

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) No.____ OF 2019
UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA

IN THE MATTER OF:-

Indian Union Muslim
League & Ors.

...Petitioners

Versus

Union of India & Ors.

...Respondents

PAPER BOOK
FOR INDEX KINDLY SEE INSIDE

I.A. No. _____ of 2019
(Application for Stay)

Advocate for the Petitioner: - Pallavi Pratap

INDEX

Sl. No.	Particulars of Documents	Page No. of part to which it belongs		Remarks
		Part I (Contents of Paper Book)	Part II (Contents of file alone)	
(i)	(ii)	(iii)	(iv)	(v)
1.	Court Fee			
2.	Listing Performa	A1-A-2	A1-A2	
3.	Cover Page of Paper Book		A3	
4.	Index of Record of Proceeding		A4	
5.	Defect List		A6	
6.	Note Sheet		NS1 to ...	
7.	Synopsis and List of dates			
8.	Writ Petition with Affidavit			
9.	<u>Annexure P-1</u> A copy of relevant provision of Foreigner Act, 1946 dated 23.11.1946 enacted by the Central Legislative Assembly.			
10.	<u>Annexure P-2</u> A copy of the Citizenship Act, 1955 dated 30.12.1955 passed by the Indian Parliament.			
11.	<u>Annexure P-3</u> A copy of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 dated 10.12.2003.			
12.	<u>Annexure P-4</u> A true copy of the Notification dated 08.09.2015 issued by the Ministry of Home Affairs.			
13.	<u>Annexure P-5</u> A true copy of the Notification dated 18.07.2016.			
14.	<u>Annexure P-6</u> A copy of the notification dated 31.07.2019 issued by the Ministry of Home Affairs.			

15.	<u>Annexure P-7</u> A true copy of the order dated 31.08.2019 issued by State Coordinator of NRC.			
16.	<u>Annexure P-8</u> A copy of the newspaper report dated 20.11.2019.			
17.	<u>Annexure P-9</u> A true copy of the text of the debates in the Lok Sabha on 9.12.2019.			
18.	<u>Annexure P-10</u> A true copy of the Citizenship Amendment Act, 2019.			
19.	<u>I.A. No. of 2018</u> Application for Stay			
20.	Filing Memo			
21.	Vakalat & Appearance			

SYNOPSIS

The Petitioners herein are constrained to prefer the present writ petition under Article 32 of the Constitution to issue a writ of certiorari or any other appropriate writ to declare the Citizenship (Amendment) Act, 2019 (hereinafter referred to as the "Amendment Act" / "CA, Act 2019") as void, for being in violation of Articles 14, 15 and 21 and the basic structure of the Constitution for discriminating among persons on the basis of their faith and religion.

At the outset, it is submitted that the petitioners herein are aggrieved by granting of citizenship to one section of illegal immigrant by making an exclusion on the basis of religion. The petitioners do not have any grievances in granting citizenship to migrants but the petitioners grievances is directed against discrimination and unreasonable classification based on religion. It is submitted that illegal migrants are class by itself and therefore any law which is applicable to them should be irrespective of any religion, cast or nationality basis.

The Amendment Act discriminates on the basis of Religion

The Preamble of our Constitution envisages that India is a secular country and therefore every law which is passed by the Parliament has to be religion neutral. No law can be passed by the Parliament if the basis of such a law is religion. That strikes at the root of the concept of Secularism which is the basic structure of the Constitution. The present Amendment Act excludes a particular community/ religion or, has included certain religions/ communities which according to the Govt. is a reasonable classification. This is not only unreasonable but against the principles enunciated under Article 14 of the Constitution.

The Amendment Act seeks to segregate persons on the basis of their religion and grant them the benefit of naturalization, if they belong to a certain religion, in this case *Hindus, Sikhs, Buddhists, Jains, Parsis and Christians*, who are from Pakistan, Afghanistan and Bangladesh. This religious segregation without any reasonable differentiation, not only violates Article 14, but is also blatantly opposed to the very Basic Structure of the Constitution and to the very idea of India as a country which treats people of all faiths equally. Not only does the Amendment Act outrightly discriminate on the basis of religion, it also

legitimizes the grant of Citizenship on the basis of religion.

Unreasonable and Arbitrary Classification of countries

The Statement of Objects and Reasons in the Citizenship Amendment Act states that India has had a historic migration of people with Afghanistan, Pakistan and Bangladesh, and these countries were a part of undivided India.

Afghanistan was never a part of undivided India, therefore the reason of its inclusion is still unclear.

Another reason given that these 3 countries are included because they have a state religion also fails because countries like Sri Lanka, Nepal and Bhutan also have a state religion and have been excluded from the ambit of the Amendment.

There are other religious minorities in these 3 countries which have been excluded

The Amendment Act has excluded minorities such as the Ahmadiyyas, Shias and the Hazaras who have a long history of persecution in Afghanistan and Pakistan and still continue being persecuted. These communities have not been covered by the present Amendment Act and no explanation has been given as to why this has been done.

No reason for exclusion of minorities from other countries

There is no explanation as to why migrants from these 3 countries are differentiated from migrants from other neighboring countries such as Sri Lanka, Bhutan (both have Buddhism as their State Religion), Nepal (State Religion as Hinduism).

Sri Lanka has had a history of persecution of Tamil minorities, a linguistic minority. Similarly, India shares approximately 1,600 km long border with Myanmar (considerably more than the border India shares with Afghanistan), which has dominated the news for primarily a genocide and persecution of Rohingya Muslims. Over the years, there have been reports of both Tamil minorities and Rohingya Muslims fleeing persecution from their respective countries and seeking refuge in India.

Legislative intent does not match the legislation

The legislative intention for the Amendment Act as provided in the Statement of Objects and Reasons appended with the bill clearly states that because the constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion, as a result many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries. Further, the justification for extending the benefit of this amendment to the minorities from three countries only, namely Pakistan, Afghanistan and Bangladesh has been

provided on the grounds that historically, prior to partition of India in 1947, trans-border migration of population has been happening continuously between these three countries.

Therefore, the two limbs of the yard stick adopted by the State are – firstly, a shared boundary with historical trans-border movement of people and secondly, persecution of such persons as a result of state sponsored support for a different religion than theirs. The vires of this amendment is challenged on the grounds that this yardstick has not been uniformly applied and therefore does not meet the test of intelligible differentia.

