

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2019

(Petition under Article 32 of the Constitution of India read with Order
XXXVIII of the Supreme Court Rules, 2013)

IN THE MATTER OF:

1. ALL ASSAM STUDENTS UNION

THROUGH ITS PRESIDENT, DIPANKA KUMAR NATH

GOPINATH BORDOLOI NAGAR

GUWAHATI-786014, ASSAM

2. LURINJYOTI GOGOI

GENERAL SECRETARY, ALL ASSAM STUDENTS UNION

C/O PROBIN GOGOI, LAIPULI MORANKARI KODOMONI

KODOMONI SRIPURIA, TINSUKIA 786145, ASSAM

...PETITIONERS

VERSUS

1. UNION OF INDIA,
THROUGH THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI-110001

2. UNION OF INDIA,
THROUGH THE SECRETARY,
MINISTRY OF EXTERNAL AFFAIRS,
SOUTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI-110001

3. STATE OF ASSAM,

THROUGH ITS CHIEF SECRETARY,
ASSAM SECRETARIAT, DISPUR CAPITAL COMPLEX,
G. S. ROAD, GUWAHATI- 781006
ASSAM

...RESPONDENTS

**A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA INTER ALIA CHALLENGING THE CITIZENSHIP
(AMENDMENT) ACT, 2019 AND SEEKING ENFORCEMENT OF
THE PETITIONERS' RIGHTS GUARANTEED UNDER PART III OF
THE CONSTITUTION OF INDIA**

To
The Hon'ble Chief Justice of India and
His Companion Justices of the Hon'ble Supreme Court of India.

The humble Petition of the Petitioners above named.

MOST RESPECTFULLY SHEWETH:

1. The present Petition has been preferred by the Petitioners herein in their personal as well as representative capacity for a large number of people living in Assam who have suffered and are still suffering the consequences of illegal immigration of Bangladeshi citizens in Assam, seeking enforcement of their fundamental rights guaranteed under the Constitution of India, inter alia including the rights contained in Articles 14, 15, 19, 21, 25 and 29 of the Constitution. The present Petition inter alia challenges the Citizenship (Amendment) Act, 2019 as a whole, and/or specifically Sections 2, 3, 5 and 6 thereof, as discriminatory, arbitrary, illegal and against the basic structure of the Constitution.

1A. The details of Petitions filing the present Public Interest Litigation are as follows:

a) Petitioner No. 1 is a non-political student organisation, namely the All Assam Students' Union (hereinafter referred to as "AASU"). In Assamese, AASU is called, "*Sadou Asom Chatra Santha*". AASU's aims and objectives are to establish a student organisation independent of affiliation to any political party for the protection of the independence and sovereignty of India, protection of the interests of the indigenous Assamese, campaigning against illiteracy and disparity in education, raising social, political and cultural consciousness amongst students and strengthening national integration. The membership criteria to AASU is non- membership of any political party, being enrolled as a regular student of an educational institution and loyalty to the aims and objectives of the organisation. Since its formation in the 1960's AASU has led many organized movements on issues like language, location of oil refineries, medium of instruction, illegal foreign nationals and educational upliftment. The Assam Movement (1979 to 1985) against illegal migration into the State was led by AASU. This resulted not only in highlighting the issue of illegal foreigners migrating from Bangladesh and Nepal, but also in formalizing a solution for the same at the national level in the form of the Assam Accord. AASU believes that the Assam movement changed the attitude of the Central Government and other parts of the country towards the state of Assam in particular, and towards the North- East in general. The Assam Accord (to which AASU was one of the signatories) formalized the academic, cultural and developmental requirements of the State of Assam through the central government's assurances.

- b) Petitioner No. 2 is a citizen of India and a research student enrolled in the Department of Mathematics, Dibrugarh University, Assam. He is the General Secretary of Petitioner No. 1, AASU.
- c) The Petitioners have no personal/ individual interest in the reliefs sought for in the present Petition and the same has only been filed in public interest.
- d) Respondent No. 1 is the Union of India, through the Ministry of Home Affairs and Respondent No. 2 is the Ministry of External Affairs of the Union of India. The Union of India has enacted the Citizenship (Amendment) Act, 2019, which is currently under challenge in the present Writ Petition. Union of India was a signatory to the Assam Accord. Respondent No. 3 is the State of Assam, which was also one of the signatories to the Assam Accord. All the three Respondents are proper and necessary parties to the present Petition and are likely to be affected by the orders sought in the present Petition.
- e) The Petitioners, through the present writ petition, are invoking the civil original writ jurisdiction of this Hon'ble Court to seek issuance of a writ, order or direction of like nature against the Respondents herein inter alia to quash the Citizenship (Amendment) Act, 2019 as a whole or Section 2, 3, 5 and 6 thereof, being unconstitutional and in violation of several provisions of the Constitution of India. It may be relevant to mention here that the Petitioners herein had been continuously opposing the introduction and thereafter the enactment of the impugned Act before various forums. However, no relief was granted to the Petitioners therefrom.

1B. The Petitioners have 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. That the Petitioners herein have never approached this Hon'ble Court or any other Court seeking a relief similar to the relief sought for in the present writ petition.

BRIEF FACTS

2. The Petitioners respectfully submit that Bangladesh and India share a 4,096-kilometer international border, the fifth-longest land border in the world. Out of the said border, 262 kms fall in the State of Assam and 92 kms of the border in the State of Assam is riverine. It is respectfully submitted by the Petitioners that large scale illegal migration from Bangladesh over several decades has been altering the demographic complexion of the State of Assam. It poses a grave threat both to the identity of the Assamese people and to national security. Illegal migration into Assam was the core issue behind the Assam student movement. It was also the prime contributory factor behind the outbreak of insurgency in the State.

