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भारतीय विधिज्ञ परिषद्
BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)

21, Rouse Avenue Institutional Area, New Delhi - 110 002

Date: 23.12.2019

The Chairman,
Bar Council of India,
New Delhi.

Sir,

I am led to understand that the Bar Council of India, in its meeting dated 22 12 2019, had adopted a resolution (Resolution No.467 of 2019) in the backdrop of continuing protests all over the country against the Citizenship Amendment Act(CAA) and the National Register of Citizens (NRC). Your goodself may recall that I had conveyed my inability to attend the said meeting of the Bar Council owing to pressing engagements in my home State.

Reportedly, the resolution in question was moved for adoption as an out of agenda item. I express my strong reservation in considering matters of such importance as

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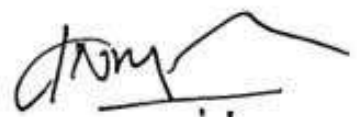


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Pakistan Afghanistan and Bangladesh, leaving apart the other neighbouring countries sharing borders with India like Bhutan, Nepal, Myanmar and Sri Lanka, for the purposes of the Act. Further, there is also no rationale in limiting the benefits of CAA to selected minorities from only three countries of Pakistan, Afghanistan and Bangladesh, leaving apart those from the other neighbouring countries sharing borders with India like Bhutan, Nepal, Myanmar and Sri Lanka. The said classifications are not based on any intelligible differentia.

While Hindus from Pakistan, Afghanistan and Bangladesh are benefitted by CAA, the Act does not cover the persecuted Hindus of Tamil descend in Sri Lanka and Hindu Madhesis of Nepal. Likewise, the Act benefits Christians of Pakistan, Bangladesh and Afghanistan whereas it is not applicable to the persecuted Christians of Bhutan. Though the Act confers benefits on certain religious minorities of Pakistan, it overlooks other persecuted religious minorities therein like Ahmadiyas and Shias. So is the case with Buddhists. While the Act benefits Buddhists



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out of agenda items. If it was included in the circulated agenda, I would have made myself available in the meeting, even keeping aside other pressing engagements referred to above. I earnestly believe that if I had taken part in the deliberations, I could have made every earnest attempt to prevail upon the Learned Members not to adopt the said resolution.

CAA is a class legislation to the core, solely intended to tear apart the secular fabric of the country and to propel sectarian agenda, a relic of the Colonial "divide and rule" policy which has been adopted by the present ruling dispensation at the Centre. Apart from being violative of the fundamental rights guaranteed under Part III of the Constitution of India, it is also violative of its basic structure. For the first time in the history of our Republic, religion has been statutorily made a criterion for conferring a benefit/ right/ status.

There is no plausible rationale, much less any rationale, whatsoever, in grouping three countries of



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neighbouring countries including the said three. The ethnic persecution of Balochs, Sindhis and Mohajirs in Pakistan and that of ethnic Tamils in Sri Lanka are examples. The Act further overlooks the ethnic Indians subjected to persecution in Malaysia and Fiji. Thus, in so far as the act applies only to persons subjected to religious persecutions, the same is discriminatory on that count also.

The entire country, cutting across political allegiances and religious beliefs, are out on the streets protesting against CAA and the proposed NRC. The people of India chose to be secular in 1947. Now, they are out on the streets to defend their choice and subvert the covert attempt of the Union Government to make India a theocratic State. The campuses all over the country are taking up the struggle against the divisive agenda behind CAA. They are out there not on the diktats of any political or religious leaders or bosses, but on their own volition, in their attempt to save the Constitution.

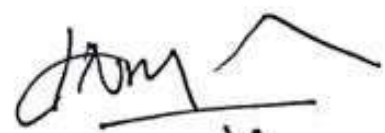


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from Pakistan, Bangladesh and Afghanistan, it does not cater to the Buddhists of Nepal. The Act, though applicable in the case of religious persecution of minorities in three countries, overlooks the religious persecution of Rohingyas in Myanmar and Muslims in Sri Lanka, who are also miniscule minorities therein.

A Stateless refugee, though a living person, is said to be politically lifeless. Such a person, on account of the provisions of CAA which harps on religious identity, will be put to a situation wherein he will have to choose between the State and his religion. This will amount to violation of fundamental rights guaranteed under Articles 21 and 25 of the Constitution.

Persecutions necessarily need not be on religious grounds alone and can be for varied reasons. The Act caters to only a class of minorities subjected to religious persecution in three neighbouring countries of Pakistan, Bangladesh and Afghanistan, while it overlooks other persecutions on the grounds of ethnicity in our



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B.R.Ambedkar, the Father of our Constitution and Sardar Vallabhai Patel, the Iron Man of India, were all lawyers who gave up their profession for the cause of the country. There were many solicitors, barristers, pleaders and vakils who left the court rooms to join and led the freedom struggle. We the lawyers, as a community, have never shied away from leading the country in moments of despair. We have to ensure that the fundamental right of equality guaranteed under Article 14 of our secular Constitution to any person within the territory of India is made available to all irrespective of religious faith.

Constitutional Courts may decide upon the constitutionality or otherwise of a legislation. But, in a democratic polity, expression of dissent against a patently arbitrary and unjust law need not always be through the process of Courts and can be through popular protests.

The protests against CAA and NRC are the attempt of the Indian citizens to save their Constitution from being trampled upon by an authoritarian regime on the strength



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The NDA ruled States and Delhi Police are brutally suppressing the struggle. It may be noted that the protests have been by and large peaceful in Non NDA ruled States, While bloodshed occurred in NDA Ruled States of Uttar Pradesh, Delhi, Karnataka, Assam, Tripura and Bihar, the gatherings of thousands of protesters in various cities of Non NDA Ruled States like Maharashtra, Punjab, Kerala, Madhya Pradesh and Rajasthan did not create any law and order problems. Altogether twenty persons have reportedly been killed in Police encounters on protesters in Uttar Pradesh and Karnataka. Visuals revealed through media showed unprovoked police firing against the crowd in Karnataka. This speaks volumes for the fact that who are the real perpetrators of violence and bloodshed.

The citizenry of our country is having a tryst with history. The protests against CAA have gained international attention. The lawyers of India have always led the country and its citizens in rightful struggles, the freedom movement and the resistance to internal emergency of 1975 being examples. Gandhiji, the Father of our Nation,



of their brute majority in the Legislature. Being the real torch bearers of the Constitution, it is the duty of every self esteemed lawyer to lead the struggle to defend the Constitution.

I request your goodself and the Learned Members of the Bar Council of India to withdraw Resolution No. 467 of 2019 taking note of the aforementioned circumstances and also to express solidarity with the protests all over the country against CAA and NRC.

With warm regards,



N. Manoj Kumar,
Member,
Bar Council of India.