The challenge is also made on the grounds that imperative historical factual aspects have been overlooked to suit the political ideology of the ruling party. Country such as Myanmar that shares a porous border of over 1600 Kms has been excluded from the Amendment Act even though very recently it has witnessed ethnic violence against a particular religious minority with the Government of Myanmar acting as a mute spectator. China and Bhutan also share a long porous border with India which were historically important destinations on the silk routes that facilitated trade and exchange of ideas across the Asian sub-continent. It is inconceivable as to how a country such as Bhutan which also sponsors a specific religion has been excluded from the benefit of this Amendment Act.

Citizenship Amendment Act 2019

The Amendment Act, among other additions to the Act, adds a proviso to Section 2 (1) (b) of the Citizenship Act, which reads:

"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;"

The aforesaid amendment provides the benefit of naturalization under Section 6B of the Citizenship Act to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan. The amendment is prime facie communal and clearly creates distinction on the basis of a persons' religion. It aims to establish a legal framework for granting citizenship based on such religious discrimination. Therefore through the said Amendment Act, the benefit of access to citizenship to illegal migrants through naturalization has been explicitly reserved to only those belonging to certain religions and hailing from 3 countries. Such religious classification to grant the benefit of access to citizenship is an

impermissible classification under Article 14 of the Constitution and against the basic structure of the Constitution and against the very idea of India.

Religion based classification is an “Impermissible Classification” and directly violates Article 14

The test for Article 14 requires the classification to have an intelligible differentia and a reasonable nexus with the object of the legislation. The Amendment Act has neither. This Hon’ble Court in **State of WB vs. Anwar Ali Sarkar [AIR 1952 SC 75]** explained that there must be a yardstick to differentiate between those included in and excluded from the group, however in the present case there are communities who have arguably been more prosecuted, and yet have been left out.

This Hon’ble Court in **Navtej Singh Johar vs. Union of India [(2018) 10 SCC 1]** held that intelligible differentia must fulfill two sub-tests: 1) that there must be a yardstick to differentiate between those included in and excluded from the group, and 2) that *yardstick* must itself be reasonable. This Hon’ble Court held “Where a legislation discriminates on the basis of an intrinsic and core trait of an individual, it cannot form a reasonable classification based on an intelligible differentia.” It was further held that “Race, caste, sex and place of birth are aspects over which a person has no control, ergo they are immutable. On the other hand, religion is a fundamental

choice of a person. Discrimination based on any of these grounds would undermine and individuals personal autonomy."

Therefore impermissible classification means that a particular classification cannot be used to classify because it is constitutionally irrelevant. Religion is a facet of personal autonomy and a classification based on it is impermissible classification.

The CA Act 2019 explicitly discriminates against Muslims. The Act extends the benefit to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, but excludes the same benefit to Muslims even in countries where they form a minority. Since, CA, Act 2019 discriminates on the basis of core and intrinsic trait of the individual i.e religion of the individual, it cannot form a reasonable classification based on intelligible differentia.

The Amendment Act does not satisfy the twin test of Article 14 of the Indian Constitution

Article 14 of the Indian Constitution envisages that the 'all should be treated equally alike', wherein it implies that the law should give equal treatment for all equals. However, the CA Act 2019 runs contrary to the concept of equality enshrined in the Constitution.

The classification does not satisfy the nexus prong test of Article 14. If the object of the CA, Act 2019 is to protect the 'minorities who faced religious

persecution in Afghanistan, Pakistan and Bangladesh'. Then, the exclusion of sect based discriminated faced by the Ahmaddiyya and Shia sect among these countries are entitled to equal treatment for the benefit of CA, Act 2019. It is well documented that the sect discrimination within the religion exists in Pakistan and Afghanistan. Therefore, the extension of benefit of CA Act to the religious minority such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, but denying the same to Ahmaddiyya and Shia sect within these countries is unable to satisfy that the nexus prong of objective sought to be achieved, which is protection of minorities facing religious persecution in the Afghanistan, Pakistan and Bangladesh.

The CA, Act 2019 clearly contravenes the principle of secularism and therefore violates basic structure of the Constitution

The CA, Act 2019, is based on the 'religious classification', wherein a particular religion is being excluded from the benefit of the impugned legislation. As a result, the impugned legislation violates the core principles of secularism. The Indian Constitution prohibits the State from favoring any particular religion or religious denominations, while enacting a law. This Hon'ble Court of India in ***S.R. Bommai v. Union of India, (1994) 3 SCC 1***, has unequivocally held that 'Secularism is part of the basic structure of

the constitution'. As a result, the concept of secularism pervades and embedded in the constitution philosophy..

The Amendment Act is directly legislated on the basis of religion and explicitly favored a group of religions and allowed them to acquire citizenship on the basis of their religious identity. Therefore, the Amendment Act had breach the core tenants of secularism and violates basic structure of the constitution.

Mala Fide Intent behind the Amendment

Under the mentorship of the Supreme Court, the exercise of preparing the National Register of Citizens (NRC) was carried out in the State of Assam. It has been reported that approximately 19 lakh people were omitted out of the NRC for failure to prove their Indian Citizenship.

This exercise was a deeply flawed exercise which failed to achieve its objective. Although Rs. 1600 Crore were spent in this exercise, all it succeeded in achieving was divide and hatred among people and the same object will surely be achieved by the Citizenship Amendment Act, 2019.

It has also come to light that the majority of these people who were declared as Illegal Migrants under the NRC were Hindus and not Muslims, contrary to the expectations and claims of the BJP. This had created a political backlash for the BJP in the Northeast States and the Ruling Party

thereafter claimed to conduct another exercise to be carried out for NRC.

So therefore, to save these Hindus, which are approximately 14-15 lakhs, who have been found as Illegal Migrants under the NRC exercise, the present Amendment has been brought about. So that all these illegal Migrants who are Hindus, which come up to about 14-15 lakhs will be given citizenship under the new law. Whereas only those Illegal Migrants who are Muslims will either be deported or kept in Detention Centres/ Concentration Camps.

Therefore this is a malafide intention for bringing in an amendment and is therefore unconstitutional.

Confusing Illegal Migrants and Refugees

The Amendment has clearly confused between Illegal Migrants and Refugees. An Illegal Migrant is one who has migrated to another country without valid documents mainly for a better life i.e. for economic reasons.

A Refugee is someone who is fearing or fleeing persecution in his homeland. The new law seeks to give citizenship to Illegal Migrants who have left their country due to persecution which is troubling considering the fact that by definition an Illegal Migrant cannot leave his country on the basis of persecution.