3. In 1983, Parliament enacted The Illegal Migrants (Determination by Tribunal) Act, 1983 and made the same applicable only to Assam. Although it was stated to be a measure which would expedite the determination of illegal migrants in the State of Assam with a view to their deportation, the said Act in fact provided a far more onerous and cumbersome process for the detection of illegal migrants in the State of Assam, than the procedure prescribed by the Foreigners Act, 1946

- applicable in the rest of India. Consequently, a three judge bench of this Hon'ble Court struck down the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 as ultra vires in its judgment reported as *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665 (hereinafter "Sonowal (I)"). It was inter alia held by this Hon'ble Court (at para 63) that illegal migration into the State of Assam constituted "external aggression" within the meaning of Article 355 of the Constitution of India.
4. The Assam Accord (1985) was a Memorandum of Settlement signed between representatives of the Government of India, State of Assam, the Petitioner No. 1 and other representative organisations in New Delhi on 15.08.1985. The Accord brought an end to the agitation and paved the way for the leaders of the agitation to form a political party and a government in the state of Assam soon thereafter. The signatories to the Assam Accord were Prafulla Kumar Mahanta (President, AASU), Bhriugu Kumar Phukan (General Secretary, AASU), Biraj Sharma, (General Secretary, All Assam Ganam Sangram Parishad), R.D. Pradhan, Home Secretary, Government of India, P.P. Trivedi, Chief Secretary, Government of Assam. The Assam Accord was signed in the presence of Mr. Rajiv Gandhi, the then Prime Minister of India. The Accord received widespread acceptance. The political party formed by the leaders of the agitation, namely, Asom Gana Parishad (AGP), contested elections and formed the government in the elections held immediately thereafter. It may be mentioned that although the Assam Accord brought an end to the agitation, some of the vital clauses are yet to be implemented. A true typed copy of the Assam Accord dated

15.08.1985 is annexed herewith as ANNEXURE P – 1 (Page ___ to ___).

5. The clauses of the Assam Accord which deal with citizenship and illegal migrants are as under.

*“5.8 Foreigners who came to Assam on or after 25th March 1971 shall continue to be **detected, deleted and expelled** in accordance with law. Immediate and practical steps shall be taken to expel such foreigners.”*

(Emphasis supplied)

“5.7 All persons who were expelled earlier, but have since re-entered illegally into Assam, shall be expelled.”

“9.1 The international border shall be made secure against future infiltration by erection of physical barriers like walls, barbed wire fencing and other obstacles at appropriate places. Patrolling by security forces on land and riverine routes all along the international border shall be adequately intensified. In order to further strengthen the security arrangements, to prevent effectively future infiltration, an adequate number of check posts shall be set up.”

“9.2 Besides the arrangement mentioned above and keeping in view security considerations, a road all along the international border shall be constructed so as to facilitate patrolling by security forces. Land between border and the road would be kept free of human habitation, wherever possible. Riverine patrolling along the international border would be

intensified. All effective measures would be adopted to prevent infiltrators crossing or attempting to cross the international border.”

“10. It will be ensured that relevant laws for prevention of encroachment of government lands and lands in tribal belts and blocks are strictly enforced and unauthorized encroachers evicted as laid down under such laws.”

6. Section 6A was inserted into the Citizenship Act, 1955, via Act 65 of 1985 with effect from 07.12.1985. The Statement of Objects and Reasons of the Citizenship (Amendment) Act, 1985 states that it was inserted pursuant to the Assam Accord dated 15.08.1985. Section 6A provides that, notwithstanding anything contained in any other law for the time being in force,
 - a. all persons of Indian origin who came into Assam from the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985 (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the people held in 1967) before 01.01.1966, and who have been ordinarily resident in Assam since the date of their entry into Assam, shall be deemed to be citizens of India;
 - b. all persons of Indian origin who came to Assam from the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985, on or after 01.01.1966 but before 25.03.1971, and have been ordinarily resident in Assam and have been

detected to be a foreigner, shall register with the Registering Authority and their names, if included in the electoral roll for any Assembly/Parliamentary Constituency in force on the date of such detection, shall be deleted therefrom for a period of 10 years.

- c. all persons of Indian origin who came to Assam from the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985, on or after 01.01.1966 but before 25.03.1971, from the date of detection as a foreigner, shall have the same rights and obligations as a citizen of India, except the right to have their name included in electoral rolls for any Assembly or Parliamentary constituency. Ten years from the date of detection as a foreigner, such person would be deemed to be a citizen of India.
7. As per the report submitted by the Governor of Assam, Lt. Gen. (Retd.) S. K. Sinha to the President of India, K.R. Narayanan, in 1998,

“Illegal migration from Assam has been taking place primarily for economic reasons. Bangladesh is the world's most densely populated country with a population density of 969 per square kilometre. The growth rate of population in that country is 2.2 per cent and its population is growing at the rate of 2.8 million per year. Each year nearly one third of Bangladesh gets inundated by floods, displacing 19 million people. 70 million people constituting 60 per cent of the population live below the poverty line. The per capita income in Bangladesh is 170 dollars per year, which is much lower than the per capita income in India. The border between India and Bangladesh is

very porous. In these circumstances, the continued large scale population movement from Bangladesh to India, is inevitable, unless effective measures are taken to counter it.

Besides the above considerations, there are other contributory factors facilitating infiltration from Bangladesh. Ethnic, linguistic and religious commonality between the illegal migrants and many people on our side of the border, enables them to find shelter. It makes their detection difficult. Some political parties have been encouraging and even helping illegal migration, with a view to building vote banks. These immigrants are hard-working and are prepared to work as cheap labour and domestic for lower remuneration, than the local people. This makes them acceptable. Moreover, with corruption being all pervasive, corrupt officials, are bribed to provide help. Recently, a racket has been busted in Lakhimpur. Four individuals were found to have been providing forged citizenship certificates and other documents to illegal migrants for the last 14 years.

