaint from BSF against the deceased. The case has been registered as Swarupnagar PS Case No. 272/12 dated 11 June, 2012. We requested a compensation of Rs. 2 Lakh under the West Bengal Victim Compensation scheme which the family of the victim is yet to receive.”*

#### **4. Mr. Rashid Mondal – Gobindapur, Swarupnagar**

Mr. Rashid Mondal, S/O Late Mr. Atel Ali Mondal, age 49 years, residing at village- Gobra, Post Office- Gobindapur, Police Station- Swarupnagar, District- North 24 Parganas, was the victim of BSF violence while he has sowing paddy-shoot a little distance from his home.

*“I was intervened by one BSF sentry on 9 October, 2015 having a nametag bearing the name “Hitendar” asked me about my involvement with Bangladeshi nationals and started to beat me without providing any reason. After that, the three BSF sentries tied my hands with a rope and forcibly put my face on the ground of the road. The two out of the three sentries captured my legs and the other struck me mercilessly with a bamboo stick and wooden handle of the spade. I was subjected to unprovoked inhumane torture for more than 20 minutes. Due to this physical aggression, I received marks of hematoma to his two hips and also swelling on my hip muscles.”*

#### **5. Mintu Gazi – Hakimpur, Swarupnagar**

Mr. Mintu Gazi, son of Islam Gazi, Age 42 Years, a resident of Hakimpur, P.S. – Swarupnagar, North 24 Parganas, was threatened and intimidated at gunpoint and was assaulted with a bamboo stick by an aged BSF officer from G Branch attached with Hakimpur BSF BOP, 112 Battalion, B Company.

*“On the morning of 24 January, 2020 at 10.00 a.m. when I was carrying a few kilograms of fertilizers towards my agricultural field, I was suddenly stopped by an aged BSF officer from “G” Branch attached with Hakimpur BSF BOP, 112 Battalion, “B” Company. The constable asked me to provide information on smugglers. When I denied any information on the smugglers, the BSF called a few other officers from the Hakimpur Camp over telephone and together they started severely beating me with bamboo sticks which resulted in the rupture of calf muscles and severe bleeding. I was then taken to the Hakimpur BSF camp, the perpetrators then made me sign some papers by force and asked me to give false statements on audio-visual records. The papers that I signed stated that the victim was involved in cross border smuggling carrying Phensydil. I was also forced to say the same on audio-visual record. The BSF also made my younger son, Riyaz Gazi, sign some papers before releasing me at around 12:00 noon.*

*On 25.01.20, I went to the OPD of Sarapul Rural Hospital for treatment but the on-duty doctor didn't see me properly after I stated that I was assaulted by the BSF.”*

Despite lodging a written complaint to the SDPO, Basirhat sub-division, no steps against the perpetrators were taken yet.

#### **6. Mr. Malin Barman – Satgram Manabari, Mathabhanga**

Malin Barman, with wife Bisho Barman, age- 42 years, Gender- Male, Caste- Scheduled Caste, Village- Satgram Manabari, Police Station- Mathabhanga, District-Cooch Behar, Nature of Violence: Physical assault by BSF personnel.

*“On 15.3.2015 at 8am my wife and I went to BSF Gate for the purpose of going to our farming lands located beyond the border fence. The on-duty BSF personnel, Kishan Kumar Yadav, from BSF Out-Post closed the gate and did not allow them to pass through the gate as I refused to catch a calf as instructed by the personnel. And then I was assaulted. I sustained severe injuries due to the physical assault. I underwent treatment at the hospital for three days. Mathabhanga Police Station had registered a criminal case on the complaint of my wife. But there is no progress in the investigation.”*

On 17.3.2015 the villagers of Satgram Manabari submitted a mass petition (signed by 116 villagers) before the Sub-Divisional Officer, Mathabhanga affirming the incident of physical assault by the accused BSF personnel upon Malin Barman. On the contrary, BSF forwarded a report to the Commission by the Ministry of Home Affairs based on the version of BSF which is lodged as an FIR against the victim Malin Barman. The enquiry officer has been equally negligent and under-reporting the matter.

#### **7. Nabir Ali – Baromasiya, Sitalkuchi**

Mr. Nabir Ali, son of Mr. Kachar Ali, aged about 37 years, by profession daily labour, Gender- Male, faith- Islam, by caste OBC, residing at Baromasiya village under Sitalkuchi Block & Police Station, District of Cooch Behar.

*“On 29.11.2020 at about 8 am I was apprehended by the four to five BSF personnel attached with Baromaricha Border Out Post. I was then 50 meters away from the fencing. Without saying anything, those 4/5 BSF jawans started beating me. I was brutally tortured with sticks and boot clad feet. I lost consciousness as a result of the beating. When I regained consciousness, I saw that I was in the Baromaricha BSF camp. Inside the BSF camp too I was inhumanly tortured. In the bitter cold, I was forced to lay on the ground and the BSF people rested their boot clad feet upon my chest. I was constantly kicked and slapped by the BSF jawans.*

*Then they tied my hands and feet and took me to the jeep for my medical checkup. In the jeep perpetrators threatened me if I disclose any incident of torture before the doctor, I will be shot dead. I was taken to*

*Sitalkuchi Block Primary Hospital for a medical checkup. Out of fear I did not disclose the incident of torture by the BSF personnel. After that those BSF people handed me over to the Sitalkuchi Police Station. Police officials registered one case against me.”*

Repeated appeals to the concerned authorities have not helped the sole earning member of the family.

### **8. Abdul Ajij Mia – Karola, Dinhata**

Abdul Ajij Miah, son of Mr. Faijuddin Miah, Gender- Male, religion- Islam, aged about 27 years, Religion – Islam, Occupation –agricultural labourer, Residing at village-Karola (Dakshin), post office- Natakbari, police station-Dinhata, District - Coochbehar, pincode-736135, West Bengal, India, Deformity due to BSF pellet Firing.

*“I sustained serious pellet injuries on my lower abdomen while I was returning back from my sister’s house, on 24.12.2015 at about 5.30 am in the early morning. When I reached near Border pillar no- 931, on duty BSF guards attached with 124 BSF Battalion, Narayananj Border Outpost allegedly opened fire on me without communicating any caution in which I received pellet injuries on his lower abdomen. I was admitted to a private hospital at Siliguri where all expenses were borne by my family itself. I was under medical treatment for several days and about Rs.3,75,000/- was spent by my family for my medical treatment. Now I am having deformity due to injuries and continuous medical treatment is required for complete cure. My family left with no money and could not bear further expenses of treatment.”*

### **9. Bhim Mandal – Bongaon, North 24 Parganas (Depositor Mrs. Lovely Mondal, wife of the victim)**

*“Mr. Bhim Mondal was arrested by Police personnel of the Bongaon police station on 16 January, 2020 at about 2.30 a.m. in connection with the murder of Mrs. Tapati Mondol by a sub-inspector of Bongaon Police Station namely Mr. Paritosh Halder. Bhim was charged under Section 302 of the Indian Penal Code. On that day i.e., on 16.01.2020 the victim was produced before the Chief Judicial Magistrate of Bongaon Court where on the request of the prosecution, Chief Judicial Magistrate granted 8 days police custody of the victim. During the time of police custody, the victim was brutally tortured. Sub Inspector of Bongaon Police Station Mr. Paritosh Halder and another police person namely Mr. Prasenjit everyday took the victim one room in the first floor of the Bongaon Police Station and mercilessly tortured upon him to confess the guilt. They put chili powder in the anus of the victim. He was beaten with sticks, kicks, slaps and fists. The victim was again produced in Bongaon court and the Magistrate directed to send the victim to jail custody. He was transferred to Bongaon jail and after 8 days he was shifted to Dumdum Central Correctional Home. On*

*28.01.2020 the Victim died in the Dumdum Central Correctional Home. The Correctional Home Authority did not inform the family members of the victim about the death of Mr. Bhim Mondal. On the same day mother of the victim Mrs. Santilata Mondal went to the Dumdum central correctional Home to see her son. But she heard from there that her son was dead. She had not been permitted to see the dead body of her son. Dumdum Central Correctional Home Authority asked to sign the victim's mother on some documents. Victim's mother did not agree to do so but the jail authority pressured her and said if she did not sign on those documents, they would not deliver the dead body of her son. It is alleged that the inquest of the deceased was not done by any Judicial Magistrate. Here section 176(1A) of Code of Criminal Procedure is clearly violated.*

*On 08.09.2021 one phone call was received by me from a mobile number 7980846980. One male voice on the phone introduced himself as an advocate of Barrackpore Court. He told me that I had to come to the Barrackpore Court on the next day i.e., on 09.08.2021 right at 10 am in the morning. When I asked the reason for my appearance before the court, The male voice threatened that if I did not come to the court, the police would arrest me. As various unknown threat calls were being received continuously, my family members and I became very scared. On 28.09.2021 I submitted one written complaint before the Superintendent of Police, Bangaon Police District regarding this unknown threat calls but till date no action has been taken by the concerned police administration. We fear that the perpetrators will try to put pressure upon them. NHRC issued a reminder to the concerned department for submitting the requisite report and the concerned departments continuously failed to submit that.”*

#### **10. Mohitan Bibi – Gitaldaha Maricha, Sitalkuchi**

Mohitan Bibi, wife of Enchar Ali, age 45, Religion- Muslim, Gender- Female, Caste- Other Backward caste, Village- Gitaldaha Maricha, Panchayat- Lalbazar, Block and police station- Sitalkuchi, District- Cooch Behar, brutally beaten by Rajnath Singh, a BSF personnel.

*“I was harassed and brutally beaten by Rajnath Singh, Constable attached to Lalbazar Border Out Post, 75 Battalion. I was working in the agricultural field when she was called by Rajnath Singh who went on to question me regarding one goat entering in the agricultural field. When I replied that it was not my goat and I did not know about how it entered the field, the BSF constable verbally abused me, started pulling my hands and clothes and finally threw me to the ground and beat me with the sticks.”*

She was brutally tortured and then left her unconscious body in that spot. On 20.01.2022 she went to Sitalkuchi Police Station and submitted written complaint against the BSF person who brutally tortured

her. The then on duty police officer did not acknowledge her written complaint and threatened by saying that if she complained against BSF, they would come and break into her house and set it on fire.

#### **11. Saheba Bibi – Tharaikhana, Dinhata**

Ms. Saheba Bibi; wife of Mr. Aminul Haque, aged about 30 years, resident of village- Tharaikhana, Post Office- Kursharhat, Police Station- Dinhata, District- Coochbehar, was severely beaten up by Mr. D Kanta Roy; Border Security Force Constable attached with 124 BSF Battalion on 28.06.2014 at around 3:00 pm near pillar Number 937/52 of India Bangladesh border.

*“On 28.06.2014, a nephew of mine; Master Bellal Islam came to my house and after having his meal at around 3.00 pm, was returning to his home. On his way while he was nearly 100 meters away from the Pillar Number 937/52 of India Bangladesh border and erected a fence, all of a sudden, the said perpetrator BSF personnel came and started beating him. The boy started screaming loudly and I ran in for his rescue. I embraced her nephew on finding that the BSF personnel were savagely beating him. The unrelenting BSF personnel then started savagely beating me and kicked on my upper body with his boot clad feet, as a result of which, I lost consciousness. I was then taken to the Dinhata Sub Divisional Hospital, where I was admitted for four days. My husband, Mr. Aminul Haque, went to Dinhata police station to lodge a complaint against the errant BSF personnel just after the incident but the Dinhata police station refused to register the complaint. Later, I submitted a written complaint to the Superintendent of Police, Coochbehar.”*

#### **12. Rimpa Sardar – Nityanandakati, Swarupnagar**

Ms. Rimpa Sardar, an eleven-year-old minor Muslim girl, the daughter of Late. Siraj Sadar, residing in the Nityananada Kati village under the Swarupnagar Police station of District North 24 Parganas, was falsely accused of being a carrier and facilitating cross border movement by the perpetrator BSF personnel of the 76 battalion of the Tarali BOP. She was handed over to the Swarupnagar Police Station. Later at around 4:45 pm she was handed over to Swarupnagar police station by the BSF, who in their complaint stated that Rimpa was arrested at around 2:00 pm for being involved in illegal cross border movement along with the other victims, Nupur Bibi and Sohid Sardar (Swarupnagar PS Case No. 382/18 dated 24.07.2018) . She was held inside Swarupnagar police lock-up for the night and sent to the Juvenile Court in Salt Lake, Kolkata on the next day, where she was released by the Court.

*“The BSF personnel abducted me from my house to the Tarali BOP while my mother was not there by tying me with iron chains. The BSF personnel, in their complaint, falsely claimed that I was arrested near the*

*Border Pillar No. 13/4R- 2 while I was going to cross the border with illegally entered Bangladeshi women following which I was charged under the Foreigner's Act, 1946.”*

Rimpa's mother Mrs. Chhabina Sardar lodged a written complaint to the S.P of Basirhat Police District on 14 September, 2018 which was duly received but no action was taken so far.

### **13. Biswajit Mondal – Rajapur, Raninagar (Testimony of the depositor, Ms. Sujala Mondal, wife of the victim)**

Mr. Biswajit Mondal, S/O Late Abhi Charan Mondal, age 31 years, a resident of the Char Rajapur, Block- Raninagar-II, Police Station- Raninagar, and District- Murshidabad, West Bengal has been a victim of BSF torture which led to his untimely death.

*“On the morning of 21 October, 2018 at around 7 a.m. in the morning, when the deceased was returning from the river for the purpose of selling fish, the BSF interrupted him, suspecting him as a cow smuggler. They started abusing him verbally and started physically assaulting him soon after. One of them kicked Biswajit in his chest with his heavy service boots, while another smacked him down with the butt of his service rifle.*

*Biswajit's nails were uprooted from his left toe and left thumb. The perpetrators also cut certain places on his left hand and applied chili powder and lemon juice in those cuts to inflict more pain. The unconscious body of Biswajit after being tortured brutally was left in the river banks in order to destroy evidence. But few villagers spotted him hearing the painful moaning from the river banks as Biswajit came back to consciousness, the villagers then carried him back on their shoulders. He was then being taken to the Lalbagh Sub-divisional Hospital, when he described the complete incident to his mother and neighbor, Mithu Mondal en route. The neighbors found Biswajit succumbed to the injuries and died before reaching the hospital near Sheikhpara more under Raninagar Police Station.”*

On 21.10.2018 a complaint was lodged by Mr. Radheshyam Mondal, brother of the deceased, later the widow of the deceased; Ms. Sujala Mondal sent a written complaint to the Superintendent of Police, Murshidabad on 29.10.2018. Police till date did not visit the place of occurrence, not examined the victim family members and witnesses, nor arrested the murderers.

### **14. Joli Bibi – D. Parashpur, Jalangi**

Ms. Joli Bibi (name changed), Wife of Mr. Mithun Mondal, aged about 25 years, residing at village Char Parashpur, Post Office- D. Parashpur, under Block & Police Station- Jalangi, Murshidabad.

*“I was a victim of torture and sexual assault by the BSF personnel at Char Parashpur Border Out Post number 1 under Farajipara BSF camp Battalion number 141, Company ‘A’ under the jurisdiction of Jalangi Police Station.*

*On 16 May 2020 at around 7 p.m. and afterwards when I went to the mainland to withdraw money, I was interrupted by the BSF who asked me to deposit her ID cards. I replied that since I had to go to the bank, I would need her ID card and requested the BSF to check the card and return it to me. The jawans ignored my request and snatched my card while the other two female BSF constables conducted a search by touching my body following which the lady BSF constables pushed me to the ground and forcibly stripped me. They also abused me and threatened to beat me badly. They started to hit me with sticks on various parts of my body while making fun of me lying in a helpless state. They also threatened me to not come to the mainland.”*

On the same day Ms. Joli Bibi (name changed) lodged a written complaint to the Jalangi Police Station and the Block Development Officer to the Jalangi Block. In the Jalangi Police Station the complaint was received by the duty officer and instead of treating the complaint as a First Information Report, police issued one scrap of paper where one General Diary number being 861, dated 16.05.2020 was written. This act of the police clearly violates the provision of section 154 of the Code of Criminal Procedure. Till date the perpetrators are roaming free.

### **15. Sanjit Mondol – Char Durgapur, Raninagar**

Mr. Sanjit Mondal, S/O Mr. Krishna Chandra Mondal; age 17 years (date of birth- 05. 01.1994, a minor at the time of the incident); Schedule Caste; resident of Char Durgapur, Post Office- Harudanga; Police Station- Raninagar, Murshidabad was a victim of illegal apprehension and torture.

*“On 15 April, 2011 at around 5 p.m. I was watering my field for Kharif cultivation; we were supposed to sow jute on the said land. All of a sudden six uniformed BSF personnel from the minicamp came at the spot and apprehended me and started beating me with rifle butts. All of them were carrying firearms at the time of the incident. I fell on the ground due to the sudden attack and bashing. Thereafter, the BSF personnel started kicking me on my chest with boot clad feet. My family somehow got information about the savage torture.*

*The BSF personnel left the place and fired their firearms at me from a few yards. The family members reported that the personnel intended to kill me. The pellets pierced through different parts of my body, even my head. I became unconscious thereafter. BSF personnel left the scene for Harudanga Mini Camp after considering that I was dead. I was taken to Godhanpara Block Primary Hospital and Domkal Sub*

*Divisional Hospital and in both these places attending doctors refused to treat me due to the involvement of BSF. I went to Calcutta Medical College and Hospital in June 2011 for removal of pellets from my body. The doctors at the Medical College have suggested a major surgery.”*

### **16. Ajijul Haque – Dinhata, Coochbehar**

Mr. Ajijul Haque, District Human Rights Monitor for MASUM and a bona fide human rights defender was a victim of planned and systematic assault by use of criminal force in the hand of the goons led by Mr. Diptiman Sengupta, a self-styled leader of enclaves and local Trinamool party.

