

IN THE HON'BLE HIGH COURT OF KARNATAKA AT
BANGALORE

WRIT PETITION (CIVIL) NO. _____ OF 2019(PIL)

(MEMORANDUM OF PETITION UNDER ARTICLE 226
& 227 OF THE CONSTITUTION OF INDIA)

BETWEEN:

1. Peoples unity for civil liberties &
Human rights forum (PUCL & HRF)
Branch office # 88/2,3rd cross,
West of Padarayanpura, Bangalore-560026
2. Tiger Tipu & Baba Saheb Ambedkar
Welfare Organisation
#29, Shop No 16 RK Plaza,
Someshwara Nagar,
Arekempahalli,
Jayanagar 1stblock.
Bangalore-560011

...Petitioners

AND

1. Union Of India,
Through Its Secretary
Ministry Of Home Affairs
North Block, Central Secretariat
New Delhi-110001
2. Ministry Of Law & Justice
Through Secretary, Shastri Bhawan,
New Delhi 110001.
3. State Of Karnataka
Through Principal Secretary
Vidhana Soudha, Bangalore 560001
4. Ministry Of Law & Justice
Through Secretary, Vidhana Soudha,
Bangalore 560001

...Respondents

**(MEMORANDUM OF PETITION UNDER ARTICLE
226 & 227 OF THE CONSTITUTION OF INDIA)**

The Petitioners named above beg to state as follows:-

I. That for the purpose of issue of summons, court notices, process, etc., from this Hon'ble court and the address of the parties are as stated above in the cause title and the Petitioners may also be served through their counsels Mr. Sirajuddin Ahmed, Vasim Pasha, Shaik Ali, & Haleema Begum Advocates, [REDACTED]

II. That for the similar purposes the respondent may also served upon the address furnished in the cause-title above and the respondent is also represented by the High court government pleader high court buildings, at Bangalore.

MOST RESPECTFULLY SHOWETH:

1. The present writ petition under Article 226 & 227 is preferred by the Petitioners herein since the Petitioners is aggrieved by the enactment of

Citizenship(Amendment), Act 2019, wherein first time religion is introduced as a reference point / condition for acquisition of Indian Citizenship for illegal / undocumented migrants from Afghanistan, Bangladesh and Pakistan. Citizenship is being extended to certain a Class of illegal / undocumented migrants belonging to the religion of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians coming from Afghanistan, Bangladesh and Pakistan. Such classification on the basis of religious identity of the individual clearly violates Article 14 and 21 of the Constitution. Moreover, the classification based on the religious identity of the individual offends the fundamental principle of 'Secularism', which is enshrined as basic structure of the Constitution.

2. The details of the Petitioners filing present Public Interested Litigation are
3. The Petitioners herein, PUCL & HRF and Tiger Tipu & Baba Saheb Ambedkar Welfare Organisation.

4. The Petitioners organization inherits the progressive, rational, patriotic, secular and democratic aspirations of the people who fought for the country's independence. The whole gamut of activities of organisation revolves around 'Service to the Humanity' by protecting Karnataka's secular fabric and developing democracy in all walks of life, human interactions, family, society and the state with full participation by the members.

5. Petitioners are demonstratively upholding the cause of humanity taking active part in rescue, relief and re-habilitation in the case of almost every natural calamity.

6. Petitioners stand always with the downtrodden, the rights for women and the backward/weaker sections of the society irrespective class, caste, gender or nationality.

7. The Petitioners organization has been taking up issues genuinely concerning the society in various field such as environment, violation of fundamental rights & human rights, right of marginalized people,

scheduled caste & scheduled tribe, women & children etc.

8. The Petitioners submits that this Petition is maintainable under Article 226 & 227 of the Constitution of India.
9. The Petitioners federation is an Registered Non-Governmental Organization, duly represented by its State Legal Cell Convene.
10. The present public interest writ petition raises a seminal important questions related to the promulgation of Citizenship (Amendment), Act 2019, wherein first time religion is introduced as a reference point / condition for acquisition of Indian Citizenship for illegal / undocumented migrants from Afghanistan, Bangladesh and Pakistan. Citizenship is being extended to certain a class of illegal / undocumented migrants belonging to the religion of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians coming from Afghanistan, Bangladesh and Pakistan. Such classification on the basis of religious identity of the individual

clearly violates Article 14 and 21 of Constitution. Moreover, the classification based on the religious identity of the individual offends the fundamental principle of 'Secularism', which is enshrined as basic structure of the Constitution.