A true typed copy of the report submitted by the Governor in 1998 is annexed herewith as **ANNEXURE P – 2 (Page ___ to ___)**.

8. On 14.07.2004, the then Minister of State, Home Affairs, submitted a statement to the Parliament indicating that indicating therein that the estimated number of illegal Bangladeshi immigrants in India as on 31.12.2001 was 1,20,53,950. Out of the total figure of 1.20 crores, 50 lacs illegal Bangladeshi immigrants were in Assam alone. A true typed copy of the record of proceedings of the parliament dated 14.07.2004 is annexed herewith as **ANNEXURE P – 3 (Page ___ to ___)**.

9. After the judgment in *Sonowal (I)*, the Central Government promulgated The Foreigners (Tribunal) Amendment Order, 2006, by which the Foreigners Order, 1964 was itself made inapplicable to the state of Assam. The Foreigners (Tribunal) Amendment Order, 2006 was called into question before this Hon'ble Court in W.P. (Civil) No. 117/2006 and W.P. (Civil) No. 119/2006. In the judgment reported as *Sarbananda Sonowal v. Union of India*, (2007) 1 SCC 174 (hereinafter referred to as, "Sonowal (II)") this Hon'ble Court quashed the Foreigners (Tribunal) Amendment Order 2006.

10. Several statutes and instruments, including those mentioned herein below, empower the Central Government to place conditions and give directions/orders relating to a foreigner's entry, stay and removal from India. The Petitioners submit that the impugned Act has the effect of altering the statutory regime in respect of a class of persons who have entered/ remained in India illegally. Some of the relevant statutes and statutory instruments are as follows:

A. The Passport (Entry into India) Act, 1920 and Rules made there under provide as follows:

- Section 3 of the Passport (Entry into India) Act, 1920 empowers the Central Government to make rules, inter alia, requiring that any person entering India shall be in possession of a passport.

- By virtue of Section 4, a person who has contravened or is reasonably suspected to have contravened any Rule or Order made under Section 3, is liable to be arrested.
- Under Section 5, the Central Government has the power to make a general or special order directing the removal of any person from India who has entered India without a passport in contravention of the Rules and to enforce such directions.
- Rule 3 of the Passport (Entry into India) Rules 1950, requires any person entering India to be in possession of a valid passport.
- Rule 5 (iv) specifies that the holder of a foreign passport must be in possession of a visa in order to satisfy the conditions of a “valid passport”. Insofar as holders of Pakistani and Bangladeshi passports are concerned, the relevant provisions are in Rule 5(iv-A) and Rule 5(iv-C) of the said Rules, respectively.
- Rule 6 of makes contravention of Rule 3 punishable with imprisonment or fine or both.

B. The Registration of Foreigners Act, 1939 and Rules made there under provide as follows:

- Section 3 of the Registration of Foreigners Act, 1939 empowers the Central Government to make Rules requiring foreigners to report their presence and movements to specific authorities.
- It is clear from Section 4 that the burden of proving whether any person is or is not a foreigner is placed upon that person.
- Section 5 of provides for penalty in case of contravention thereof.

- It is provided in Section 8 that the provisions of the said Act shall be in addition to and not in derogation of any other laws.
- The Registration of Foreigners Rules, 1992 have been framed under the said Act of 1939, in supersession of the 1939 Rules. The Central Government has also made the Registration of Foreigners (Bangladesh) Rules, 1973 requiring any citizen of Bangladesh entering India or resident in India to present a “registration report” to the appropriate Registration Officer. (It may be noted that the proviso to Rule 2 exempts a person who enters India on a valid visa of not more than 180 days and does not wish to remain in India beyond this period.)

C. The Foreigners Act, 1946 and Foreigners Order, 1948 provide as follows:

- Section 3 of the Foreigners Act, 1946 empowers the Central Government to make general or specific orders prohibiting, regulating or restricting the entry and departure of foreigners and their presence in India.
- Under Section 9, the burden of proving whether or not a person is a foreigner lies upon that person.
- Section 11 empowers the concerned authorities to enforce compliance with their directions including by use of reasonable force.
- Sections 14 to 14C provide for penalties for contravention thereof, including for overstaying or violating visa conditions

(Section 14) or entering into any area in India without the documents required under any order or direction given under the 1946 Act (Section 14A).

- Section 16 provides that it shall be in addition to and not in derogation of other laws.
- The Foreigners Order, 1946 provides for various restrictions upon foreigners including with regard to their duration of stay, employment, movement and permissible activities.
- Clause 3 provides specific points of entry for foreigners to enter India and also requires them to obtain leave of the jurisdictional civil authority. Such leave is to be refused, inter alia, if the foreigner is not in possession of a valid passport or visa. In the absence of leave, the foreigner may also be detained.
- Under Clause 14, when a foreigner is liable to removal from India, his money and property may be applied towards *“the voyage from India and the maintenance until departure of the foreigner and his dependents, if any”*.

D. Section 2 of the Immigrants (Expulsion from Assam) Act, 1950 provides that the Central Government can order expulsion of persons who have been resident outside India, and are resident in Assam, detrimental to the interest of the general public of India or any section thereof, or of any scheduled tribes in Assam. Such an order can be enforced under Section 4, if necessary, by use of reasonable force. Section 5 also provides for penalties for contravention of any order made under the Act. (By notification dated 20.03.1950, powers under the aforementioned Act were

conferred by the Central Government also upon the Government of Assam and other authorities.)

11. That on 13.09.2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter “UNDRIP”), with India voting in its favour. UNDRIP inter alia provided for the following right for the indigenous peoples:

“Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after

agreement on just and fair compensation and, where possible, with the option of return.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.”

It is submitted that due to the continued influx of the illegal immigrants in Assam, the Respondents herein have failed to protect the rights of the indigenous people of Assam as enshrined under the UNDRIP. A true copy of the United Nations Declaration on the Rights of Indigenous Peoples, 2007 is annexed herewith as **ANNEXURE P – 4 (Page ___ to ___)**.