We may recall that during a parliamentary debate in 2003 when the Citizenship Amendment Act was amended, Senior BJP Leader Mr. L.K. Advani had stated on the floor of the Lok Sabha that as far as Refugees are concerned the country should welcome them as they have no other means and are fleeing persecution. But to those Illegal Migrants who have entered India illegally without documents, it should be a strict No!

Defeats Constitutional Intent

By virtue of this amendment, the Constitutional intent of not granting citizenship or access to citizenship to illegal migrants is being defeated. The Amendment Act removes a disqualification prescribed by the Act for applying for citizenship for select groups, while excluding a specific

community from its ambit, without any rationale. The Indian Constitution recognizes citizenship by birth, descent or acquisition by bonafide residence and by no other means. The constitution also specifically restricts the rights of migrants from what was then Pakistan in Articles 6 and 7.

Hence, the present writ petition

LIST OF DATES

DATE	PARTICULARS/EVENTS
23.11. 1946	<p>The Central Legislative Assembly of British India enacted Foreigner Act, 1946 in order to confer certain power to Central Government in respect of dealing with foreigners in India.</p> <p>Section 2 (a) of the Foreigner Act, 1946 defines as follows "<i>foreigner</i>" means a person who is not a citizen of India.</p>
30.12.1955	<p>In view of the powers granted under Article 11 of the Indian Constitution, the Indian Parliament enacted the Citizenship Act, 1955 to provide a substantive and procedural framework with respect to acquisition and determination of the Indian Citizenship.</p> <p>Section 2 (1) (b) of the Citizenship Act, 1955 clearly provides the</p>

	<p>definition of illegal migrant and it is defined as follows;</p> <p>2(1) (b) <i>illegal migrant means' a foreigner who has entered into India-</i></p> <p><i>(i) Without a valid passport or travel documents and such other documents or authority as may be prescribed by or under any law in that behalf; or</i></p> <p><i>(ii) With a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;</i></p>
10.12.2003	<p>The Indian Government in the exercise of power conferred under Section 18 of the Citizenship Amendment Act, 1955 have promulgated the "Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003"</p> <p>The Rule 3 and 4 of the Citizenship Rules, 2003 provides outline for the maintenance and preparation of National Register of Citizens throughout the country.</p>

	<p>It is pertinent to note that the persons Rule 4(4) of the Citizenship Rules, prescribes</p> <p><i>"During the verification process, particulars of such individuals, whose Citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over."</i></p> <p>The persons excluded from the National Register of Citizens in pursuant to Rule 4 of the Citizenship Rules, 2003, have to finally present their case in the proceedings before the Foreigner Tribunal in order to establish citizenship of the person. A person declared as Foreigner by the Tribunal shall result in detention at the detention centre.</p>
07.09.2015	<p>Notification published in Gazette No. 553 bearing number GSR 685(E) in titled as "the following clause was inserted, in the</p>

Passport (Entry into India) Rules, 1950, in rule 4, in sub-rule (I), after clause (h), namely:

"(ha) persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31 st December, 2014-

(i) without valid documents including passport or other travel documents; or

(ii) with valid documents including passport or other travel document and the validity of any of such documents has expired:

Provided that provision of this clause shall take effect from the date of publication of this notification in the Official Gazette."

Further, the Notification bearing number GSR 686(E) wherein the Foreigners Order, 1948 was

amended and Paragraph 3A was inserted after Paragraph 3 of the Foreigners Order, 1948:

"3A. Exemption of certain class of foreigners.- (I) Persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31st December, 2014-

(a) without valid documents including passport or other travel documents and who have been exempted under rule 4 from the provisions of rule 3 of the Passport (Entry into India) Rules, 1950, made under section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920); or

*(b) with valid documents including passport or other travel document and the validity of any of such documents has expired,
are hereby granted exemption*

	<p><i>from the application of provisions of the Foreigners Act, 1946 and the orders made thereunder in respect of their stay in India without such documents or after the expiry of those documents, as the case may be, from the date of publication of this order in the Official Gazette."</i></p> <p>The Foreigners (Amendment) Order, 2015 came into force from the date of the publication in the gazette.</p>
18.07.2016	<p>Notification published in Gazette No. 495 vide Notification bearing number GSR 702 (E), wherein in the Passport (Entry into India) Rules, 1950, in clause (ha) of sub-rule (1) of rule 4, for the word "Bangladesh", the words "Afghanistan, Bangladesh" was be substituted.</p> <p>Further, Order dated 18.07.2016 was published bearing Notification number GSR 703 (E), through which, in paragraph 3A, for the word "Bangladesh", the words "Afghanistan, Bangladesh" were substituted in the Foreigners</p>

	Order, 1948.
31.06.2019	The office of the Register of General Citizens and Registration issued notification in pursuant to Rule 3(4) of Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003, wherein the Central Government decided to prepare and update the population Register between 1 st April to 30 th September 2020
31.08.2019	<p>Pursuant to the series of Supreme Court orders in <i>Assam SanmilthaMahasanga v Union of India W.P. (C) No 562/2012 & All Assam Public Work v Union of India 274 of 2009</i>, the Government of Assam along with Union of India updated the National Register of Citizens (NRC) for the residents in the State of Assam.</p> <p>The Final list of NRC for the resident of Assam was published on 31.08.2019. There was applicants of 3.3 crore people in NRC list and final list have included 3.11 crore people and excluded</p>

	19.06 lakh people. The religious demographics of the people being excluded by virtue of the process of National Register of Citizens in the State of Assam is still unclear.
20.11.2019	The Home Minister of the Government of India announced the Government plan for the Pan-India National Register of Citizens to be carried out across India. The Home Minister of Government of India asserted that the process of NRC is carried out in order update the citizens list, but nothing would be done against any particular religion.
9.12.2019	The Citizenship Amendment Bill, 2019 was introduced in Lok Sabha and after a heated debate the same was passed with a majority of 311 to 80.
11.12.2019	The Citizenship Amendment Bill, 2019 was introduced in Rajya Sabha and after a heated debate the same was passed with a majority of 125 to 105.
12.2019	The Indian Parliament passed the Citizenship (Amendment) Act, 2019, wherein it amended the Section 2(1)(b) of Citizenship Act,

1955 and inserted the following proviso to the same:

"Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;"

Further, the following section was inserted after Section 6A of the Principal Act:

'6B. (1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on

an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.