11. The Petitioners has no personal or political interest of any kind except the prosperity of the nation and the integrity of the nation's administrative and legal processes aspiring for the welfare of the humanity as a whole.

12. That the Petitioners has not filed any other petition seeking similar reliefs in this Hon'ble Court or any other courts in India.

13. That the instant Writ Petition is filed without any delay or laches and there is no legal bar in entertaining the same.

14. The Petitioners Organisation has no other alternative or efficacious remedy except to file the present Writ Petition before this Hon'ble Court, by

invoking Article 226 & 227 of the Constitution of India.

15. That the Annexure are true and correct copies of the respective originals.

BRIEF FACTS:

1. The Central Legislative Assembly of British India enacted Foreigner Act, 1946 in order to confer certain power to Central Government in respect of dealing with foreigners in India. Section 2 (a) of the Foreigner Act, 1946 defines a foreigner as follows: "foreigner" means a person who is not a citizen of India. The copy of the same is here with produced and marked as **ANNEXURE A**.
2. The Indian Parliament enacted the Citizenship Act, 1955 in exercise of powers under Article 11 of the Constitution of India to provide a substantive and procedural framework with respect to acquisition and determination of the Indian Citizenship.
3. Section 2 (1) (b) of the Citizenship Act, 1955 clearly provides the definition of illegal migrant and it is defined as follows;

a. 2(1) (b) illegal migrant means' a foreigner who has entered into India- (i) Without a valid passport or travel documents and such other documents or authority as may be prescribed by or under any law in that behalf; or (ii) With a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time.

4. The Govt. of India in exercise of powers under Section 18 of the Citizenship Act, 1955 on 10.12.2003 have promulgated the "Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003". The Rule 3 and 4 of the Citizenship Rules, 2003 provides outline for the maintenance and preparation of National Register of Citizens throughout the country. It is pertinent to note that the Rule 4(4) of the Citizenship Rules, prescribes as follows;

a. During the verification process, particulars of such individuals, whose Citizenship is doubtful,

shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over.

- b. The persons excluded from the National Register of Citizens in pursuant to Rule 4 of the Citizenship Rules, 2003, have to finally represent the proceedings before the Foreigner Tribunal in order to establish citizenship of the person. A person declared as Foreigner by the Tribunal shall result in detention at the detention Center.

persecution, who entered into India on or before the 31st December, 2014 without valid documents. A true typed copy of Notification dated 08.09.2015 bearing number GSR 685(E) and GSR 686(E) issued by Ministry Home Affairs, vide Notification dated 08.09.2015 The copy of the same is here with produced and marked as **ANNEXURE B.**

6. Ministry of Home Affairs vide Notification No. GSR 702 (E) and 703(E) dated 18.07.2016 published in Gazette No. 495 made an amendment in the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 substituted the word "Bangladesh", for words "Afghanistan, Bangladesh". A true typed copy of Notification No. GSR 702 (E) and 703(E) dated 18.07.2016 and published in Gazette No. 495 issued by Ministry Home Affairs, The copy of the same is here with produced and marked as **ANNEXURE C.**

7. The office of the Register of General Citizens and Registration issued notification in pursuant to Rule 3(4) of Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003,

wherein the Central Government decided to prepare and update the population Register between 1st April to 30th September 2020. A true copy of Notification dated 31.07.2019 by Ministry Home Affairs, The copy of the same is here with produced and marked as **ANNEXURE D.**

8. In pursuant to the series of Supreme Court orders in Assam Sanmiltha Mahasanga v Union of India W.P. (C) No 562/2012 & All Assam Public Work v Union of India 274 of 2009, the Government of Assam along with Union of India updated the

of Citizens (NBC) for the residents

10. That on 09.12.2019 'the Citizenship Amendment Bill, 2019' was introduced in Lok Sabha and was passed. The copy of the same is here with produced and marked as **ANNEXURE E**.

11. The Citizenship Amendment Bill, 2019 was introduced in Rajya Sabha and passed. That on 12.12.2019, The President assented to the Citizenship (Amendment) Act, 2019, wherein it amended the Section 2(1)(b) and amended clause is as follows: "Provided that persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have been exempted by the Central Government by or under clause (c) of subsection (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any order made there under, shall not be treated as illegal migrants for the purposes of that Act:" '6B. (1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may

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. .