12. The Petitioners state and submit that several petitions relating to issues concerning illegal migration in the State of Assam are at present pending before this Hon'ble Court, including, inter alia, the following:

- d. Writ Petition (Civil) No. 274 of 2009 (Assam Public Works v. Union of India & Ors.) was preferred before this Hon'ble Court for deleting the names of illegal voters from the voting list, regularising the pre - 25.03.1971 immigrants as Indian citizens and upgrading of the National Register of Citizens for the State of Assam, containing village-wise information of each and every person enumerated therein, which was prepared during the census of 1951 under a directive of the Ministry of Home Affairs. The Petitioners herein were permitted to be impleaded in the said matter.
- e. W.P. (Civil) No. 562 of 2012 (Assam Sanmilita Mahasangha v. Union of India & Ors.) was filed before this Hon'ble Court to challenge the constitutional validity of Section 6A of the Citizenship Act, 1955 as being in violation of Articles 5 and 6, 14, 21 and 29 of the Constitution of India. The Petitioners herein were arrayed as Respondent No. 6 in

the said matter and filed their counter affidavit dated 26.07.2013 and an additional affidavit dated 05.08.2013 in the said matter.

- f. W.P. (C) No. 876 of 2014 (All Assam Ahom Association & Ors. v. Union of India & Ors.) was filed thereafter, challenging constitutional validity of Section 6A of the Citizenship Act, 1955 and Rule 4A of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. It further prayed for directions to the State of Assam to complete border fencing, identify and deport foreigners in accordance with the Foreigners Act, 1946 and constitute adequate number of tribunals under the Foreigners (Tribunals) Orders, 1964. The Petitioners herein were arrayed as Respondent No. 5 in the said matter.
- g. W.P. (C) No. 311/2015 (Deepak Kumar Nath & Ors. Union of India & Ors.), challenging Section 3(1)(a) and 3(1)(b) of the Citizenship Act, 1955 as being in contravention of Section 6A of the Citizenship Act, with respect to the State of Assam. The question which arose in that Writ Petition was as to whether a person can claim citizenship of India under Section 3(1)(a) and 3(1)(b) of the Citizenship Act, 1955, even if one or both of his/her parents is an “illegal migrant” as defined in Section 2(1)(b) of the Citizenship Act. W.P. (Civil) 311/2015 was referred to the Constitution bench by this Hon’ble Court vide order dated 21.07.2015. A true copy of the order of this Hon’ble Court in W.P. (C) 311/2015 dated 21.07.2015 is annexed herewith as **ANNEXURE P – 5 (Page ____ to ____)**. The Petitioners herein were arrayed as Respondent No. 6 in the said matter and filed a short affidavit dated 24.07.2015 in the said matter.

13. This Hon'ble Court in its judgment dated 17.12.2014 in *Assam Sanmilita*, passed in Writ Petition (Civil) No. 274 of 2009, W.P. (Civil) No. 562 of 2012 and W.P. (C) No. 876 of 2014 has observed that thirteen questions, enumerated therein, need to be answered by a minimum of 5 Judges under Article 145(3) of the Constitution of India, as most of them are substantial questions as to the interpretation of the Constitution.

14. Further, this Hon'ble Court in *Assam Sanmilita*, issued directions to the Union of India and the State of Assam to detect foreigners belonging to the stream of 1.1.1966 to 24.3.1971 and to detect and deport all illegal migrants who have come to the State of Assam after 25.3.1971. This Hon'ble Court also directed the Union of India to enter into necessary discussions with the Government of Bangladesh to streamline the procedure of deportation. The Hon'ble Chief Justice of the Gauhati High Court was requested to monitor the functioning of the Foreigners Tribunals by constituting a Special Bench. Specific directions to ensure effective border patrolling such as completion of fencing, installation of flood lights, laying of motorable roads along the border were issued to prevent illegal access to the country from Bangladesh. The actions taken by Union of India and the State of Assam in this regard have been monitored by a two-Judge Bench of this Hon'ble Court from time to time.

15. On 07.09.2015, the Union of India promulgated Passport (Entry into India) Amendment Rules, 2015 (hereinafter "2015 Rules") under Section 3 of the Passport (Entry into India) Act, 1920 exempting Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India

due to religious persecution or fear of religious persecution in Pakistan and Bangladesh and who have entered India on or before 31.12.2014 without valid documents (or who have overstayed), from the application of Rule 3 of the Passport (Entry into India) Rules, 1950. Rule 3 of the Passport (Entry into India) Rules, 1950 provides that no person, except those specified in Rule 4, may enter India without a “valid passport” (a valid passport is one which conforms to the requirements under Rule 5) and that no person may enter India via water, land or air except through such port or other place as may be specified in this behalf by the Central Government. A true copy of the Passport (Entry into India) Amendment Rules, 2015 is annexed herewith as **ANNEXURE P – 6 (Page ___ to ___)**.

16. On the very same day, being 07.09.2015, the Union of India also promulgated the Foreigners (Amendment) Order, 2015 (hereinafter “2015 Order”) in purported exercise of powers under Section 3 of the Foreigners Act, 1946. The Foreigners (Amendment) Order, 2015 grants Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution in Pakistan and Bangladesh and who have entered India on or before 31.12.2014 without valid documents or who have overstayed, exemption from the application of the provisions of the Foreigners Act, 1946 and the orders made there under. A true copy of the Foreigners (Amendment) Order, 2015 is annexed herewith as **ANNEXURE P – 7 (Page ___ to ___)**.

