

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

**WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019**  
(Petition under Article 32 of the Constitution of India read with Order XXXVIII of the Supreme Court Rules, 2013)

**IN THE MATTER OF:**

1. Assam Association of the Deaf  
Gopinath Nagar, Guwahati-781016,  
Dist.-Kamrup (M),  
Assam  
Represented by:  
Mr. Ankur Sarma,  
Member of Assam Association of the Deaf, Guwahati
  
2. Ankur Sarma,  
Member of Assam Association of the Deaf, Guwahati  
S/o Shri Tapan Kumar Sarma,  
Aged about 22 years,  
R/o Maligaon East Gotanagar,  
Qrs. 102/B, Guwahati-781011  
Assam

...PETITIONERS

VERSUS

1. UNION OF INDIA,  
THROUGH THE SECRETARY, MINISTRY OF HOME  
AFFAIRS, NORTH BLOCK, CENTRAL SECRETARIAT, NEW  
DELHI-110001
  
2. UNION OF INDIA,  
THROUGH THE SECRETARY, MINISTRY OF EXTERNAL  
AFFAIRS, SOUTH BLOCK, CENTRAL SECRETARIAT, NEW  
DELHI-110001
  
3. Union of India  
Through its Secretary, Ministry of Law and Justice  
Shastri Bhawan, New Delhi-110001
  
4. STATE OF ASSAM,  
THROUGH ITS CHIEF SECRETARY,  
ASSAM SECRETARIAT, DISPUR CAPITAL COMPLEX,  
G. S. ROAD, GUWAHATI- 781006  
ASSAM

...RESPONDENTS

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

To

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

The humble Petition of the Petitioners above named.

**MOST RESPECTFULLY SHEWETH:**

1. The present Petition has been preferred by the Petitioners herein in their personal as well as representative capacity for a large number of people living in Assam who have suffered and are still suffering the consequences of illegal immigration of Bangladeshi citizens in Assam, seeking enforcement of their fundamental rights guaranteed under the Constitution of India, inter alia including the rights contained in Articles 14, 15, 19, 21, 25, 29, 325, 326 and 355 of the Constitution of India. The present Petition inter alia challenges the Citizenship (Amendment) Act, 2019 as a whole, and/or specifically Sections 2, 3, 5 and 6 thereof, as discriminatory, arbitrary, illegal and against the basic structure of the Constitution.

**ARRAY OF PARTIES**

1. The Petitioner No.1 is the Assam Association of the Deaf and Petitioner No.2 is a citizen of India, holding the post of Member of Assam Association of the Deaf, with annual income of about Rs. 1,50,000/- per annum, Aged about 22 years, R/o Maligaon East Gotanagar, Qrs. 102/B, Guwahati-781011, Assam, PAN Card of the Petitioner bearing PAN No. AABAA2929G. It is also pertinent to mention that the National People's Party, Meghalaya is supporting the Impugned Act considering the fact that inner permit is promised to the State of Meghalaya by the Central Government whereas such similar assurance is not coming for the entire State Assam and as such the Assam Unit of the National People's Party is opposing the Impugned Act as the same would have massive threat on the State.
2. The Petitioners do not have any personal interest or any personal gain or private motive or any other oblique reason in filing this Writ Petitioner in Public Interest. The Petitioner has not been involved in any other civil or criminal or revenue litigation, which could have legal nexus with the issues involved in the present Petition.

3. Respondent No. 1 is the Union of India, through the Ministry of Home Affairs and Respondent No. 2 is the Ministry of External Affairs of the Union of India. The Union of India has enacted the Citizenship (Amendment) Act, 2019, which is currently under challenge in the present Writ Petition. Union of India was a signatory to the Assam Accord. Respondent No. 3 is the State of Assam, which was also one of the signatories to the Assam Accord. All the three Respondents are proper and necessary parties to the present Petition and are likely to be affected by the orders sought in the present Petition.
4. The Petitioners, through the present writ petition, are invoking the civil original writ jurisdiction of this Hon'ble Court to seek issuance of a writ, order or direction of like nature against the Respondents herein inter alia to quash the Citizenship (Amendment) Act, 2019 as a whole or Section 2, 3, 5 and 6 thereof, being unconstitutional and in violation of several provisions of the Constitution of India.
5. The Petitioners have no other equally efficacious remedy except to approach this Hon'ble Court by way of present Writ Petition. All annexures annexed to the Writ Petition are true copies of their respective originals.

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

#### **BRIEF FACTS OF THE CASE**

7. That In 1935, when the Government of India Act was promulgated, Assam was, Under Section 46(1), stated to be a Governor's province. It was in this scenario that the Foreigners Act of 1946 was enacted under which the burden of proving whether a person is or is not a foreigner lies upon such person. At the commencement of the Constitution of India, Article 5 stated that every person who has his domicile in the territory of India and who was either born in the territory of India; or either of whose parents were born in the territory of India; or who has been ordinarily resident in the territory of India for not less than 5 years immediately preceding such commencement shall be a citizen of India.
8. At this stage, the Immigrants (Expulsion from Assam) Act, 1950 was enacted to protect the indigenous inhabitants of Assam. The statement of objects and reasons of this Act says "during the last few months a serious situation had arisen from the immigration of a very large number of East Bengal residents into Assam. Such large migration is disturbing the economy of the

province, besides giving rise to a serious law and order problem. The bill seeks to confer necessary powers on the Central Government to deal with the situation."