(2) Subject to fulfilment of the conditions specified in section 5 or the qualifications for naturalisation under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalisation under sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India.

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him:

Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or

authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section:

Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application.

Further, the following proviso was added to clause (d) of the Third Schedule:

Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence or service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven years."

	<p>It is pertinent to note that the benefit of Section 6 i.e Naturalization was granted to a class of illegal migrants belonging <u>Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan.</u>The said amendments excluded such benefit to a similarly situated class of persons Muslim illegal migrants/ Hindu illegal migrants from Sri Lanka etc.</p>
12.12.2019	Hence the present writ petition.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) No.____ OF 2019
UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA

IN THE MATTER OF:

1. Indian Union of Muslim League
Quaid-e-Millath Manzil,36
Marayikayar Lebbai Street,
Chennai, Tamilnadu, India
Through P.K. Kunhalikutty
2. P.K. Kunhalikutty,
Member of Parliament (Lok Sabha)
Pandikkadavath House, Oorakam Melmuri,
Pattarkadavu, Urakam, Malappuram,
Oorakam Melmuri, Kerala, 676519.
3. E.T Mohammed Basheer
Member of Parliament (Lok Sabha)
"Soumyam" Mapram,
P.O. Cheruvanyur, Vazhakkad,
Malappuram, Kerala-673645
4. Abdul Wahab,
Member of Parliament (Rajya Sabha)
Peevees Mirage,
Nilambur P.O.,
Malappuram District,
Kerala. 679329
5. K. Navas kani
Member of Parliament (Lok Sabha)

Meeragani, 9, Padmanabha
Nagar 5th Street, Adyar, chennai,
Adyar, Tamil Nadu- 600020.

... Petitioners

Versus

1. Union of India
Through Cabinet Secretary
Rashtrapati Bhawan,
New Delhi-110004
2. Union of India
Through its Secretary,
Ministry of Home Affairs
North Block,
New Delhi-110001
3. Union of India
Through its Secretary,
Ministry of Law and Justice
Shastri Bhawan
New Delhi-110001

... Respondents

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA**

To
The Hon'ble Chief Justice of India
And His companion Justices of the
Supreme Court of India

The Humble petition of the

Petitioner above named

MOST RESPECTFULLY SHOWETH:

- 1.** The present writ petition under Article 32 is preferred by the Petitioners herein since the Petitioners are aggrieved by the enactment of CA, Act 2019, which is paving the way for admitting illegal migrants in the country on the basis of their religion. The same is also clearly violative of Article 14 and 21 of the Indian Constitution and thereby the Petitioners are seeking the issuance of a writ of certiorari or any other appropriate writ to declare the Notifications dated 08.09.2015, the Notification dated 18.07.2016 and Citizenship (Amendment) Act, 2019, particularly the proviso to Section 2(1)(b) as void, for being in violation of Article 14 and 21 of the Constitution.
- 1A.** The details of the Petitioner filing the present Public Interest Litigation are as follows:
 - a) The First Petitioner is a Political Party in the name and style of "Indian Union Muslim League" Registered and recognized by

the Election Commission of India
Represented by its General Secretary P.K.
Kunalikutty Member of Parliament, Lok
Sabha. The first petitioner is a political
party registered and recognized by the
Election Commission of India and has got its
representatives in the Parliament as well as
the State Legislative Assemblies. The
Secretary General of the Petitioner is
authorised to file the present Petition. The
registered address/Headquarters of the
Petitioner is at Quaid-e-Millath Manzil,36
Marayikayar Lebbai Street, Chennai,
Tamilnadu, India and phone no. is 044
28345097 . The Annual Income of the
Petitioner is
s and PAN Card no/Aadhar
card no 499719348070 of the Petitioner is
Petitioner No.1 has among its objectives to
strive to preserve and promote and honour
the religious and cultural identity of Muslims
and other minorities and backward
communities of India, enriching national life

and strengthening its secular and democratic foundations.

- b) Petitioner No.2 and 3 are members of Indian Parliament (Lok Sabha) representing Malappuram and Ponnani Constituencies in Kerala respectively and Petitioner No.4 is a member of the Rajya Sabha.
- c) Petitioner No.5 is a member of Lok Sabha representing Ramanathapuram constituency in Tamil Nadu.
- d) The Petitioners are aggrieved by the passing of the present Citizenship Amendment Act, 2019 as the same allows for Illegal Migrants on the basis of their religion is entitled to acquire citizenship and are constrained, since the same benefit of the aforesaid act is excluded to Muslims.
- e) The present public interest writ petition raises a seminal important questions related to the promulgation of CA, Act 2019, wherein the benefits of naturalization to the illegal migrants is being extended to certain a class of illegal migrant belonging to the religion of

Hindus, Sikhs, Buddhists, Jains, Parsis and Christians coming from Afghanistan, Bangladesh and Pakistan. Such classification on the basis of religious identity of the individual clearly violates Article 14 and 21 of the Constitution. Moreover, the classification based on the religious identity of the individual offends the fundamental principle of 'Secularism', which is enshrined as basic structure of the Constitution. Therefore, the present writ petitioner under Article 32 of the Constitution has been necessitated in accordance to the promulgation of Citizenship (Amendment) Act, 2019 on , passed by the Parliament of India.

- 1B.** The Petitioner has no other equally efficacious remedy except to approach this Hon'ble Court by way of present Writ Petition. All annexures annexed to the Writ Petition are true copies of their respective originals.
- 1C.** The Petitioner has not filed any other Petition either before this Hon'ble Court or any other

court High Court for seeking same or similar relief.

FACTS OF THE CASE

- 2.** On 23.11.1946, The Central Legislative Assembly of British India enacted Foreigner Act, 1946 in order to confer certain power to Central Government in respect of dealing with foreigners in India.

Section 2 (a) of the Foreigner Act, 1946 defines a foreigner as follows:

"foreigner" means a person who is not a citizen of India.

A copy of relevant provision of Foreigner Act, 1946 dated 23.11.1946 enacted by the Central Legislative Assembly is produced and annexed herewith as **Annexure P-1(pages**

- 3.** In view of the powers granted under Article 11 of the Indian Constitution, the Indian Parliament enacted the Citizenship Act, 1955 to provide a substantive and procedural framework with respect to acquisition and determination of the Indian Citizenship.