17. It is submitted that the effect of the 2015 Rule and the 2015 Order is thus that a class of foreigners, who have entered India without a valid passport or other legal authority or who stay in India beyond the period of authorisation, can continue to remain in India based on religious affiliation, due to alleged religious persecution or alleged fear of religious persecution. A Writ Petition, being W.P. (C) No. 68 of 2016 titled as *Pranab Kumar Mazumadar & Ors. v. Union of India & Anr.* has been filed challenging the 2015 Rule and 2015 Order and notice had been issued thereon on 10.03.2016. A true copy of the order dated 10.03.2016 passed in W.P. (C) No. 68 of 2016, and connected matters (where Writ Petition (Civil) No. 562/2012 is the lead matter), is annexed herewith as **ANNEXURE P – 8 (Page ___ to ___)**. The Petitioners therefore, filed an application, being I.A. No. 1 of 2017 in the said writ petition seeking leave from this Hon'ble Court to intervene in the said matter, which is presently pending before this Hon'ble Court. It is pertinent to note that, vide judgment dated 17.12.2014, reported as *Assam Sanmilita Mahasangha & Ors. v. Union of India & Ors.*, (2015) 3 SCC 1 (hereinafter referred to as "*Assam Sanmilita*"), Writ Petition (Civil) No. 562/2012 namely, *Assam Sanmilita Mahasangha & Ors. v. Union of India & Ors.* and other connected matters have been referred to the Hon'ble Chief Justice of India under Article 145 (3) of the Constitution of India for constitution of a five judge bench in order to answer the substantial questions as to the interpretation of the Constitution, enumerated therein.

18. That on 23.12.2016 the Respondent No. 1 issued another notification/ Order, which stated as follows:

“S.O. 4132(E).—In exercise of the powers conferred by section 16 of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby directs that powers exercisable by it, for registration as a citizen of India under section 5 or for grant of certificate of naturalisation under section 6 of the Citizenship Act, 1955, in respect of any person belonging to minority community in Afghanistan, Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians (herein this Order referred to as “the applicant”), residing in the States of Chhattisgarh, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan and Uttar Pradesh and Union territory of Delhi, shall also be exercisable by—

- (a) the Collector, within whose jurisdiction the applicant is ordinarily resident, in relation to the districts of—
 - (i) Raipur in the State of Chhattisgarh;
 - (ii) Ahmedabad, Gandhinagar and Kutch in the State of Gujarat;
 - (iii) Bhopal and Indore in the State of Madhya Pradesh;
 - (iv) Nagpur, Mumbai, Pune and Thane in the State of Maharashtra;
 - (v) Jodhpur, Jaisalmer and Jaipur in the State of Rajasthan;
 - (vi) Lucknow in the State of Uttar Pradesh; and
 - (vii) West Delhi and South Delhi in the Union territory of Delhi; and
- (b) the Secretary of the Department of Home of the State or the Union territory, as the case may be, within whose jurisdiction the applicant is ordinarily resident, in relation to districts not covered under clause (a), in accordance with the provisions of the

Citizenship Rules, 2009 (hereinafter referred to as the said rules),
subject to the following conditions, namely:—

- (A) the application for registration as citizen of India or grant of certificate of naturalisation as citizen of India under the said rules is made by the applicant online;
- (B) the verification of the application is done simultaneously by the Collector or the Secretary, as the case may be, at the district level and the State level and the application and the reports thereon shall be made accessible simultaneously to the Central Government;
- (C) the Collector or the Secretary, as the case may be, makes such inquiry as he considers necessary for ascertaining the suitability of the applicant and for that purpose forward the application online to such agencies for verification and comments as may be required under the instructions issued by the Central Government in this regard;
- (D) the comments of the agencies referred to in clause (C) are uploaded online by such agencies and accessible to the Collector or the Secretary, as the case may be, and the Central Government;
- (E) the Collector or the Secretary, as the case may be, on being satisfied with the suitability of the applicant, grant him the citizenship of India by registration or naturalisation and issue a certificate of registration or naturalisation, as the case may be, signed by the Collector or the Secretary, as the case may be, in the Form as prescribed in the said rules; and
- (F) the Collector and the Secretary shall maintain a register, in accordance with the said rules, containing the details of persons

so registered or naturalised as a citizen of India and furnish a copy thereof to the Central Government within seven days of such registration or naturalisation...”

19. A Writ Petition, being W.P. (C) No. 20 of 2019 titled as *Nagarikatwa Aain Songsudhan Birodhi Mancha (Forum Against Citizenship Act Amendment Bill) vs. Union Of India* has been filed challenging inter alia the aforesaid notification/ Order dated 23.12.2016 and notice had been issued thereon on 27.02.2019. The Petitioners therefore, filed an application, being I.A. No. 85259 of 2019 in the said writ petition seeking leave from this Hon’ble Court to intervene in the said matter, which is presently pending before this Hon’ble Court.

20. It is submitted that as per the directions of this Hon’ble Court, a National Register of Citizens (NRC) was being prepared by a team of NRC officials, being led by the State Coordinator, and the same was being continuously monitored by this Hon’ble Court. On December 31, 2018, a draft list was published by the NRC authorities which contained names of over 40 lakhs people most of whom were found to have migrated into Assam illegally and to be excluded from the final NRC. As per the Rules, these people were provided the opportunity to present their claims for being included in the final draft and were also heard thereafter. In June 2019, according to a statement issued by the state coordinator of NRC, 1,02,462 persons were further declared ineligible during the process of verification carried out by the Local Registrars of Citizens Registration (LRCRs). The final list of persons which are excluded from the NRC has been published on August 31, 2019 wherein out of a total of 3,30,27,661 applicants, only 19,06, 657 people were excluded. A true copy of the Press Release issued by the State

Coordinator for NRC is annexed herewith as **ANNEXURE A-9 (Page __ to __)**).

21. That the Union of India has enacted the Citizenship (Amendment) Act, 2019, on 12.12.2019, which inter alia seeks to make illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship. The said Act also makes amendments to provisions related to Overseas Citizen of India (OCI) cardholders, including a provision to allow cancellation of OCI registration if the person has violated any law notified by the central government. For the sake of convenience, the provisions of the Act are reproduced below:

“1. (1) This Act may be called the Citizenship (Amendment) Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in section 2, in sub-section (1), in clause (b), the following proviso shall be inserted, namely:—

"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;".