9. That Between 1948 and 1971, there were large scale migrations from East Pakistan to Assam. As is well known, West Pakistan commenced hostilities against East Pakistan on 25th March, 1971 culminating in the war which dismembered the two parts of Pakistan and in which a new nation, Bangladesh, was born.
10. That Bangladesh and India share a 4,096-kilometer international border, the fifth-longest land border in the world. Out of the said border, 262 kms fall in the State of Assam and 92 kms of the border in the State of Assam is riverine. It is respectfully submitted by the Petitioners that large scale illegal migration from Bangladesh over several decades has been altering the demographic complexion of the State of Assam. It poses a grave threat both to the identity of the Assamese people and to national security. Illegal migration into Assam was the core issue behind the Assam student movement. It was also the prime contributory factor behind the outbreak of insurgency in the State.
11. That given the continuing influx of illegal migrants from Bangladesh into Assam, the All Assam Students Union

first submitted a memorandum to the then Prime Minister of India (in 1980) inviting her urgent attention to this issue. As a result of such representations, Parliament enacted the Illegal Migrants (Determination by Tribunal) Act, 1983. This Act was made applicable only to Assam and was expected to be a measure which speeded up the determination of illegal migrants in the State of Assam with a view to their deportation. Not being satisfied with this parliamentary measure, and in view of large scale agitations in the State of Assam, an accord was signed known as the "Assam Accord" on 15th August, 1985 between the AASU, AAGSP and the Central and the State Governments.

12. The Assam Accord (1985) was a Memorandum of Settlement signed between representatives of the Government of India, State of Assam, the Petitioner No. 1 and other representative organisations in New Delhi on 15.08.1985. The Accord brought an end to the agitation and paved the way for the leaders of the agitation to form a political party and a government in the state of Assam soon thereafter. The signatories to the Assam Accord were Prafulla Kumar Mahanta (President, AASU), Bhriugu Kumar Phukan (General Secretary, AASU), Biraj Sharma, (General Secretary, All

Assam Ganam Sangram Parishad), R.D. Pradhan, Home Secretary, Government of India, P.P. Trivedi, Chief Secretary, Government of Assam. The Assam Accord was signed in the presence of Mr. Rajiv Gandhi, the then Prime Minister of India. The Accord received widespread acceptance. The political party formed by the leaders of the agitation, namely, Asom Gana Parishad (AGP), contested elections and formed the government in the elections held immediately thereafter. It may be mentioned that although the Assam Accord brought an end to the agitation, some of the vital clauses are yet to be implemented. The Assam Accord reads as under:

*"ASSAM ACCORD*

*15th August, 1985*

*(Accord between AASU, AAGSP, Central and State Government on the Foreigner Problem Issue)*

*MEMORANDUM of SETTLEMENT*

- 1. Government have all along been most anxious to find a satisfactory solution to the problem of Foreigners in Assam. The All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) have also expressed their Keenness to find such a solution.*
- 2. The AASU through their Memorandum dated 2nd February, 1980 presented to the Late Prime Minister Smt. Indira Gandhi, conveyed their profound sense of apprehensions regarding the continuing influx of foreign*

*nationals into Assam and the fear about adverse affects upon the political, social, cultural and economic life of the State.*

*3. Being fully alive to the genuine apprehensions of the people of Assam, the then Prime Minister initiated the dialogue with the AASU/AAGSP. Subsequently, talks were held at the Prime Minister's and Home Ministers levels during the period 1980-83. Several rounds of informal talks were held during 1984. Formal discussions were resumed in March, 1985.*

*4. Keeping all aspects of the problem including constitutional and legal provision, international agreements, national commitments and humanitarian considerations, it has been decided to proceed as follows:*

*FOREIGNERS ISSUE:*

*5.*

*1. For purpose of detection and deletion of foreigners, 1-1-1966 shall be the base date and year.*

*2. All persons who came to Assam prior to 1-1-1966, including those amongst them whose names appeared on the electoral rolls used in 1967 elections, shall be regularized.*

*3. Foreigners who came to Assam after 1-1-1966 (inclusive) and upto 24<sup>th</sup> March, 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1939.*

4. Names of foreigners so detected will be deleted from the electoral rolls in force. Such persons will be required to register themselves before the Registration Officers of the respective districts in accordance with the provisions of the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939.

5. For this purpose, Government of India will undertake suitable strengthening of the governmental machinery.

6. On the expiry of the period of ten year following the date of detection, the names of all such persons which have been deleted from the electoral rolls shall be restored.

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

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

9. The Government will give due consideration to certain difficulties express by the AASU/AAGSP regarding the implementation of the Illegal Migrants (Determination by Tribunals) Act, 1983.

*Safeguards and Economic Development:*

6. Constitutional, legislative and administrative safeguards, as may be appropriate, shall be

*provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people.*

*7. The Government takes this opportunity to renew their commitment for the speedy all round economic development of Assam, so as to improve the standard of living of the people. Special emphasis will be placed on the education and Science & Technology through establishment of national institutions.*

*Other Issues:*

*1. The Government will arrange for the issue of citizenship certificate in future only by the authorities of the Central Government.*

*2. Specific complaints that may be made by the AASU/AAGSP about irregular issuance of Indian Citizenship Certificates (ICC) will be looked into.*

*9.*

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

2. *Besides the arrangements mentioned above and keeping in view security considerations, a road all along the international border shall be constructed so as to facilitate patrolling by security forces. Land between border and the road would be kept free of human habitation, wherever possible. Riverine patrolling along the international border would be intensified. All effective measures would be adopted to prevent infiltrators crossing or attempting to cross the international border.*

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

11. *It will be ensured that the law restricting acquisition of immovable property by foreigners in Assam is strictly enforced.*