*“On 22 February, 2015 at around 9.45 p.m. when me with some enclave dwellers reached the New Cooch Behar, after attending an event on the occasion of International Mother Language Day, the hooligans led by Mr. Diptiman Sengupta was waiting at the railway station. When I and other enclave dwellers got down from the train we were encircled and brutally beaten by the hooligans in presence of police.*

*Later, two other enclave dwellers and I were taken to the parked police vehicle and brought to the Cooch Behar Kotwali police station and there we were detained without issuing an arrest memo or even citing any reason for their detention. The police then started a protracted discussion and ‘negotiation’ with the errant Mr. Diptiman Sengupta to ascertain the fate of the detained HRDs. Mr. Sengupta put his political clout to pressurize the police to initiate a specific criminal case against us under Indian Foreigners Act, but somehow the misdemeanor was not fully appreciated by the police and after illegal detention for nearly 8 hours, we were asked to leave the police station.*

*At 7.00 PM, we came out of the police station, but were forcefully captivated again by the ‘followers’ of Mr. Sengupta in presence of the police. Later I went to Cooch Behar Hospital with serious head and other injuries. The attending doctor opined for CT scan and MRI examinations for his head and eyes after ascertaining the gravity of the injuries.”*

The matter was not looked at or investigated by the police despite the complaint.

### **17. Badiar Rahman – Dinhata, Cooch Behar**

Mr. Badiar Rahman, Gender- Male, Religion- Islam, Police station- Dinhata, District- Cooch Behar, Firing by BSF leading to injuries.

*“On 24/7/2014 due to an incident of firing by BSF, I sustained gunshot injuries on my right hand. The BSF claims it to be a case of cattle smuggling and that they had issued prior warnings. There has been no inquiry into the matter till date. I was accompanied by 7 other people who have been named in an FIR against them. The victim remains without justice.”*

# Bench two

## 1. Fajle Rahaman – Sitalkuchi, Cooch Behar

The villagers of Mahishmuri-Haldikura under Sitalkuchi Block, Caste- Other Backward Caste mostly, Population of 2000, out of which 1200 are Muslims and 800 are Hindus, Police Station- Cooch Behar district. The villagers' primary occupation is agriculture.

*“The village of Mahishmuri-Haldikura is located near the Indo-Bangladesh border and has 850 bighas of cultivable land on the other side of the border fence. The distance between the border fence and the International Border Pillar (IBP) is about 300-1000 meters. The villagers use gates to cross to the other side of the fence which are guarded by the BSF. The gates open three times a day—from 7-9am, 12-1pm and 4-5pm. When the people request the BSF to open the gates on schedule, they refuse to open the gates at all and abuse and harass the people. On the other hand, when villagers arrive a little late from the scheduled time, they are verbally abused and physically assaulted by the BSF. Crops more than 3 feet in height, such as corn and jute are not allowed to be grown. The villagers are not allowed to carry adequate fertilizers inside and their fertilizers are often mixed with soil at the gate in disproportionate quantities. More than two cows are not allowed to enter the farms. No daily laborers are allowed inside for farming and in addition to Aadhaar and voter IDs; the residents also have to present a certification by the Block Development Officer (BDO) to cross the gates. Adding to the residents' troubles is the lack of basic amenities in the village. Trees are not allowed to be grown; there are no roads, irrigation facilities, hospitals, electricity or clean drinking water. The nearest government ration shop is 6 kilometers away, Secondary and Higher Secondary schools are 3 kilometers away and the nearest college is 25 kilometers away. Every family has around 6-9 family members and this restriction on livelihood by the BSF does not allow them to meet their needs.”*

## 2. Villagers of Purba Chamta – Sitai, Cooch Behar

The villagers of Purba Chamta Village under the Sitai Block, Police station- Dinhat, District- Cooch Behar, Population- 1500 people, 715 female and 785 are male. 50 % of the total population belongs to the Hindu and Scheduled caste community and rest of the populations belongs to Muslim community. Occupation- Agriculture

The villagers/ farmers of Purba Chamta Village are restricted to enter into their respective agricultural fields and cultivate profitable crops in their own fields.

*“The distance between the international border pillar (IBP) and the Border fence is about 150 meters to 500 meters. There are about 300 acres of cultivable land in this area between the border fence and the International Border Pillar. There are no irrigation facilities or drinking water or sanitation or road facilities in that particular area. The BSF personnel posted in the area imposed illegal and arbitrary restrictions on the agricultural activities.*

*The farmers are not allowed to enter their fields whenever required. Last 4 to 5 years the BSF personnel did not open the gate on a daily basis. They have created their own rules and regulations to open the fencing gates once every two days. It is really difficult for the farmers to manage their agricultural work within this short time. Moreover, the farmers are forced to do many undue works for the BSF then only the farmers are allowed to enter into their respective lands. In the name of border security, the villagers are not allowed to grow profitable crops, which are more than 3 feet high on either side of the border fence.*

*Last five years BSF personnel did not allow the farmers to cultivate any profitable crops like jute, maize etc. Due to this restriction farmers are facing heavy loss from agriculture and they are forced to migrate to various parts of India for jobs. The members of the village level committee “Amra Simanta Basi” (a conglomeration of bordering populace) stated that Bangladeshi cattle ruin the crops in the agricultural fields of the villagers. BSF personnel restrict the farmers to carry the chemical fertilizer, pesticides and other agricultural equipment.”*

NHRC – A case was filed with the NHRC on 21 October, 2021 which was registered by the commission on 23 October, 2021 vide case no. 4485/25/6/2021. On 25 October, 2021, the case was disposed of with the direction to the Secretary, MHA directing it to take appropriate action within 8 weeks. The case was again registered on 2 February 2022 by the commission and on 3 February 2022, the case was disposed off with the direction to The Secretary, MHA to take appropriate action within 8 weeks. No positive action was taken so far.

### **3. Villagers of Satgram Manabari – Mathabhanga, Cooch Behar**

The villagers of Satgram Manabari under Block Mathabhanga I, Sub- division- Mathabhanga, District of Cooch Behar. Population- 61 families, distance between the border fence and the international border pillar- 2.5 kilometer.

The villagers of Satgram Manabari have more than 300 acres of fertile land located on the other side of the fence. The villagers used BSF manned gates to enter this part of the village, which used to be open for 12 hours a day.

*“BSF has put several restrictions on the movement through this gate. Now, the gate is opened twice a day at 9 am and 5 pm for very short durations. Crops more than 3 feet height, such as corn and jute are not allowed to be grown. The villagers are not allowed to carry adequate fertilizers inside and their fertilizers are often mixed with soil at the gate in disproportionate quantities. If the cattle of the villagers stray onto the Indo Bangladesh Border Road, they are brutally beaten by the BSF personnel.*

*Exasperated by these restrictions, the villagers asked the Shikharpur Panchayat to intervene. The Panchayat Pradhan and other members went to speak to the BSF regarding these restrictions but they responded by saying that these restrictions are in place due to the suspicion of smuggling in the village. They also said that the villagers should catch the smugglers if they want the restrictions to stop.”*

NHRC- The complaint was lodged with the commission on 9 December, 2019 which was registered by the commission on 3 March, 2020 vide case no. 24/25/6/2020-PF. On 9 January 2020 the complaint was dismissed by the commission in limini stating that allegations do not make out any specific violations of human rights. The complainant sent another communication on 4 February, 2020 following which the commission observed is beyond the purview of the commission and closed the case. No positive action is taken till date.

#### **4. Villagers of Dighaltari – Sahibganj, Cooch Behar**

The Villagers of Dighaltari, Police Station- Sahibganj, Block- Dinhata 2, District- Cooch Behar

*“The villagers of Dighaltari village live under restrictions by the nearby BSF camp because it is a bordering village. The primary healthcare center of the area is almost 3 km away and the healthcare center is almost 20 km away. There is only one primary school in the village and for enrolling in a secondary school one has to travel for 4 km. The college is located 24 km away from the main village area. Although there are metal roads and government water facilities available, the village lacks governmental irrigation facilities. There are no barbed-wire fences in this border area. The farmers are not allowed to cultivate in this plot of land, neither are the cattle able to graze in the field.*

*The BSF have created Out Posts in the middle of these plots to guard that area. Whenever a farmer tries to cultivate their own land, they are being thoroughly searched by the BSF personnel. Although this plot of land is specifically for cultivating 'Amon' and 'Boro' crops, the villagers couldn't cultivate these crops suitably due to lack of proper irrigation facilities and the high soaring prices of diesel. Alternatively, when they tried to cultivate jute and corn in their lands, the BSF, for the last 3 years, has issued an embargo on that as well. Therefore, many villagers, finding no other means of livelihood, have migrated to other cities and states. Many of the villagers have also resorted to smuggling activities for earning their means of livelihood."*

NHRC – NHRC did not register the case.

### **5. Villagers of Dhadial / South Dhadial – Cooch Behar**

The village NakatiGach Gram Panchayat, Tufanganj Police Station, Post office- NakatiGach, District- Cooch Behar, Population of around 1660, 700 are female, 770 are male and 190 are children, 570 Hindus and 900 Muslims, 350 families, 200 Muslim families, 150 are Hindu families, 1170 voters, Occupation- farming and daily wage labour, Distance from the International Border Pillar and the border fence- 200-500 meters.

The villagers of South Dadhiyal have been suffering due to restrictions on their livelihood by the (BSF) and arbitrary construction of fences without sticking to the rules laid down by the Government of India.

*"Lack of basic amenities, welfare schemes and undue, despotic restriction is a severe issue that the villagers face. The border fence is supposed to be constructed within 150 yards as per the rule laid down by the government but such has not been followed in this case and the BSF has put the fences at a distance of 200-500 yards from the International Border Post. The BSF doesn't allow them to cultivate their lands freely. The farmers have their lands within the fence and need tractors for farming on their land. The BSF informed them that due permission is required for using vehicles.*

*The villagers have requested for permission over and over again but the BSF continues to give excuses and delays this procedure. This restriction has incurred heavy loss and destroyed all their crops due to the unavailability of adequate equipment. These villagers are highly dependent on agriculture and that is the only source of their income. The helpless villagers took aid of the media and it was further learnt that the B.D.O and S.D.O denied all allegations against the BSF. As this news spread out in the village, in the month of February, 2020, the B.D.O and S.D.O held a meeting with all the Chair of Panchayats of the village regarding the difficulties faced by the people at the border but there has been no solution to this yet."*

NHRC – On 11 February 2022 a complaint was filed with the commission which was registered on 28 February, 2022 vide case no. 825/25/6/2022. On 2 March, 2022, the commission disposed of the case, issuing a direction to The Secretary, MHA to take appropriate action within 8 weeks.

The case was registered for the second time on 22 March, 2022 vide case no. 1085/25/6/2022 following which on 6 May 2022, the commission disposed of the case with the directions to The Secretary, MHA instructing the authority to take action within 8 weeks. The case was registered by the commission on the case of Villagers of South Dadhiyal on 1 April, 2020 and was disposed of with the directions to The Secretary, MHA directing to take appropriate action within 8 weeks. No positive action has been taken so far.

## **6. Villagers of Putia Baromasia – Sitalkuchi, Cooch Behar**

The Villagers of Putia Baromasia, Border village of post office- Lal Bazar under Sitalkuchi police station, District- Coochbehar, Population- 200 families The Villagers of Putia Baromasia at Indo-Bangladesh bordering area suffer due to the unfair restriction by BSF. Their 500 Bighas of agricultural lands falls on the other side of the fencing. To visit their agricultural lands, the villagers have to cross a barbed-wire gate. The farmers who own agricultural land on the other side of the fence are allowed to visit their fields under whims and fancies of the posted BSF and villagers have to submit their EPIC cards during the same.

*“Villagers most of the time are not permitted to bring tractors, fertilizers, plow, oxen for agricultural purposes. Going by BSF guard’s instruction, they have to visit BOP to meet senior officers for permission. But, as expected, they are not allowed to bring farming equipment beyond the fencing. The border gates are opened for one hour thrice a day. The farmers complain that the gate is not open in time and BSF guards of the said BOP open and close the gate impromptu. If they return from the field late, then they have to wait near the gate for hours till a senior officer gives them permission to enter.”*

NHRC – The case was lodged with the NHRC on 27 December, 2016 which was registered by the commission on 9 January, 2017 vide case no. 52/25/6/2017-PF. On 24 January, 2017, the case was disposed off with the direction to The Secretary, MHA and the Chief Secretary of West Bengal issuing the direction to take appropriate action within 8 weeks. No positive action has been taken so far.

## **7. Villagers of Kashipur – Bagdah, North 24 Parganas**

The villagers of Kashipur have been facing a constant violation of their right to life and livelihood activities including their fundamental right to live with human dignity since their rights, engraved under Article 21 of the Constitution, are infringed continuously due to violation by the BSF personnel on a regular basis.

*“The villagers were forced to abide by the whimsical ‘rules’ of Border Security Force and slightest violation resulted into brutal physical assault and harassment of the villagers. Regular torture becomes day to day issue. Article 19 of the Constitution of India grants every citizen the right to move freely across the country but 35 families of Kashipur village are unable to do so and their only fault is that their houses are located near the Indo-Bangladesh border and during the construction of the border roads and fencing, their houses unfortunately fell across the fencing (other side of the fence), which has been erected 230 meter inside the Indian territory.*

*By fencing of 150-yard inside actual Indo-Bangladesh border line, India has practically divide Kashipur village in two parts leaving 35 families beyond the fencing, under Bagdah PS as half of the village is now situated in between Indo-Bangladesh border and I.B.B.R (Indo- Bangladesh Border Road) Construction work of fence was permanently halted as CPWD issued suspension of work as the area is densely populated and at places fencing has divided the homesteads, fishponds, temple, mosque and the village markets rendering villagers life miserable. BSF, by force, violated suspension of work notice imposed by CPWD and constructed bamboo and barbed made fence along the side of the I.B.B. Road 230 meters inside and divided their residence. There is a bamboo made gate at a certain location on the fencing at the village.*

*Due to this, 35 families with a population of about 200 have fallen outside of the fencing, they have been facing irrational restrictions from Border Security Forces to enter or exit through the fencing gate.*

*The BSF personnel of the Ronghat and Jeetpur Border outpost, ‘C’ company, battalion 01, who guards the Indo-Bangladesh border at the area, opens the gates at around 6 am and the farmers reside beyond the fencing who cross over the fencing to their daily jobs are supposed to return before 8 pm when the gate closes for the day. They are locked away from their own village for 10 hours a day and it seems that they are in a prison.*

*Even if there is a medical emergency, they cannot go out at night. Villagers have been urging the local administration for a long time to construct a road for civilians but nothing has been done. It is found that the majority of the children do not go to school. To go to a school, the children will have to cross the gate in the border fencing by showing their identity to the BSF guards and the nearest school is far off from the village.”*

The villagers continue to live under a prison-like state in the village due to BSF restriction.

NHRC – A complaint was lodged by the NHRC on 26 July, 2016 which was registered on 9 August, 2016 vide case no. 52/25/6/2017-PF. On 17 August, 2016 the commission from the Action Taken Report from the District Magistrate, North 24 Parganas and The Director General, Border Security Force called for a report within four weeks. On 24 January, 2017 the case was disposed of with directions to the District Magistrate, North 24 Parganas and concluded that the complaint made by the BSF was fake and baseless and the commission closed the case. No further action was taken. The case was again registered by the commission on 17 February, 2017.

### **8. Villagers of Puratan Bongaon – Bongaon, North 24 Parganas**

There are about 3,500 people living in the Puratan Bongaon village belonging to the Schedule Caste background. There is approximately 350 acres of cultivable land situated inside this stretch. The BSF is posted beside the IBBR, which is about 1 kilometer from the actual border and controls the ingress and egress of the villagers into the village through fencing gates.

*“The villagers have been facing severe restrictions since restrictions to cultivate in their own lands and hence incurring grave financial losses since the past 2 years. The BSF authorities have alleged that these villagers are involved in illegal cross-border trade, which is why they are being restricted to cross the border fencing gates and cultivate their lands located inside Indian Territory. They also alleged that they have recovered smuggling goods from the fields of the respective peasants, which were kept in hiding in their respective fields. After several appeals made by the villagers to the BSF authorities, they were not allowed to enter their fields. The BSF doesn't even listen to the pleas of the local Panchayat.*

*The victim villagers from Puratan Bongaon village lodged a complaint to the Sub-Divisional Officer of Bongaon Sub- division on 23.08.21 regarding the continuous restrictions imposed on their livelihood and agriculture and the arbitrary actions of the BSF due to which they are suffering huge losses. They also appealed that they have no other means of livelihood to sustain their family and therefore requested to take necessary steps so that they may start cultivating their lands. No action has been taken so far.”*

NHRC – A complaint was lodged with the NHRC on 20 January, 2017 and the commission registered the complaint on 17 February, 2017 vide case no. 256/25/15/2017-PF. On 24 March, 2017, the commission called for a report from the Secretary, MHA and District Magistrate, North 24 Parganas. The commission

called for a report from DM North 24 Parganas several times thereafter but no report was submitted. On 2 March, 2021 the commission issued directions for the intervention of the Secretary, MHA in the matter and closed the matter.

The case was again registered by the commission on 20 October, 2021 and on 11 November, 2021 an action report was called from the Director General, BSF and for 20 May, 2022 the commission called for Additional Information from the Director General, BSF. No positive action has been taken thereafter.

### **9. Villagers of Pipli – Gaighata, North 24 Parganas**

The villagers of Pipli depend on agriculture for their living and a number of villagers earn their livelihood by fishing in the river Ichamati. As witnessed by the villagers, the BSF personnel create hazards and hindrances to the regular agrarian activities.

