

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2019

[Under Article 32 of the Constitution of India]

BETWEEN

Versus

- | | |
|--|----------------------------------|
| 1. Union of India,
Through Cabinet Secretary,
Parliament House,
New Delhi-110001. | Contesting
Respondent
No.1 |
| 2. Union of India,
Through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001. | Contesting
Respondent
No.2 |
| 3. Union of India,
Through its Secretary,
Ministry of Law and Justice,
Shastri Bhawan,
New Delhi-110001. | Contesting
Respondent
No.3 |

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

TO
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT

THE WRIT PETITION OF
THE PETITIONER ABOVE NAMED:

MOST RESPECTFULLY SHOWETH:

1. The present Writ petition under Article 32 of the Constitution of India read with Order XXXVIII Rule 12 of Supreme Court Rules, 2013 is preferred by the Petitioners herein since the Petitioners are aggrieved by the enactment of Citizenship (Amendment) Act, 2019 No.47 of 2019 which is paving the way for admitting illegal migrants in the country on the basis of their religion. The same is violative of Article 14 and 21 of the Constitution of India. The Petitioners are seeking the issuance of a Writ or declaration or any other appropriate Writ to declare the Notifications dated 08.09.2015, the Notification dated 18.07.2016 and Citizenship (Amendment) Act, 2019 No.47 of 2019, particularly the proviso to Section 2(1)(b) as void, for being in violation of Article 14 and 21 of the Constitution of India.
- 1A. Name of the 2ND Petitioner is prefixed by the initial of his father which prevalent in Tamil Nadu.
2. The details of the Petitioner filing the present Public Interest Litigation are as follows:
 - (a) The First Petitioner is

The Petitioner No.1 has among its objectives to bear true faith and allegiance to the Constitution of India as by law established and to the principle of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India. The petitioner party contested the assembly Election in the year 2016 and secured sizeable numbers of Votes.

- (b) The Petitioners are aggrieved by the passing of the present Citizenship (Amendment) Act, 2019 No.47 of 2019 as the same allows a selective and arbitrary basis for granting Citizenship Illegal Migrants on the basis of their religion.
- (c) The present public interest writ petition raises important questions related to the Citizenship (Amendment) Act, 2019 No.47 of 2019 wherein the benefits of naturalization to the illegal migrants is being extended to certain a class of illegal migrant belonging to the religion of *Hindus, Sikhs, Buddhists, Jains, Parsis and Christians coming from Afghanistan, Bangladesh and Pakistan*. Such classification on the basis of religious identity of the individual clearly violates Article 14 and 21 of the Constitution of India. Moreover, the classification based on the religious identity of the individual offends the fundamental principle of 'Secularism', which is enshrined as basic structure of the Constitution of India. The classification of the illegal migrants who are entitled to naturalization as per the Act is also selective and arbitrary as it is restricted only to migrants into India on account of religious persecution from three countries, viz; Pakistan, Bangladesh and Afganistan for which there is no basis and also excludes refugees from other countries such as SriLanka, Myanmar, etc. Therefore, the present writ petition under Article 32 of the Constitution of India is being filed for a writ or declaration to declare The Citizenship (Amendment) Act, 2019 No.47 of 2019 as un constitutional ultravires, void abinitio and violative of Article 14 and 21 of the Constitution of India.
- (d) The Petitioner has no other equally efficacious remedy except to approach this Hon'ble Court by way of present Writ Petition. All annexures annexed to the Writ Petition are true copies of their respective originals.
- (e) The Petitioner has not filed any other Petition either before this Hon'ble Court or any other court High Court for seeking same or similar relief.

3. **FACTS OF THE CASE.**

3.1. On 23.11.1946, Foreigner Act, 1946 was enacted in order to confer certain power to Central Government in respect of dealing with foreigners in India.