12. *It will be ensured that Birth and Death Registers are duly maintained.*

*Restoration of Normalcy:*

13. *The All Assam Students Unions (AASU) and the All Assam Gana Sangram Parishad (AAGSP) call off the agitation, assure full co-operation and dedicate themselves towards the development of the Country.*

14. *The Central and the State Government have agreed to:*

1. *Review with sympathy and withdraw cases of disciplinary action taken against employees in the context of the agitation and to ensure that there is no victimization;*
2. *Frame a scheme for ex-gratia payment to next of kin of those who were killed in the course in the agitation.*
3. *Give sympathetic consideration to proposal for relaxation of upper age limit for employment in public service in Assam, having regard to exceptional situation that prevailed in holding academic and competitive examinations etc. in the context of agitation in Assam:*
4. *Undertake review of detention cases, if any, as well as cases against persons charged with criminal offences in connection with the agitation, except those charged with commission of heinous offences.*
5. *Consider withdrawal of the prohibitory orders/notifications in force, if any:*
15. *The Ministry of Home Affairs will be the nodal Ministry for the implementation of the above."*

13. It was in pursuance of this accord that Section 6A was inserted in the Citizenship Act in 1985. The Statement of Objects and Reasons of the Act specifically states that it is legislation required to give effect to the Assam Accord. It was inserted into the Citizenship Act, 1955, via Act 65 of 1985 with effect from 07.12.1985. Section 6A

provides that, notwithstanding anything contained in any other law for the time being in force,

- a. all persons of Indian origin who came into Assam from the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985 (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the people held in 1967) before 01.01.1966, and who have been ordinarily resident in Assam since the date of their entry into Assam, shall be deemed to be citizens of India;
- b. all persons of Indian origin who came to Assam from the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985, on or after 01.01.1966 but before 25.03.1971, and have been ordinarily resident in Assam and have been detected to be a foreigner, shall register with the Registering Authority and their names, if included in the electoral roll for any Assembly/Parliamentary Constituency in force on the date of such detection, shall be deleted therefrom for a period of 10 years.

- c. all persons of Indian origin who came to Assam from the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985, on or after 01.01.1966 but before 25.03.1971, from the date of detection as a foreigner, shall have the same rights and obligations as a citizen of India, except the right to have their name included in electoral rolls for any Assembly or Parliamentary constituency. Ten years from the date of detection as a foreigner, such person would be deemed to be a citizen of India.
14. That as part of the Assam Accord, a huge number of illegal migrants were made deemed citizens of India. It is interesting to note that Parliament has not enacted any law pertaining to refugees from other countries. Refugee status can be granted and has been granted in India through executive orders passed by the Central Government. In any case, Section 6A did not merely rest content with granting refugee status to those who were illegal migrants from East Pakistan but went on to grant them the benefit of citizenship of India so that all persons who had migrated before 1966 and all persons who migrated before 25th March, 1971 respectively

were to become citizens of India either immediately or as is mentioned by the Act after a period of 10 years once there has been a determination that they have in fact settled in India between 1966 and 1971.

15. The Governor of Assam in his report dated 8<sup>th</sup> November, 1998 sent to the President of India has clearly said that unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State. It is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of Assam but has more dangerous dimensions of greatly undermining our national security. The report also says that this can lead to the severing of the entire landmass of the north-east with all its resources from the rest of the country which will have disastrous strategic and economic consequences. The report is by a person who has held the high and responsible position of Deputy Chief of the Army Staff and is very well equipped to recognize the potential danger or threat to the security of the nation by the unabated influx and continued presence of Bangladeshi nationals in India. Bangladesh is one of the world's most

populous countries having very few industries. The economic prospects of the people in that country being extremely grim, they are too keen to cross over the border and occupy the land wherever it is possible to do so. The report of the Governor, the affidavits and other material on record show that millions of Bangladeshi nationals have illegally crossed the international border and have occupied vast tracts of land like "Char land" barren or cultivable land, forest area and have taken possession of the same in the State of Assam. Their willingness to work at low wages has deprived Indian citizens and specially people in Assam of employment opportunities. This, as stated in the Governor's report, has led to insurgency in Assam. Insurgency is undoubtedly a serious form of internal disturbance which causes grave threat to the life of people, creates panic situation and also hampers the growth and economic prosperity of the State of Assam though it possesses vast natural resources. This being the situation there can be no manner of doubt that the State of Assam is facing "external aggression and internal disturbance" on account of large scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of Union of India to take all measures for protection of the State of Assam from such external aggression and internal

disturbance as enjoined in Article 355 of the Constitution. Having regard to this constitutional mandate, the question arises whether the Union of India has taken any measures for that purpose. He said:

The dangerous consequences of large scale illegal migration from Bangladesh, both for the people of Assam and more for the Nation as a whole, need to be empathetically stressed. No misconceived and mistaken notions of secularism should be allowed to come in the way of doing so.

As a result of population movement from Bangladesh, the spectre looms large of the indigenous people of Assam being reduced to a minority in their home state. Their cultural survival will be in jeopardy, their political control will be weakened and their employment opportunities will be undermined.

The silent and invidious demographic invasion of Assam may result in the loss of the geo-strategically vital districts of lower Assam. The influx of illegal migrants is turning these districts into a Muslim majority region. It will then only be a matter of time when a demand for their merger with Bangladesh may be made. The rapid growth

of international Islamic fundamentalism may provide the driving force for this demand. In this context, it is pertinent that Bangladesh has long discarded secularism and has chosen to become an Islamic State. Loss of lower Assam will sever the entire land mass of the North East, from the rest of India and the rich natural resources of that region will be lost to the Nation.