*“The fence is open for one hour twice or thrice a day and the villagers have to mortgage their citizenship identities to posted personnel of BSF during this time only. The administration or BSF are deciding the timings for entry and exit from their own land. BSF officials misbehave with women passing lewd comments with sexual innuendo for fun and they cross the gate for cultivation. Farmers engage to cultivate, use pesticide and fertilizer to protect the crop but BSF officials obstruct them carrying any kind of fertilizer or pesticide.*

*Farmers owning the land being harassed and restricted to visit their own land and even threatened and abused. BSF of the camp are deciding the timings for entry and exit from farmland according to their whims and fancies. The agrarian populace has to submit their citizenship identities to posted personnel of BSF when they go to their own agrarian fields for harvesting and cultivation.*

*Due to this unjustified restriction, the poor farmers only cultivate the land as per B.S.F. prescribed timing and meeting financial loss. If any of the farmers reach the outpost late, then their identity document has been taken off and damaged. There is a sizable amount of land without proper guard at night. Even the Bangladeshi miscreants illegally enter the farm land and steal and damage their crop; therefore, the farmers incur financial loss.*

*Villagers of Pipli submitted their petitions to the Chief Minister on 19.12.2016, Local Member of Parliament on 12.04.2016, The Additional District Magistrate and Land Reforms Office on 02.03.2016, the BSF Company Commander, Tentulberia Border Out Post on 04.03.2016, The Block Development Officer, Gaighata and local Panchayat Pradhan on 02.03.2016 but in vain. Recently, they submitted a mass petition*

*before the District Magistrate of 24 Parganas (North) on 22.02.2018 regarding unjustified restrictions and harassment by the posted BSF personnel.”*

NHRC – A case was filed with the NHRC on 20 March 2018 which was registered by the commission on 14 June, 2018 vide case no. 905/25/15/2018-PF. On 19 June 2018 the commission disposed of the case with the directions to the Superintendent of Police and Director General, BSF asking to take appropriate action within 8 weeks. No positive action was taken so far.

### **10. Villagers of Mallik Sultanpur – Malda**

The villagers of Mallik Sultanpur, Malda have been subjected to the constant livelihood violations by the BSF for the longest time.

As per the rules laid down by the Union of India, the fence wire must be laid at a distance of 150 yards from the border. However, the BSF authorities have laid the fence wire 1-1.5 kms from the border into the aforementioned village which impedes free movement and myriad fundamental rights of the resident villagers.

*“The villagers have to show their identity cards to access places outside of the village. Moreover, the residents of the village can only move around from morning 6 a.m. to evening 6 p.m. which violates regular and potential earning opportunities for peasants and daily wage laborers. The BSF personnel have also arbitrarily implemented a check post in the middle of the village and have thus effectively divided the village into two. Even in the event that a neighboring villager comes to the village, the villagers are incessantly harassed. The resident students face several issues and threats to free movement when they go to school. The BSF personnel check every good that is carried in lump sum either inside or outside of the village.*

*The villagers continue to live in a prison-like state, dominated by apathetic atrocities by the BSF and government negligence yearlong.”*

### **11. Mostafa Sardar – Swarupnagar, North 24 Parganas**

Mr. Dabirauddin Sardar son of late Panchai Sardar, age 77 years and Mr. Mostafa Sardar son of Dabirauddin Sardar aged 40 years residing at Hakimpur Majherpara, Post Office - Hakimpur, Police Station - Swarupnagar, District – North 24 Parganas were victims of livelihood violations by the BSF.

Mr. Dabiruddin Sardar has two trade licenses (being nos. 270 and 272) in his name for running one grocery and one meat shop. Mr. Mostafa Sardar also has two trade licenses (being nos. 268 and 269) in his name for running one grocery and one meat shop. The said trade licenses were issued by Bithari – Hakimpur Gram Panchayat and all the above-mentioned licenses are valid till 31.03.2012.

*"The Border Security Force personnel from Bithari Border BSF Out-Post (BOP), Battalion No. 152 of Border Security Force (BSF) ordered the victims to close the grocery shops on and from 16.07.2012 and the meat shops on and from 28.05.2012. They did not disclose any reason for such whimsical order. Since then, the victims had to close down their shops. The victims went to the office of Mr. A.C. Nayar, the Company Commander of Bithari Border BSF Out-Post (BOP) to find out the reason for closing down their shops. But he only replied that they could not open their shops".*

The victims sent two written complaints to the Inspector General of Border Security Force (BSF) on 15.10.2012 through registered post with A/D seeking his proper intervention so that they can open their shops but till date there is no response against their complaints.

On 07.12.2012, a complaint before the Commission regarding another incident where the Commandant, Head Quarter, 152 Battalion, BSF, Haringhata, Post Office- Mohanpur, District- Nadia, West Bengal restraining the livelihood of his family by sending one notice to Mr. Dabiruddin Sardar to close his meat shop. The Commission acknowledged that complaint and registered the complaint vide NHRC Case No-1891/25/15/2012-PF/UC.

The victim lodged a complaint to the Sub Divisional Officer, Basirhat on 18.05.2018 stating the false accusation made by Mr. Narendra Singh against him and requested for the renewal of his trade license. Mr. Mostafa Sardar wrote an application to the Block Development Officer, Swarupnagar for the renewal of his trade license on 04.06.2018 but both the authorities did not take any action to renew his trade license.

NHRC – On 30 October 2012 we lodged a complaint to the NRC. On 19 November 2013 NHRC closed the case. On 19 December 2013 we petitioned the NHRC in protest of closing the case. But no action has been taken.

## **12. Villagers of Kalmati Durganagar – Dinhata, Cooch Behar**

The village of Kalmati Durganagar (Teprai), Block- Dinhata II, Police station –Sahebganj, Kaalmati Post Office , District of Cooch Behar, Population- around 2000, 1100 female and 900 are male, Hindu

population 1500 and 500 Muslim population, Occupation- farming and daily wage labour, Distance from the International Border Pillar and the border fence is about 300-500 meters The villagers of Kalmati Durganagar (Teprai) have been suffering due to the restrictions on their livelihood by the BSF and arbitrary construction of fences without sticking to the rules laid down by the Government of India. Lack of basic amenities, welfare schemes and undue, despotic restriction is a severe issue that the villagers face. The fact in concern is that the construction of the fence was to be made within 150-gauge meter as per the rule of Government of India but the B.S.F has planned to put the fences 300-350 gauge from the International Border Post.

Three roads go over the marketplace of Kalimati Bhakra pul, hence most businessmen and general people use that road to travel and use it for other purposes. BSF despotically shut that road down and restricted vehicles which caused a lot of problems for the villagers. The villagers requested the fences to be built at a distance of 150 gauge as prescribed. The main road from Dinhat to Bamanhat is used by about 4000 families, businessmen, farmers, pregnant women and old sick people. It is a basic requirement to have free access to roads for people to carry on their daily jobs which the BSF has control on.

NHRC – The complaint was filed with the NHRC on 21 February, 2020 which was registered on 5 March, 2020 vide case no. 293/25/6/2020. On 12 March 2020, the case was disposed of with directions to the Secretary, MHA to take appropriate action within 8 weeks. However, no further action was taken.

### **13. Abutaleb Mondal – Swarupnagar, North 24 Parganas**

Mr. Abutaleb Mondol was a resident of the Taranipur Village of Gobindapur gram panchayat, a village near the Indo- Bangladesh border under Swarupnagar Block of North 24 Parganas is a marginalized poor daily wage laborer who was refused the issuance of PMAY (Pradhan Mantri Awas Yojana. He lives with his wife and two sons under a tattered make-shift hut that has bamboo-made walls and a damaged tin roof. In order to stop water from dripping inside their house during rains, they have hung a tarpaulin sheet over the roof of their hut and tied it with the nearby trees.

*"On 28.07.21, Mr. Abutaleb Mondal arranged all the paper works for his PMAY – G (Gramin) application and submitted those to the Gobindapur Panchayat office. On 02.08.21 Mrs. Rebeka Bibi, wife of Abutaleb Mondal went to the Swarupnagar BDO (Block Development Officer) office to enquire about their PMAY application. As she went to talk with the Joint BDO of Swarupnagar, Mr. Koushik Pramanik, she was informed that her application has been rejected and she will not receive the PMAY house. Completely*

*baffled with the statement, Mrs. Rebeka Bibi asked the reason for such refusal but Mr. Koushik Pramanik denied stating any reason.*

*The family was informed by the Gobindapur panchayat member Mrs. Khodeja Bibi that they will not get a house under the PMAY- G scheme unless they pay Rs 20,000 bribe which will be shared among the BDO and herself. Mrs. Rebeka Mondal in severe anguish stated that she and her family had no means to pay such an amount. If she had such money, she wouldn't be living under a tattered roof. But Mrs. Khodeja Bibi was persistent and informed that without the money they will not avail the PMAY housing."*

The family continues to be denied by the panchayat members and BDO of their rightful issuance of the scheme while they continue to live in abject poverty over the years.

NHRC – On 30 September, 2021 a complaint was filed with the NHRC which was registered on 4 October 2021. On 8 October 2021, the commission disposed of the case with directions to the District Magistrate, Barashat to take appropriate action within 8 weeks. The case was again registered by the commission on 26 February, 2022 and on 28 February, 2022 the case was again disposed of with directions to take appropriate action within 8 weeks. No further update was received from the commission.

#### **14. Villagers of Gobra Gobindapur – Swarupnagar, North 24 Parganas**

The villagers of Gobra, Gobindapur live under abysmal conditions, facing severe government negligence day in and out.

The Gobra village is situated under Gobindapur Panchayat and Swarupnagar Block and Police station in North 24 Parganas district. This village is situated very near to the Indo- Bangladesh border. The total population of this village is around 3000 where half of the population belongs to the Schedule Caste Hindu community and another half belongs to the Other Backward Classes Muslim community.

The northeast part of this village is surrounded by the fence. This fence is situated at least 500 meters away from the border pillar. In the northwest part Ichamati river is situated. The main occupation of the villagers is agriculture. Most of the agricultural land is situated on the opposite side of the fence. Border Security Force personnel from Gobra Border Out-Post and 112 Battalion Number are posted there. The villagers are facing illegitimate restrictions imposed by the mentioned BSF personnel.

They are not allowed through gate number 18 to go to their own field. Not only this, the perpetrator BSF personnel also restrict the villagers to carry their lunch to their field. The villagers complained regarding

the matter to the Company Commandant of the mentioned Border Out-Post. But he did not pay any heed to their verbal complaint.

The main problem of the village is the poor condition of roads. The total length of the road is 5 kilometers. Due to negligence of the administration the condition of the road is very bad. In the rainy seasons, the villagers can't even think about using this road. The students are unable to use the road to go to their schools. The situation becomes worse in medical emergencies.

This behavior of the BSF forces and absolute government negligence violates Article 14, 19(1)(d) and 21 of the Constitution.

On 13.09.2020 the affected villagers lodged one written complaint to the Block Development Officer of Swarupnagar Block but till date no action has been taken from his end. On 06.10.2020 a complaint was lodged in NHRC vide NHRC case no. 1386/25/15/2020-PF on the plight of the villagers of Gobra under Swarupnagar Block and Police Station in North 24 Parganas district. The villagers continue to live in plight till date.

NHRC – A complaint was filed with the commission on 6 October 2020 which was registered on 7 October, 2020. On 9 October, 2020 the case was dismissed in limine stating that allegations do not make out any specific violation of human rights.

### **15. Madhai Mondal – Swarupnagar, North 24 Parganas**

Mr. Madhai Mondal, son of Late Basudeb Mondal, residing in village-Amudia, Police Station-Swarupnagar, was a victim of livelihood violations and false allegations by the BSF.

*"On 02.09.2017 at about 7.30am Mr. Madhai Mondal went to Sonai River to catch fish. But seeing him, one of the BSF personnel posted at BSF BOP Tarali and BSF BOP Tarali Mini Camp under 76 BSF Battalion hurt him by throwing a stick and started to threaten him by using filthy language. The Company Commander of Tarali Mini BSF Camp also threatened him saying that he would be lifted from his residence at any time and be implicated in false narcotic cases.*

*The BSF personnel also threatened to put him behind the bar for a long period by implicating him in a false case under the N. D. P. S. Act. The BSF personnel cut off the fishing net and broke the bamboo structure built by him to catch fish. Mr. Madhai Mondal was threatened with dire consequences if he dared to catch fish again in Sonai River."*

On 04.09.2017 the victim submitted a written complaint before the Block Development Officer, Block-Swarupnagar describing the whole incident and he prayed for adequate protection. He also sent a similar written complaint to the Superintendent of Police, North 24 Parganas by registered post on 04.09.2017. Our fact-finding team met with the victim Mr. Madhai Mondal and the local villagers and they stated the incident described above as true.

The Commission registered the complaint as Case no. 572/25/15/2017-PF/OC and within a short span of time. The Commission disposed of the case with the direction to take appropriate action within 8 weeks and to inform the complainant of the action taken in the matter. However, no action was taken till date.

NHRC – A case was lodged with the NHRC on 18 April, 2017 and was registered on 29 April, 2017 vide case no. 572/25/15/2017-PF. On 9 May, 2017 the commission disposed of the case with the direction to the Secretary, MHA and District Magistrate, North 24 Parganas to take appropriate action within 8 weeks. The case was again registered by the NHRC on 18 December, 2020 and the NHRC issued the direction to the Secretary, MHA to take appropriate action and closed the case. The case was again registered on 13 September, 2019 and on 18 October, 2021 the commission called for an action taken report from the Secretary, MHA. No further action has been taken so far.

# Bench three

## 1. Azizul Pramanik – Keshari Bari, Sitai

Azizul Pramanik, Age- 35, Gender- Male, Faith- Islam, Residence village- Keshari Bari, Police Station- Sitai, District- Cooch Behar, Death in Police custody.

*"Azizul (deceased) was apprehended by the border guards at about 11:30 pm of 21.1.2020. He was in custody of BSF for about 11 hours where he was subjected to brutal physical assault by the guards. At about 12 pm of 22.1.2020 he was brought to Sitai Police station where it has been observed by the eye witnesses that he was in no position to stand alone and about 4-5 BSF jawans grabbed and dragged him. (Footage available).*

*Before reaching Sitai Police Station, the BSF managed to get a prescription made by the medical officer on duty of Sitai Government Hospital where it was declared by the medical officer that Mr. Azizul was physically fit. The victim was in police lock up lying on his stomach, due to his injuries he was forced to defecate clotted blood, twice in his pants (Pant as evidence available). Azizul was taken to Sitai Hospital who was then referred to Dinhata hospital where the doctors declared the victim as "brought dead". The doctors and Super of Dinhata Sub-Divisional hospital were pressured to issue false certificates to avoid the onus of death in police custody."*

NHRC – On 23 January 2020 this case was sent to the NHRC as a complaint. On 28 January 2020, this case was registered by the NHRC being case no. 153/25/6/2020-PCD. On 30 January 2020 the NHRC called for a report from DM Coochbehar and West Bengal Human Rights Commission. On 12 May, 2022, the investigation division of NHRC, the commission asked for a report from SP Cooch Behar and the Ministry of Home Affairs, Government of India, New Delhi.

Legal – Judicial Magistrate took cognizance of the matter in the court of Judicial Magistrate 1st Class, Dinhata, Coochbehar vide case no. UTP1/2020. On 25 February 2021, Magistrate recorded the statement of some members of the victim's family members. On 29 June 2021, the Magistrate recorded the statement of other family members. After that, the matter was not listed in the cause list.

## **2. Sachin Barman – Parmanand, Dinhata**

Sachin Barman used to run a small snack shop in the local market of Gitaldah Harirhat, run his family of four; his wife, one son and one daughter. Gender- Male, Religion- Islam, Village- Parmanand, Dinhata Block 1, Police state- Dinhata, District- Cooch Behar, Brutal torture and custodial death.

*On 04.04.2016 at 6 pm, the victim was selling snacks in his shop. Suddenly a car stood in front of the shop and police personnel from the excise department got down and forcibly put the victim and another person, Fanindranath Barman into the car. At the time of their apprehension no memo of arrest was issued.*

*The victim was beaten black and blue inside the car and soon he lost his senses. Sensing his critical physical condition, the police personnel tried to flee by leaving the victim at Atiya Barir Chara. But they could not succeed in their plan due to the gathering of some local people. They took the victim with them. Thereafter they left the victim at the emergency gate of Dinhata Sub-Divisional Hospital and fled from the spot. The victim was declared 'brought dead' at the said hospital. The West Bengal Human Rights Commission has been inactive about it too despite our repetitive appeals.*

NHRC – On 29 April, 2016 we filed a complaint with the NHRC regarding this matter. On 27 May 2016, NHRC registered this case being case no. 766/25/6/2016-AD. On 10 June, 2016, NHRC transferred the case to the State Human Rights Commission West Bengal. No update has been received from the State Human Rights Commission so far. Even whether the case has been registered with the commission is unknown.

## **3. Momena Bibi – Daharkhanda, Swarupnagar**

Momena Bibi, Age-, Gender- Female, Faith- Islam, Residing at village- Daharkhanda, Post Office-Hakimpur, Police Station-Swarupnagar, District-North 24 Parganas, West Bengal, India. Sexually assaulted by BSF while at home.

*"On 15.04.2016 at night the victim, Mrs. Momena Bibi, was sleeping beside a window in her room. At about 2 am two BSF jawans namely Mr. Bibekananda Misra and Mr. Harpal trespassed into the house of the victim. Then Mr. Harpal put his hand through the window and started to pull the clothes of the victim. She was awakened from the sleep and started to shout. Then the aforesaid BSF personnel started to pull the victim to the window by touching her private parts.*

*Due to the forcible pulling, she sustained injuries on her chest. Hearing the shouting of the victim, the family members and neighbors rushed to the spot. The aforesaid BSF personnel left the place hurling abusive languages and issuing threats to murder them if the incident was reported to police. On the same night the incident was reported to the local BSF authority but no action was taken upon the perpetrator BSF personnel. The victim was medically treated at Sarapul Rural Hospital on the same day. Her family continues to face threats from the BSF. Her husband has been physically assaulted at a later occasion and asked to withdraw the case under threat."*

NHRC- A complaint has been filed in this regard on 5 July, 2016. On 15 July, 2016, NHRC registered the case-by-case no. 983/25/15/2016-PF. On 24 October, 2019, the NHRC recommended to the Secretary, Ministry of Home Affairs, Government of India to pay an amount of Rs 50,000 as monetary compensation to the victim. Till date the compensation has not been received by the victim but NHRC has closed the case following the issuance of this direction.

