

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 Supreme Court Rules, 2013)

IN THE MATTER OF:



...Petitioner

Versus

Union of India

...Respondent

PAPER BOOK
(FOR INDEX KINDLY SEE INSIDE)

Mrigank Prabhakar
COUNSEL FOR THE PETITIONER

SYNOPSIS

The petitioner, [REDACTED] is a Delhi-based public spirited human rights group of conscientious citizens, academics, entrepreneurs, student activists who have been consistently campaigning against hate crimes. There is no motive other than of public interest in filing the present writ petition. The present Writ Petition seeks the intervention of this Hon'ble court for the enforcement of fundamental Right to life guaranteed under article 21 of the constitution) and Right to equality under Article 14 of constitution.

The Petitioner herein is challenging the constitutionality of Citizenship (Amendment) Act, 2019 that seeks to simplify acquirement of citizenship by six identified minority communities – Hindus, Sikhs, Jains, Buddhists, Christians and Parsis from Afghanistan, Pakistan and Bangladesh who came to India before December 31, 2014 to the exclusion of Muslims and Tamil Eelams from Sri Lanka, Buddhists from China and other neighbouring countries. These groups would not be considered “illegal migrants,” thus allowing them and their descendants to be Indian citizens or apply for Indian citizenship. The proposed amendment also shortens the minimum period of residence in India for them. Instead of the 11 years applicable to everyone, they need six years to qualify for citizenship through naturalisation.

The Amendment provides that illegal migrants who fulfill these four conditions will not be treated as illegal migrants under the Act. The conditions are: (a) they are Hindus, Sikhs, Buddhists, Jains, Parsis or Christians; (b) they are from Afghanistan, Bangladesh or Pakistan; (c) they entered India on or before December 31, 2014; (d) they are not in certain tribal areas of Assam, Meghalaya, Mizoram, or Tripura included

in the Sixth Schedule to the Constitution, or areas under the “Inner Line” permit, i.e., Arunachal Pradesh, Mizoram, and Nagaland.

As the result of the present amendment, a child born in India after 2003 to Hindu, Sikh, Jain, Buddhist, Parsi or Christian “illegal migrants” would qualify as a citizen by birth. If the child is born to even one Muslim “illegal migrant,” they would not.

The amendment enacts an impermissible, religious-based classification under Article 14 of the Constitution. The amendment lacks an intelligible differentia and a reasonable nexus with the legislative object.

The amendment also places residents who may have illegally migrated from other countries like Sri Lanka, Nepal, China, and Myanmar at a disadvantage. It would be immaterial if their religious identity and the reasons for migration were the same.

The amendment makes three distinctions: (i) between Muslim and non-Muslim migrants from Afghanistan, Bangladesh, and Pakistan; (ii) between migrants from these three countries and those from other countries; and (iii) between residents who migrated due to reasons of religious persecution and those who migrated due to other forms of persecution like racial or ethnic persecution.

In *Navtej Singh Johar & Ors. Vs. Union of India & Ors.* As reported in AIR 2018 SC 4321, this Hon’ble Court observed thus; “: “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”.

By excluding Muslim illegal migrants and creating a religion based differentia, the amendment is in violation of Article 14 of the Constitution.

Further, the amendment also fails to meet the *nexus* test of equality as laid down in the State Of West Bengal v. Anwar All Sarkar as reported in 1952 AIR 75. The object of the amendment is to ‘protect those who have faced religious persecutions in Afghanistan, Pakistan, and Bangladesh’. However, by excluding Muslims from the category of ‘persecuted’, the amendment is based on the false premise that only minorities face religious persecution in a Muslim-majority country. The amendment does not take into account the persecution of Hazaras in Afghanistan or Ahmadiyyas in Pakistan.

Further, the amendment suffers from manifest arbitrariness. It is submitted that the test to determine manifest arbitrariness is to decide whether the enactment is drastically unreasonable and irrational.