16. That three judge bench of this Hon'ble Court struck down the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 as ultra vires in its judgment reported as Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665 (hereinafter "Sonowal (I)"). It was inter alia held by this Hon'ble Court (at para 63) that illegal migration into the State of Assam constituted "external aggression" within the meaning of Article 355 of the Constitution of India. this Court referred to the Assam Accord and to the huge influx of illegal migrants into the State of Assam and came to the conclusion that the 1983 Act and the rules made thereunder operated in the reverse direction i.e. instead of seeing that illegal migrants are deported, it did the opposite by placing the burden of proof on the State to prove that a person

happens to be an illegal migrant. This Court went on to hold that Article 355 of the Constitution had been violated, in as much as the Union had failed to protect the State of Assam against the external aggression and internal disturbance caused by the huge influx of illegal migrants from Bangladesh to Assam and went on to hold the 1983 Act to be violative of Article 14 as well.

17. That in the aforesaid case the Union of India filed a counter-affidavit on 18-7-2000, which has been sworn by Shri Jatinder Bir Singh, Director, Ministry of Home Affairs. In para 7 of this affidavit, it was stated that a proposal to repeal the IMDT Act is under consideration of the Government of India. A copy of the reply given by Shri I.D. Swami, Minister of State in the Ministry of Home Affairs in the Rajya Sabha on 8-3-2000 has been filed as Annexure R-2 to the counter-affidavit, wherein the Minister had said that in the State of Assam Foreigners Tribunals under the Foreigners Act, 1946 are functioning for detection of illegal migrants, who had come to the State of Assam after 1-1-1966 and up to 24-3-1971 and the Illegal Migrants Determination Tribunals under the IMDT Act have been constituted for detection and deportation of illegal migrants, who had entered into India on or after 25-3-1971. The Hon'ble

Minister had further stated that the Government is of the view that application of the IMDT Act to the State of Assam alone is discriminatory and a proposal to repeal the said Act is under consideration of the Government. A true copy of the latest status report filed by the Government in Writ Petition No. 125 of 1998, which has been filed seeking deportation of all Bangladeshi nationals from India, has been filed as Annexure R-1 to the counter-affidavit and paras 3 to 7 of the said status report are being reproduced below:

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

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

The 'Pull Factors' on the Indian side include:

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

18. In Sarbananda Sonowal v. Union of India it was held by this Hon'ble Court that:

the influx of Bangladeshi nationals who have illegally migrated into Assam pose a threat to the integrity and security of north-eastern region. Their presence has changed the demographic character of that region and the local people of Assam have been reduced to a status of minority in certain districts. In such circumstances, if the Parliament had enacted a legislation exclusively for the State of Assam which was more stringent than the Foreigners Act, which is applicable to rest of India, and also in the State of Assam for identification of such persons who migrated from the territory of present Bangladesh between 1<sup>st</sup> January, 1966 to 24<sup>th</sup> March, 1971, such a

legislation would have passed the test of Article 14 as the differentiation so made would have had rational nexus with the avowed policy and objective of the Act. But the mere making of a geographical classification cannot be sustained where the Act instead of achieving the object of the legislation defeats the very purpose for which the legislation has been made. As discussed earlier, the provisions of the Foreigners Act are far more effective in identification and deportation of foreigners who have illegally crossed the international border and have entered India without any authority of law and have no authority to continue to remain in India. For satisfying the test of Article 14, the geographical factor alone in making a classification is not enough but there must be a nexus with the objects sought to be achieved. If geographical consideration becomes the sole criteria completely overlooking the other aspect of "rational nexus with the policy and object of the Act" it would be open to the legislature to apply enactments made by it to any sub-division or district within the State and leaving others at its sweet will. This is not the underlying spirit or the legal principle on which Article 14 is founded. Since

the classification made whereby IMDT Act is made applicable only to the State of Assam has no rational nexus with the policy and object of the Act, it is clearly violative of Article 14 of the Constitution and is liable to be struck down on this ground also.

19. That it is difficult to make a realistic estimate of the number of illegal immigrants from Bangladesh because they enter surreptitiously and are able to mingle easily with the local population due to ethnic and linguistic similarities. The demographic composition in the districts bordering Bangladesh has altered with the illegal immigration from Bangladesh. The districts of Assam and West Bengal bordering Bangladesh have recorded growth of population higher than the national average. The States of Meghalaya, Mizoram and Tripura have also recorded high rates of population growth. Illegal immigrants from Bangladesh have also been using West Bengal as a corridor to migrate to other parts of the country.
20. The large-scale influx of illegal Bangladesh immigrants has led to large tracts of sensitive international borders being occupied by foreigners. This has serious implications for internal security. a result of population

movement from Bangladesh, the specter looms large of the indigenous people of Assam being reduced to a minority in their home State. Their cultural survival will be in jeopardy, their political control will be weakened and their employment opportunities will be undermined. There was a large scale influx of persons from the then East Pakistan into India before the commencement of December 1971 Indo-Pak war.

21. On 3rd November, 1971, one month before the actual commencement of the war, Dr. Nagendra Singh, India's representative in the Sixth Committee of the General Assembly on the Definition of Aggression, made a statement, wherein he said :- ".....The first consideration, in the view of the Indian Delegation, is that aggression must be comprehensively defined. Though precision may be the first virtue of a good definition, we would not like to sacrifice the requirement of a comprehensive definition of aggression at any cost. There are many reasons for holding this view. Aggression can be of several kinds such as direct or indirect, armed in nature or even without the use of any arms whatsoever. There can be even direct aggression without arms..... We would accordingly support the categorical view expressed by

the distinguished delegate of Burma, the U.K. and others that a definition of aggression excluding indirect methods would be incomplete and therefore dangerous. ...., there could be a unique type of bloodless aggression from a vast and incessant flow of millions of human beings forced to flee into another State. If this invasion of unarmed men in totally unmanageable proportion were to not only impair the economic and political well-being of the receiving victim State but to threaten its very existence, I am afraid, Mr. Chairman, it would have to be categorized as aggression. In such a case, there may not be use of armed force across the frontier since the use of force may be totally confined within one's territorial boundary, but if this results in inundating the neighbouring State by millions of fleeing citizens of the offending State, there could be an aggression of a worst order..... What I wish to convey, Mr. Chairman, is the complexity of the problem which does not permit of a fourline definition of aggression much less an ad-interim declaration on it."