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

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

A copy of the Foreigners Act, 1946 dated 23.11.1946 Act No.31 of 1946, is produced and annexed herewith as **Annexure P-1 (Page Nos.23-31).**

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

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

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

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

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

A copy of the Citizenship Act, 1955 dated 30.12.1955 passed by the Indian Parliament is produced and annexed herewith as **Annexure P-2 (Page Nos.32-46).**

- 3.3. On 10.12.2003, in the exercise of power conferred under Section 18 of the Citizenship Act, 1955 the respondent have promulgated the "Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003". The Rule 3 and 4 of the Citizenship Rules, 2003 provides outline for the maintenance and preparation of National Register of Citizens throughout the country.
- 3.4. During the verification process, particulars of such individuals, whose Citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over.
- 3.5. The persons excluded from the National Register of Citizens in pursuant to Rule 4 of the Citizenship Rules, 2003, have to finally represent the proceedings before the Foreigner Tribunal in order to establish Citizenship of the person. A person declared as Foreigner by the Tribunal shall result in detention at the detention centre. A copy of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 dated 10.12.2003 promulgated by the Central Government is produced and annexed herewith as **Annexure P-3 (Page Nos. 47-55).**
- 3.6. The Ministry Home Affairs, on 08.09.2015 published notification dated 07.09.2015 bearing number GSR 685(E) and GSR 686(E) and made an amendment in the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 and allowed entry to persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution, who entered into India on or before the 31st December, 2014 without valid documents. A true copy of the Notification and Order bearing number GSR 685(E) and GSR 686(E) dated 08.09.2015

issued by the Ministry of Home Affairs is produced and annexed herewith as **Annexure P-4 (Page No. 56).**

- 3.7. Further on 18.07.2016, the Ministry of Home Affairs vide Notification No.GSR 702 (E) and 703(E) dated 18.07.2016 published in Gazette No. 495 and made an amendment in the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 substituted the word "Bangladesh", for words "Afghanistan, Bangladesh". A true copy of the Notification and Order bearing number GSR 702 (E) and 703(E) dated 18.07.2016 issued by the Ministry of Home Affairs is produced and annexed herewith as **Annexure P-5 (Page No. 57).**
- 3.8. On 31.07.2019, The office of the Register of General Citizens and Registration issued notification in pursuant to Rule 3(4) of Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003, wherein the Central Government decided to prepare and update the population Register between 1st April to 30th September 2020. A copy of the notification bearing number S.O. 2753 (E) dated 31.07.2019 issued by the Ministry of Home Affairs is produced and annexed herewith as **Annexure P-6 (Page No. 58).**
- 3.9. On 12.12.2019, The President gave its assent to the Citizenship (Amendment) Act, 2019 No.47 of 2019, wherein it amended the Section 2(1)(b) and amended clause is as follows:

"Provided that persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have been exempted by the Central Government by or under clause (c) of 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 order made thereunder, shall not be treated as illegal migrants for the purposes of that Act:"

'6B. (1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.

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

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

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

(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 of India and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873.

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

true copy of the Citizenship (Amendment) Act, 2019 No.47 of 2017 dated 12.12.2019 issued by the Ministry of Law and Justice is hereto and marked as **Annexure P-7 (Page Nos. 5961).**

- 3.10. The amendment make two classification (1) classification based on religion by excluding Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the ambit of illegal migrants (2) classification based on the country, wherein the benefit of restricting the benefit of naturalization is extended to religious minorities only from Afghanistan, Pakistan and Bangladesh. The Citizenship excluded such benefit to a similarly situated class of persons Muslim illegal migrants/ Hindu illegal migrants from Sri Lanka etc.

GROUND

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

- 4.1. The "Basic Structure of Constitution of India" is a doctrine that this Hon'ble Court laid down in the case of ***Keshavanda Bharti vs State of Kerala (1973) 4 SCC 225*** where it has been laid down that Parliament could amend any part of the Constitution of India so long as it did not alter or amend "the basic structure or essential features of the Constitution of India". Furthermore, the Preamble of the Constitution of India speaks about India being a secular nation, and the same secularism forms a part of the 'Basic Structure of the Constitution of India', thus the Parliament by enacting such legislations, is overreaching the limitations placed on it.
- 4.2. Equality before law under Article 14 means the State will treat every class of persons without discrimination. The equal protection of law means the State will not frame laws or rules that discriminate two persons. Rights under Article 14 are absolute and are not exclusive to the citizens of India but to "any person". It gives benefits of equality

to any person within the territory of India even to a foreigner. Accordingly, the Act wants to create a class of refugees on the basis of religion which cannot be treated as permissible/reasonable classification. In order to pass the test of permissible/reasonable classification, two conditions as propounded by this Hon'ble Court in the case of ***State of West Bengal Vs Anwar Ali Sarkar, 1952 SCR 284*** have to be satisfied:

- . the classification must be founded on an intelligible differentia which distinguishes person or thing that are grouped together from other left out;
- . the differentia must have a direct nexus to the object sought to be achieved by the statute in question.