3. After section 6A of the principal Act, the following section shall be inserted, namely:—

“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.

(4) Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to

the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873.”

4. In section 7D of the principal Act,— (i) after clause (d), the following clause shall be inserted, namely:—

"(da) the Overseas Citizen of India Cardholder has violated any of the provisions of this Act or provisions of any other law for time being in force as may be specified by the Central Government in the notification published in the Official Gazette; or".

(ii) after clause (f), the following proviso shall be inserted, namely:—

"Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard."

5. In section 18 of the principal Act, in sub-section (2), after clause (ee), the following clause shall be inserted, namely:—

"(eei) the conditions, restrictions and manner for granting certificate of registration or certificate of naturalisation under sub-section (1) of section 6B;"

6. In the Third Schedule to the principal Act, in clause (d), the following proviso shall be inserted, namely:—

“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".”

It is submitted that Section 2 of the impugned Act amends Section 2(1)(b) of the 1955 Act to provide that Hindus, Sikhs, Buddhists, Jains, Parsis and

Christians from Afghanistan, Bangladesh and Pakistan will not be treated as illegal migrants. In order to get this benefit, they must have also been exempted from the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920 by the central government.

The unamended 1955 Act allowed a person to apply for citizenship by naturalisation, if the person meets certain qualifications. One of the qualifications is that the person must have resided in India or been in central government service for the last 12 months and at least 11 years of the preceding 14 years. However, section 3 of the impugned Act has further inserted “Section 6B” in the 1955 Act, which inter alia created an exception for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, with regard to this qualification. For these groups of persons, the 11 years’ requirement will be reduced to about five years. It further provides that on acquiring citizenship: (i) such persons shall be deemed to be citizens of India from the date of their entry into India, and (ii) all legal proceedings against them in respect of their illegal migration or citizenship will be closed.

Further, sections 5 and 6 of the impugned Act also makes consequent amendments to Sections 18 and the Third Schedule of the 1955 Act respectively.

A true copy of the impugned Citizenship (Amendment) Act, 2019 is annexed herewith as **ANNEXURE A-10 (Page __ to __)**.

22. In the context of the relevant constitutional provisions and aforesaid statutory scheme, it is respectfully submitted that the impugned Act (especially Sections 2, 3, 5 and 6 thereof) is unreasonable, arbitrary, illegal and thus, violative of Article 14 of the Constitution of India. The impugned

Act has been passed under extraneous political considerations and is in derogation of the rights of Indian citizens living in the state of Assam. The impugned Act is not in public interest and welfare. The result of the impugned Act will be that a large number of non-Indians, who have surreptitiously entered Assam after 25.03.1971, without possession of valid passport, travel documents or other lawful authority to do so, will be able to take citizenship and reside therein. The impugned Act seeks to do away with any sort of regulation for Hindus, Sikhs, Buddhists, Jains, Parsis and Christian foreigners entering India illegally from Bangladesh, Afghanistan and Pakistan.

23. Therefore, in light of the abovementioned facts, the Petitioners herein are constrained to file the present Writ Petition challenging the Impugned Act on the following amongst other grounds, which are being taken without prejudice to each other and the Petitioners seek liberty to urge further grounds at the time of hearing, if so advised.

A. Because Sections 2, 3, 5 and 6 of the impugned Act is inconsistent of Section 6A of the Citizenship Act, 1955 (hereinafter referred to as “the 1955 Act”). Section 6A was inserted into the 1955 Act, by the Citizenship (Amendment) Act 1985, as a result of the 1985 Assam Accord, whereby illegal migrants who have entered the State of Assam from Bangladesh up to 24.03.1971 were ultimately required to be granted citizenship of India, on the assurance that illegal migrants entering the state of Assam after 25.03.1971 would be deported back to Bangladesh. Sections 2, 3, 5 and 6 of the impugned Act are completely contrary to Section 6A of the 1955

Act, since it legitimises the entry and continued stay of “illegal migrants” as defined under Section 2(1) (b) the 1955 Act in the state of Assam, even if they entered India after 25.03.1971. It is submitted that the provisions of the impugned Act, thus, go contrary to the solemn promise made to the Assamese people by way of the enactment of Section 6A of the 1955 Act.

B. Because the impugned Act is in stark contradiction with Section 6A (8) of the 1955 Act, which is a saving clause and provides that,

“Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.”

Sections 2, 3, 5 and 6 of the impugned Act are therefore inconsistent with the provisions of Section 6A (8) of the 1955 Act. It is submitted that the impugned Act tends to negate the statutory promise made to the people of Assam and in fact, provides incentive to the illegal migrants, thus, defeating the entire object and purpose of Section 6A of the 1955 Act.

C. Because Sections 2, 3, 5 and 6 of the impugned Act are also inconsistent with the Immigrants (Expulsion from Assam) Act, 1950 which was enacted to protect the indigenous inhabitants of Assam. As per the Statement of Objects and Reasons of the Immigrants (Expulsion from Assam) Act, 1950, refers inter alia to a serious

situation having arisen from the immigration of a very large number of East Bengal residents into Assam, and states that such large migration is disturbing the economy of the province, besides giving rise to a serious law and order problem. The impugned Act is inconsistent with the powers granted to the Central Government under Sections 2 and 4 of the Immigrants (Expulsion from Assam) Act, 1950.

D. Because Sections 2, 3, 5 and 6 of the impugned Act is in violation of the Assam Accord dated 15.08.1985 which was signed between the Petitioner No. 1 and other organizations on the one hand and the Respondents on the other hand. As stated hereinabove, the terms of the 1985 Assam Accord, inter alia, specifically provided that steps would be taken to detect and deport illegal migrants from the state of Assam. It is submitted that the Union is bound by its sovereign promise.