#### **4. Mr. Samim Dafadar - Doharkanda, Hakimpur**

Mr. Samim Dafadar, son of Najrul Dafadar, a Muslim minor (age 17 years), residing at village-Daharkanda, Post Office-Hakimpur, Police Station-Swarupnagar, District-North 24 Parganas was assaulted brutally by Mr. Kamalesh Yadav, BSF Constable, 152 Battalion, Company- C, Bithari BOP under Daharkanda BSF Camp by brutally hitting him with a rifle on his head.

*While Samim was playing, suddenly one BSF person named Kamalesh Yadav called him and asked him to bring something. On refusal, the said BSF person assaulted him by brutally hitting him with a rifle on his head. He immediately sustained deep cut injuries on his head and he was bleeding profusely. He immediately lost his senses and fell down on the ground. The local people also rushed to the spot and the victim's son was taken to Sarapul Rural Hospital for treatment. One First Information Report was registered at Swarupnagar Police Station with case no. 352/2013 dated 9.6.2013 under section 325 of Indian Penal Code against the accused BSF person Mr. Kamalesh Yadav. The victim's family stated that the accused BSF person Mr. Kamalesh Yadav is still roaming freely and no action has been taken against him by the police till date.*

NHRC – On 01.07.2013 complaint in this regard was lodged with the National Human Rights Commission and the Commission acknowledged the complaint and registered the case vide NHRC case number

997/25/15/2013-PF/OC. On 16.09.2013 one action taken status report was received from the Assistant Registrar (Law), NHRC from where it is revealed that already one case had been registered on the same incident vide NHRC case number 513/25/15/2012-PF and therefore your Commission merged this case with the case number 513/25/15/2012-PF. From the website of NHRC, it is revealed that the victim's name in connection with the case number 513/25/15/2012-PF is Abdul Karim Molla & Yunus Molla and the date of incident was 11.02.2012 and the complaint date was 27.02.2012. It is completely a different case with the case of Shamim Dafadar.

In connection with Shamim Dafadar's case the date of incident was 09.06.2013 and we lodged a complaint on 01.07.2013. NHRC made a great mistake to link up two different cases into one where the date of incident and the victims are all different from each other. We complained to the NHRC on 9 June, 2022 but the commission did not take any further steps.

Legal – Additional Chief Judicial Magistrate, Basirhat Court issued a warrant against the accused BSF personnel. But the warrant does not get executed. On 5 January, 2019, a writ petition of Mandamus for execution of warrant against the accused BSF was filed in the Calcutta High Court being case no. WP1971(w)/2019. On 15 February, 2019, High Court ordered an affidavit from the Government side within two weeks but till date the matter was not listed in the cause list.

##### **5. Paritosh Mondal – Raninagar, Murshidabad**

Mr. Paritosh Mondal, Gender- Male, Faith- Hindu, Age- 29 years, Caste- Schedule Caste (Dalit)

Mr. Sukumar Mondal alias Bablu Mondal, Gender- Male, Age- 32 years. Village- Lakkhi Narayanpur, Gram Panchayat- Kalinagar-II, Police Station- Raninagar Police Station, District- Murshidabad, WB, India, Killed by BSF personnel.

*"On 03.07.2018 at about 4am in the early morning the victims left their homes for work on their agricultural land. The BSF personnel from Harudanga BSF Camp thought them as smugglers and without raising any caution fired a few rounds of bullets. The victims were shot dead in the firing by BSF. The place occurrence is 3-4 kilometers inside from the international border.*

*The family members of the victims alleged that they did not find the bodies of the victims till date as the perpetrators BSF personnel threw their bodies into the river Padma to conceal the crime. It is also stated by the family members of the victims that hearing the sound of firing several villagers of Harudanga came*

*out and tried to go to the place of incident but the BSF personnel did not allow them. They chased the villagers with their weapons to clear the place.*

*The family members of the victims stated that they had been to Raninagar Police Station and sought for police assistance to recover the bodies of the victims but the police refused to take any complaint against the BSF.”*

NHRC- On 5 July, 2018, we lodged a complaint to the NHRC. On 18 August, 2018 the commission registered the case vide case no. 1221/25/13/2018. On 21 August, 2018, the NHRC disposed of the case to the Director General of Police, West Bengal. But till date, no action has been taken.

Legal- One Habeas Corpus writ petition was filed before the Calcutta High Court vide case no. WP19791(w)/ 2018 on 20 February, 2019. The court directed the CID to investigate the matter by the CID. On 25 January, 2021, the High Court disposed of the case based on the report of Deputy SP CID West Bengal.

## **6. Mr. Ranjit Das – Swarupdaha, Swarupnagar**

Mr. Ranjit Das, S/O Late Hazupada Das, age 63 years, belonging to the Schedule Caste Community, resident of village- Swarupdaha, Block- Swarupnagar, Post Office- Hakimpur, police station- Swarupnagar, District- North 24 Parganas, was a victim of assault by 5 BSF security personnel on the fateful morning of 2 January, 2016 around 5 a.m.

*The victim was going for a morning walk when the BSF personnel impeded his walk and started to assault him with bamboo sticks, bare fists, boot-clad feet and rifle butt without any queries. The BSF were in an inebriated state at the time of the incident and subjected the victim to torture for a while. Following the torture, the perpetrators thought that the victim was dead and shifted his unconscious body hastily behind the concrete road and fled from the spot while still verbally abusing the victim. The victim suffered several injuries on his body including hematoma on his right thigh, 4 loosened teeth and a deep cut mark on the right side of his upper lip was seen. He was then taken to the Sarapul Rural Hospital with the help of rural people.*

Mr. Das made one written complaint to Swarupnagar PS on 2.01.2016 wherein he described the terrible incident. One case was registered based on this complaint at Swarupnagar PS as Case no 01/16 dated 02.01.2016 under sections 341/323/325/308/34 of Indian Penal Code. The company commander of Hakimpur Border Outpost visited Mr. Das's house apologized for the atrocious act committed by the BSF

personnel and offered him Rs 2000/- for his further treatment but the victim's family refused to accept the money and demanded proper action against the involved BSF personnel. No action was taken further.

### **7. Kached Ali SK. – Gorbhodanga, Dinhat**

Mr. Kached Ali Sk, Mahiran Bibi, wife of Kached Ali Sk, Rahima Bibi, sister-in-law of Mr. Kached Ali Sk, Mamoni Bibi, daughter of Ms. Rahima Bibi, Rafikul Ali Sk, son-in-law of Rahima Bibi, Gender- both male and female, Religion- Islam. Unexplained Violence and threat to life and theft. All residing at village- Gorbhodanga, Block- Dinhat II Police Station- Sahebganj, District of Cooch behar.

*"On 20.12.2020 at 7.30 BSF of Kalaighati and Sachinandan Border Out Post, chased some smugglers through the IBBR road but they fled. As the BSF did not catch those smugglers, they entered the Garbhadanga village and started to vandalize the houses of the villagers and anyone found at their houses was beaten severely by the perpetrator Border Security forces. At first 25 to 30 personnel along with the Company Commander trespassed the house of Kached Ali Sk by breaking the main doors of the house. They grabbed Mr. Kached Ali Sk by the legs and pulled him out in the yard.*

*He was severely beaten with the sticks and rifle butt in their hand. Mahiran Bibi, tried to save her husband. The BSF personnel also beat her. Their granddaughter Banicha Khatun, aged 12 years, requested those BSF personnel to release her grandparents. She held the feet of the personnel. One BSF personnel kicked the minor girl and threatened her to shut up. The Company Commander tried to take Kached Ali and dragged him away on the IBBR road. It is alleged that the Company Commander was in a drunken state and he told his jawans that Mr. Kached Ali will be taken to the IBBR road and shot to death and after that be implicated in a false smuggling case."*

The distance of border fencing and IBBR road is 200 yards from the house. At the same time some BSF personnel broke the main gate of Rahima Bibi's house by kicking. Mamani Khatun had given birth to a baby. She was tortured and threatened to death as well. The BSF personnel grabbed the legs of the newborn baby of Mamani Khatun and hung the head down. They threatened the victim's family to hit the head of the baby on the wall or throw the newborn. When Rahima Bibi tried to save her granddaughter, one BSF jawan kicked her. Those BSF jawans committed theft of Rs. 21,000/- from the showcase in their room Kached Ali Sk. BSF vandalized and destroyed all goods in the shop. When those BSF personnel returned from there they threatened by saying, "Didi ka jamana khatam hoga, Toder chipe chipe marbo.

NHRC – On 28 January, 2021 a complaint has been filed with the NHRC. On 16 March, 2021 the case was registered with the commission vide case no. 638/25/6/2021-PF. On 31 March 2021, the NHRC directed the Home Secretary, Ministry of Home Affairs, Government of India and the Superintendent of Police Cooch Behar to send a detailed report on the matter within 4 weeks. But no communication has been received further.

### **8. Umran Bewa – Karola, Dinhata**

Umran Bewa alia Sahera with Mahamuja Bibi, Gender- Female, Religion- Islam, Village- Karola, Police station- Dinhata., District- Cooch Behar.

*"On the night of 11/10/14, Umran Bewa went to attend nature's call, at that time one B.S.F. Jawan of Karala Border Out Post illegally entered and trespassed inside her house and targeted the victim with his firearm. Without any valid reason he fired at her from his firearm. Due to the serious injuries, she received by gunshot, she died at the spot within a few minutes. The family members reported that the said BSF Jawan tried to remove her body and threatened them with dire consequences."*

The next morning, Mominul Islam, son of the victim reported the incident to Nayarhat police out-post under Dinhata Police Station through the telephone that her motherome police personnel came to the house of the victim and send her dead body for post-mortem examination. The post mortem examination was held at the police morgue.

Later, the BSF personnel came to the victim's residence and told the family members to vacate the place of their residence. They also threatened them that if they will still live; same fate will meet them as the deceased.

On 01.04.2015 few BSF personnel from Delta Company and Alpha Company entered the deceased's house. They verbally abused the women present at home and then tried to strip off Mrs. Mahamuja Bibi, daughter-in law of Umran Bewa.

NHRC – On 13 October, 2014 a complaint was filed by the NHRC. On 6 November 2014, the case was registered by the NHRC vide case no. 1555/25/6/2014-ED. On 3 February, 2021 the NHRC recommended to the Secretary, Ministry of Home Affairs to make payment of Rs. 5 Lakh as compensation to the next of kin of the deceased. But no compensation has been received yet.

## **9. Ali Ahammad Mia and Entaj Mia – Putia Baromasia, Sitalkuchi**

Ali Ahammad Mia, son of Goni Mia, aged 38, Faith- Muslim, Occupation- Agriculture

Entaj Mia, son of Nabiruddin Mia, aged -25 years, Faith-Muslim, Occupation-agriculture.

Gender- Male, Religion- Islam, Village- Putia Baromasia, Block- Sitalkuchi, Post office- Lalbazar, Police Station- Sitalkuchi, District- Cooch Behar, Death by bullet fired by BSF personnel.

*"On 04/11/2012, the victims Ali Ahmed Mia and Entaj Mia were killed by bullets fired by BSF jawans. The police of Sitalkuchi Police Station registered one criminal case against the perpetrator, BSF jawans but the investigation has been pending. The family of the victims stated that on 04.11.2012 at about 6am to 7am the victims were killed in daylight. The perpetrator BSF personnel entered into the house of Nabiruddin Mia and started hurling abusive language. The family members and victims protested against such unruly behavior.*

*One BSF personnel fired one round from his service rifle and the bullet first hit on the head of Entaj Mia and then pierced into the chest of Ali Ahmed Mia who was standing behind Entaj Mia at the time of the incident. Both the victims succumbed to the gunshot injuries on the spot. The neighbors of Nabiruddin Mia were eyewitnesses of the incident. In the post mortem examination report of Entaj Mia it was recorded as "Bullet might have been fired from nearer distance"."*

NHRC – We filed a complaint with the NHRC on 4 June, 2016. The NHRC closed the case on 22 June, 2016 as the case is not subject to the jurisdiction of the commission.

## **10. Abdur Samad – Lalgola, Murshidabad**

Mr. Abdus Samad alias Kalu(deceased), son of late Sakimuddin, aged about- 35 years, religion – Muslim, occupation- agricultural labour, of village- Biswanathpur, Post Office – K.D. Para, Pin Code – 742148, Police Station- Lalgola, District – Murshidabad, West Bengal, India. Unexplained violence by BSF personnel.

*"On 05.05.09 the victim was sleeping with his family members inside the thatched and dilapidated room. At about 3.00 a.m., the perpetrators-BSF personnel forcibly entered into the room of the victim and kicked the wife of the victim and asked about his whereabouts though having full knowledge that the victim was asleep in the same room. Then the BSF started beating him with rifle butts and lathis and dragged him outside the room after tying his hands on his back.*

*During this they never stopped bashing him. The victim was forcibly dragged to the adjacent premises of Manik Chowk Primary School. Few people from the neighborhood also came out of their house after hearing*

*the screams and tried to prevent the BSF personnel from continuing the brutal assault but were threatened to use violence. Then BSF personnel brought him to BSF Camp at Diar Manick Chawk. After sensing that the said victim would die in a few moments, the BSF personnel left him to die in the camp. The family members found the body of the victim, totally bared and lying on the floor in the BSF Camp."*

NHRC- A complaint was lodged on 20 May, 2009. On 28 May 2009 the commission registered the complaint vide case no. 157/25/13/09-10-AD. On 1 November, 2016, the NHRC issued recommendation to the Secretary, Ministry of Home Affairs, New Delhi to pay Rs 5 Lakh compensation to the wife of the deceased victim but the Secretary, Ministry of Home Affairs requested to the NHRC to examine again the commission's direction regarding payment of monetary compensation as the matter is subjudice. On 10 January, 2018, the NHRC closed the case leaving the matter to the next of kin of the deceased to take such measures under the law to get implemented the recommendation made by the commission.

Legal – NHRC recommended Rs. 5 Lakh as compensation to the deceased victim's wife, Mrs. Rima Bewa for extra-judicial execution of her husband, Late Abdur Samad by the BSF but till date no compensation has been received. In this regard, we filed a writ petition of Mandamus on 24 December, 2020 in the Calcutta High Court for directing the concerned authority to pay the compensation under NHRC recommendation.

#### **11. Mr. Arup Tikadar – Baglani, Swarupnagar**

Late Arup Tikadar; aged 26 years, son of Mr. Basudeb Tikadar, by profession- agrarian labor, from Schedule Caste community, resident of Baglani, Police Station- Swarupnagar, District- North 24 Parganas, was a victim of Extrajudicial Killing by the BSF.

*"The deceased, who was a courier of cattle smuggling before, was in the gang of 8-10 youths from poor families like him and tried to smuggle out 15-20 cattle on the said date. The wee hour of morning of 25 February, 2015 while they were on their way to the border for smuggling, the BSF personnel intercepted them and a commotion broke out. It was reported that, at that time; Mr. Sanjiv Kumar of Khalsi BOP of 144 BSF Battalion fired from his service weapon and a bullet stuck on his right side of the upper back and it pierced through the left of the chest. It was further reported that Arup Tikadar died at the spot. It was evident by the body part that received the bullet that in no way the deceased was in a position to attack the BSF personnel.*

*It was also observed that the body was left at the spot for about 6 hours. At about 10 am some policemen reached the spot with one rickshaw van. The body was lifted in the said rickshaw van and was tied with rope and the van reached Swarupnagar Police Station. Many villagers' along with family members followed the van. Nowhere the police called one doctor to examine the body of Arup Tikadar.*

*At about 12 noon by one 107 vehicles the body was taken to Basirhat morgue where Mr. Bidyut Tikadar (nephew) and Mr. Mihir Mallik (close relative) accompanied. After reaching Basirhat morgue police took Rs. 4000/- from Bidyut Tikadar for payment to the vehicle driver / owner."*

Swarupnagar police initiated an unnatural death case vide Swarupnagar dated 25.02.2015 and a specific criminal case against the deceased on the complaint of BSF; vide Swarupnagar PS Case No. 139/15 dated 25.02.2015 under sections of Indian Penal Code and sections 25(1)(a) and 27 of Indian Arms Act.

Till date, Post Mortem report was not provided to the victim's family.

NHRC – A case was filed with the NHRC on 15 April, 2015. Till date NHRC did not register the case.

## **12. Ms. Jharna Khatun – Bithari, Swarupnagar**

Jharna Khatun (Dhabak), aged 26 years, wife of Mr. Aatur Rahaman Dhabak, residing at Bithari, Police Station- Swarupnagar, District North 24 Parganas, was a victim of prominent police inaction.

*"The victim worked in a private nursing home in Bidhannagar, Kolkata. On her journey to her workplace, she met Mr. Aatur Rahaman Dhabak, working as a Home Guard under Bowbazar Police Station, Kolkata. The said Mr. Aatur Rahaman Dhabak promised to marry the victim lady. They entered into a marriage-like relationship and she got pregnant. But when Mr. Aatur Rahaman Dhabak refused to marry her, she approached the local respectable persons for help. As a result, Ms. Jharna Khatun (Dhabak) and Aatur Rahaman Dhabak got married according to Islamic rites and customs under Muslim personal Law. Their marriage was also registered before the Muslim Marriage Registrar Md. Abu Jafar Khan on 30.07.2017.*

*Ms. Jharna Khatun (Dhabak) within the wedlock with her husband gave birth to a girl child named Neha Dhabak at Basirhat District Hospital on 24.10.2017.*

*But Mr. Aatur Rahaman Dhabak never took the responsibilities of his wife and the new born daughter. The victim lady stayed with her daughter in her mother's house and whenever she requested her husband for their shelter and maintenance she was subjected to physical and mental torture by her husband. On 12.02.2018 the victim lady with her lap baby went to her husband's residence at Dattapara Village under*

*Swarupnagar Police Station. There the in-laws of the victim assaulted her and forcibly drove her out of the house."*

On 24.01.2018 she went to Basirhat Municipality to get the birth certificate of her girl child with all her papers. But the concerned authority refused to issue the birth certificate. On being refused she lodged a written complaint before the Chairman of Basirhat Municipality but till date no action has been taken by the authority.

