

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:

ASSAM STATE JAMIAT ULEMA

**..PETITIONER**

VERSUS

UNION OF INDIA

**...RESPONDENT**

PAPER BOOK  
(FOR INDEX KINDLY SEE INSIDE)

Mrigank Prabhakar  
COUNSEL FOR THE PETITIONER

Assam State Jamiat Ulema

...Petitioner

Versus

1. UNION OF INDIA

Through Ministry of Home Affairs

North Block

New Delhi-110001

2. STATE OF ASSAM,

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

...Respondents

**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 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 is the State unit of Jamiat Ulema-E-Hind in Assam, which is unregistered body and was founded in the year 1919. That J.U.H, was founded under the leadership of Hazrat Sheikhul Hind Maulana Mehmood Hassan R.A., a great Muslim leader, religious scholar and had wide following of not only the Muslims but also the other communities and as such lodged a crusade against the British with active support of not only the Muslim leaders but also with the support of Hindu brethren.

2. "JUH" verily believe that fundamentalism has no place in Islam and the petitioner's association has been striving ahead in the said direction by issuing Fatwas and has launched crusade, campaign and riots against fundamentalism which fact is a known fact, the same is not being repeated for the sake of brevity and to avoid repetition.

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 The Petitioner 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. So called illegal migration into Assam was the core issue behind the Assam Agitation (1979-1985). It was also the prime contributory factor behind the outbreak of insurgency in the State.

3.2 That in 1919, the parent body of the Petitioner was founded. Petitioner is the State unit of Jamiat Ulema-E-Hind in Assam, which is unregistered body and was founded in the year 1919. That J.U.H, was founded under the leadership of Hazrat Sheikhul Hind Maulana Mehmood Hassan R.A., a great Muslim leader, religious scholar and had wide following of not only the Muslims but also the other communities and as such lodged a crusade against the British with active support of not only the Muslim leaders but also with the support of Hindu brethren.

“JUH” verily believe that fundamentalism has no place in Islam and the petitioner’s association has been striving ahead in the said direction by issuing Fatwas and has launched crusade, campaign and riots against fundamentalism which fact is a known fact, the same is not being repeated for the sake of brevity and to avoid repetition.

That the Respondent is the Union of India through the Ministry of Home Affairs. The Respondent 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 historical Assam Accord, 1985. The Respondent No. 2 is the state of Assam that was also a signatory to Assam Accord, 1985.

3.2 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-2**.

3.3 That, Articles 5 to 10 of the Constitution deals with the citizenship in India and the Constitution does not lays down provisions as well as permits grant of citizenship on the basis of religion. 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.

3.4 That from 1978-1985 there were mass agitations in Assam against the outsiders meaning thereby those who have settled in the state from outside should be driven out. With the course of time the movement was turned into anti foreigners. The six years long agitation entailed mass frenzy resulting in genocide and displacement of people, loot, arsoning, damages of public

properties, worth some crores of rupees, disrupt of academic atmosphere in the State of Assam and all sorts of anarchism. As per the statement made by the then Union Minister of State for Home Affairs on the floor of parliament, during the period from August, 1979 to January, 1980, 78 people had lost their lives in the wake of Assam agitation. There were 120 cases arsoning, 127 cases of assault with weapon. Moreover 32000 houses of 40 villages were gutted making 15000 peoples homeless. In the year 1980 there were 198 cases of murders, 654 cases of assault, 259 cases of arsoning and the total numbers of such crimes relating to agitation was 1613 as per official report. In the year 1981 there were 51 cases murder, 193 cases or arsoning and the total incident of crimes were 387. In the year 1982, there were 18 cases of murder, 22 cases of arsoning and the total numbers of crimes relations to the movement was 386. Such violence continued in a scattered manner till January, 1983 when it took a serious turn because of holding of General Election in the State of Assam. As per the official reports submitted by the Govt. of Assam before Commission of Enquiry appointment by Government, headed by Sri Tribhubhan Prasad Tiwary, during the period from January, 1983 to April, 1983 there were cases of murder of 3023 persons arsoning of 15131 dwelling houses, 455 officials buildings, 99 cases of damages of vehicle and 545 cases of damages of bridges in the State of Assam. The picture of situation in the Assam during the six year long agitation can be gauged from above.