A purely religious classification, devoid of any determining principle, is also manifestly arbitrary because it violates the fundamental constitutional value of secularism.

The amendment creates an unreasonable and irrational classification between communities as well as country of origin of illegal immigrants. There’s no justification because there is no adequate determining principle that *guides* the classification.

This Hon’ble Court in Justice K.S. Puttaswamy (retd) vs. Union of India as reported in 2017 (10) SCC 1 observed thus;

Article 14, as a guarantee against arbitrariness, infuses the entirety of Article 21. The inter-relationship between the guarantee against arbitrariness and the protection of life and personal liberty operates in a multi-faceted plane. First, it ensures that the procedure for deprivation must be fair, just and reasonable. Second, Article 14 impacts both the procedure and the expression “law”. A law within the meaning of Article 21 must be consistent with the norms of fairness which originate in

Article 14. As a matter of principle, once Article 14 has a connect with Article 21, norms of fairness and reasonableness would apply not only to the procedure but to the law as well.

Further, the purported object of the amendment is to grant citizenship to minorities of the classified nations who escaped religious persecution. However, the newly inserted provision Section 6B or proviso to Section 2(1)(b) does not mention either the minorities or religious persecution. The amendment evidently does not intend to choose religious persecution as grounds of accommodation at all. The amendment only intends to isolate Muslim migrants from the three countries, in order to offer citizenship specifically to the Non-Muslim migrants. It also aims to do so in by altering the parameters of citizenship retrospectively.

The amendment lacks both procedural as well as substantive fairness. A legislative action that is biased against a particular set of people on the basis of religion cannot be termed to be procedurally fair and is in violation of the rule against bias.

It is submitted that this Hon'ble Court held in NHRC Vs. State of Arunachal Pradesh & ors, as reported in 1996 SCC(1) 742, *"We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so."*

The present amendment should also be read with the proposed nationwide exercise for creating a National Register of Citizens (NRC). The fear of nationwide NRC without any reasonable basis of the exercise and the present amendment where only Muslim community has been excluded from protection has created panic among the Muslim community.

Therefore, the present writ Petition is filed challenging the citizenship (amendment) Act, 2019 on grounds of it being in violation of Article 14, and 21 of the Constitution of India and to strike down Citizenship (Amendment) Act, 2019 on the ground of it being in violation of basic structure of the Constitution of India.

LIST OF DATES

08.04.1950	An Agreement between the Governments Of India And Pakistan regarding security And rights Of Minorities was entered into and is popularly known as Nehru-Laiquat pact of 1950 which inter alia provided thus; “The Governments of India and Pakistan solemnly agree that each shall ensure, to the minorities throughout its territory, complete equality of citizenship, irrespective of religion, a full sense of security in respect of life, culture, property and personal honour, freedom of movement within each country and freedom of occupation, speech and worship, subject to law and morality. Members of the minorities shall have equal opportunity with members of the
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majority community to participate in the public life of their country, to hold political or other office, and to serve in their country's civil and armed forces.”

30.12.1955

The citizenship Act, 1955 was enacted that inter alia provided for grant of citizenship by birth, by registration, by naturalization and by descent. It is pertinent to note that the act did not envisage any grant of citizenship on the basis of religion.

15th August 1985

The Union of India signed a Memorandum of Settlement (MoS) with the leaders of the Assam movement on 15 August 1985 called Assam Accord. As per this accord: all those foreigners who had entered Assam between 1951 and 1961 were to be given full citizenship including the right to vote. Migrants those who had done so after 1971 were to be deported. Those who entered between 1961 and 1971 were to be denied voting rights for ten years but would enjoy all other rights of citizenship. It is pertinent to mention herein that the Assam accord provided for expulsion of illegal immigrants without making any distinction between their religious identities.