Ms. Jharna Khatun (Dhabak) also lodged complaint at Swarupnagar Police Station on 12.02.2018 stating the incident of torture and cruelty perpetrated upon her by her husband by stating the entire incidents of torture and cruelty. Her complaint disclosed information of commission of cognizable offenses but the police instead of registering an FIR on her complaint simply issued a General Diary Entry number vide GDE No-493 dated 12.02.18 and took no action on her complaint.

On 16.02.2018 the victim lady also lodged a written complaint before the Commissioner of Police; Kolkata describing the facts but the authority did not take any action till date for her relief.

NHRC – A case was filed with the National Women Commission on 25 April, 2018. NCW registered the case vide case no. 8-10563-2019-NEW-RS-NMG. On 18 September 2019, the Commissioner of Police, Kolkata asked to send a report by 30 days. No further communication has been received.

### **13. Mr. Osman Sardar – Tarali, Swarupnagar**

Mr. Osman Sardar, son of Mr. Ismail Sardar, aged about 60 years, residing at village Tarali, Hakimpur Post Office; Block and Police Station Swarupnagar in the district of North 24 Parganas, was a victim of livelihood violation.

*"Osman cultivates other people's land by farming a bullock. The Central Public Works Department (CPWD) did not make any fencing in the bordering village of Tarali. Some families are residing in the western side of the IBBR in the village of Tarali. BSF illegally constructed barbed wire here and put high voltage electricity through the barbed wire.*

*In the morning, the farming bullock of Mr. Osman Sardar was taken out of the barn and tied in front of his house. That bullock went to that place to eat grass, it came into contact with the barbed wire and died due to electrocution."*

Much later the BSF authority cut off the power connection from fencing. This act of the BSF surely violates Article 21 of the Constitution of India. With regard to article 21, the Supreme Court notably held that every species has a right to life and security, subject to the law of the land, which includes depriving its life, out of human necessity.

Mrs. Lima Gazi, Panchayat Pradhan of Bithari Hakimpur Gram Panchayat came to the spot and she promised the villagers to talk about the incident with the BSF personnel. After a few days she was informed that the BSF personnel did not give any importance to her words.

At about 4 pm police personnel of Swarupnagar Police Station came to the incident spot and heard the incident from the local people but till date they did not take any positive action. As till date no action has been taken in this respect, Mr. Osman Sardar lodged one written complaint to the Superintendent of Police, Basirhat Police District and sent through registered post, dated 09.09.2021 but the complainant is still unaware any positive action has been taken in this case or not.

NHRC – On 6 October, 2021 a complaint was filed with the NHRC. On 22 October 2021 the case was registered vide case no. 4472/25/15/2021-PF. On 23 January 2022, the NHRC disposed of the case to the Ministry of Home Affairs, Government of India. On 12 November 2021, the NHRC registered the case for the second time; vide case no. 4720/25/15/2021.

On 24 January 2022, the NHRC disposed of the case to the Ministry of Home Affairs, Government of India. No further step has been taken by the concerned authority.

Legal – On the complaint of the victim, one case was registered vide Swarupnagar PS case no. 962/21 dated 12.11.2021 vide GR No. 4965/21 U/S 429 IPC and 11 of PC Animal Act. Investigation officer did not submit the final report. Therefore, on 7 April, 2022, one petition was submitted before the Additional Chief Judicial Magistrate, Basirhat. Magistrate called IO for submission of the final report.

#### **14. Monnaf Ali – Karola, Dinhata**

Monnaf Ali, son of Joinal Abedin, aged about-56 years, Gender- Male, religion- Islam, residing at village-Karola, Police Station-Dinhata, District-Cooch Behar is a farmer.

*"On 02.09.2016 at about 9 pm the victim was sitting on the open courtyard in front of his house after completing dinner with his family members. At that time one BSF-INT personnel, Beer Singh along with*

*other three BSF jawans from Natkobari BSF BOP Camp entered into the residence of the victim and started to abuse him in filthy language.*

*They snatched one mobile phone from him and left the place by putting him into danger. On the next day he verbally informed the incident to members of the local gram panchayat. He consecutively for three days went to Natkobari BSF BOP Camp and requested for the return of his mobile phone but it was not returned to him. Having no other way out he submitted one written complaint describing the whole incident before the Superintendent of Police, Cooch Behar but till date no action has been taken on his complaint."*

NHRC – We filed a case with the NHRC on 14 December, 2016. The NHRC did not register the case.

### **15. Taslima Begum – Daharkanda, North 24 Parganas**

Ms. Taslima Begum, wife of Mr. Abbas Sardar, aged 47 years, residing at Village- Daharkanda, Post Office- Hakimpur, Police Station- Swarupnagar, District- North 24 Parganas, was a victim to verbal and physical assault in the hands of BSF personnel on the morning of 20 August, 2013.

*"In the backdrop that a few cattle smugglers were smuggling a large number of cows to Bangladesh, the BSF personnel came to the house of the victim and started banging her door fiercely while the victim was sleeping inside. They started using vulgar language with sexual connotations, suspecting that one of the smugglers was hiding inside the house. The BSF personnel threatened the victim to open the gate following which BSF personnel Mr. Samir broke the lock of the gate with his rifle butt and trespassed inside the house.*

*After forcefully entering the victim's house, the BSF tore the blouse of the victim and assaulted her with wooden sticks following which the BSF personnel started to molest other female members of the victim's family, namely Ms. Farida Khatun, her daughter and Mrs. Khaleda Bibi, her daughter-in-law, whose saree the BSF personnel tore off. The husband of Taslima, Mr. Abbas Sardar was brutally assaulted."*

On the same day at 6.50 am the victim and her daughter; Ms. Farida Khatun both were medically treated at Sarapul Rural Hospital and the medical officer clearly stated that the victims received injuries due to the physical torture by the BSF personnel. On the same day at 10 am, the victims went to Swarupnagar Police Station to lodge a First Information Report against the perpetrator BSF personnel.

But the on-duty officer wearing a single star (Assistant Sub Inspector) with a big mustache, refused to receive the complaint and register it, and advised them to mutually settle the issue with the offenders; the raiding BSF personnel.

On 23.08.2013, Ms. Taslima Begum lodged a written complaint before the Superintendent of Police; 24 Parganas (North) informing the whole incident of physical torture and mischievous acts upon them by the BSF personnel; the police refused to accept a complaint.

In reference to the above-mentioned case, the Commission sent a letter dated 04 May, 2015 intimating that the Commission recommended an interim relief of monetary compensation of Rs. 25,000/- to be granted by the State Government of West Bengal to the victim. The amount was received by the victim on 15 March, 2017.

NHRC – A complaint was lodged on 5 September 2013. On 21st September 2013 the commission registered the complaint vide case no. 1137/25/15/2013-PF. On 30th September 2015 NHRC recommended to the State Government of West Bengal to pay compensation of Rs. 25000/- to the victim. On 15th March 2017 the victim received the compensation amount.

The BSF implicated her in a fabricated NDPS case, where she defended the charges in Barasat Special NDPS Court and was discharged from all charges by the court. However, after she was discharged from all the NDPS charges, she applied to various govt. authorities to get back her ICDS job, from which she was suspended after she was falsely charged. But till date she didn't get her job back in ICDS even after the court cleared all the charges against her.

# Observation and comments of the Panelists

Hon'ble members of the three benches heard the cases and provided us with their valuable comments. Here is what they mentioned.

## **Dr. Sarfaraz Ahmed Khan, Professor, National University of Juridical Sciences**



*“First of all, I would like to mention that, the number of cases which usually reach the courts of Justice are the minority among the total number of crimes. There are a vast number of cases which never reach the courts. That is why, I would like to extend my heartiest congratulations to MASUM, who has given us the opportunity to hear the cases which would otherwise go unheard. Even these cases are a small fraction of the actual number of violations.... The law enforcement is nurturing a toxic culture of impunity. There is a common tactic in place. The government authorities forge a false accusation against the victims when the cases of atrocities are reported. This is common-place practice in the border area.*

*.....In the hundred and thirteenth report of the law commission it has been stated that if the circumstantial evidence points the accusation towards the custodian authority in case the onus will shift to them to prove innocence. Another point I would like to mention here. Through amendment of the Evidence Act, it has been made clear that sanctions are not required to put a person with authority to trial in cases of sexual harassment, as this said offense cannot be a part of official work. Similarly, murdering someone who doesn't pose any kind of threat or torturing someone cannot be a part of any official authority. Thus, there should be regulation to make sure that those cases are coming to registration. There must be some changes in law to make that sure.*

*Another thing we have observed is that in the cases where the NHRC has acknowledged the violation of rights and announced monetary compensation, victims are still awaiting the compensation to be paid leave alone the punishment of the perpetrators.*

*In the end I must add, the laws and acts in place to protect the victims from human rights violations must be functional and prompt to provide them with legal avenues to get justice. And by the proper implementation of the constitutional rights, we must figure out a way to put a full stop on the human rights*

*violations by the armed forces, police etc. in the Border areas. The area is tough without a shed of doubt, but actions must be taken to ensure justice.”*

### **Dr. Bhaskar Chakraborty, Doctor**



*“Does Justice get delivered or not, does not only depend on the justice system. We, doctors, have a responsibility in the process of justice. In fact, that is the first step of justice. But in many cases, we observe that, the first attending doctor of a torture victim deny treatment due to involvement of BSF and police. The reports are either missing or incomplete. This is a negligence of the basic medical duty. Due to this the justice process as a whole gets hampered. As public servants, the doctors are only responsible to people. They must not neglect it and compile unbiased medico-legal certificates. There is a grave lacking in this. That is one of my observations.*

*Another point I need to mention, many victims don't know they have the right to get MLC from the hospital. This must be taken care of.*

*Third thing I would like to mention is about custodial death. In custody physical check must be done with utmost care. In case of post-mortem examination, it must be done without bias and prejudices.*

*In a nutshell, as doctors, if we adhere to our duties and responsibilities, we can help the victims to get justice.”*

### **Mr. Arindam Acharjee, Ex-Officer, West Bengal Police**



*“It is to be noted in many cases the perpetrator is defending themselves with the shield of cattle smuggling. And the local police are helping them to do so. This needs to be addressed. They must be changed in the grass-root. We should wage a legal battle to ensure that. The atrocities of BSF would go unnoticed if we don't participate in this process. And it is to be remembered that in case of custodial deaths, the onus shifts to the accused to prove innocence.*

*And, I would like to congratulate MASUM for providing us with such detailed documentation of the cases. This definitely gave us a much clearer picture of the violations. We must carry on our struggle to ensure that the fruits of justice are borne.”*

## Mr. Subhajit Bagchi, Journalist



*"I was present as a panelist in the social audit conducted by MASUM on the issue of Human Rights violation at the Indo-Bangladesh Border. We heard about the plight of the border population especially from the districts of Cooch Behar and North 24 Parganas. It was heart-wrenching to hear the testimonies of the people who are living in their ancestral land for generations with limited access to it while being exposed to multiple threats including serious threats from law enforcement agencies. Clear cases of human rights violations were reported. The border residents are treated precisely as foreigners or infiltrators in their own country 75 years after Independence. I would like to congratulate and thank MASUM for the initiative. Due to MASUM's effort we could interact with the women and the men from the border areas which otherwise is out of bound for people like us in the cities. I hope they will continue with such initiatives in future, not only at the State level but at the national level as well."*

## Mr. Amit Sengupta, Journalist



*"It is agonizing to notice that due to the delay in the judiciary, justice is denied to the victims on many occasions. The Legal system must be more functional and prompter to ensure justice for the wretched. And it is our duty to keep a continuous mechanism of monitoring in place to ensure swift and true Justice"*

## Mr. Ashokendu Sengupta, Ex-Chairperson, West Bengal Commission for Protection of Child Rights



*"This program was meticulously planned by MASUM. We thoroughly enjoyed it. We were saddened to know the plight of the people residing at the border region of India and Bangladesh. It is distressing to know how the torture and restriction of BSF has pushed away the dreams and aspirations of the people aside. "*

## **Mrs. Manidipa Ghosh, Child Rights Activist**



*“The biggest issue I understood after hearing the cases, is that of the problem of delay in Deliberation of Justice. We observed that cases from 2010 or 2011 are pending before different courts. While acts are in place to protect our constitutional rights, the implementation of the same is delayed to unimaginable degrees thus tantamount to denying justice. Even in cases of illegal detentions the custodian of the victims, i.e., the state police, has failed to deliver any assurances to the victims. In a case, we observed that in one particular case the detainee passed away in the jail custody. The police, instead of informing the family about the same, took a bribe of Rs. 7000, in exchange of assurances that the victim will be released. This shows us a sorry state of affairs in delivery of justice, where not only the victims but the entire family is undergoing a traumatic ordeal. We must all come together to exploit all the legal means to bring the perpetrators to justice and put an end to the gruesome torture on the villagers by BSF and other authorities in the Indo-Bangladesh border.”*

# CHAPTER IV: General Observations and Recommendations

Though government data is not available, we assume that nearly 1.5 crore people reside near the Indo-Bangladesh Border. Due to government negligence, highhandedness of BSF, systematic corruption and insensitive administration, this densely populated area has become a hell on earth. Not only the people are losing their life from BSF bullets and torture, the absence of general development programs, absence of infrastructure, restrictions on livelihood etc. are forcing the people to choose between two options: either endure the cruelty or migrate to somewhere else where there are other livelihood opportunities. Through the social audit we have observed the following categories on the issues of the Indo-Bangladesh border villagers.

Due to the collection of negligence, restrictions and administrative apathy the great many populations of the IBB area are getting marginalized everyday both socially and economically. The livelihood of the people is at bay due to the severe restrictions in place in the border areas. To begin with, we can see in the areas with barbed wire fencing, the locals are partially or fully restricted to cultivate their own lands. Even where they are allowed to cultivate, that has to be in accordance with unofficial and whimsical rules of BSF. Per se, one cannot plant crops of height over 3 feet, such as maize, jute etc. Thus, even after knowing that cultivation of those crops can be more profitable than paddy, they are forced to farm only the latter. The fishermen community makes up a good portion of the border population. They too, are regularly restricted from fishing beyond the fencing. A large section of the population in these areas are Muslims. They are restricted from their food habits too. Such as, if a licensed person sells beef or someone carries beef for consumption, they are prone to face harassment at the hands of the Border Security Force. Cattle markets are severely restricted in the area by BSF and the administration. According to them this is done to prevent cattle smuggling. But, due to the absence of legal means to trade cattle, people are forced to resort to cattle smuggling. In this process the people lose their right to choose and pursue their livelihood in a free and equal environment.

We have to note that the fencing we are talking about is way more inland than the permissible limit of 150 yards from the international border pillar. Though the abbreviation 'BSF' stands for Border Security Force, their actual station is inside the border villages instead of the actual border. All of their whimsical actions

are done in the name of border protection, however they themselves are camping far away from the border instead of guarding it.

As we mentioned before, according to our observation, BSF related issues are not the only problem in the Indo-Bangladesh border villages. Generally, the government is not sympathetic towards any development of the region. A Border Area Development Programme (BADP) fund is in place for the development in the border villages. And it is to be noted that under the accountable democratic process of India, the expenses and projects of BADP should be done in consultation with the Gram Sabha. However, in reality the case is not the same. BSF and local administration is going ahead with the projects overlooking the gram Sabha or the Panchayat. Thus, rarely the actual need of the population is addressed. Rather, the money is spent under the supervision of the BSF, and they are, in most of the cases, spending the money the way they see fit (mostly from a military point of view). This leads to a stalling of development in the area. Apart from these, the other welfare schemes such as MGNREGA, PMGAY, PMGSY etc. are not doing well in these areas. These conglomerate causations are leading to a cascade of events. First of all, the restriction on livelihood is forcing the population to take up cross-border smuggling as the source of income at the risk of their lives. While, the BSF claims, all their actions are in conjunction to curtail illegal activities across the border, we can observe that it is doing the exact opposite. The people who are not taking up the smuggling are forced to migrate to other states for livelihood opportunities. That too, they do under unsafe conditions and at the peril of exploitation by the employer, as the government hardly keeps any tally on these migrations in accordance with the law.

Absence of basic educational facilities and the unsafe environment for the children to avail it, is another damage done by the said causes. Schools are usually far, and the higher educational institutions are further from these villages. Due to the constant restriction on the use of CPWD roads and the continuous issuance of section 144 of the Criminal Procedure Code (Cr.P.C.) the students don't dare to voyage much further from the villages as it will be perilous for them to return to their homes if they get late. Desperate poverty caused by the restrictions and negligence means most of them cannot afford to stay out-station and study. These all leads to high dropout rate from schools, which in turn effects into increase of child labour and instances of underage marriage of the girls.

These problems related to marginalization are highly prominent and urgent. However, the Governments (both Union and State) are not ready to make it a topic of discussion let alone acting upon it. Any political party has not made these issues a part of their regular political discourse. Under these paramount pressures, the population in the Indo-Bangladesh Border area is living a life of second grade citizens in their own country.