Classification of migrants on the basis of religion is impermissible under Article 14 and, this classification cannot be said to be founded on intelligible differentia. Further, the object of the Amendment Act is stated to provide Citizenship for religiously persecuted persons from neighbouring countries, who want to seek Citizenship (Amendment) Act, 2019 No.47 of 2019 in India. It is submitted that if the object is only religious persecution, then while including Hindus, Sikhs, Buddhists, Jains, Parsis and Christian, amendments have deliberately not included other minorities facing discrimination or persecution on the basis of their religious/sect belief such as Ahmadiyya sect in Pakistan and Shia Sect and Hazara Sect in Afghanistan as it is well documented that the sect based discrimination within the religion exists in Pakistan and Afghanistan. Thus, exclusion of similarly situated persons belonging to the minority sect of Ahmaddiya and Shia Sect, who faces similar persecution alike religious minorities (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians) clearly constitutes an unreasonable and arbitrary classification violative of Article 14 of the Constitution of India.

- 4.3. The religion based classification of Citizenship (Amendment) Act, 2019 No.47 of 2019 is an impermissible classification and violates Article 14 and 21 of the Constitution of India.
- 4.4. The Citizenship (Amendment) Act, 2019 No.47 of 2019 does not have reasonable classification based on intelligible differentia. The classification based on religion *ipso facto* violates Article 14 of the Constitution of India, wherein the legislation effectuate discrimination on the basis of the intrinsic and core identity of the individual i.e religious identity of the individual.
- 4.5. 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 of India. As a result, the concept of secularism pervades and embedded in the Constitution of India philosophy.

“para 304While Article 25 of the Constitution guarantees to all its people freedom of religion, Articles 14, 15 and 16 enjoin upon the State to treat all its people equally irrespective of their religion, caste, faith or belief. While the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the State is concerned, i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally. How is this equal treatment possible, if the State were to prefer or promote a particular religion, race or caste, which necessarily means a less favourable treatment of all other religions, races and castes. How are the constitutional promises of social justice, liberty of belief, faith or worship and equality of status and of opportunity to be attained unless the State eschews the religion, faith or belief of a person from its consideration altogether while dealing with him, his rights, his duties and his entitlements? Secularism is thus more than a passive attitude

of religious tolerance. It is a positive concept of equal treatment of all religions. This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. This may be a concept evolved by western liberal thought or it may be, as some say, an abiding faith with the Indian people at all points of time. That is not material. What is material is that it is a constitutional goal and a basic feature of the Constitution as affirmed in *Kesavananda Bharati*³⁶ and *Indira N. Gandhi v. Raj Narain*³⁷. Any step inconsistent with this constitutional policy is, in plain words, unconstitutional. This does not mean that the State has no say whatsoever in matters of religion. Laws can be made regulating the secular affairs of temples, mosques and other places of worships and maths. (see *S.P.Mittal Vs Union of India*.)

- 4.6. Article 14 of the Constitution of India envisages that the 'all should be treated equally alike', wherein it implies that the law should give equal treatment for all equals. However, the Citizenship (Amendment) Act, 2019 No.47 of 2019 runs contrary to the concept of equality enshrined in the Constitution of India.
- 4.7. Citizenship (Amendment) Act, 2019 No.47 of 2019 explicitly discriminates against the Muslims. The Act extends the benefit to individuals belonging *Hindus, Sikhs, Buddhists, Jains, Parsis and Christians*, but excludes the same benefit to the individuals belonging to the Islam religion or other religion. Since, Citizenship (Amendment) Act, 2019 No.47 of 2019 discriminates on the basis of core and intrinsic trait of the individual i.e religion of the individual, it cannot form a reasonable classification based on intelligible differentia.
- 4.8. This Hon'ble Court in ***Navtej Singh Johar v Union of India***, (2018)10 SCC 1, has held that "*where a legislation discriminates on the basis of an intrinsic and core trait of an individual, it cannot form a reasonable classification based on an intelligible differentia*".