1985

Citizenship Act was amended in aftermath of the Assam Accord and section 6A was inserted. The section 6A of the act says that all those who came to Assam on or after 1 January, 1966, but before

25th March, 1971 from the specified territory (it includes all territories of Bangladesh at the time of commencement of the Citizenship (Amendment) Act, 1985), and since then are residents of Assam, must register themselves under section-18 for citizenship. It is pertinent to mention herein that the said amendment that facilitated citizenship for migrants from the then east Pakistan did not make distinction on the basis of religion.

07.01.2004

The Citizenship (Amendment) Act, 2003 was promulgated which substituted Section 3 with an amending section inter alia providing that every person born in India on or after the commencement of the Citizenship (Amendment) Act, 2003, where-

- (i) both of his parents are citizens of India; or
- (ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.

17.12.2014

This Hon'ble Court vide its Judgment dated 17.12.2014 in W.P. (C) No. 562 of 2012 referred the challenge to the constitutional validity of Section 6A of citizenship Act to a larger bench of 5 judges.

08. 09.2015

The Ministry of Home Affairs vide a notification bearing G.S.R 685 (E) amended the Passport

(Entry into India) Rules, 1950 thereby providing relaxation 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 and entered into India on or before the 31st December, 2014.

18.07.2016

The Ministry of Home Affairs vide a notification bearing G.S.R 685 (E) amended the Passport (Entry into India) Rules, 1950 thereby providing relaxation to persons belonging to minority communities in Bangladesh and Pakistan as well as Afghanistan, 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.

27.02.2019

The abovementioned rules were challenged and this Hon'ble Court was pleased to issue notice on the same in Writ Petition (Civil) No 20 of 2019.

2016

Citizenship Amendment Act, 2016 was introduced and was passed by the Lok Sabha. However, the rajya Sabha voted in favour of sending the amendment to select committee and thereby the bill lapsed.

31st August 2019

The final list of National register of Citizen in

Assam was published and it excluded around 19.6 lakh people.

The Petitioner herein published a fact finding report after the publication of final NRC list in Assam.

December, 2019

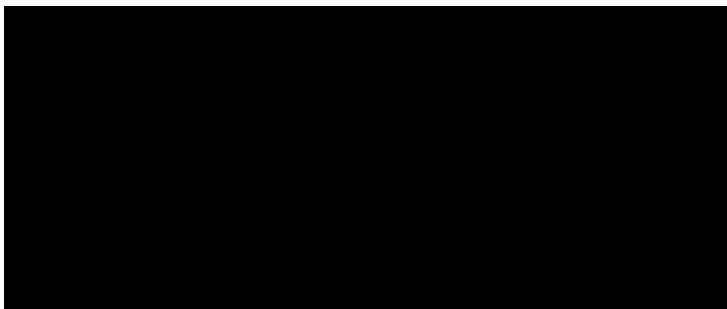
On 9th December 2019, the Lok Sabha passed the Citizenship (Amendment) Act, 2019 which was later passed in Rajya Sabha on 11th December 2019 and received Presidential assent on the midnight of 12 December 2019. The Act is illegal and in violation of the basic structure of the Constitution.

13.12.2019

Hence the present Writ Petition

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(Petition under Article 32 of the Constitution of India read
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IN THE MATTER OF:



...Petitioner

Versus

Union of India
Through Ministry of Home Affairs
North Block
New Delhi-110001

...Respondent

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA FOR ISSUANCE OF WRIT, ORDER OR DIRECTION IN
NATURE OF MANDAMUS DECLARING THE CITIZENSHIP
(AMENDMENT) ACT, 2019 AS UNCONSTITUTIONAL ON ACCOUNT
BEING VIOLATIVE OF THE FUNDAMENTAL RIGHTS ENUMERATED
UNDER ARTICLE 14 AND 21 OF THE PART III OF THE
CONTITUTION OF INDIA;**

To,

The Hon'ble Chief Justice of India

And his companion judges of the Hon'ble Supreme Court

Most Respectfully showeth:

1. That the present writ petition is being filed in under Article 32 of the constitution. The petitioner is a group not guided by self-gain or for gain of any other person/institution/body and that there is no motive other than of public interest in filing the present writ petition. Further, the petitioner looks to ensure the guarantee of Fundamental Rights for all citizens does not get violated, especially the Right to Equality as enshrined under Article 14, Right to freedom of speech and expression as under Article 19 (1) (a), and the Right to Life enshrined under Article 21 of the Constitution. The Petitioner herein is challenging the constitutionality of Citizenship (Amendment) Act, 2019 on the grounds of it being in violation of basic structure of the Constitution. A copy of the Citizenship (Amendment) Act, 2019 is marked and annexed hereto as **Annexure P-1**.
- 1A. That the petitioner, [REDACTED] is a Delhi-based public spirited human rights group of conscientious citizens, academics, entrepreneurs, student activists who have been consistently campaigning against hate crimes, attacks on minorities, mob lynching and communal violence. The group was formed in July

2017 in the backdrop of a series of incidents of mob lynching and communal violence that claimed the lives, livelihood and property of people, particularly Muslims and Dalits.

The petitioner has organized a series of Public meetings, tribunals, fact-finding visits, press conferences and protest demonstrations to spread awareness in light of news of a mob-lynching, extrajudicial encounter killings, unlawful detentions of activists or citizens, and other such rights violations. A copy of [REDACTED] annual activities report is marked and annexed hereto as **Annexure P-2**.

The Petitioner has also organized two fact finding missions on the situation in Assam before and after publication of the final draft of the National Register of Citizen of Assam. A copy of the fact finding report dated 17.08.2018 is marked and annexed hereto as **Annexure P-3**. A copy of the fact finding report dated 10.09.2019 is marked and annexed hereto as **Annexure P-4**.

Further, this Hon'ble Court has held in the case of **S.P. Gupta v. Union of India** as reported in **AIR 1982 SC 149** that;

“Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right...and such person or determinate class of persons is by reasons of poverty, helplessness, or disability or socially or economically disadvantaged position, unable to approach the Court for any relief, any member of the public can maintain an application for an appropriate

direction, order or writ.”

The Petitioner has no personal interest, or private/oblique motive in filling the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioner which has or could have a legal nexus with the issues involved in the Writ Petition.

2. That all of the documents annexed with the present writ petition are in public domain.

3. **Brief facts of the case**

3.1 That on 08.04.1950, An Agreement between the Governments Of India And Pakistan regarding security And rights Of Minorities was entered into and is popularly known as Nehru-Liaquat pact of 1950 which inter alia provided thus; “The Governments of India and Pakistan solemnly agree that each shall ensure, to the minorities throughout its territory, complete equality of citizenship, irrespective of religion, a full sense of security in respect of life, culture, property and personal honour, freedom of movement within each country and freedom of occupation, speech and worship, subject to law and morality. Members of the minorities shall have equal opportunity with members of the majority community to participate in the public life of their country, to hold political or other office, and to serve in their country's civil and armed forces.” A copy of the Nehru-Liaquat pact is marked and annexed hereto as Annexure **P-5**.

3.2 That on 30.12.1955, the citizenship Act, 1955 was enacted that inter alia provided for grant of citizenship by birth, by registration, by naturalization and by descent. It is pertinent to

note that the act did not envisage any grant of citizenship on the basis of religion.

3.3 That on 15th August 1985, The Union of India signed a Memorandum of Settlement (MoS) with the leaders of the Assam movement on 15 August 1985 called Assam Accord. As per this accord: all those foreigners who had entered Assam between 1951 and 1961 were to be given full citizenship including the right to vote. Migrants those who had done so after 1971 were to be deported. Those who entered between 1961 and 1971 were to be denied voting rights for ten years but would enjoy all other rights of citizenship. It is pertinent to mention herein that the Assam accord provided for expulsion of illegal immigrants without making any distinction between their religious identities. A copy of the Assam Accord of 1985 is marked and annexed hereto as **Annexure P- 6**.