The actions of Border Security Force in the area are not only threatening the quality of life and the livelihood in the IBB area but threatening the life of the people itself. From the cases which are coming up we can conclude that the force who is actually responsible for the protection of the life and properties of the civilians are engaging in threatening the same in the name of security. Thus, cases of torture, extra-judicial killings, enforced disappearances and sexual harassments in the hand of the security forces are not a big news for the villagers anymore. In many cases we observed that the victims survived shots from BSF just because of sitting in their own backyard in the evening. Many who asked the logic of BSF restrictions have gone through the same. In cases of enforced disappearances, if the family members of the victims go to the camps in order to enquire their whereabouts, they too are prone to become victims of torture and illegal detentions. These terrors of repercussion are directed to discourage the villagers to fight for their issues. Which is detrimental to the democratic health of the entire country.

According to the BSF Act enacted in 1968 if any member of the force resorts to illegal activities such as looting, hooliganism, being drunk on duty etc. there is provision for penalty under section 16B and section 26 of the act. But that is rarely the case. Most of the times in cases of torture etc. to protect themselves and justify their actions the BSF is resorting to filing a counter case against the victims and the complainants. While a counter case cannot justify the cases of torture, killing or enforced disappearance or sexual harassment (as a legally convicted criminal too have impunities against the said violations), this definitely can create a negative national conscience about the plight of the victims. Due to lack of a strong victim and witness protection scheme in the country, most of the victims and witnesses gives in to the immense pressure from the men in uniform. Here we must note that the enactment of the BSF Act was proposed to defend the border between India and erstwhile East Pakistan after the 1965 war, i.e., a hostile border. The things are not the same on the ground anymore. The liberation of Bangladesh was actively aided by the Government of India in 1971. Since its establishment they have claimed to have a cordial relation with each other. Similarly, the Indo-Bhutan and Indo-Nepal borders are not hostile. Neither the BSF nor a barbed wire is present in these borders. The differential treatment for IBB is a violation of Article 14 of the Indian Constitution. The old Act which was proposed to serve a different border under different set of circumstances seems unfit and detrimental to the current concrete situations.

While many of these cases get reported to the local police bodies, most of the time the complaint is not registered. An invisible nexus between the Police and BSF makes it impossible to get the perpetrators to justice. If the victim goes to the NHRC, they can do nothing much against the BSF but recommend directives. In many cases, we saw that the compensations which were announced for the victims have not been translated into reality. We have observed that the absence of the independent and regular monitoring body let this situation go unchecked.

Above all, the members of security forces enjoy a certain degree of impunity from the consequences of their actions. By the power of Section 197 of the CrPC they can't be tried before an open court of law without the sanction of the concerned authority, which rarely arrives. BSF takes it upon themselves to judge the alleged perpetrators in their special court. This is a contradiction in the legal system which awaits to be resolved.

On the part of the government and the administration there is no efforts at all to seriously implement the Minnesota Protocol, guidelines of the Tokyo Declaration and the Istanbul Protocol; all of these are important instruments of global fight for justice against human rights violations. Thus, the cases of summary executions, enforced disappearance etc. have been going on for many years now.

In a nutshell, it has been observed that, the current situations, weakness and unwillingness of the administration, fallacies and contradiction in the interpretation of acts and laws in place are making the situation ripe for the creation of such a dangerous environment in the Indo-Bangladesh border. This requires immediate attention from the sections of the society.

The unruly behaviour of BSF is often aided by the corruption and ineffectiveness of the local administration and the State Police. The police are responsible for law and order in India, which happens to be a State subject. But instead of intervening and putting a stop to the illegal actions of BSF, the police department acts most of the time as accomplices and defenders of the perpetrator. In many instances they intimidate the complainant victim by tagging them in false cases of smuggling, NDPS etc. Where they don't resort to false cases, they demand a fair amount to bribe from the victims even to provide a small piece of information.

In many cases we see that repeated appeals and petitions from the villagers to the civil authorities, i.e., SDO, DM et al go unheard for ages, or if they are heard, simply it does not interest the administration much to take any adequate action. Even the health professionals at the local government who have pledged to treat and help the patient irrespective of identity and circumstances, neglect their duties. Often, they are rejected to get treatment even if they come with grave injuries such as pellet injuries, ballistic injuries etc. In many instances they are not provided with Medico Legal Certificates (MLC), which is a useful document in the prosecution of the perpetrators.

It has been noticed that the border areas are constantly forced under the rule of Section 144. It is to be noted that in the judgment on the petition of Anuradha Bhasin before the bench of NV Ramana and V Ramasubhramaniam in 2020, the court stated that section 144 of Cr.P.C. cannot be applied to a region for more than 60 days at a stretch. The local administration, though, repeatedly grant the permission to re-

apply the section in the areas on recurrent basis. Supreme courts judgements are binding and can be used as legal precedence to resolve disputes in legality of circumstances. But, the local administration and BSF is regularly overlooking this very fact and extending the period of application of section 144Cr.P.C. indefinitely.

On the part of the government there is no serious effort to strengthen the Panchayat Raj Institutions (PRIs) at the grass-root. Most of the decisions regarding the region are taken by the administration alone without consulting the Panchayat or the Gram Sabha. In general, Gram Sabhas are not held in these villages at all. Thus, the villages cannot avail their constitutional rights. It has been observed that the members of the panchayat are not aware of their constitutional authorities. This makes the situation more difficult.

The violation of the right to livelihood and the atrocities by the police and BSF multiplied by overall negligence has pushed the population of the region to the abyss of desperation. Enduring violence, loss of livelihood, fear of persecution made the community susceptible to mental health conditions such as clinical depression, post-traumatic stress disorder etc. In the border areas these are affecting the society drastically. In India's village society mental disorders are always a stigma. Due to the absence of any support system and any mechanism to call for help, the entire life of the affected people is degrading beyond humane.

The violations committed on the people of the border by various appendages of the government is in direct contravention of international covenants and declarations. India is a signatory in the ICCPR and ICESCR. But the actions on the ground makes the government's commitment to the same questionable. The government is yet to ratify United Nations Convention Against Torture (UNCAT), which is a prime weapon in the present day to give the torture victims justice. The goals mentioned in the United Nation's Sustainable Development Goals ensures sustainable development by ensuring justice. But the government of India has not taken up concerted effort to implement the same.

According to the observations, it is of utmost importance to take cognizance of this dysfunctional and corrupt administrative situation and take actions immediately in order to resolve the same.

# Recommendations

When the security of the border is more important than the security of the border dwellers to the central and state governments, they must focus on the following factors:

- Ensure that those who are marginalized and outcasts both inside and beyond the border fence are given access to the fundamental human rights—the right to life— life with dignity guaranteed by Article 21 of the Indian Constitution.
- Undertake immediate steps to reduce poverty in border areas by creating potential livelihood options for the dwellers, which will ultimately reduce cross border illegal trade by the border populace.
- The BSF should be posted at the actual border and not inside the villages.
- Use the money from BADP fund for developmental and welfare activities for those who live within or outside the border fence. The fund should be used at the villages located within 0 to 10 kilometers from the international border after discussing with the villagers in Gram Sabha. These Gram Sabhas should be held twice a year as per the guidelines of the Panchayat Act, 1968 so that the villagers get the scope to articulate their needs to the Panchayat.
- Every house in the border areas should have proper sanitation with safe drinking water facilities.
- People residing outside the barbed wire but inside Indian territory should be relocated with adequate compensation, following proper land acquisition procedures.
- Panchayat should also have the authority over the village roads. Any restriction from the border guards to use the IBBR or the village roads should be dealt by the panchayat stating their authority over the said roads. Villagers should be able to use the village roads without any restrictions.
- Border ‘Haats’ should be introduced at every 5 kilometers in the border, where villagers from both India and Bangladesh will be able to trade under the supervision of the forces of both the countries. These border ‘Haats’ will not only reduce cross border smuggling activities and develop the area as a whole but will also earn revenue for the government of both the countries.
- Steps should be taken by the district education department to ensure children in border areas stay in school. This is required to stop school dropouts, child marriage and involvement of minors in cross border smuggling activities.
- The state government should ensure the presence of proper health facilities along with adequate number of doctors in the border areas so that the villagers can avail health services from government health facilities.
- The BSF must stop interfering with the livelihood of border residents immediately. Inhibiting their right to free movement with outposts that are located too deep into Indian territory and are overly restrictive, violates Article 19 of the Constitution. The BSF must respect the order passed by the

MHA absolutely prohibiting the BSF from interfering with the livelihood of farmers and small businessmen in the border areas.

- The BSF and the local administration should adhere to the resolution of the meeting between the NHRC and the BSF held on 16<sup>th</sup> and 17<sup>th</sup> February, 2012 and report of Mr. R. R. Jha, IAS, the then Secretary, MHA, GOI dated 07.04.2011.
- District administration should immediately refrain from imposing section 144 of Criminal Procedure Code continuously for an indefinite time period as per the BSF's whims as it has post ill effect in the life and liberty of the citizens. In *Anuradha Bhasin vs. Union of India & others* [Writ Petition (Civil) no. 1031 of 2019] the Supreme Court of India clearly expressed that section 144, Cr.P.C does not confer arbitrary power on the Magistrate, since it must be preceded by an inquiry. However, no such steps are being taken by the district administration.
- Make sure that the allegations of torture and other human rights violations against the victims listed in this submission are promptly, impartially, and effectively investigated; where sufficient evidence is available, make sure that the offenders are prosecuted and given appropriate punishment.
- Create an independent, unbiased commission of inquiry into severe violations of international human rights law by the BSF and inaction of other stakeholders like police and administrative line departments, in accordance with Paris Principle, 1991.
- Amend the BSF Act to ensure that security forces members who are suspected of violating human rights, such as torturing people, are tried before open court of law.
- Immediately amend the Protection of Human Rights Act, 1993 to strengthen the NHRC with the authority to undertake punitive actions against the perpetrators of human rights violations.
- Repeal Section 19 of the Protection of Human Rights Act to give national and state human rights commissions the authority to independently look into claims that members of the military forces, including the BSF, have violated human rights.
- The MHA, Government of India and respective state government should issue a directive requiring the BSF and other security forces to follow the fundamental principles of the United Nations Code of Conduct for Law Enforcement Officials regarding the use of force and guns by law enforcement personnel in order to make them accountable.
- Amend all acts and laws and repeal section 197 of the Criminal Procedure code of 1973, that require the executive branch of the government's consent before legal actions against can be taken against members of the armed forces and other state agents.
- A strong and effective victim and witness protection Act should be in place in order to safeguard the interest of the victims and witnesses so that their safety, security and integrity can be ensured from the threats of the perpetrators.

- Every police officer should be accountable and register a FIR in case of any cognizable offence reported to him as per section 154 Cr.P.C and the Lalita Kumari judgement by the Supreme Court and a copy of the complaint should be made available to the victim immediately. The government should make a law that advocates punitive actions against the police officer in case the concerned police officer doesn't comply with this directive.
- Police officials making arrests should comply with the proper guidelines for arrest as laid down by the Supreme Court in D.K. Basu judgement. In most cases of arrest, the accused is not provided with a memo of arrest or an arrest warrant, where needed. As per the guidelines the next of kin of an accused is not informed in most cases after an arrest has been made. Such violations should be met with punitive actions.
- Initiate a prompt investigation into the complaints made by those who have experienced cruel or inhumane treatment by state officials, in accordance with the guidelines enshrined in the Istanbul Protocol.
- In many cases of death in custody of a state official or killing by the BSF, the post mortem report does not contain details about the actual injury which is described by the kin of the deceased. This begs the question on whether the inquest was made in the presence of the family members which is set down in Section 174, 176 and 176 (1)(A) of the CrPC. Moreover, in cases of custodial deaths, the enquiry is being carried out by an executive magistrate instead of a judicial magistrate, as directed in the section 176 (1)(A) of the Code of Criminal Procedure. This can only be perpetrated in the presence of a nexus between the BSF, the police and the concerned medical professional. Such violations should be stopped and measures should be taken against the violators.
- The kin of the deceased, in many cases, are not informed when cases of BSF extra-judicial killings are transferred from the Judicial Magistrate's Court to the BSF's Staff Security Court, where the judge, prosecution and the accused is a BSF official and renders biased decisions in favor of the BSF. The law should be amended and cases of human rights violations, killings and torture should be tried in open courts of law.
- Initiate prompt investigation into the cases of extrajudicial Killings and custodial deaths, in accordance with Minnesota Protocol.
- In the cases of torture and pellet firing by the BSF the victims have often not received Medico-Legal Certificate (MLC) from the hospital they were treated in. It is to be noted that in such instances of torture it is the duty of the hospital authority to hand out an MLC to the victim as per the Tokyo Declaration and guidelines laid down by the World Medical Association. Medical professionals should be properly sensitized by the government to follow these directives. Punitive actions should be taken against the medical officers violating such guidelines.
- Ratification and effective implementation of international human rights treaties, such as the Convention Against Torture (CAT), its operational protocol and the International Covenant of Civil

and Political Rights (ICCPR), as well as acceptance of the Committee against Torture's authority to hear individual communications under the CAT.

- The family of the victim should be compensated by the government for their severe loss, from the perpetrators pocket instead of public exchequer's money.
- Effective psychological support system should be in place with recruitment of adequate psychologists and psychiatrists in government health facilities to address the mental health concerns of the victims of torture and family members of extra-judicially killed.
- The NHRC's guidelines on custodial death and encounter death cases should be abided by during investigation.
- In many cases the police have been involved in shielding the perpetrator and their gross negligence and inaction leads to impunity as the accused roam around freely. The investigating officer, in such cases, should be held accountable and immediate action should be taken against him.
- Courts should be free from the influences of the state forces, who might be the perpetrators of the same case. Courts should initiate independent enquiry instead of relying on police reports. The victims should be provided fast and upright justice by the court.
- Legal services bodies like DLSA, SDLSC and NLSA should be sensitized with the aim to provide free adequate legal support to the victims
- It should be taken care that the family members of the victim are provided with protection.
- The government of India should immediately sign and ratify the Rome Statute so that these cases of violations can be taken up to the International Criminal Court for availing justice.

# Conclusion

The Indo-Bangladesh border has been a cauldron of atrocities, negligence and apathy by the Government security forces, the roots of which date far back in history to the time when a bloody line was drawn to divide a country into two; the scars of these atrocities are glaringly visible till date. Just like the barbed-wire fence that unreasonably divides a country whose demographic profiles are a reflection of each other, the dividing line has also been drawn between the people and “the people’s protectors” aka the BSF. The victims of such border atrocity no longer believe that as citizens of the country, they are entitled to security and protection by the forces of the state.

In many cases, it has been made clear to them, over many instances of violation of some of their basic human rights, that they are their own protector. The bordering populace are witness to sporadic instances of resistance against the police-BSF and local administrative authorities.

Often, the victims of such atrocities resort to protests, believing that their last resort is to stand up against the abusers of their life and livelihood. It is often that we see the victims uniting to put up a brave fight against their common nemesis, the BSF to demand a just and fair way of life and living which were guaranteed to them by the very Constitution of India.

The purpose of this social audit was to establish a prototype for a quasi-judicial redressal mechanism in the absence of a justice system which is free from impunity and apathy towards the marginalized. With this, we not only come to highlight the numerous stories of violations of human rights, which otherwise would sink into oblivion, but also set an example ahead of the current mechanism in place. Such mechanism will aid in proper civil administration, responsible policy making and economic development to ensure positive changes in the lives of the border populace.

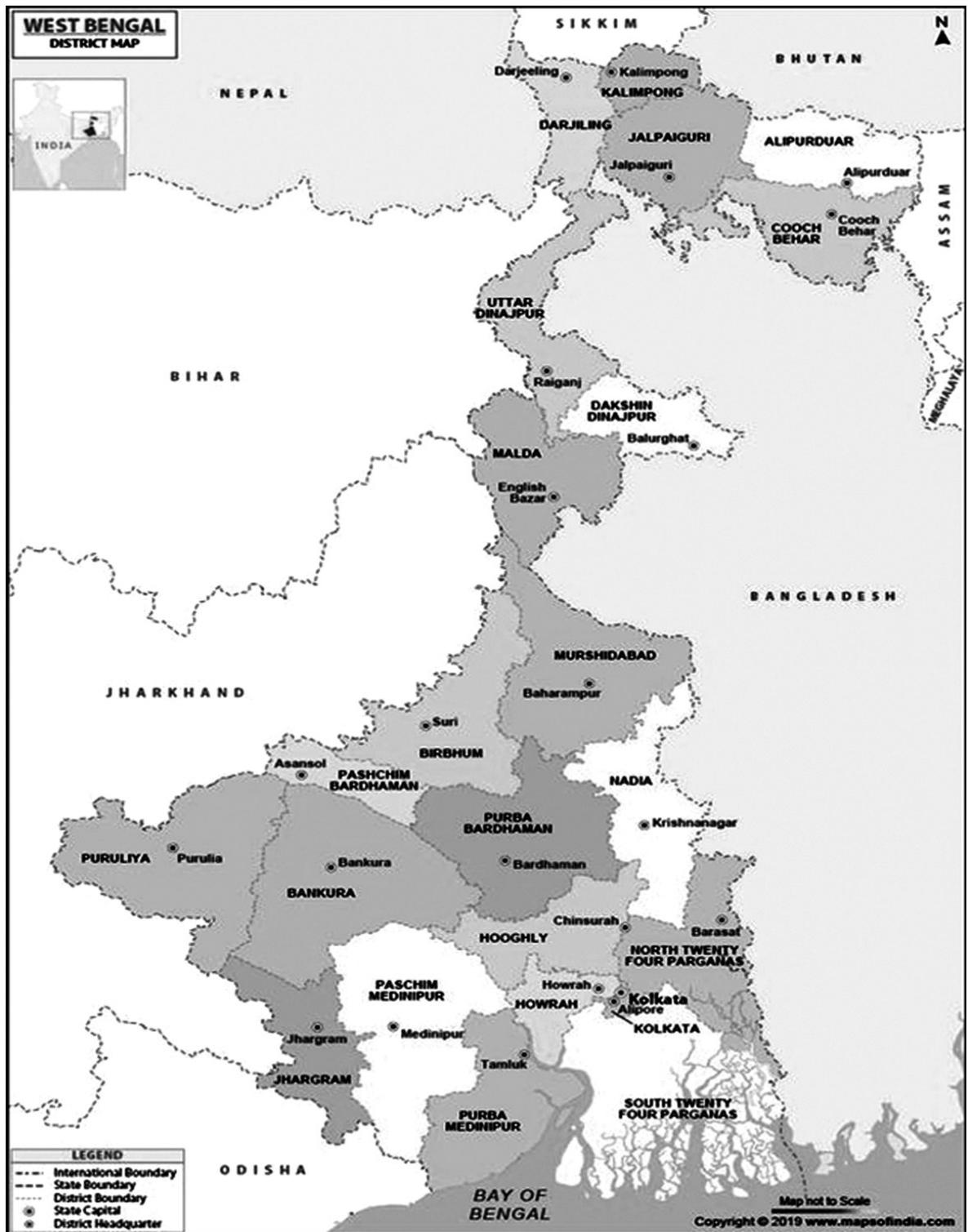
In the last couple of decades, we have seen the borders closing in when it comes to standing up for Human Rights. Organizations, activists and people from the progressive sections of the society in both the countries have joined hands to come together and collectively demand some of the most fundamental rights for people who are constantly and literally under the line of fire. We have achieved quite a few

milestones and unless justice is delivered and premises are established to eradicate the violations of Human Rights completely, we have a lot more to achieve.