Section 2 (1) (b) of the Citizenship Act, 1955 clearly provides the definition of illegal migrant and it is defined as follows;

2(1) (b) *illegal migrant means' a foreigner who has entered into India-*

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

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

A copy of the Citizenship Act, 1955 dated 30.12.1955 passed by the Indian Parliament is produced and annexed herewith as

Annexure P-2(pages

4. On 10.12.2003, the Indian Government in the exercise of power conferred under Section 18 of the Citizenship Amendment Act, 1955 have promulgated the "Citizenship

(Registration of Citizens and Issue of National Identity Cards) Rules, 2003”.

The Rule 3 and 4 of the Citizenship Rules, 2003 provides outline for the maintenance and preparation of National Register of Citizens throughout the country. It is pertinent to note that the persons Rule 4(4) of the Citizenship Rules, prescribes as follows;

During the verification process, particulars of such individuals, whose Citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over.

The persons excluded from the National Register of Citizens in pursuant to Rule 4 of the Citizenship Rules, 2003, have to finally represent the proceedings before the Foreigner Tribunal in order to establish

citizenship of the person. A person declared as Foreigner by the Tribunal shall result in detention at the detention centre.

A copy of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 dated 10.12.2003 promulgated by the Central Government is produced and annexed herewith as **Annexure P-3(pages**

- 5.** On 07.09.2015, The Ministry Home Affairs, vide Notification dated 08.09.2015 bearing number GSR 685(E) and GSR 686(E) made an amendment in the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 and allowed entry to persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution, who entered into India on or before the 31st December, 2014 without valid documents.

A true copy of the Notification dated 08.09.2015 issued by the Ministry of Home Affairs is produced and annexed herewith as **Annexure P-4(pages**

6. Further on 18.07.2016, the Ministry of Home Affairs vide Notification number GSR 702 (E) and 703(E) dated 18.07.2016 published in Gazette No. 495 made an amendment in the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 substituted the word "Bangladesh", for words "Afghanistan, Bangladesh".

A true copy of the Notification dated 18.07.2016 is produced and annexed herewith as **Annexure P-5(pages**

7. On 31.07.2019, The office of the Register of General Citizens and Registration issued notification in pursuant to Rule 3(4) of Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003, wherein the Central Government decided to prepare and update the population Register between 1st April to 30th September 2020

A copy of the notification dated 31.07.2019 issued by the Ministry of Home Affairs is produced and annexed herewith as **Annexure P-6(pages**

- 8.** On 31.08.2019, In pursuant to the series of Supreme Court orders in *Assam SanmilthaMahasanga v Union of India W.P. (C) No 562/2012 & All Assam Public Work v Union of India 274 of 2009*, the Government of Assam along with Union of India updated the National Register of Citizens (NRC) for the residents in the State of Assam.
- 9.** The Final list of NRC for the resident of Assam was published on 31.08.2019. There were applications of 3.3 crore people in NRC list and final list have included 3.11 crore people and excluded 19.06 lakh people. It is yet unclear exact number of how many people belonging to Hindu religion and Islam religion are being excluded by virtue of the process of National Register of Citizens in the State of Assam.

A true copy of the order dated 31.08.2019 issued by State Coordinator of NRC is produced and annexed herewith as **Annexure P-7(pages**

- 10.** On 20.11.2019, the Home Minister of the Government of India announced the Government plan for the Pan-India National Register of Citizens to be carried out across India. The Home Minister of Government of India asserted that the process of NRC is carried out in order update the citizens list, but nothing would be done against any particular religion.

A copy of the newspaper report dated 20.11.2019 is produced and annexed herewith as **Annexure P-8(pages**

- 11.** On 9.12.2019 the Citizenship Amendment Bill, 2019 was introduced in Lok Sabha and after a heated debate the same was passed with a majority of 311 to 80. A true Copy of the text of the debates in the Lok Sabha on 9.12.2019 is annexed herewith and marked as **Annexure P-9(pages**

12. On 11.12.2019 The Citizenship Amendment Bill, 2019 was introduced in Rajya Sabha and after a heated debate the same was passed with a majority of 125 to 105.

13. On 12.12.2019, The President assented to the Citizenship (Amendment) Act, 2019, wherein it amended the Section 2(1)(b) and amended clause is as follows:

"Provided that persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have been exempted by the Central Government by or under clause (c) of subsection (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any order made thereunder, shall not be treated as illegal migrants for the purposes of that Act:"

'6B. (1) *The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and*

manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.

(2) Subject to fulfilment of the conditions specified in section 5 or the qualifications for naturalisation under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalisation under sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India.

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him:

Provided that such person shall not be disqualified for making application for citizenship under this section on the ground

that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section:

*Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application. A true Copy of the Citizenship Amendment Act, 2019 is produced and annexed herewith and marked as **Annexure P-10(pages***

- 14.** It is pertinent to note that vide the Amendment Act the benefit of reduced period of naturalization to 5 years shall be granted to everyone, including illegal immigrants if they are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan. The amendment make two classification (1) classification

based on religion by excluding Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the ambit of illegal migrants (2) classification based on the country, wherein the benefit of restricting the benefit of naturalization is extended to religious minorities only from Afghanistan, Pakistan and Bangladesh.

15. However, the CA, Act 2019 excluded such benefit to a similarly situated class of persons Muslim illegal migrants/ Hindu illegal migrants from Sri Lanka etc.

16. Thus being aggrieved, the Petitioners with leave of this Hon'ble Court are filing the present writ petition under Article 32 of the Constitution of India on inter-alia the following grounds:-

GROUND

RE: Religion based classification is an impermissible classification and thereby violates Article 14 of the Indian Constitution

- A.** The Section 2 of CA, Act 2019 amended the definition of illegal migrant and excluded Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the definition of 'illegal migrant'.
- B.** Furthermore, the Section 2 of CA, Act 2019 allows the benefit of the naturalization under Section 6B of Citizenship Act is limited to the religious minority Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the countries limited to Afghanistan, Pakistan and Bangladesh.
- C.** That, the religion based classification of CA, Act 2019 is an impermissible classification and violates Article 14 of the Indian Constitution.
- D.** That the CA, Act 2019 does not have reasonable classification based on intelligible differentia. The classification based on religion *ipso facto* violates Article 14 of the Indian Constitution, wherein the legislation effectuate discrimination on the basis of the

intrinsic and core identity of the individual i.e religious identity of the individual.