E. Because Section 3 of the Registration of Foreigners Act, 1939 empowers the Central Government to make rules requiring foreigners to report their presence, date of intended departure, proof of identity as well as require persons having the management of any hotel etc. or vessel or aircraft etc. to report the name of any foreigner residing therein or entering or intending to depart from India therein respectively. Section 6 of Registration of Foreigners Act, 1939 empowers the Central Government to exempt certain foreigners or class or description of foreigners from the application of the provisions of the Registration of Foreigners Act, 1939. In exercise

of the powers under Section 3 of the Registration of Foreigners Act, 1939, the Central Government has issued the Registration of Foreigners Rules, 1992 which have been amended from time to time and most recently by the Registration of Foreigners (Amendment) Rules, 2013. The Respondents have not issued any Orders or Rules under the Registration of Foreigners Act, 1939, in respect of the classes of persons sought to be covered by the impugned Act, which are, therefore, in violation of the mandate of the Registration of Foreigners Act, 1939, unworkable and vague.

F. Because the impugned Act has been passed as a result of extraneous political considerations. Sections 2, 3, 5 and 6 of the impugned Act are in violation of the non-religious and secular fabric of the Constitution of India which is contained in the Preamble to the Constitution, as well as in Articles 15 and 25 to 27 of the Constitution of India. It is further submitted that a discrimination based on religion is not permissible. The impugned Act attempts to grant blanket exemptions from the provisions of law governing grant of citizenship to a certain class of foreigners in India, who have entered and/or staying in India without valid documents.

G. Because the impugned Act is in violation of Article 14 of the Constitution of India. The impugned Act grants unbridled discretion for exclusion of a certain class of persons from the existing legal framework regulating the grant of citizenship of India, without prescribing guidelines/ determinable criteria for identification of such persons, who may have been persecuted. Further, they do not

enjoin a prescribed authority with the power to determine whether and in what manner and to what extent, if at all, such persons of the specified religion who have entered into India from Pakistan, Afghanistan and/or Bangladesh, form a special class and/or are eligible for a special treatment, thus granting legal right to citizenship of India to such persons arbitrarily and *en-masse*.

H. Because this Hon'ble Court has held religion to be a facet of personal autonomy and any classification based on religion is an impermissible classification in terms of Article 14 of the Constitution. Further, classification on the basis of place of birth is also an impermissible classification and contrary to Part III of the Constitution. It is submitted that Sections 2, 3, 5 and 6 of the impugned Act, thus, make impermissible classification of people and are liable to be struck down on that ground itself.

I. Because the impugned Act 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. It is respectfully submitted 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*”. It is therefore,

submitted that the classification done by the impugned Act falls foul of the law propounded by this Hon'ble Court.

J. Because, in any case, the classification made by the impugned Act has no rational nexus with the object it is said to achieve. It is submitted that it would not be correct to say that the impugned Act has been enacted to protect persecuted communities from the neighbouring countries of India as there are several minority Muslim communities and other communities (including atheists) also in the countries in question which also face discrimination and/or persecution from the other majority Muslim communities. It is further submitted that even the selection of just three countries with a specific state/ majority religion, while leaving out other countries with other state/ majority religions, inter alia like Sri Lanka, Myanmar, China etc. itself fails to withstand the test of a reasonable classification. It is therefore, submitted that both religion based classification and country based classification, done in Sections 2, 3, 5 and 6 of the impugned Act, are unconstitutional and liable to be struck down by this Hon'ble Court.

K. Because the impugned Act, and especially Sections 2, 3, 5 and 6 thereof, suffers from manifest arbitrariness and is thus, liable to be struck down in light of the judgments of this Hon'ble Court inter alia including the judgments in *Joseph Shine v. Union of India*, (2019) 3 SCC 39; *Shayara Bano v. Union of India*, (2017) 9 SCC 1 and *Hindustan Construction Company & Anr. v. Union of India &*

Ors. 2019 SCC OnLine SC 1520 (Writ Petition (Civil) No. 1074 of 2019, decided on 27.11.2019).

L. Because there is no reasonable justification or rational nexus sought to be achieved by providing an arbitrary cut off date of 31.12.2014.

M. Because the impugned Act confers arbitrary and uncontrolled power upon the Executive and is thus violative of the Petitioners' fundamental rights in that no mechanism is provided to determine whether such persons satisfy the criteria laid down in the impugned Act.

N. Because even if the Respondents justify the class created by the impugned Act on the grounds of religious persecution, it is submitted that the same was not identified as one of the causes of illegal migration by the Government of India before this Hon'ble Court in *Sonowal (I)*. The stand of the Government of India was that Bangladeshis enter India due to, "*steep and continuous increase in population, sharp deterioration in land-man ratio and low rates of economic growth particularly poor performance in agriculture*". It was further submitted that people of all religions from Pakistan and Bangladesh have come for the same reason. The same was recorded by this Hon'ble Court in its judgment in *Sonowal (I)*, as follows.

"A true copy of the latest status report filed by the Government in Writ Petition No. 125 of 1998, which has been filed seeking deportation of all Bangladeshi nationals from India, has been

filed as Annexure R-1 to the Counter Affidavit and paragraphs 3 to 7 of the said status report are being reproduced below :

3. Continuing influx of Bangladeshi nationals into India has been on account of a variety of reasons including religious and economic. There is a combination of factors on both sides which are responsible for continuing influx of illegal immigration from Bangladesh. The important "Push Factors" on the Bangladesh side include: -

- a) steep and continuous increase in population;*
- b) sharp deterioration in land-man ratio;*
- c) low rates of economic growth particularly poor performance in agriculture;*

The "Pull Factors" on the Indian side include: -

- a) ethnic proximity and kinship enabling easy shelter to the immigrants;*
- b) porous and easily negotiable border with Bangladesh;*
- c) better economic opportunities;*
- d) interested religious and political elements encouraging immigration;”*

There is thus no basis for the Respondent No.1 to exempt illegal migrants from the applicable statutory scheme on the basis of religious persecution or religious persecution in Afghanistan, Bangladesh or Pakistan.