- 3.4 That on 15<sup>th</sup> August 1985, The Union of India signed a historical Memorandum of Settlement (MoS) with the leaders of the Assam

agitation on 15<sup>th</sup> 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. 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. The Accord also granted general amnesty from legal proceedings against all those who were accused of varying degree of dastardly crimes during Assam movement. A copy of the Assam Accord of 1985 is marked and annexed hereto as **Annexure P- 3**.

- 3.5 That in 1985, Citizenship Act was amended in aftermath of the Assam Accord and section 6A was inserted by the parliament unanimously. 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.

3.6 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.

3.7 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. The Division Bench of this Hon'ble Court also directed for preparation of National Register of Citizens (NRC) in Assam containing the persons whose names figure in NRC, 1951 or any of the Electoral Rolls up to midnight of 24<sup>th</sup> March, 1971 and their descendants in time bound manner to bury the foreigners issue in Assam.

3.8 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. The notification also amended Foreigners Amendment order, 1948 wherein the above mentioned class of persons were provided exemption from the

application of provisions of the Foreigners Act, 1945. A copy of the notification dated 08.09.2015 is marked and annexed hereto as Annexure **P-4**.

3.9 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. The notification also amended Foreigners Amendment order, 1948 wherein the above mentioned class of persons were provided exemption from the application of provisions of the Foreigners Act, 1945. A copy of the notification dated 18.07.2016 is marked and annexed hereto as Annexure **P-5**.

3.10 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.

3.11 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-6**.

3.12 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.

3.13 That, 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 against the provisions of Assam accord which was a sovereign promise?
- V. Whether the Government of India can breach its agreement with the representatives of people of Assam that brought lasting peace through Assam Accord?
- VI. Whether the Citizenship Amendment Act, 2019 is violation of Right to life and personal liberty enshrined under the constitution of India?
- VII. Whether the Citizenship Amendment Act, 2019 is arbitrary and manifestly illegal under the Article 14?
- VIII. Whether the differentia between communities and countries arbitrary and has no nexus with the objective sought to be achieved?
- IX. Whether the Citizenship (Amendment) Act, 2019 creates arbitrary classification among citizens born after promulgation of Citizenship Amendment Act, 2003?

**GROUNDS:**

- 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 Elams 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 Pact).
- 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 **political or** racial or ethnic persecution. That none of these three distinctions can be termed to be reasonable classification.

H. That the Petitioner humbly submits that the present amendment is against the letter and spirit of Assam Accord. It is pertinent to mention here that Assam accord was accepted by all and the amendment to citizenship Act in light of Assam Accord that inserted Section 6A was a rare unanimous legislation.

I. That any derogation from Assam accord will only create more disturbances in Assam. It is submitted that the identification and deportation of the illegal immigrants as was decided in Assam Accord was non partisan and was absolutely secular. It did not create any artificial classification based in religion.

J. That the insertion of section 6A in the aftermath of Assam accord also caused amendments in Citizenship rules which is not the case with the present amendment.

K. 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 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”.

- L. That the amendment also fails to meet the *nexus* test of equality as laid down in the State Of West Bengal vs Anwar Ali 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.
- M. 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.
- N. That a purely religious classification, devoid of any determining principle, is also manifestly arbitrary because it violates the fundamental constitutional value of secularism.
- O. That the act is arbitrary in so much so that the act provides that illegal migrants who fulfill 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 or 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, Nagaland and Manipur.

- P. 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.
- Q. By excluding Muslim illegal migrants and creating a religion based differentia, the amendment is in violation of Article 14 of the Constitution.
- R. 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.
- S. That causing statelessness is in violation of the principles of the customary International law.
- T. That Amendment Act, violates India’s international obligation under Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.
- U. 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.”*

V. That 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.

W. 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.

X. 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 anybody 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.”*

Y. That the amendment act suffers from arbitrariness as much as it makes 31<sup>st</sup> 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 24<sup>th</sup> 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.

Z. 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.

AA. 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.

BB. 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'.

CC. 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 protests 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 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 a writ/ order or direction to the Respondents to exempt the whole of State of Assam from the ambit of Citizenship Amendment Act, 2019;
- c. Issue Rule Nisi in terms of prayers (a) and (b) 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: 15.12.2019

Drawn by: Mustafa Khaddam Hussain

Anas Tanwir

A.S. Tapadar

(Advocates)

Filed by:

Filed on: 16.12.2019  
Place: New Delhi

**(Mrigank Prabhakar)**  
ADVOCATE FOR THE PETITIONER