- E.** That, CA, Act 2019 explicitly discriminates against the Muslims. The Act extends the benefit to individuals belonging *Hindus, Sikhs, Buddhists, Jains, Parsis and Christians*, but excludes the same benefit to the individuals belonging to the Islam religion. Since, CA, Act 2019 discriminates on the basis of core and intrinsic trait of the individual i.e religion of the individual, it cannot form a reasonable classification based on intelligible differentia.
- F.** That, this Hon'ble Court in ***Navtej Singh Johar v Union of India , (2018)10 SCC 1***, has held that "*where a legislation discriminates on the basis of an intrinsic and core trait of an individual, it cannot form a reasonable classification based on an intelligible differentia*". Similarly, the individuals belonging to the class of Muslims must not be excluded from the benefit under Section 6B of the Citizenship Act, on the

basis of their religious identity. Therefore, the religious based classification is impermissible principle to be used for the purpose of classification.

G. That, if the classification is founded on the intrinsic and core element of the individual ground such as race, sex, religion, place of birth and caste. Such classifications are *prime facie* impermissible classification under Article 14 of the Constitution. The CA, Act 2019 has founded its intelligible differentia on the basis of religion, which is core identity of the individual.

H. That, intelligible differentia based on religion clearly constitute discrimination based on impermissible or invalid classification. Hence, of CA, Act 2019 is violation of Article 14 of the Constitution.

RE: The CA, ACT 2019 does not satisfy the twin test of Article 14 of the Indian Constitution

A. That, the Article 14 of the Indian Constitution envisages that the 'all should be treated

equally alike', wherein it implies that the law should give equal treatment for all equals. However, the CA, Act 2019 runs contrary to the concept of equality enshrined in the Constitution.

- B.** The religious classification of CA, Act 2019 violates the twin test of classification under Article 14, wherein it requires that (i) there should be a reasonable classification based on intelligible differentia; and, (ii) this classification should have a rational nexus with the objective sought to be achieved
- C.** That the classification in the CA, Act 2019 is not founded on the basis of intelligible differentia. The yardstick for the purpose of differentiating in the CA, Act 2019 is that the 'religious persecuted minorities' belonging to the country of Afghanistan, Pakistan and Bangladesh. It includes Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, but at the same time exclude other minorities facing discrimination or persecution on the basis of their religious/sect belief, such as *Ahmadiyya*

sect in Pakistan and Shia Sect and Hazara Sect in Afghanistan.

- D.** The denial of similar benefit accrued in CA, Act 2019 to the similarly situated persons belonging to the minority sect of Ahmaddiya and Shia sect, who faces similar persecution alike religious minorities (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians) clearly constitutes an unreasonable classification and violates Article 14 of the Indian Constitution
- E.** That, the classification does not satisfy the nexus prong test of Article 14. If the object of the CA, Act 2019 is to protect the 'minorities who faced religious persecution in Afghanistan, Pakistan and Bangladesh', then, the Ahmaddiyya and Shia sect from these countries are entitled to equal treatment for the benefit of CA, Act 2019. It is well documented that the sect based discrimination within the religion exists in Pakistan and Afghanistan. Therefore, the extension of benefit of CA Act, 2019 to the

religious minority such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, but denying the same to Ahmaddiyyas, Hazaras and Shia sect within these countries is unable to satisfy that the nexus prong of objective sought to be achieved, which is protection of minorities facing religious persecution in the Afghanistan, Pakistan and Bangladesh.

- F.** Therefore, the CA, Act 2019 is a violation of Article 14 of the Indian Constitution.

RE: The Religious/Country based classification of CA, Act 2019 is manifestly arbitrary and unreasonable

- A.** The Section 2 of CA, Act 2019 provides two classifications for the purpose of excluding from the definition of 'illegal migrant' and granting the benefit of naturalization under Section 6B of the citizenship Act.
- B.** Apart from the religious based exclusion of Muslims from the benefit of acquiring citizenship through naturalization. The benefit is limited to religious minorities

belonging to Pakistan, Afghanistan and Bangladesh.

- C.** That, the object of the CA, 2019 is to 'protect those have faced religious faced persecution in Afghanistan, Bangladesh and Pakistan'. However, the CA, Act 2019 does not lay down the principle on which these aforesaid three countries were chosen to grant protection to the religious minorities. It also does not explain how the claims of persecution are being believed en masse.
- D.** That, the arbitrary classification of the aforesaid countries without any rationale, or standard principles constitutes manifest arbitrariness and violates Article 14 of the Indian Constitution.
- E.** That, this Hon'ble Court in ***Sharma Transport v. Govt. of A.P., (2002) 2 SCC 188***, wherein Para 25 states that "*the expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the*

nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone”.

F. This Hon’ble Supreme Court in ***Shayaro Bano v Union of India (2017) 9 SCC 1*** had also noted that “*And a constitutional infirmity is found in Article 14 itself whenever legislation is “manifestly arbitrary” i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc.*”

G. That, the country based classification of the CA Act 2019 is manifestly arbitrary. The impugned Section 2(1)(b) of CAB, Act 2019 only permits the illegal migrant belonging to religious minorities, who faced persecution from the Afghanistan, Pakistan and

Bangladesh would be entitled to benefit of naturalization by virtue of CA, Act 2019.

- H.** However, the CA, Act 2019 does not prescribed any standard principle or norm behind choosing aforesaid three neighboring countries, whereby it does not extend the benefit to religious minorities belonging to other neighboring countries such as Sri Lanka, Myanmar, Nepal and Bhutan.
- I.** That, the classification of Afghanistan, Pakistan and Bangladesh is not founded on rationale principle to justify a separate special treatment for the religious minorities facing persecution on the basis of religion.
- J.** That, if the guiding principle of the Indian Government to single out the Pakistan, Bangladesh and Afghanistan, is because there exist religious persecution. There exist religious persecution in higher degree of harm in Sri Lanka and Myanmar. Sri Lankan Eelam Tamil had faced religious and ethnic persecution from the Sri Lankan Government and Rohingya Muslims in Myanmar had also

faced the most extreme forms of inhumane persecution at the hands of Myanmar Army. Therefore, there is no guiding principle to single out three countries (Afghanistan, Pakistan and Bangladesh) and extend the benefit of citizenship through naturalization to the religion minorities of the aforementioned three countries.

K. That, if the Indian Government argues that the guiding principle of country classification is that the aforementioned three countries have a state religion i.e Islam. As a result, there would be higher chances of religious persecution. But, the neighboring state of Sri Lanka also has a State religion, which prescribes Buddhism as the State religion. Therefore, there are no guiding principles on which these aforementioned three countries were pick and choose by the Indian Government in the CA, Act 2019, for the purpose of granting benefit of Citizenship through naturalization.