O. Because the impugned Act is in violation of Article 14 of the Constitution of India in as much as it violates the requirement of *'equal protection of the laws'* to all persons within the territorial jurisdiction of the Union. The classification made has no relation with the object of the legislations in question. The impugned Act makes an illegal discrimination based on religion and therefore, also runs contrary to the rule against arbitrariness.

P. Because Sections 2, 3, 5 and 6 of the impugned Act violate the obligations of Respondent No. 1 under the United Nations Declaration on the Rights of Indigenous Peoples. It is submitted that due to the continued influx of the illegal immigrants in Assam, the Respondents herein have failed to protect the rights of the indigenous people of Assam as enshrined under the said Declaration. It is submitted that the impugned Act is, in any manner, also in violation of the international obligations of India.

Q. Because Sections 2, 3, 5 and 6 of the impugned Act are in violation of the judgment of this Hon'ble Court in Sonowal (I) wherein this Hon'ble Court gave a clear mandate to the Central Government to remove illegal migrants from India and equated the entry and stay of illegal migrants in the state of Assam with external aggression. All foreigners, irrespective of religion or place of origin, who enter India without valid travel documents, are illegal migrants and liable for expulsion. By establishing vague and indeterminable criteria, the effect of the impugned provisions will be to enable more illegal migrants to claim exemption from the existing statutory framework.

On a similar reasoning, in the said judgment, this Hon'ble Court had struck down the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 as ultra vires the Constitution. Similarly, in Sonowal II also, the Hon'ble Court had emphasized that all illegal immigrants should be deported.

R. It is further submitted that Sections 2, 3, 5 and 6 of the impugned Act are in violation of the judgment of this Hon'ble Court in All Assam Sanmilitia Mahasangha v. Union of India (2015) 3 SCC 1 wherein this Hon'ble Court directed the Union Government to and to detect and deport all illegal migrants who have come to the State of Assam after 25.3.1971. The impugned Act is an attempt to overreach the following directions of this Hon'ble Court.

“41. We are at loss to understand why 67 years after independence the Eastern border is left porous...”

*“42. ...we have considered the necessity of issuing appropriate directions to the Union of India and the State of Assam to ensure that effective steps are taken to prevent illegal access to the country from Bangladesh; to detect foreigners belonging to the stream of 1.1.1966 to 24.3.1971 so as to give effect to the provisions of Section 6(3) & (4) of the Citizenship Act **and to detect and deport all illegal migrants who have come to the State of Assam after 25.3.1971.**The Union will take all effective steps to complete the fencing (double coiled wire fencing) in such parts/portions of the Indo-Bangla border (including the State of*

Assam) where presently the fencing is yet to be completed. The vigil along the riverine boundary will be effectively maintained by continuous patrolling. Such part of the international border which has been perceived to be inhospitable on account of the difficult terrain will be patrolled and monitored at vulnerable points that could provide means of illegal entry. Motorable roads alongside the international border, wherever incomplete or have not yet been built, will be laid so as to enable effective and intensive patrolling. Flood lights, wherever required, will also be provided while maintaining the present arrangements. The completed part of the border fencing will be maintained and repaired so as to constitute an effective barrier to cross border trafficking.” (Emphasis supplied)

As a result of the above directions of this Hon’ble Court, it is amply clear that the Respondent No. 1 has been directed to completely stem the flow of illegal migrants from Bangladesh into India, as well as to speedily detect and remove permanently all illegal migrants who are residing in the state of Assam, having entered after 25.03.1971. In the light of such directions, the impugned Act is clearly an attempt to bypass the express directions of this Hon’ble Court.

S. Because the impugned Act imposes an unreasonable and unfair burden on Indian states since no budgetary allocation has been made for the illegal migrants expected to take citizenship of India as a result of the impugned Act. The Central Government has vested the power to identify and deport a foreign national illegally staying in

the country under section 3 (2)(c) of the Foreigners Act, 1946 to the State Governments/Union Territory Administrations. Therefore, the State Governments/Union Territory Administrations should have been consulted before promulgating the impugned Act.

T. Because the impugned Act is arbitrary, illegal, null and void.

U. Because the impugned Act is otherwise bad in law.

24. That the Petitioners have no other efficacious remedy but to approach this Hon'ble Court by means of the present Writ Petition.

25. That the present Petition is filed bonafide and in the interest of justice.

26. That the Petitioners have not filed any other similar petition before this Hon'ble Court or any other court seeking similar reliefs.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Issue a writ in the nature of mandamus and/ or any other writ/ order or direction declaring the Citizenship (Amendment) Act, 2019 as a whole, or Sections 2, 3, 5 and 6 thereof, as discriminatory, arbitrary and illegal and consequently setting aside the impugned Act as ultra-vires the Constitution of India;

- b. Issue a writ in the nature of Mandamus or any other appropriate writ/ order or direction to the Respondent no 1 to take effective steps for implementation of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples;
- c. Issue a writ in the nature of Mandamus or any other appropriate writ/ order or direction to the Respondent no 1 to take effective steps for implementation of Assam Accord in general and for conservation and preservation of the distinct culture, heritage and traditions of the indigenous people of Assam in furtherance to Clause 6 of the Assam Accord, in particular;
- d. Issue Rule Nisi in terms of prayers (a), (b) and (c) above; and/or
- e. Pass any other such further or other writ, order or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

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

Drawn on: 10.12.2019

Filed by:

Filed on: 13.12.2019

(T. Mahipal)

Place: New Delhi

ADVOCATE FOR THE PETITIONERS