22. This Hon'ble Court in its judgment dated 17.12.2014 in Assam Sanmilita Mahasangha vs. Union of India, (2015) 3 SCC 1 has observed that thirteen questions,

enumerated therein, need to be answered by a minimum of 5 Judges under Article 145(3) of the Constitution of India, as most of them are substantial questions as to the interpretation of the Constitution. An enumeration of these questions is as follows:

- (i) Whether Articles 10 and 11 of the Constitution of India permit the enactment of Section 6A of the Citizenship Act in as much as Section 6A, in prescribing a cut-off date different from the cut-off date prescribed in Article 6, can do so without a "variation" of Article 6 itself; regard, in particular, being had to the phraseology of Article 4(2) read with Article 368(1)?
- (ii) Whether Section 6A violates Articles 325 and 326 of the Constitution of India in that it has diluted the political rights of the citizens of the State of Assam;
- (iii) What is the scope of the fundamental right contained in Article 29(1)? Is the fundamental right absolute in its terms? In particular, what is the meaning of the expression "culture" and the expression

"conserve"? Whether Section 6A violates Article 29(1)?

- (iv) Whether Section 6A violates Article 355? What is the true interpretation of Article 355 of the Constitution? Would an influx of illegal migrants into a State of India constitute "external aggression" and/or "internal disturbance"? Does the expression "State" occurring in this Article refer only to a territorial region or does it also include the people living in the State, which would include their culture and identity?
- (v) Whether Section 6A violates Article 14 in that, it singles out Assam from other border States (which comprise a distinct class) and discriminates against it. Also whether there is no rational basis for having a separate cut-off date for regularizing illegal migrants who enter Assam as opposed to the rest of the country; and
- (vi) Whether Section 6A violates Article 21 in that the lives and personal liberty of the citizens of Assam have been affected adversely by

the massive influx of illegal migrants from Bangladesh.

- (vii) Whether delay is a factor that can be taken into account in moulding relief under a petition filed Under Article 32 of the Constitution?
- (viii) Whether, after a large number of migrants from East Pakistan have enjoyed rights as Citizens of India for over 40 years, any relief can be given in the petitions filed in the present cases?
- (ix) Whether Section 6A violates the basic premise of the Constitution and the Citizenship Act in that it permits Citizens who have allegedly not lost their Citizenship of East Pakistan to become deemed Citizens of India, thereby conferring dual Citizenship to such persons?
- (x) Whether Section 6A violates the fundamental basis of Section 5(1) proviso and Section 5(2) of the Citizenship Act (as it stood in 1985) in that it permits a class of migrants to become deemed Citizens of India without any

reciprocity from Bangladesh and without taking the oath of allegiance to the Indian Constitution?

(xi) Whether the Immigrants (Expulsion from Assam) Act, 1950 being a special enactment qua immigrants into Assam, alone can apply to migrants from East Pakistan/Bangladesh to the exclusion of the general Foreigners Act and the Foreigners (Tribunals) Order, 1964 made thereunder?

(xii) Whether Section 6A violates the Rule of Law in that it gives way to political expediency and not to Government according to law?

(xiii) Whether Section 6A violates fundamental rights in that no mechanism is provided to determine which persons are ordinarily resident in Assam since the dates of their entry into Assam, thus granting deemed citizenship to such persons arbitrarily?

23. This Hon'ble Court in the aforesaid case of Assam Sanmilita Mahasangha vs. Union Further, issued directions to the Union of India and the State of Assam to detect foreigners belonging to the stream of 1.1.1966

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

24. On 07.09.2015, the Union of India promulgated Passport (Entry into India) Amendment Rules, 2015 (hereinafter "2015 Rules") under Section 3 of the Passport (Entry into India) Act, 1920 exempting Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution in Pakistan and Bangladesh and who have entered India on or

before 31.12.2014 without valid documents (or who have overstayed), from the application of Rule 3 of the Passport (Entry into India) Rules, 1950. Rule 3 of the Passport (Entry into India) Rules, 1950 provides that no person, except those specified in Rule 4, may enter India without a "valid passport" (a valid passport is one which conforms to the requirements under Rule 5) and that no person may enter India via water, land or air except through such port or other place as may be specified in this behalf by the Central Government.

25. On the very same day, being 07.09.2015, the Union of India also promulgated the Foreigners (Amendment) Order, 2015 (hereinafter "2015 Order") in purported exercise of powers under Section 3 of the Foreigners Act, 1946. The Foreigners (Amendment) Order, 2015 grants Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution in Pakistan and Bangladesh and who have entered India on or before 31.12.2014 without valid documents or who have overstayed, exemption from the application of the provisions of the Foreigners Act, 1946 and the orders made there under.