Similarly, the individuals belonging to the class of Muslims must not be excluded from the benefit under Section 6B of the Citizenship (Amendment) Act, 2019 No.47 of 2019, on the basis of their religious identity. Therefore, the religious based classification is impermissible principle to be used for the purpose of classification.

- 4.9. If the classification is founded on the intrinsic and core element of the individual ground such as race, sex, religion, place of birth and caste. Such classifications are *prime facie* impermissible classification under Article 14 of the Constitution of India. The Citizenship (Amendment) Act, 2019 No.47 of 2019 has founded its intelligible differentia on the basis of religion, which is core identity of the individual.
- 4.10. The religious classification of Citizenship (Amendment) Act, 2019 No.47 of 2019 violates Article 14, wherein it requires that (i) there should be a reasonable classification based on intelligible differentia; (ii) this classification should have a rational nexus with the objective sought to be achieved. (iii) it fails to pass the test of reasonable classification, (iv) as it treats equals as unequal, (v) as it is manifestly arbitrary.
- 4.11. The Citizenship (Amendment) Act, 2019 No.47 of 2019 excludes Tamil Hindus, Buddhists, Christians from Sri Lanka simply because they do not fall in the purview of the three countries to which this law applies as it fails to reason or justify the exclusion of Persons who are Sri Lanka and Bhutanese. Therefore, the objective of the law to offer **SANCTUARY** to those who are persecuted in their home countries cannot be accepted.
- 4.12. This Hon'ble Court in *Sharma Transport v. State of A.P.* [(2002) 2 SCC 188]

"Para 25 while discussing the concept of manifest arbitrariness in legislation held that, "... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is

manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.."

4.13. This Hon'ble Court in **Shayara Bano v. Union of India, (2017) 9 SCC 1** while discussing the test of manifest arbitrariness under Article 14 of the Constitution of India, observed that,

"It will be noticed that a Constitution of India Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121*] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14. This Hon'ble Court in ***Shayara Bano v Union of India (2017) 9 SCC 1*** had also noted that "*And a constitutional infirmity is found in*

Article 14 itself whenever legislation is "manifestly arbitrary" i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc."

4.14. This Hon'ble Court has developed and recognized the concept of, "Constitutional Morality" and in **Manoj Narula v. Union of India, (2014) 9 SCC 1**, this Hon'ble Court has explained, "Constitutional Morality" as follows

"74. The Constitution of India is a living instrument with capabilities of enormous dynamism. It is a Constitution of India made for a progressive society. Working of such a Constitution of India depends upon the prevalent atmosphere and conditions. Dr Ambedkar had, throughout the debate, felt that the Constitution of India can live and grow on the bedrock of constitutional morality. Speaking on the same, he said:

"Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic."
[Constituent Assembly Debates, 1948, Vol. VII, 38.]

75. The principle of constitutional morality basically means to bow down to the norms of the Constitution of India and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner. It actually works at the fulcrum and guides as a laser beam in institution building. The traditions and conventions have to grow to sustain the value of such a morality. The democratic values survive and become successful where the people at large and the persons in charge of the institution are strictly

guided by the constitutional parameters without paving the path of deviancy and reflecting in action the primary concern to maintain institutional integrity and the requisite constitutional restraints. Commitment to the Constitution of India is a facet of constitutional morality..."

- 4.15. This Hon'ble Court in *Sarbananda Sonowal v. Union of India* [(2005) 5 SCC 665] had struck down the *Illegal Migrants (Determination by Tribunals), 1983* (and the rules made thereunder) [hereinafter referred to as "IMDT Act"] on the grounds that, first, the IMDT Act only resulted in giving advantage and benefits to an illegal migrant while failing to achieve the real objective of the enactment, viz., detecting and deportation of a illegal migrants, second, the classification made whereby the IMDT Act was made applicable only to the State of Assam had no rational nexus with the policy and object of the Act, and hence violative of Article 14 of the Constitution of India.

held that, "If an Act made by the Legislature has the disastrous effect of giving shelter and protection to foreign nationals who have illegally transgressed the international border and are residing in India and further the Act is unconstitutional, any citizen is entitled to bring it to the notice of the court by filing a writ Petition under Article 32 of the Constitution of India."