3.4 That in 1985, Citizenship Act was amended in aftermath of the Assam Accord and section 6A was inserted. The section 6A of the act says that all those who came to Assam on or after 1 January, 1966, but before 25th March, 1971 from the specified territory (it includes all territories of Bangladesh at the time of commencement of the Citizenship (Amendment) Act, 1985), and since then are residents of Assam, must register themselves under section-18 for citizenship. It is pertinent to mention herein that the said amendment that facilitated citizenship for migrants from the then east Pakistan did not make distinction on the basis of religion.

3.5 That on 07.01.2004, The Citizenship (Amendment) Act, 2003 was promulgated which substituted Section 3 with an amending

section inter alia providing that every person born in India on or after the commencement of the Citizenship (Amendment) Act, 2003, where-

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.

3.6 That on 17.12.2014, This Hon'ble Court vide its Judgment dated 17.12.2014 in W.P. (C) No. 562 of 2012 referred the challenge to the constitutional validity of Section 6A of citizenship Act to a larger bench of 5 judges.

3.7 That on 08.09.2015, The Ministry of Home Affairs vide a notification bearing G.S.R 685 (E) amended the Passport (Entry into India) Rules, 1950 thereby providing relaxation 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 and entered into India on or before the 31st December, 2014. A copy of the notification dated 08.09.2015 is marked and annexed hereto as Annexure **P-7**.

3.8 That on 18.07.2016, the Ministry of Home Affairs vide a notification bearing G.S.R 685 (E) amended the Passport (Entry into India) Rules, 1950 thereby providing relaxation to persons belonging to minority communities in Bangladesh and Pakistan as well as Afghanistan, 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 copy of the notification dated 18.07.2016 is marked and annexed hereto as Annexure **P-8**.

3.9 That in 2016, Citizenship Amendment Act, 2016 was introduced and was passed by the Lok Sabha. However, the rajya Sabha voted in favour of sending the bill to select committee and thereby the bill lapsed.

3.10 That on 27.02.2019, The abovementioned notifications were challenged and this Hon'ble Court was pleased to issue notice on the same in Writ Petition (Civil) No 20 of 2019. A copy of the order dated 27.02.2019 in W.P. (C) No. 20 of 2019 is marked and annexed hereto as **Annexure P-9**.

3.11 That on 31. 08. 2019, The final list of National register of Citizen in Assam was published and it excluded around 19.6 lakh people.

3.12 That in December 2019, On 9th December 2019, the Lok Sabha passed the Citizenship (Amendment) Act, 2019 which was later passed in Rajya Sabha on 11th December 2019 and received Presidential assent on the midnight of 12 December 2019. The Act is illegal and in violation of the basic structure of the Constitution.

4. As a concerned group of citizens deeply aggrieved by the arbitrary law and Executive actions, the Petitioner is filing the present writ petition approaching the Hon'ble Court under Article 32 of the Constitution of India for safeguarding the civil liberties of the general Indian public and to preserve the core democratic values of our Constitution embedded in the

form of fundamental rights guaranteed under Part III of the Constitution of India. The Petitioner has not filed any other petition raising the issue raised.

The present writ petition is being filed on the following grounds amongst others:

5. QUESTION OF LAW

This Writ Petition raises the following questions of law for the consideration of this Hon'ble Court:

- I. Whether the Citizenship Amendment Act, 2019 is in violation of fundamental Rights incorporated under the Part III of the constitution of India?
- II. Whether the Citizenship Amendment Act, 2019 is in violation of treaties entered into between India and Pakistan as well as between Students Union of Assam and Government of India?
- III. Whether the classification based on religion as brought upon by the Citizenship Amendment Act, 2019 is in contravention of Article 14 of the Constitution?
- IV. Whether the Citizenship Amendment Act, 2019 is violation of Right to life and personal liberty enshrined under the constitution of India?
- V. Whether the Citizenship Amendment Act, 2019 is arbitrary and manifestly illegal under the Article 14?
- VI. Whether the differentia between communities and countries arbitrary and has no nexus with the objective sought to be achieved?