26. It is submitted that the effect of the 2015 Rule and the 2015 Order is thus that a class of foreigners, who have entered India without a valid passport or other legal authority or who stay in India beyond the period of authorisation, can continue to remain in India based on religious affiliation, due to alleged religious persecution or alleged fear of religious persecution. A Writ Petition, being W.P. (C) No. 68 of 2016 titled as *Pranab Kumar Mazumadar & Ors. v. Union of India & Anr.* has been filed challenging the 2015 Rule and 2015 Order and notice had been issued thereon on 10.03.2016
27. That on 23.12.2016 the Respondent No. 1 issued another notification/Order, which stated as follows:
- “S.O. 4132(E).—In exercise of the powers conferred by section 16 of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby directs that powers exercisable by it, for registration as a citizen of India under section 5 or for grant of certificate of naturalisation under section 6 of the Citizenship Act, 1955, in respect of any person belonging to minority community in Afghanistan, Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians (herein this Order referred to as “the

applicant”), residing in the States of Chhattisgarh, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan and Uttar Pradesh and Union territory of Delhi, shall also be exercisable by—

- (a) the Collector, within whose jurisdiction the applicant is ordinarily resident, in relation to the districts of—
  - (i) Raipur in the State of Chhattisgarh;
  - (ii) Ahemdabad, Gandhinagar and Kutch in the State of Gujarat;
  - (iii) Bhopal and Indore in the State of Madhya Pradesh;
  - (iv) Nagpur, Mumbai, Pune and Thane in the State of Maharashtra;
  - (v) Jodhpur, Jaisalmer and Jaipur in the State of Rajasthan;
  - (vi) Lucknow in the State of Uttar Pradesh; and
  - (vii) West Delhi and South Delhi in the Union territory of Delhi; and
- (b) the Secretary of the Department of Home of the State or the Union territory, as the case may be, within whose jurisdiction the

applicant is ordinarily resident, in relation to districts not covered under clause (a), in accordance with the provisions of the Citizenship Rules, 2009 (hereinafter referred to as the said rules), subject to the following conditions, namely:—

- (A) the application for registration as citizen of India or grant of certificate of naturalisation as citizen of India under the said rules is made by the applicant online;
- (B) the verification of the application is done simultaneously by the Collector or the Secretary, as the case may be, at the district level and the State level and the application and the reports thereon shall be made accessible simultaneously to the Central Government;
- (C) the Collector or the Secretary, as the case may be, makes such inquiry as he considers necessary for ascertaining the suitability of the applicant and for that purpose forward the application online to such agencies for verification and comments as may be

required under the instructions issued by the Central Government in this regard;

- (D) the comments of the agencies referred to in clause (C) are uploaded online by such agencies and accessible to the Collector or the Secretary, as the case may be, and the Central Government;
- (E) the Collector or the Secretary, as the case may be, on being satisfied with the suitability of the applicant, grant him the citizenship of India by registration or naturalisation and issue a certificate of registration or naturalisation, as the case may be, signed by the Collector or the Secretary, as the case may be, in the Form as prescribed in the said rules; and
- (F) the Collector and the Secretary shall maintain a register, in accordance with the said rules, containing the details of persons so registered or naturalised as a citizen of India and furnish a copy thereof to the Central Government within seven days of such registration or naturalisation..."

28. A Writ Petition, being W.P. (C) No. 20 of 2019 titled as *Nagarikatwa Aain Songsudhan Birodhi Mancha (Forum Against Citizenship Act Amendment Bill) vs. Union Of India* has been filed challenging inter alia the aforesaid notification/ Order dated 23.12.2016 and notice had been issued thereon on 27.02.2019. The Petitioners therefore, filed an application, being I.A. No. 85259 of 2019 in the said writ petition seeking leave from this Hon'ble Court to intervene in the said matter, which is presently pending before this Hon'ble Court.
29. It is submitted that as per the directions of this Hon'ble Court, a National Register of Citizens (NRC) was being prepared by a team of NRC officials, being led by the State Coordinator, and the same was being continuously monitored by this Hon'ble Court. On December 31, 2018, a draft list was published by the NRC authorities which contained names of over 40 lakhs people most of whom were found to have migrated into Assam illegally and to be excluded from the final NRC. As per the Rules, these people were provided the opportunity to present their claims for being included in the final draft and were also heard thereafter. In June 2019, according to a statement issued by the state coordinator of NRC, 1,02,462 persons were further declared ineligible during

the process of verification carried out by the Local Registrars of Citizens Registration (LRCRs). The final list of persons which are excluded from the NRC has been published on August 31, 2019 wherein out of a total of 3,30,27,661 applicants, only 19,06, 657 people were excluded.

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

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

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

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

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

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

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

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

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him: Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section: Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application.

(4) Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873."

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

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

(ii) after clause (f), the following proviso shall be inserted, namely:— "Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard."

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

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

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

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

It is submitted that Section 2 of the impugned Act amends Section 2(1)(b) of the 1955 Act to provide that Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan will not be treated as illegal migrants. In order to get this benefit, they must have also been exempted from the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920 by the central government.

The unamended 1955 Act allowed a person to apply for citizenship by naturalisation, if the person meets certain

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

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

True copy of the Citizenship Amendment Act, 2019 issued by Ministry of Law and Justice on 12<sup>th</sup> December, 2019 is filed herewith and marked as **ANNEXURE P-1** (Pg.\_\_\_\_ to \_\_\_\_).

31. In the context of the relevant constitutional provisions and aforesaid statutory scheme, it is respectfully

submitted that the impugned Act (especially Sections 2, 3, 5 and 6 thereof) is unreasonable, arbitrary, illegal and thus, violative of Article 14 of the Constitution of India. The impugned Act has been passed under extraneous political considerations and is in derogation of the rights of Indian citizens living in the state of Assam. The impugned Act is not in public interest and welfare. The result of the impugned Act will be that a large number of non-Indians, who have surreptitiously entered Assam after 25.03.1971, without possession of valid passport, travel documents or other lawful authority to do so, will be able to take citizenship and reside therein. The impugned Act seeks to do away with any sort of regulation for Hindus, Sikhs, Buddhists, Jains, Parsis and Christian foreigners entering India illegally from Bangladesh, Afghanistan and Pakistan.