L. That, the country classification of Afghanistan, Pakistan and Bangladesh without any guiding principle, standard norm, or rationality clearly constitutes the classification as manifest arbitrariness and unreasonable.

RE: CA Act, 2019 is based upon a classification that has no rational relation with the apparent object sought to be achieved by the Act

A. That the Act selects religion as the basis of deciding which a refugee to be treated as illegal irrespective of the fact whether she has been discriminated against religiously or not. This basis bears no rational relation with the apparent object sought to achieved by the Act, giving relief to refugees who face religious discrimination.

B. That the clubbing of Afghanistan, which was not a part of British Indian territory, with Pakistan and Bangladesh, who were, ipso facto demonstrates that the countries have been chosen carefully to discriminate

between refugees on religious basis having no rational relation with the apparent object of the Act. C. The choice of the three countries while not including China, Sri Lanka and Burma demonstrates that the intention of the classification was exclusion of refugees from citizenship in religious basis.

C. The Amendment Act is destructive of the basic structure of one of the pillars of the Constitution of India, to wit, secularism and having the effect of violation of the article 51 of the Constitution of India of promotion of international peace and order by alienating all Islamic countries and fostering respect for international law on refugees, that does not permit discrimination on the basis of religion (Refugee Convention 1951).The principle enunciated in the Charter of the United Nations is that human beings shall enjoy fundamental rights and freedoms without discrimination.The legislation is manifestly arbitrary seeking to draw an artificial distinction between refugees who flee on

account of alleged religious persecution and all other refugees. It further draws a distinction between the Muslim refugees who have been subjected to alleged religious persecution and the Hindu, Sikh, Christian and Parsi refugees. It arbitrarily presumes that all Hindu, Sikh, Jain, Christian and Parsi refugees have fled their home countries solely on account of religious persecution. Additionally, the legislature has deliberately selected Pakistan, Bangladesh and Afghanistan and excluded China and Myanmar solely to discriminate on the basis religion in deliberate defiance of article 14 of the Constitution of India.

RE: The Direct and Inevitable consequence of CA, Act 2019 shall be that the Pan-India NRC and proceeding before Foreigner Tribunal would be exclusively reserved to the Muslims and thereby violates Article 14 of the Indian Constitution

- A.** That, the fundamental rights violation of CA, Act 2019 must be adjudged in the light of 'direct and inevitable effect' of the legislation on the individuals belonging to the Muslim migrants.
- B.** That, it is now well settled law that the fundamental rights violations are considered on the basis of direct and inevitable consequence of the statute. This Hon'ble Court in **Bachan Singh v. State of Punjab, (1982) 3 SCC 24**, wherein it was observed *"that in order to locate the fundamental right violated by a statute, the court must consider what is the direct and inevitable consequence of the statute. The impugned statute may in its direct and inevitable effect invade more than one fundamental right and merely because it satisfies the requirement of one fundamental right, it is not freed from the obligation to meet the challenge of another applicable fundamental right."*
- C.** That, the direct and inevitable consequence of promulgating the CA, Act 2019 would be

that the Hindu migrants excluded from the final list of NRC for the residents in Assam published on 31.08.2019, would be entitled to get benefit of naturalization under Section 6B of Citizenship Act. However, the Muslim migrants who stand in equal footing with the Hindu migrants, are nevertheless denied the same legal protection.

- D.** That, the proceedings before the Foreigner Tribunal to determine whether the excluded person from NRC List are illegal migrants, shall be exclusively reserved to the individuals belonging to the religious identity i.e Islam.
- E.** That, the CA, Act 2019 by design and default ensures that the people excluded from the NRC list, who are belonging to the religion of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians would be able to seek protection under get benefit and protection under CA, Act 2019. However, the people excluded from the NRC list belonging to Muslim identity would face proceeding of Foreigner Tribunal.

Therefore, the CA, Act 2019 ensures that the proceeding before the Foreigner Tribunal and detention would be directly targeted against the Muslims alone.

- F.** On 20.11.2019, the Home Minister of Government of India announced the plan to start Pan-India NRC. The people fail to prove their citizenship credentials through documentary evidence would be excluded from the National Register of Citizens (NRC).
- G.** That, the CA, Act 2019 ensures that the excluded person belonging to Non-Islam category would be entitled to get the benefit and protection of Section 6B of Citizenship Act. But, the excluded persons belonging to the Islam religion are blatantly discriminated and denied the protected vested under Section 6B of Citizenship Act.
- H.** As a result, the inevitable consequence of Pan-India NRC would be that, it ensures that the declared 'illegal migrant' would be no one except people belonging to the religion of Islam. Additionally, the corollary of the

aforesaid act is that the detained illegal migrant would be disproportionately comprised of people belonging to the Islam religion.

- I. Therefore, there is a direct and inevitable consequence of CA, Act 2019 is that penal consequences of failing to prove citizenship shall be exclusively or at least disproportionately targeted against the persons belonging to the religion of Islam. Hence, it violates Article 14 of the Indian Constitution.

RE: The CA Act 2019 violates the core principle of secularism and thereby violates basic structure of the Constitution

- A. That, the CA, Act 2019 also violates the principle of secularism, which is being considered as the basic structure of the constitution.
- B. That, this Hon'ble Court of India in ***S.R. Bommai v. Union of India, (1994) 3 SCC 1***, has unequivocally held that 'Secularism is

part of the basic structure of the constitution'. As a result, the concept of secularism pervades and embedded in the constitution philosophy.

- C.** That, one of the basic principle of secularism is that, it explicitly and implicitly prohibits the establishment of theocratic state and prevents the State from identifying itself associated or favoring any particular religion or religious sect or religions. The State is mandated to accord equal treatment to all religions and religious sects and denominations. This same was substantiated by this Hon'ble Court in ***S.R. Bommai v. Union of India, (1994) 3 SCC 1.***
- D.** That, the CA, Act 2019 incorporates a process of acquiring citizenship on the basis of religious identity. The person belonging to the Islam religion would not able to acquire citizenship through naturalization. The CA, Act 2019 implicitly enabled a citizenship law based on religion. It had explicitly associated or favored a group of religion such as Hindus,

Sikhs, Buddhists, Jains, Parsis and Christians. But, the CA, Act 2019 excluded the protection to the Muslims. As a result, it denied the equal treatment to all religion in the eyes of law.