The Section 2 of Citizenship (Amendment) Act, 2019 No.47 of 2019 provides two classifications for the purpose of excluding from the definition of 'illegal migrant' and granting the benefit of naturalization under Section 6B of the Citizenship (Amendment) Act, 2019 No.47 of 2019. Apart from the religious based exclusion of Muslims from the benefit of acquiring Citizenship (Amendment) Act, 2019 No.47 of 2019 through naturalization. The benefit is limited to select religious minorities belonging to Pakistan, Afghanistan and Bangladesh. The arbitrary classification of the aforesaid countries without any

rationale, or standard principles constitutes manifest arbitrariness and violates Article 14 of the Constitution of India.

- 4.16. The country based classification of the Citizenship (Amendment) Act, 2019 No.47 of 2019 is manifestly arbitrary. The impugned Section 2(1)(b) of Citizenship (Amendment) Act, 2019 No.47 of 2019 only permits the illegal migrants belonging to religious minorities, who faced persecution in Afghanistan, Pakistan and Bangladesh to the benefit of naturalization by virtue of Citizenship (Amendment) Act, 2019 No.47 of 2019. However, the Citizenship (Amendment) Act, 2019 No.47 of 2019 does not prescribe any standard principle or norm behind choosing aforesaid three neighboring countries, whereby it does not extend the benefit to religious minorities belonging to other neighboring countries such as Sri Lanka, Myanmar, Nepal and Bhutan. The classification of Afghanistan, Pakistan and Bangladesh is not founded on rationale principle to justify a separate special treatment for the religious minorities facing persecution on the basis of religion.
- 4.17. That, if the guiding principle of the respondents is to single out the Pakistan, Bangladesh and Afghanistan, on account of religious persecution prevailing there, the exclusion of Ahmadiyahs from Pakistan, Shias from Afghanistan is inconsistent to such principle. The ethnic and religious persecution against the Tamilians in Sri Lanka pose a higher degree of harm. There was wide spread religious persecution of Non-Buddhist communities in Sri Lanka to whom the Citizenship (Amendment) Act, 2019 No.47 of 2019 does not apply. Similarly, the Rohingya Muslims in Myanmar had also faced the most extreme forms of inhumane persecution at the hands of Myanmar Army. Therefore, there is no guiding principle to single out three countries (Afghanistan, Pakistan and Bangladesh) and extend the benefit of Citizenship (Amendment) Act, 2019 No.47 of 2019 through naturalization to the religious minorities of the aforementioned three countries.

4.18. The fundamental rights violations are considered on the basis of direct and inevitable consequence of the statute. This Hon'ble Court in **Bachan Singh v. State of Punjab, (1982) 3 SCC 24**, wherein it was observed

"that in order to locate the fundamental right violated by a statute, the court must consider what is the direct and inevitable consequence of the statute. The impugned statute may in its direct and inevitable effect invade more than one fundamental right and merely because it satisfies the requirement of one fundamental right, it is not freed from the obligation to meet the challenge of another applicable fundamental right."

4.19. The proceedings before the Foreigner Tribunal to determine whether the excluded person from NRC List are illegal migrants, shall be exclusively reserved to the individuals belonging to the religious identity i.e Islam.

4.20. The Citizenship (Amendment) Act, 2019 No.47 of 2019 ensures that the excluded person belonging to Non-Islam category would be entitled to get the benefit and protection of Section 6B of Citizenship (Amendment) Act, 2019 No.47 of 2019. But, the excluded persons belonging to the Islam religion are blatantly discriminated and denied the protection vested under Section 6B of Citizenship (Amendment) Act, 2019 No.47 of 2019.