Lastly, in the matters related to the justice delivery system, it must be borne in mind that neutrality works in favor of the oppressor. The demand for justice is an act of walking together, irrespective of whether you are affected or not.

And as Howard Zinn once said, “*The cry of the poor is not always just, but if you don’t listen to it, you will never know what justice is.*”

# Annexure



Districts of West Bengal having border with Bangladesh

# Bangladesh-India agree to bring down border killings to zero



New Delhi, Sep 7 (UNI) The incidents of border killing have decreased significantly -- that has made two top leaders of India and Bangladesh satisfied, claimed a joint statement that was issued on Wednesday following a meeting between Bangladesh prime minister Sheikh Hasina and her Indian counterpart Narendra Modi.

The statement read both leaders discussed all affairs of bilateral cooperation, including

politics, security, defence, border management, commerce, water resources, development and culture.

It claimed the number of killings along the border has decreased significantly -- that has made two top leaders satisfied.

Besides, both have agreed to bring the number of border killings down to zero.

They also pledged to thwart the spread of terrorism, militancy and fundamentalism in South Asia and beyond.

Prime minister Sheikh Hasina went on a four-day state visit to India on Monday.

Following a meeting of prime minister Sheikh Hasina and Narendra Modi at Hyderabad House in New Delhi, the two prime ministers issued a joint statement.

Newspaper reports related to border atrocities

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India

### ED arrests ex-BSF Commandant in cattle smuggling case

PTI 25 April, 2022 07:15 pm IST

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New Delhi, Apr 25 (PTI) Former BSF commandant Satish Kumar has been arrested under the anti-money laundering law in a case linked to alleged cattle smuggling across the India-Bangladesh international border in West Bengal, the Enforcement Directorate said on Monday.

Advertisement



No. 15011/20/2011-HR-II  
Ministry of Home Affairs  
(HR Division)

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**Sub:- Inquiry report on the complaint of Shri Kiriti Roy, State Director, National Project on Preventing Torture in India, Manabadhikar Suraksha Manch (MASUM) in respect to alleged violation of human rights of Saiful Mondal, S/o. Late Alimuddin Mondal, r/o. Vil. Charparaspur, Jalangi, Dist. Murshidabad, West Bengal (NHRC Case No. 44/25/13/08-09-PF/OC)**

Shri Kiriti Roy, State Director National Project on Preventing Torture in India, Manabadhikar Suraksha Manch (MASUM), Kolkata wrote to National Human Rights Commission (NHRC) vide his letter dated 26<sup>th</sup> March, 2008 alleging violation of human rights of Saiful Mondal, S/o. Late Alimuddin Mondal, r/o. Vill. Charparaspur, Jalangi, Dist. Murshidabad, West Bengal. The Commission had written to West Bengal Police and Border Security Force (BSF) in the matter. The report of West Bengal Police was shared by the Commission with the complainant. Subsequently, the Commission received comments of complainant on the report of West Bengal Police. The Commission, thereafter, sent a copy of report of BSF dated 3<sup>rd</sup> June, 2008 in the matter to the complainant on 12.10.2010. The Commission received comments of complainant on BSF report on 25.10.2010. The complainant was not satisfied with the report of the West Bengal Police as well as the report of BSF on violation of human rights of Saiful Mondal. The Commission, accordingly, called upon Union Home Secretary to constitute an independent enquiry into the alleged violation of human rights in this case. NHRC Case No. 44/25/13/08-09-PF/OC refers.

## **Complaint**

2. It has been alleged in the complaint that the victim Saiful Mondal who lost his land due to land erosion in Paraspur by river Padma started a grocery shop in Charparaspur village, PS Jalangi, Dist. Murshidabad to earn his livelihood. Shri Saiful Mondal, has been selling rice and other grocery items in Charparaspur village for quite some time. It has also been stated that in 2006, the BSF has been permitting the victim to bring 50 kg of rice and 20-25 kg of flour along with other grocery items twice per week from Jalangi bazaar to his shop in Charparaspur for his business. It is also alleged that since 2007, BSF has not been allowing the victim to bring more than 2 kg of rice per week to his village. Complainant's subsequent letter dated 25.10.2010 addressed to NHRC states that since January, 2008, BSF personnel have been allowing him to bring only 10 kg of rice and other commodities twice a week which is not sufficient even for his own sustenance. It is also alleged that because of restriction imposed by BSF, the victim is deprived of his livelihood. The complainant in his letter dated 25.10.2010 to the Commission has also alleged that BSF report dated 3.6.2008 to the Commission in this case is a malafide attempt to shield the BSF personnel.

## **Visit of Joint Secretary (HR) to Charparaspur village on 9<sup>th</sup> March, 2011**

3. On the directions of Home Secretary, the undersigned accompanied by Section Officer (HR-III), Shri T.K. Sarkar along with officials of district administration, police officials of Murshidabad district, Bn. Commander of

BSF and complainant visited Charparaspur village and met Saiful Mondal at his grocery shop in the village. A number of villagers were also present.

**Observation during the Inquiry**

4. During the inquiry at Charparaspur village, discussions with the victim, complainant, West Bengal Police personnel & BSF personnel, following point emerged:

- (i) Charparaspur village has a population of about 700 families. The village is under Jalangi Block close to Indo-Bangladesh border and is located on the bed of river Padma. The international border is about 3 kms from the village. The village itself is located about 4 kms from O.P No.2 of BOP Farzipara of BSF under the Jalangi Block. Very few villagers are engaged in agriculture in the village because of paucity of agricultural land. Most of the areas has sand deposits. Therefore, most of the villagers have no source of livelihood.
- (ii) Villagers have been issued Identity Cards by BSF to enable them to come to Jalangi town and return to the village.
- (iii) State Government has not issued Ration Cards to the villagers. Shri Roy of MASUM stated that only 30 to 40 persons of Charparaspur are in possession of Ration Cards.
- (iv) State Government's scheme for employment including that under NREGA are not available to the inhabitants of the village. There is a possibility that some of the villagers might be engaging themselves in unlawful activities.

- (v) There are two grocery shops in the village including the one owned by Saiful Mondal. The grocery shops have been issued trade licence by Ghoshpara Gram panchayat. The trade licence does not indicate quantity of rice and other grocery items to be stocked by the concerned shop keeper. The grocery shop owner approaches BSF officers from time to time for permission to bring grocery items from Jalangi bazaar for his own consumption as well as for selling them to the buyers.
- (vi) Other inhabitants of the village also obtain permission from BSF for bringing rice and other commodities for their consumption.
- (vii) Saiful Mondal was in possession of register where the grocery items being brought by him from Jalangi bazaar with permission of BSF are recorded. The register contains signature of BSF personnel who permitted him to bring rice and other grocery items to his shop. BSF also maintains a register at O.P No. 2 where grocery items being brought by individuals including Saiful Mondal from Jalangi bazaar to Charparspur village are recorded. Since the register at O.P. No. 2 contains long list of persons who have been permitted on a daily basis to carry grocery items to Charparspur village, it was not possible to cross-check the entries made in register at O.P. No. 2 with the entries made in register of Saiful Mondal.
- (viii) The inspection of the register maintained by Saiful Mondal revealed that in the year 2006 BSF has been allowing him to bring about 300 - 350 kgs of rice per month to his grocery shop. Each consignment included 50 kg of rice and other grocery items. Saiful Mondal could not show the register maintained by him in the year 2007.

- (ix) The register for the year 2008 maintained by Saiful Mondal indicated that he was allowed to bring 20 to 25 kg of rice twice a week to his grocery shop. On being asked as to why Shri Mondal was not allowed to bring 50 kg of rice twice a week in 2008 from Jalangi bazaar, BSF officers explained that in late January, 2008 they had received advice from Department of Food and Public Distribution, Government of India through State Government to take steps to prevent smuggling of rice across the border. Based on this advice, BSF had been permitting Saiful Mondal to bring only 20-25 kg of rice and other grocery items from Jalangi bazaar.
- (x) BSF officer also informed that at times each member of families residing in the village family brings rice on the pretext of requirement for his own consumption and if no checks are enforced, there is a possibility that each family may accumulate large quantity of rice which would be far in excess of his requirement.
- (xi) The inquiry further revealed that there is no laid-down guidelines by State Government/BSF Headquarter as to how much rice and other commodities could be allowed to villagers of Charparpur so that the villagers do not feel shortage and smuggling of rice to Bangladesh does not take place.
- (xii) In the absence of laid down guidelines in this regard, BSF personnel has been taking adhoc decisions on quantity of rice and other commodities that could be brought by shopkeeper and villagers of Charparaspur. Such discretionary powers give opportunity for criticism by parties concerned.

- (xiii) Saiful Mondal confirmed that in early 2008 when he had tried to persuade BSF personnel to allow him to carry 50 kg of rice twice a week, he was beaten up by BSF personnel.
- (xiv) Saiful Mondal was shown copy of letter reportedly written by him stating that he was not harassed by BSF personnel. He was also shown letter dated 23.12.2009 addressed to complainant. Sri Mondal could not confirm that he had written these two letters. It appeared that thought the victim can sign in Bengali, he cannot read and write. Therefore, it could not be established that the letter reportedly written by him to BSF is fake.

#### **Other issues raised by the complainant**

5. The complainant also raised issues relating to illegal movement of persons along the border, smuggling of cattle, extra judicial killings and torture by BSF personnel. He also intimated that Coys of BSF deployed at Border Out Posts do not have working knowledge of local language (Bangali) and have little knowledge of ground situation along the India-Bangladesh border. The force, therefore, lacks humane approach while guarding the border. I explained to him that NHRC regularly receives complaints about extra judicial killings and torture by police and takes appropriate action on such complaints. The illegal movement of persons along the border, smuggling of cattle and other commodities are also looked into by concerned agencies including BSF. However, the suggestion of complainant for humane approach to genuine problems of Indian citizens residing in border villages needs support of BSF as border guarding would not be effective without the support of local population.

6

## **Recommendations**

6. (i) BSF as a Border Guarding Force should not be involved in regulating movement of rice and other grocery items purchased by persons in border areas either for their consumption or for local trade. However, the Force may continue to take effective steps to stop smuggling of food grains and other items across the border whenever such instances come to its notice.
- (ii) BSF has accordingly been advised that they need not object or fix quota of rice/flour etc. that the villagers might be bringing to their border villages after purchasing them from the local market either for their own consumption <sup>or</sup> for local trade.
- (iii) The Government of West Bengal needs to be advised by NHRC that the State Government must take measures to ensure that rice/wheat allocated by Department of Food & Public Distribution, Government of India for eligible families and those available locally are not diverted for illegal trade across the border.

  
(R.R. Jha)

Joint Secretary (HR)

7.4.2011

  
**भारत का राजपत्र**  
**The Gazette of India**

सी.जी.-डी.एल.-अ.-11102021-230337  
CG-DL-E-11102021-230337

असाधारण  
EXTRAORDINARY  
भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)  
प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY

सं. 3853]  
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नई दिल्ली, सोमवार, अक्टूबर 11, 2021/ आश्विन 19, 1943  
NEW DELHI, MONDAY, OCTOBER 11, 2021/ ASVINA 19, 1943

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 11 अक्टूबर, 2021

का.आ. 4196(अ.).—केन्द्रीय सरकार, सीमा सुरक्षा बल अधिनियम, 1968 (1968 का 47) की धारा 139 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए का.आ. 1686 (अ) तारीख 3 जुलाई, 2014 द्वारा भारत के राजपत्र, असाधारण, भाग-II, खंड 3, उप-खंड (ii) में प्रकाशित गृह मंत्रालय, भारत सरकार की अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात्:-

उक्त अधिसूचना में, "अनुसूची" के स्थान पर निम्नलिखित "अनुसूची" रखी जाएगी अर्थात्:-

"अनुसूची

मणिपुर, मिजोरम, त्रिपुरा, नागालैंड और मेघालय राज्यों तथा जम्मू-कश्मीर और लद्दाख संघ राज्य क्षेत्रों में समाविष्ट समस्त क्षेत्र तथा गुजरात, राजस्थान, पंजाब, पश्चिमी बंगाल और असम राज्यों में भारत की सीमाओं से लगी हुई पचास किलोमीटर की पट्टिका के भीतर समाविष्ट क्षेत्र"।

[फा. सं. 45020/2/2021-विधिक-II (सी.एफ. सं. 3519713)]

सुधेश कुमार शाही, संयुक्त सचिव

टिप्पण: मूल अधिसूचना का.आ. 1686 (अ) तारीख 3 जुलाई, 2014 द्वारा भारत के राजपत्र, असाधारण, भाग-II, खंड 3, उप-खंड (ii) में प्रकाशित की गई थी।

**MINISTRY OF HOME AFFAIRS  
NOTIFICATION**

New Delhi, the 11th October, 2021

**S.O. 4196(E).**—In exercise of the powers conferred by sub-section (1) of section 139 of the Border Security Force Act, 1968 (47 of 1968), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), *vide* S.O. 1686 (E), dated the 3<sup>rd</sup> July, 2014, namely: -

In the said notification, for the "Schedule", the following "Schedule" shall be substituted, namely: -

**"SCHEDULE**

The whole of the area comprised in the States of Manipur, Mizoram, Tripura, Nagaland and Meghalaya and Union Territories of Jammu and Kashmir and Ladakh and so much of the area comprised within a belt of fifty kilometers in the States of Gujarat, Rajasthan, Punjab, West Bengal and Assam, running along the borders of India".

[F. No. 45020/2/2021-Legal-II (CF No. 3519713)]

SUDHESH KUMAR SHAHI, Jt. Secy.

**Note:** The Principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) *vide* number S.O. 1686 (E) dated the 3<sup>rd</sup> July, 2014.

**अधिसूचना**

नई दिल्ली, 11 अक्टूबर, 2021

**का.आ. 4197(अ).**—केन्द्रीय सरकार, सीमा सुरक्षा बल अधिनियम, 1968 (1968 का 47) की धारा 139 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए का.आ. 3996 (अ) तारीख 22 सितंबर, 1969 द्वारा भारत के राजपत्र, असाधारण, भाग-II, खंड 3, उप-खंड (ii) में प्रकाशित गृह मंत्रालय, भारत सरकार की अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात्—

उक्त अधिसूचना में, "अनुसूची" के स्थान पर निम्नलिखित "अनुसूची" रखी जाएगी अर्थात्—

**"अनुसूची**

मणिपुर, मिजोरम, त्रिपुरा, नागालैंड और मेघालय राज्यों तथा जम्मू-कश्मीर और लद्दाख संघ राज्य क्षेत्रों में समाविष्ट समस्त क्षेत्र तथा गुजरात, राजस्थान, पंजाब, पश्चिमी बंगाल और असम राज्यों में भारत की सीमाओं से लगी हुई पचास किलोमीटर की पट्टिका के भीतर समाविष्ट क्षेत्र"।

[फा.सं. 45020/2/2021-विधिक-II (सी.एफ. सं. 3519713)]

सुधेश कुमार शाही, संयुक्त सचिव

**टिप्पणः** मूल अधिसूचना का.आ. 3996 (अ) तारीख 22 सितंबर, 1969 द्वारा भारत के राजपत्र, असाधारण, भाग-II, खंड 3, उप-खंड (ii) में प्रकाशित की गई थी।

**NOTIFICATION**

New Delhi, the 11th October, 2021

**S.O. 4197(E).**—In exercise of the powers conferred by sub-section (1) of section 139 of the Border Security Force Act, 1968 (47 of 1968), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Home Affairs, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), *vide* S.O. 3996 (E), dated the 22<sup>nd</sup> September, 1969, namely: -

In the said notification, for the "Schedule", the following "Schedule" shall be substituted, namely: -

## “SCHEDULE

The whole of the area comprised in the States of Manipur, Mizoram, Tripura, Nagaland and Meghalaya and Union Territories of Jammu and Kashmir and Ladakh and so much of the area comprised within a belt of fifty kilometers in the States of Gujarat, Rajasthan, Punjab, West Bengal and Assam, running along the borders of India”.

[F. No. 45020/2/2021-Legal-II (CF No. 3519713)]

SUDHESH KUMAR SHAHI, Jt. Secy.

**Note:** The Principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide number S.O. 3996 (E), dated the 22<sup>nd</sup> September, 1969.