- E.** That, the CA, 2019 runs contrary to the foundational value and principle of 'Secularism' as it does not intend to countenanced the idea of treating the minority as second class citizen. However, the religious based classification of the CA, Act 2019 violates the same and attempts to classify the persons belonging to Muslim would only be considered as an 'illegal migrant'.
- F.** Hence, the CA, Act 2019 is contrary to principle and spirit of secularism and thereby violates basic structure of the constitution.

RE: Citizenship: A Universal Right in International Human Rights Law

- A.** That, the Article 15 of the Universal Declaration of Human Rights (UDHR) provides that "everyone has the right to a

nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” Enshrining citizenship and the right to be free from arbitrary deprivation of citizenship as human rights in and of themselves, article 15 of the UDHR establishes the bedrock legal relationship between individuals and states.

- B.** While all states are bound to respect the human rights of all individuals without distinction, an individual's legal bond to a particular state through citizenship remains in practice an essential prerequisite to the enjoyment and protection of the full range of human rights. The universal anti-discrimination norm and the principle that statelessness should be avoided have emerged to constrain state discretion on citizenship under International Law.

RE: The Citizenship (Amendment) Act, 2019 violates India's international obligation under UDHR and ICCPR

- A.** That, the International human rights law imposes obligation upon the States to respect, protect and promote human rights of all individuals including right to equality and prohibition against discrimination on the basis of the religion.
- B.** The Citizenship (Amendment) Act, 2019 directly violates Article 26 of ICCPR. The new enactment of CA, 2019 is not in conformity with India's international obligations.
- C.** The freedom from discrimination is considered as one of the core principles of human rights and the same has been provided in Universal declaration of human rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Social, Cultural and Economic Rights (ICESCR).
- D.** The India has a constitutional duty to honor these internationally recognized rules and principles. Article 51 of which forms part of the Directive Principles of State Policy, requires the State to endeavour to "foster

respect for international law and treaty obligations in the dealings of organised peoples with one another”.

- E.** That, the Article 26 of ICCPR clearly imposes obligation to prohibit any discrimination on the ground of religion and mandates effective protection against discrimination on the basis of religious identity.
- F.** That, Article 26 of ICCPR is provided herein below: *“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*
- G.** The Supreme Court in ***Vishaka v. State of Rajasthan, (1997) 6 SCC 241***, wherein it was held that, *“Any international convention not inconsistent with the fundamental rights*

and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution”.

H. Similarly, the Supreme Court in ***K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1***, wherein the Court has held that “*India is a responsible member of the international community and the Court must adopt an interpretation which abides by the international commitments made by the country particularly where its constitutional and statutory mandates indicate no deviation. In fact, the enactment of the Human Rights Act by Parliament would indicate a legislative desire to implement the human rights regime founded on*

constitutional values and international conventions acceded to by India”.

- I.** Therefore, it is undisputed that the India has commitment and obligation under the international human rights to respect and protect the rights enumerated in ICCPR. Thus, the Article 26 of ICCPR, which prohibits the discrimination on the basis of religious identity, has to be read along with rights guaranteed under the Indian Constitution.
- J.** The Citizenship (Amendment) Act, 2019, is patently premised on the discrimination against the Muslims. The CA, 2019 ensures that the benefit of naturalization to the illegal migrants from Afghanistan, Pakistan and Bangladesh to persons belonging to *Hindus, Sikhs, Buddhists, Jains, Parsis and Christians*, except Muslims.
- K.** That, the Citizenship (Amendment) Act, 2019 is blatantly discriminatory against the Muslims in India. Article 26 of the ICCPR and Article 7 of UDHR does not recognize any difference between citizen and non-citizen,

but prohibits any form of discrimination on the basis of religion.

- L.** That, the Citizenship (Amendment) Act, 2019 giving benefit to a number of religious group and at the same time excluding Muslim from the ambit of benefit of naturalization is clear violation of Article 26 of ICCPR and Article 7 of UDHR.
- M.** Therefore, the Citizenship (Amendment) Act, 2019 is a violation of India's obligation under International law.

RE: Citizenship (Amendment) Act, 2019 will cause widespread discrimination in the NRC process

- A.** On November 20, 2019, the Union Home Minister announced in Parliament that the Government plans to conduct a Pan-India National Register of Citizens (NRC). According to the Home Minister's speech the process of Pan India NRC shall be carried out across the country on the base line year of 1950 as the cut off-date.

- B.** Thus, with the passage of the Amendment Act, and the nationwide implementation of NRC, it shall ensure that those illegal migrants who are Muslims shall be prosecuted and, those illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians such shall be given the benefit of naturalization as an Indian Citizen.
- C.** Therefore all those Muslims who have been excluded in such pan India NRC exercise shall have to prove their citizenship before the Foreigners Tribunal, all because they are Muslims and not Hindus, Sikhs, Buddhists, Jains, Parsis and Christians. This blatant discrimination put into legislation by the Amendment Act is not only unconstitutional but also inhumane and opposed to the very idea of our Nation.
- D.** Currently 19.06 lakh residents of Assam have been excluded from the NRC list of Assam. However, it is unclear as to how many of these are Hindus and how many Muslims. However, the CA Act, 2019 will not clearly

extend the benefit of naturalization to the Hindus excluded in the said NRC, even though the excluded persons who are Muslims stand on a similar footing. But due to the Amendment Act they are being excluded from the benefits merely on the basis of their faith.

- E.** That in view of the above it is in the interest of justice and equity, the Petitioner seeks to pray following directions from this Hon'ble Court under Article 32 of the Constitution.

PRAYER

In the circumstances it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Issue a writ or direction declaring the Citizenship (Amendment) Act, 2019 to be in violation of Article 14 of the Constitution and striking down the same.
- (b) Issue a writ or direction declaring the Notifications bearing number GSR 685(E)

dated 08.09.2015, the Notification bearing number GSR 702 (E) dated 18.07.2016 Citizenship (Amendment) Act, 2019 to be in violation of Article 14 and 21 of the Constitution and striking down the same.

- (c) Issue a writ or direction declaring that the Citizenship (Amendment) Act, 2019 is unconstitutional, being in violation of the Part III of the Indian Constitution.
- (d) Pass such other and further order/orders as are deemed fit and proper in the facts and circumstances of the case

Drawn By

Filled by

(Haris Beeran)

(Pallavi Pratap)

Advocate

Advocate for the petitioner

New Delhi

Drawn On:- 11.12.2019

Filed On:- 12.12.2019