4.21. The relaxation criteria for eligibility of illegal migrants to gain Citizenship (Amendment) Act, 2019 No.47 of 2019 is unreasonable. With no explanation given as to the inclusion of this clause, it is prima facie unconstitutional, failing the test of reasonability contained in Article 14 (Right to Equality) of the Constitution of India and corrupting the "basic structure doctrine" (Kesavananda Bharati v State of Kerala (1973)4 SCC 225). This kind of religious outlook is antithetical to the concept of secularism espoused in the Constitution of India. Such a condition makes it tough for persons of other

religions, most notably, Islam and Judaism, to enter the fold of Citizenship (Amendment) Act, 2019 No.47 of 2019, making it seem like a targeted ousting practice of these religions.

- 4.22. THAT the Citizenship (Amendment) Act, 2019 No.47 of 2019 has is against the ideology in the preamble of the Constitution of India; Article 14, 15, 25, 26, 27, 28 have safeguarded the Right to Equality. Secularism is inherent in Constitution of India. This Act will divide the society. It will not solve the problems rather it would create more problems.
- 4.23. That, one of the basic principle of secularism is that, it explicitly and implicitly prohibits the establishment of theocratic state and prevents the State from identifying itself associated or favoring any particular religion or religious sect or religions. The State is mandated to accord equal treatment to all religions and religious sects and denominations.
- 4.24. That in view of the above it is in the interest of justice and equity, the Petitioner seeks to pray following directions from this Hon'ble Court under Article 32 of the Constitution of India.
- 4.25. It is further submitted that the Amending Act assumes that all illegal migrants from the three nations named therein have come to India on account of religious persecution. This stand is not supported by any data. The immigrants have themselves not declared that they came to India out of religious persecution. Therefore, this law based on such flawed presumption on fact, is manifestly arbitrary.
- 4.26. While persecution of religious minorities in the three neighbouring nations may be a fact, there is no co-relation between the migration of all those who have come to India and the religious persecution. It is a fact that many migrations are only on account of economic reasons. Therefore the law is manifestly arbitrary and un Constitutional.
- 4.27. The linguistic minority of Tamil people in Sri Lanka are persecuted because of their linguistic and ethnic identity. Any exclusion of them

would defeat the purpose of a law which is claimed to be for the persecuted minorities.

- 4.28. A law which is intended to give special protection to persecuted minorities cannot exclude the Indian origin Tamil population of Sri Lanka and if it does so, this Hon'ble Court may kindly be pleased to either hold the entire amendment Act to be un-Constitutional or be pleased to read down the law so as to uphold its vires if and only if it also includes the linguistic and ethnic minority of Tamil people from Sri Lanka.
- 4.29. It is submitted that the Constitution of India permits special provision for the religious and linguistic minorities under Articles 15(5) and Article 30. Religion and language are used with equal importance and there cannot be any special protection only on account of religion while excluding the linguistic minorities who are similarly situated. Article 350A and 350B also provide for special provision for linguistic minorities. It is submitted that the Constitution of India envisages special protection for linguistic minorities and an amendment excluding linguistic minorities while ensuring it for religious minorities alone is un Constitutional.

PRAYER

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

- (a) Issue a writ or declaration or any other appropriate writ or direction declaring the Citizenship (Amendment) Act, 2019 No.47 of 2019 dated 12.12.2019 to be in violation of Article 14 and 21 of the Constitution of India and strike down the same;
- (b) Issue a writ or declaration or order or direction declaring the Notifications bearing number GSR 685(E) dated 08.09.2015, the Notification bearing number GSR 702 (E) dated 18.07.2016 Citizenship (Amendment) Act, 2019 No.47 of 2019 dated 12.12.2019

to be unconstitutional as it is violative of Article 14 and 21 of the Constitution of India and strike down the same.

- (c) Pass such other and further order/orders as are deemed fit and proper in the facts and circumstances of the case.

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

Drawn by:
Mr. M.V. Bhaskar, Advocate
Mr. Prashant Padmanabhan, Advocate
Mr. Navneet Dugar, Advocate

SETTLED AND FILED BY:

Drawn on: 15.12.2019
Filed on: 16.12.2019

T. HARISH KUMAR
Advocate for the Petitioners