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

- (A) Because the Citizenship Amendment Act, 2019 violates Article 21 of the people of Assam in that the lives and liberty of the Citizens of Assam will be affected adversely by the massive influx of illegal immigrant as citizens of India. It has been again and again observed by this Hon'ble Court that influx of illegal immigrant had massively affected the socio economic condition of the State of Assam and the same has serious implications for internal security. As a result of this grant of citizenship the indigenous people of Assam will be reduced to a minority in their home State. Their cultural survival will be in jeopardy, their political control will be a weakened and their employment opportunities will be undermined.
- (B) Because constitutional validity of Section 6A of the Citizenship Act on the ground of it violating Article 21 of the Citizens of Assam is already referred to Constitution Bench of this Hon'ble Court. Under such a situation when the influx of illegal immigrants between 1951 to 1971 itself is pending consideration, the CAA, 2019 could not have been brought into effect.

- (C) Because in Sarabananda Sonowal's case (Supra) it was specifically observed that there can be no manner of doubt that the State of Assam is facing "external aggression and internal disturbance" on account of large scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution. In such situation when there is specific observation from this Hon'ble Court that the illegal immigrants are causing "external aggression and internal disturbance" in the state of Assam, granting citizenship to illegal immigrants now would constitute further external aggression and internal disturbance and as such will violate Article 355.
- (D) The CAA, 2019 violates Article 325 and 326 of the Constitution of India as the same dilutes the political rights of the Citizens of Assam.
- (E) Because the Home Minister, Central Government in his debate in parliament has stated that a self declaration from Hindu, Sikh, Buddhist, Jain, Parsis and Christian Illegal Immigrant stating that he/she

entered India prior to 31<sup>st</sup> December 2014 will be acceptable to consider his citizenship. If this procedure is adopted to consider the citizenship of an illegal immigrant then any person can enter anytime into India and claim citizenship. Even any other person who does not fall in the definition of the amended Act can change his name and swear a false affidavit. This as such shows that the entire Act is absurd and unreasonable and threatens the entire State of Assam as well the entire Nation.

- (F) Because the provisions of the impugned Act does not reflect what is discussed in Statement of Object and Reasoning. As there is no provision in the Act to ascertain or to differentiate Hindu, Sikh, Buddhist, Jain, Parsi and Christian illegal immigrant who entered into India due to religious persecution or any other reason. As discussed above it is clear the illegal immigrants from Bangladesh have entered the State of Assam due to any religious persecution but the influx was mainly due to economic reasons. Thus there is no basis for the Respondent No.1 to exempt illegal migrants from the applicable statutory scheme on the basis of

religious persecution or religious persecution in Afghanistan, Bangladesh or Pakistan

- (G) Because Sections 2, 3, 5 and 6 of the impugned Act is inconsistent of Section 6A of the Citizenship Act, 1955 (hereinafter referred to as "the 1955 Act"). Section 6A was inserted into the 1955 Act, by the Citizenship (Amendment) Act 1985, as a result of the 1985 Assam Accord, whereby illegal migrants who have entered the State of Assam from Bangladesh up to 24.03.1971 were ultimately required to be granted citizenship of India, on the assurance that illegal migrants entering the state of Assam after 25.03.1971 would be deported back to Bangladesh. Sections 2, 3, 5 and 6 of the impugned Act are completely contrary to Section 6A of the 1955 Act, since it legitimises the entry and continued stay of "illegal migrants" as defined under Section 2(1) (b) the 1955 Act in the state of Assam, even if they entered India after 25.03.1971. It is submitted that the provisions of the impugned Act, thus, go contrary to the solemn promise made to the Assamese people by way of the enactment of Section 6A of the 1955 Act. Further when the validity of 6A itself is in question

before the Constitution Bench of this Hon'ble Court bringing of CAA,2019 will further worsen the situation of the Citizens in Assam.

(H) Because the impugned Act is in violation of Article 14 of the Constitution of India. The impugned Act grants unbridled discretion for exclusion of a certain class of persons from the existing legal framework regulating the grant of citizenship of India, without prescribing guidelines/ determinable criteria for identification of such persons, who may have been persecuted. Further, they do not enjoin a prescribed authority with the power to determine whether and in what manner and to what extent, if at all, such persons of the specified religion who have entered into India from Pakistan, Afghanistan and/or Bangladesh, form a special class and/or are eligible for a special treatment, thus granting legal right to citizenship of India to such persons arbitrarily and *en-masse*.

(I) Because this Hon'ble Court has held religion to be a facet of personal autonomy and any classification based on religion is an impermissible classification in terms of Article 14 of the Constitution. Further, classification on the basis of place of birth is also

an impermissible classification and contrary to Part III of the Constitution. It is submitted that Sections 2, 3, 5 and 6 of the impugned Act, thus, make impermissible classification of people and are liable to be struck down on that ground itself.

(J) Because the impugned Act does not have reasonable classification based on intelligible differentia. The classification based on religion *ipso facto* violates Article 14 of the Indian Constitution, wherein the legislation effectuate discrimination on the basis of the intrinsic and core identity of the individual i.e., religious identity of the individual. It is respectfully submitted that this Hon'ble Court in *Navtej Singh Johar v Union of India*, (2018) 10 SCC 1, has held that "*where a legislation discriminates on the basis of an intrinsic and core trait of an individual, it cannot form a reasonable classification based on an intelligible differentia*". It is therefore, submitted that the classification done by the impugned Act falls foul of the law propounded by this Hon'ble Court.