## अधिसूचना

नई दिल्ली, 11 अक्टूबर, 2021

**का.आ. 4198(अ).**—केन्द्रीय सरकार, सीमा सुरक्षा बल अधिनियम, 1968 (1968 का 47) की धारा 139 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए का.आ. 1318 (अ) तारीख 11 जून, 2012 द्वारा भारत के राजपत्र, असाधारण, भाग-II, खंड 3, उप-खंड (ii) में प्रकाशित गृह मंत्रालय, भारत सरकार की अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात्—

उक्त अधिसूचना में, “अनुसूची” के स्थान पर निम्नलिखित “अनुसूची” रखी जाएगी अर्थात्—

## “अनुसूची

मणिपुर, मिजोरम, त्रिपुरा, नागालैंड और मेघालय राज्यों तथा जम्मू-कश्मीर और लद्दाख संघ राज्य क्षेत्रों में समाविष्ट समस्त क्षेत्र तथा गुजरात, राजस्थान, पंजाब, पश्चिमी बंगाल और असम राज्यों में भारत की सीमाओं से लगी हुई पचास किलोमीटर की पट्टिका के भीतर समाविष्ट क्षेत्र”।

[फा.सं. 45020/2/2021-विधिक-II (सी.एफ. सं. 3519713)]

सुधेश कुमार शाही, संयुक्त सचिव

**टिप्पण:** मूल अधिसूचना का.आ. 1318 (अ) तारीख 11 जून, 2012 द्वारा भारत के राजपत्र, असाधारण, भाग-II, खंड 3, उप-खंड (ii) में प्रकाशित की गई थी।

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SUDHESH KUMAR SHAHI, Jt. Secy.

**Note:** The Principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide number S.O. 1318 (E), dated the 11<sup>th</sup> June, 2012.

**A brief report on the two-day human rights sensitization programme for BSF personnel posted at Indo-Bangladesh Border at Kolkata on 16-17 February, 2012.**

A two day programme for human rights sensitization of BSF officers posted on the Indo-Bangladesh Border was organized at Kolkata on 16 – 17 February, 2012. Two different sets of participants were covered on these two days. The programme covered participants from BSF Southern Bengal Frontier on the first day and Malda as well as Shillong Frontiers on the second day. The programme on 16<sup>th</sup> Feb., 2012 was inaugurated by the Justice Shri K.G. Balakrishnan, Chairperson, NHRC. The programme on 17<sup>th</sup> Feb., 2012 was inaugurated by Shri Satyabrata Pal, Member, NHRC. Director General (Investigations), Shri Sunil Krishna also participated in the programme besides other senior officers of the Investigation and Training Division of NHRC.

Chairperson, NHRC in his inaugural address on 16<sup>th</sup> February, 2012 conveyed that there have been complaints of human rights violations received from civil society by the NHRC. These cases largely pertained to District Murshidabad while some pertained to North 24 Paraganas, Cooch Bihar and Malda. According to him, the Commission believes that the adherence to human rights norms does not compromise on the effectiveness of the security forces. Rather, adherence to the human rights norms will raise the prestige of the forces internationally. He reminded the caution given by Supreme Court of India in D.K. Basu Vs State of West Bengal case where it observed that “the State must ensure that the various agencies deployed by it act within the bounds of the law and not become law unto themselves”. He further stated that as per the code of conduct for law enforcement

officials adopted by UN General Assembly in 1979, these officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. He complemented the participants on the important services being rendered by them as part of the elite force but at the same time they should also uphold the highest standards of human rights.

On the second day (17<sup>th</sup> February, 2012), Shri Satyabrata Pal, Member, NHRC in his inaugural address mentioned about the impeccable record of BSF officers while being posted on foreign UN peace keeping assignments. According to him, similar high standards of human rights should be maintained by them in their dealings with people on the Indo-Bangladesh border. He further conveyed that the people on this border are poor people and they need to be dealt with in a humane manner. As regards BSF view that the complaints of human rights violations sent to NHRC by civil society being not genuine, he advised that the force should not shy away from criticism by the civil society. He also reminded them that as a border security force, when the BSF operates against enemy combatants, under the Geneva Convention, it is bound to refrain from violence, cruel treatment and torture while dealing with persons not taking active part in hostilities during situations of armed conflict. These, however, were the complaints made against it to the NHRC, and most of the victims were Indians. The BSF must not commit against its own citizens acts that would be forbidden even against enemy soldiers.

The other sessions included a presentation on the concept of human rights as well as the role of NHRC by Joint Secretary (Training) and presentation on the guidelines issued by Supreme Court and NHRC on important subjects like custodial death, torture, encounters, rapes etc

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by the Investigation Division officers. A panel discussion by experts in the field on both days was also part of the programme.

In the panel discussion, Shri D.K. Arya, Ex-DGP, BSF spoke about the various gaps which are at present leading to human rights violations and which need to be filled in so that the security forces assigned at the Indo-Bangladesh border could carry out their duties more effectively and in a humane manner. These included the knowledge gap which requires to be filled with awareness creation and necessary training on human rights issue. There was also a commitment gap evident from the fact that there were frequent news regarding allegations of BSF personnel aiding in smuggling activities. The security gap also posed a challenge and needed to be filled. He stated that if there is an environment of impunity created by the attitude of senior officers towards human rights violations by jawans, it would lead to repetition of such instances. Hence, such impression of impunity should not be allowed to set in or tolerated by the leadership. He also reminded the participants about the code of conduct for the police in India developed by the Ministry of Home Affairs which serves as guidelines for the police force in the country and also communicated to the Heads of Central Police Organizations in 1985.

Shri Damodar Sarangi, Special Rapporteur, NHRC talked about the need to maintain rule of law. He stated that there is generally an attitude of disdain towards human rights institutions among the security forces because of the pressures under which they operate. Such an attitude should be avoided. He also mentioned about security being not a law and order problem but also a development problem and recalled that according to Kofi Annan, former UN Secretary General, "no security

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is possible without development". He also mentioned that State terrorism is also responsible for some of these problems. According to him, BSF is a closed force and which sometimes, leads to suppression of facts. While being a closed knit organization is good, suppression of facts does not help as it leads to lack of credibility of the organization. Moreover, there should not be compromise with conscience. According to him, when sometimes, people involved in corruption were depriving the economy of huge sums of money but facing no reprisal, the poor people involved in petty thefts should not face harsh treatment from security forces.

Shri Ramakrishnan, Director, Regional Institute of Correctional Administration, Kolkatta observed that training requirements are different for the Eastern and Western Sectors and there is need for orientation of the BSF personnel while dealing with poor people in the Bengal Sector. He also mentioned about the need for addressing the issue of adequate border management which is a broader concept than the way it is understood and handled.

IG, South Bengal Frontier, Shri Ravi Ponoth stated that there are vested interests of the NGOs who are making complaints to NHRC. According to him, it was the bounden duty of the BSF to uphold the highest standards of human rights and the officers were committed to maintain these standards. However, he highlighted some practical difficulties faced by BSF personnel who were transferred from Western/Northern sectors to Indo-Bangladesh border because of the entirely different conditions in this area. While some orientation training is carried out, it is not sufficient for them to cope up with the change.

This could also be a reason for some of the inadvertent human rights violations on their part.

Shri Satyabrata Pal also took part in the panel discussions on second day and in reply to queries raised by participants, conveyed that each of the complaints received against BSF is examined in the NHRC based upon totally unbiased investigations into the reports obtained from the BSF authorities and carried out by police officers having professional expertise and using scientific methods before the Commission arrives at a decision on them.

Some of the important issues which emerged during the discussions which followed the panel discussions and presentation made by Investigation Division were as follows:

- i) Training of BSF officers does not adequately cover human rights issues. In this context, it was agreed that the NHRC will share the basic training module for police personnel prepared by NHRC for sub-inspector/constable level with the BSF. A copy of the module was handed over to IG, South Bengal Frontier for making necessary copies and distributing in the BSF battalions of the Frontier.
- ii) There is not good knowledge of laws among the BSF personnel. It may be stated that the handout as well as the presentations made during the programme conveyed the basic information about important components of International Law as well as the Supreme Court/NHRC guidelines on matters relating to police/judicial custody deaths, arrests, encounters and torture etc.

- iii) Most of the problems arise from cattle smuggling. If cattle trade is regularized most of the problems will be taken care of. It was observed, however, that the issue was more complex one and could not be settled by the NHRC.
- iv) It was stated that only two cases out of 81 reported were genuine. It was generally felt by the participating officers that the complaints were made by vested interests among the civil society and most of them were fabricated. The NHRC made it clear that this gravely understated the problem, and stated that BSF Staff Courts of Inquiry were often unable to take objective decisions. The NHRC carries out its own investigation and examine each and every case based upon the records placed before it before arriving at a decision. Accordingly, several complaints have been dismissed if not supported by conclusive evidence. It was also stated that the BSF personnel should not shy away from criticism and rather try to improve upon the shortcomings wherever brought to light.
- v) It was conveyed by BSF officers that the senior officers have to keep in view the morale of the jawans they command and hence need to protect them considering the situation they are placed in where sometimes, their actions inadvertently result in human rights violations. It was conveyed to them by the experts' panel that an environment of impunity cannot be allowed to set in and it is best for the officers to present the factual situation in their report so that the rule of law can prevail. In other words they need to be as close to the truth as possible in their reports.
- vi) It was conveyed by participating BSF officers that due to recent instructions given by the authorities against use of lethal

weapons/fire power, the number of killings on this border had dropped from 35 in 2010 to 7 in 2011. However, at the same time it was highlighted that the number of BSF personnel getting injured were on the increase. It was stated by the DG (I) that since no killing of infiltrators from across the border by BSF was reported in such cases, in spite of extreme provocation, how could killings of innocent people like that of a small girl on the fence where there was no such provocation be justified?

- vii) A suggestion was mooted by DG (I) that a system of self reporting by BSF authorities of cases of deaths/rapes/encounters could be put into place like the system of mandatory reporting as per NHRC guidelines for State police. BSF conveyed that since they have to follow the hierarchical system of reporting, it may not be feasible. It was conveyed to them by NHRC officers that even the police reporting is at the level of SP of District concerned and not at the local unit. Moreover, reports from higher formations or Headquarters level do not always reflect actual ground conditions and hence there were gaps in facts stated therein. This could be avoided.
- viii) Some of the BSF officers were of the opinion that civil administration does not take up the cases handed over to them seriously/properly. It was also mentioned by some that the border areas are extremely underdeveloped and there is need for NHRC to intervene for provision of basic services for the people in these areas. Joint Secretary (Training) also suggested if some NHRC Special Rapporteurs could visit these areas to take up matters relating to basic services for people.

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Recommendations and observation of the Parliamentary standing committee  
(Rajya Sabha) on Border related issues



REPORT NO.

203

PARLIAMENT OF INDIA  
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE  
ON HOME AFFAIRS

TWO HUNDRED THIRD REPORT

**BORDER SECURITY: CAPACITY BUILDING AND  
INSTITUTIONS**

(PRESENTED TO RAJYA SABHA ON 11<sup>th</sup> APRIL 2017)

(LAID ON THE TABLE OF LOK SABHA ON 11<sup>th</sup> APRIL 2017)



Rajya Sabha Secretariat, New Delhi  
April, 2017/Chaitra, 1939 (Saka)

## RECOMMENDATION/OBSERVATIONS OF THE COMMITTEE - AT A GLANCE

### INDIA-BANGLADESH BORDER (IBB)

#### Border Outposts along IBB

The Committee, in the first instance, takes a serious note of the fact that the proposal of constructing 509 BOPs along IPB and IBB to reduce the inter-BOP distance to 3.5 Kilometres has been revised and reduced to 422 BOPs. Reducing inter-BOP distance is very crucial for the security of the country and to keep a tab on the activities going on at the border. But even the reduced target was not achieved and only 97 BOPs out of 326 BOPs have been completed by the end of 2016 along IBB. The Committee takes a serious view of the cost and time overrun due to delay in land acquisition. The government should have taken advance action to overcome all such difficulties for timely implementation of the project. Now that the Ministry has found a workable solution in the form of utilizing land available in the Right of Way of Fence and Road, the Committee strongly recommends that the project should be completed by the targeted date of July, 2018 and there should be no further time and cost overrun. The Committee notes that no reasons were furnished by the MHA why the number of BOPs was reduced from 509 to 422. In the circumstances, the Committee recommends that the original plan of constructing 509 BOPs to reduce the inter-BOP distance to 3.5 kilometres may be reconsidered in the interest of the security of the nation.

(Para 2.3.3)

#### Border Fencing along IBB

The Committee notes with anguish the extremely slow pace of construction of fencing along IBB. The Ministry was able to complete only 21 km of fencing in 17 months since July, 2015. The Committee also notes that a long stretch of 423.34 km has remained unfenced due to non-feasibility of physical barrier and deployment of non-physical barriers is still in its testing phase and will require time before its implementation. The Committee feels that, at the current pace, the Ministry would not be able to seal the India-Bangladesh border by its target date i.e. March, 2019. The Committee recommends that the Ministry should find solutions to the problems that beset the fencing project and erect physical barriers at all feasible locations at the earliest. The Committee also recommends that in the areas that are hotspots for FICN and cattle smuggling, fencing projects should be prioritised and, if fencing in such areas is not feasible, then the Ministry must increase the deployment of forces and intensify round-the-clock surveillance till such areas are secured through implementation of non-physical barriers.

(Para 2.4.4)

The Committee feels that the issue of shifting the villages or the fence is an intricate one and the Ministry must not adopt a one-size-fits-all approach on this issue. The Committee feels that the Ministry must try to shift the fence in as many areas as possible to prevent any inconvenience to the people. However, wherever the houses are located right on the International Boundary line, the Ministry will have to shift them to the hinterland and rehabilitate the affected households. The Committee recommends that the Ministry should carry out a review of all such areas within six months and come up with specific solutions in all such cases. The Committee desires to be apprised about the progress in this regard.

(Para 2.4.7)

The Committee also notes that while rehabilitation and resettlement of displaced people does not come under the purview of BADP Guidelines, the BADP funds can be utilised to create social infrastructure. The Committee feels that the people residing on the border line will be willing to shift easily if they are provided with proper housing and other facilities. The Committee, therefore, recommends that the Ministry should persuade the State Government to provide BADP funds for community housing projects, which fall within the definition of social infrastructure, in the hinterland and shift all the households living beyond the fencing into such buildings.

(Para 2.4.8)

#### **Border Floodlighting along IBB**

The Committee notes that almost 528 km of border, where floodlighting is feasible and has been sanctioned, is yet to be floodlit. The Committee also noticed lack of floodlights along several stretches during its study visit to the India-Bangladesh Border. Lack of floodlights on the border allows the smugglers to perpetrate their devious activities during night. The Committee, therefore, recommends that the Ministry must fast-track the floodlighting project and complete it at the earliest. The Committee also recommends that, as a short-term measure, the Ministry must provide adequate long-range night-vision equipment to all the Border Outposts situated in areas that lack floodlights.

(Para 2.5.2)

#### **Cattle-Smuggling along IBB**

The Committee is distressed to note that despite several measures taken by the BSF the problem of cattle smuggling persists along IBB. The Committee is particularly anguished to note that the West Bengal State Government has failed to implement its own order dated 01.09.2003 that outlaws existence of any cattle haats within 8 km of border area. The Committee recommends that the State Government of West Bengal should take steps to cancel the licenses of all cattle haats that are illegally functioning within 8 km of border area and hold the officials responsible for illegally issuing/renewing licenses to these haats. The Committee also recommends that mass movement and trading of cattle should be prohibited within 15 km of the border and steps may be initiated to move all cattle haats located within 15 km of the border to the hinterland.

(Para 2.6.6)

The Committee notes that the auction of seized cattle by Customs officials is misused by the cattle smugglers who keep buying the auctioned cattle again and again. The Committee, in this regard, recommends that auctioning of seized cattle must be banned in the states bordering IBB and Customs Department may be requested to arrange for transportation of the seized cattle to states other than the border states and hold auctions there. The Committee also recommends that the Ministry must pursue the Customs Department to raise the minimum bench mark price of the seized cattle to prevent their re-selling to the persons involved in smuggling of cattle and also make it mandatory for cattle auctioneers to submit their Pan Card and Aadhaar Card details while bidding.

(Para 2.6.7)

The Committee also learnt about the involvement of the local people living near the border in cattle smuggling and feels that lack of any legal deterrence and ineffective law enforcement seem to have emboldened such persons. The Committee, therefore, recommends that the West

**Bengal State Government should be requested to take strict action against persons who are known or suspected to be involved in cattle smuggling.**

(Para 2.6.8)

The Committee agrees that mass movement of cattle occurs from all the states towards West Bengal and Assam and once they reach the border areas it becomes extremely difficult to stop their movement across the border. The Committee feels that Police forces of various States have failed to stop this mass movement of cattle to border states and West Bengal Police has failed to intercept or stop the movement of the cattle. The Committee feels that there is a wide and deeply entrenched nexus due to which this menace has proliferated and the Government needs to strike at the roots of this nexus if it has to completely curb this problem.

(Para 2.6.9)

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...I was intervened by one BSF sentry, who asked me about my involvement with Bangladeshi nationals and started to beat me without providing any reason. After that, the three BSF sentries tied my hands with a rope and forcibly put my face on the ground of the road. The two out of the three sentries captured my legs and the other struck me mercilessly with a bamboo stick and wooden handle of the spade. I was subjected to unprovoked inhumane torture for more than 20 minutes...”

- Mr. Rashid Mondal, torture survivor  
the victim was brutally tortured by the BSF and then released without charging any case against him.



## About MASUM

Banglar Manabadhikar Suraksha Mancha (MASUM) was established in 1997 by a group of activist experts who had long experience working on human rights and civil liberties in West Bengal, India. MASUM acts as a platform for HRDs, grassroots human rights groups, and survivors collective.

More info on [www.masum.org.in](http://www.masum.org.in)