VII. Whether the Activities (Prevention) Amendment Act, 2019 creates arbitrary classification among citizens born after promulgation of Citizenship Amendment Act, 2003?

GROUND:

- A. THAT the Petitioner herein is challenging the constitutionality of Citizenship (Amendment) Act, 2019 that seeks to simplify acquirement of citizenship by six identified minority communities – Hindus, Sikhs, Jains, Buddhists, Christians and Parsis from Afghanistan, Pakistan and Bangladesh who came to India before December 31, 2014 to the exclusion of Muslims and Tamil Eelams from Sri Lanka, Buddhists from China and other neighbouring countries. These groups would not be considered “illegal migrants,” thus allowing them and their descendants to be Indian citizens or apply for Indian citizenship. The proposed amendment also shortens the minimum period of residence in India for them. Instead of the 11 years applicable to everyone, they need six years to qualify for citizenship through naturalisation.
- B. That the act is in violation of the agreement between the Governments of India and Pakistan regarding security and rights of minorities (nehru-liaquat agreement).
- C. That the amending act is contrary to the promises made by the Government of India in Assam Accord with the student’s agitators of Assam movement.

- D. That as the result of the present amendment, a child born in India after 2003 to Hindu, Sikh, Jain, Buddhist, Parsi or Christian “illegal migrants” would qualify as a citizen by birth. If the child is born to even one Muslim “illegal migrant” parent, they would not qualify as a citizen by birth. This classification is in violation of Article 15 of the Constitution of India.
- E. That the amendment enacts an impermissible, religious-based classification under Article 14 of the Constitution. The amendment lacks an intelligible differentia and a reasonable nexus with the legislative object.
- F. That the amendment also places residents who may have illegally migrated from other countries like Sri Lanka, Nepal, China, and Myanmar at a disadvantage. It would be immaterial if their religious identity and the reasons for migration were the same.
- G. That the amendment makes three distinctions: (i) between Muslim and non-Muslim migrants from Afghanistan, Bangladesh, and Pakistan; (ii) between migrants from these three countries and those from other countries; and (iii) between residents who migrated due to reasons of religious persecution and those who migrated due to other forms of persecution like racial or ethnic persecution. That none of these three distinctions can be termed to be reasonable classification.
- H. That In *Navtej Singh Johar & Ors. Vs. Union of India & Ors.* As reported in AIR 2018 SC 4321, this Hon’ble Court observed thus; “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”.

- I. That the amendment also fails to meet the *nexus* test of equality as laid down in the State Of West Bengal vs Anwar All Sarkar as reported in 1952 AIR 75. The object of the amendment is to ‘protect those who have faced religious persecutions in Afghanistan, Pakistan, and Bangladesh’. However, by excluding Muslims from the category of ‘persecuted’, the amendment is based on the false premise that only minorities face religious persecution in a Muslim-majority country. The amendment does not take into account the persecution of Hazaras in Afghanistan or Ahmadiyyas in Pakistan.
- J. That the amendment suffers from manifest arbitrariness. It is submitted that the test to determine manifest arbitrariness is to decide whether the enactment is drastically unreasonable and irrational.
- K. That a purely religious classification, devoid of any determining principle, is also manifestly arbitrary because it violates the fundamental constitutional value of secularism.
- L. That the act is arbitrary in so much so that the act provides that illegal migrants who fulfil these four conditions will not be treated as illegal migrants under the Act whereas the rest would be. The conditions are: (a) they are Hindus, Sikhs, Buddhists, Jains, Parsis or Christians; (b) they are from Afghanistan, Bangladesh or Pakistan; (c) they entered India on or before December 31, 2014; (d) they are not in certain tribal areas of Assam, Meghalaya, Mizoram, or Tripura included in the Sixth Schedule to the Constitution, or areas under the “Inner Line” permit, i.e., Arunachal Pradesh, Mizoram, and Nagaland.