(K) Because, in any case, the classification made by the impugned Act has no rational nexus with the object it is said to achieve. It is submitted that it

would not be correct to say that the impugned Act has been enacted to protect persecuted communities from the neighbouring countries of India as there are several minority Muslim communities and other communities (including atheists) also in the countries in question which also face discrimination and/ or persecution from the other majority Muslim communities. It is further submitted that even the selection of just three countries with a specific state/ majority religion, while leaving out other countries with other state/ majority religions, inter alia like Sri Lanka, Myanmar, China etc. itself fails to withstand the test of a reasonable classification. It is therefore, submitted that both religion based classification and country based classification, done in Sections 2, 3, 5 and 6 of the impugned Act, are unconstitutional and liable to be struck down by this Hon'ble Court.

- (L) Because there is no reasonable justification or rational nexus sought to be achieved by providing an arbitrary cut off date of 31.12.2014.
- (M) Because the impugned Act confers arbitrary and uncontrolled power upon the Executive and is thus

violative of the Petitioners' fundamental rights in that no mechanism is provided to determine whether such persons satisfy the criteria laid down in the impugned Act.

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

*"A true copy of the latest status report filed by the Government in Writ Petition No. 125 of 1998, which has been filed seeking deportation of all Bangladeshi nationals from India, has been filed as Annexure R-1 to the Counter Affidavit and paragraphs 3 to 7 of*

*the said status report are being reproduced below :*

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

*a) steep and continuous increase in population;*

*b) sharp deterioration in land-man ratio;*

*c) low rates of economic growth particularly poor performance in agriculture;*

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

*a) ethnic proximity and kinship enabling easy shelter to the immigrants;*

*b) porous and easily negotiable border with Bangladesh;*

*c) better economic opportunities;*

*d) interested religious and political elements encouraging immigration;”*

- (O) There is thus no basis for the Respondent No.1 to exempt illegal migrants from the applicable statutory scheme on the basis of religious persecution or religious persecution in Afghanistan, Bangladesh or Pakistan.
- (P) Because the impugned Act is in violation of Article 14 of the Constitution of India in as much as it violates the requirement of 'equal protection of the laws' to all persons within the territorial jurisdiction of the Union. The classification made has no relation with the object of the legislations in question. The impugned Act makes an illegal discrimination based on religion and therefore, also runs contrary to the rule against arbitrariness.
- (Q) Because Sections 2, 3, 5 and 6 of the impugned Act violate the obligations of Respondent No. 1 under the United Nations Declaration on the Rights of Indigenous Peoples. It is submitted that due to the continued influx of the illegal immigrants in Assam, the Respondents herein have failed to protect the rights of the indigenous people of Assam as enshrined under the said Declaration. It

is submitted that the impugned Act is, in any manner, also in violation of the international obligations of India.

- (R) Because Sections 2, 3, 5 and 6 of the impugned Act are in violation of the judgment of this Hon'ble Court in Sonowal (I) wherein this Hon'ble Court gave a clear mandate to the Central Government to remove illegal migrants from India and equated the entry and stay of illegal migrants in the state of Assam with external aggression. All foreigners, irrespective of religion or place of origin, who enter India without valid travel documents, are illegal migrants and liable for expulsion. By establishing vague and indeterminable criteria, the effect of the impugned provisions will be to enable more illegal migrants to claim exemption from the existing statutory framework. On a similar reasoning, in the said judgment, this Hon'ble Court had struck down the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 as ultra vires the Constitution. Similarly, in Sonowal II also, the Hon'ble Court had emphasized that all illegal immigrants should be deported.

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

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

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

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

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

- (T) Because the impugned Act imposes an unreasonable and unfair burden on Indian states since no budgetary allocation has been made for the illegal migrants expected to take citizenship of India as a result of the impugned Act. The Central Government has vested the power to identify and deport a foreign national illegally staying in the country under section 3 (2)(c) of the Foreigners Act, 1946 to the State Governments/Union Territory Administrations. Therefore, the State Governments/Union Territory Administrations should have been consulted before promulgating the impugned Act.
- (U) Because the impugned Act is arbitrary, illegal, null and void.
- (V) Because the impugned Act is otherwise bad in law.
33. That the Petitioners have no other efficacious remedy but to approach this Hon'ble Court by means of the present Writ Petition.
34. That the present Petition is filed bonafide and in the interest of justice.

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

**PRAYER**

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

- a) Issue a writ in the nature of mandamus and/ or any other writ/ order or direction declaring the Citizenship (Amendment) Act, 2019 as a whole, or Sections 2, 3, 5 and 6 thereof, as discriminatory, arbitrary and illegal and consequently setting aside the impugned Act as ultra-vires the Constitution of India;
- b) Issue a writ in the nature of Mandamus or any other appropriate a writ/ order or direction to the Respondent no 1 to take effective steps for implementation of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples;
- c) Issue a writ in the nature of Mandamus or any other appropriate a writ/ order or direction to the Respondent no 1 to take effective steps for implementation of Assam Accord in general and for conservation and preservation of the distinct culture, heritage and traditions of the

indigenous people of Assam in furtherance to Clause 6 of the Assam Accord, in particular;

- d) Issue Rule Nisi in terms of prayers (a), (b) and (c) above; and/or
- e) Pass any other such further or other writ, order or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

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

DRAWN ON: /12/2019

FILED BY:

PLACE : NEW DELHI  
DATED: /12/2019

**[KAUSHIK CHOUDHURY]**  
Advocate for the Petitioner(s)