- M. That the amendment creates an unreasonable and irrational classification between communities as well as country of origin of illegal immigrants. There's no justification because there is no adequate determining principle that *guides* the classification.
- N. By excluding Muslim illegal migrants and creating a religion based differentia, the amendment is in violation of Article 14 of the Constitution.
- O. That the act will cause statelessness to existing citizen of Muslim faith who may not find their name included in the proposed all India exercise for preparation of National Register of Citizens.
- P. That causing statelessness is in violation of the principles of the customary International law.
- Q. That Amendment Act, violates India's international obligation under Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.
- R. That the present amendment is in violation of Article 26 of International Covenant on Civil and Political Rights.
- S. That this Hon'ble Court in Justice K.S. Puttaswamy (retd) vs. Union of India as reported in 2017 (10) SCC 1 observed thus;
- “Article 14, as a guarantee against arbitrariness, infuses the entirety of Article 21. The inter-relationship between the guarantee against arbitrariness and the protection of life and personal liberty operates in a multi-faceted plane. First, it ensures that the procedure for deprivation must be fair, just and reasonable. Second, Article 14 impacts both the procedure and the expression “law”. A law within the meaning of Article 21 must be consistent*

with the norms of fairness which originate in Article 14. As a matter of principle, once Article 14 has a connect with Article 21, norms of fairness and reasonableness would apply not only to the procedure but to the law as well.”

- T. That the the purported object of the amendment is to grant citizenship to minorities of the classified nations who escaped religious persecution. However, the newly inserted provision Section 6B or proviso to Section 2(1)(b) does not mention either the minorities or religious persecution. The amendment evidently does not intend to choose religious persecution as grounds of accommodation at all. The amendment only intends to isolate Muslim migrants from the three countries, in order to offer citizenship specifically to the Non-Muslim migrants. It also aims to do so in by altering the parameters of citizenship retrospectively.
- U. That the amendment lacks both procedural as well as substantive fairness. A legislative action that is biased against a particular set of people on the basis of religion cannot be termed to be procedurally fair and is in violation of the rule against bias.
- V. That this Hon'ble Court held in NHRC Vs. State of Arunachal Pradesh & ors, as reported in 1996 SCC(1) 742, *“We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human being,*

be he a citizen or otherwise, and it cannot permit any body or group of persons, e.g., the AAPSU, to threaten the Chakmas to leave the State, failing which they would be forced to do so.”

- W. That the amendment act suffers from arbitrariness as much as it makes December 2014 as cutoff date for inclusion as citizen via proposed Section 6B. This date has no historical or logical basis. In the past a different cut-off date of 24th March 1971 exclusively for State of Assam was by Section 6A of the citizenship Act. This amendment in citizenship Act was a result of Assam Accord. Section 6A unlike Section 6B does not discriminate between religious identities. It provided citizenship to people of all religion who were escaping from bloodstained persecution at the hands of the army of West Pakistan.
- X. That the challenged amendment seeks to alter the basis of citizenship in India. From place of birth being the basis of citizenship to now religion being a basis. This is in violation of the principles of secularism.
- Y. 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.
- Z. That, the challenged amendment 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 amendment violates the same and attempts to classify the

persons belonging to Muslim community would only be considered as an 'illegal migrant'.

AA. That the amendment has already caused unrest in the Country. The unrest in North eastern states of Tripura and Assam has caused huge loss of life and property. That there are countrywide protest that have erupted simultaneously against the amendment.

PRAYER

In view of the facts and circumstances mentioned, the petitioner humbly prays before this Hon'ble Court to pass the following relief:-

- a. Issue of writ, order or direction declaring Citizenship (Amendment) Act, 2019 as unconstitutional;
- b. 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.
- c. Pass any other order or relief in favour of the petitioner in the interest of justice, equity and good conscience.

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

DRAWN BY: ANAS TANWIR

[MRIGANK PRABHAKAR]
ADVOCATE FOR THE PETITIONER

DRAWN ON 13.12.2019
FILED ON 14.12.2019