12. By virtue of Section 6(B) read with proviso in Clause (d) in the 3rd Schedule of the Principal Act introduced by the Citizenship (Amendment) Act 2019 the liberalized reduced mandatory aggregate period of residence required for Citizenship by registration or naturalization is available only to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan covered under proviso to Clause (b) of Sub-Section 1 of Section 2 of the Citizenship Act, 1955 introduced by Section 2 of the Citizenship (Amendment) Act, 2019.

13. But the impugned Act 2019 denies such right to religiously persecuted Ahammadiya Muslims and Shiyas Muslims. Same is the case with Rohingya Muslim refugee / migrants coming to India due to religious / racial persecution by Myanmar. Similarly

... of naturalization 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
Naturalization under the provisions of the Third
Schedule, a person granted the certificate of
registration or certificate of naturalization 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 (A...

Hindu illegal migrants from Sri Lanka on religious and racial persecution despite the fact the fact that they are of Indian origin are denied such rights and discriminated.

14. Thus being aggrieved, the Petitioners with leave of this Hon'ble Court are filing the present writ petition under Article 226 & 227 of the Constitution of India on inter-alia the following grounds:-

15. The impugned Act is violative of Article 14 of the Constitution of India as the proviso in Clause (b)

migrants from other neighboring countries such as Sri Lanka, Myanmar, and Bhutan. That there is no rational in not extending such rights to religious minorities belonging to other neighboring countries such as Sri Lanka, Myanmar, Nepal and Bhutan. The classification of Afghanistan, Pakistan and Bangladesh is not founded on rationale principle to justify a separate special treatment for the religious minorities facing persecution on the basis of religion. The neighboring State of Sri Lanka has got a state religion namely Buddhism. The Tamilian people of Sri Lanka are severely persecuted lot and they are predominantly of Indian origin.

36. The impugned amendment Act is in direct conflict with the Secularism, the basic structure of the Constitution of India. It promotes radicalization of members of the minority due to discrimination. It violates Art. 51 of the Constitution of India of promotion of International peace, fostering respect for International law. It is against the Charter of the United Nations.

GROUND FOR INTERIM PRAYER

The Petitioners submits that the impugned act passed by the respondent no1 which is supposed to be implemented by the Respondent no 3 and 4 is causing irreparable loss, injury, mental harassment, religious discrimination, inequality and which will cause major damage the Petitioners submits that he has a good case on merits 'balance of convenience is on the side of the people on whose behalf this PIL is filed.

PRAYER

That in the facts and circumstances mentioned herein above it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- (a) Issue a writ, order or direction to the Respondents declaring the Citizenship (Amendment) Act, 2019 to be in violation of Article 14 of the Constitution as it is discriminatory, manifestly arbitrary, unreasonable and irrational hence striking down the same as unconstitutional.
- (b) Issue writ or direction to the respondents not to implement and execute the said impugned

citizenship amendment act 2019 in the state of Karnataka.

- (c) Pass such other order as this Hon'ble Court may deem fit and proper in the interest of equity, justice and conscience.

INTERIM PRAYER

The Petitioners respectfully prays that this Hon'ble Court may be pleased to grant **ex- parte ad-interim** stay restraining the **Respondent No. 3 and 4** which is supposed to be implemented by the Respondent no 3 and 4 is causing irreparable loss, injury, mental harassment, religious discrimination, inequality and which will cause major damage. Till the final disposal of this Writ Petition,

b. Or Grant any other relief as this court deems fit looking into the facts and circumstances for the welfare of the peoples at large in the interest of Justice and Equity.

Place:

Date:

Advocate For Petitioners

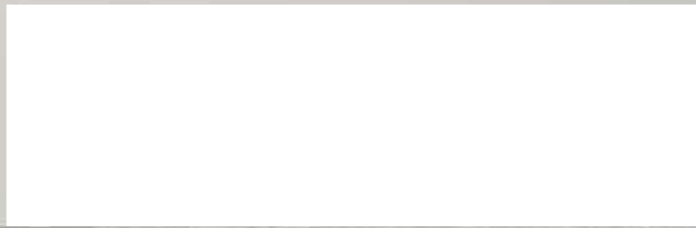
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

F.P. No. 54306/2019
PRESENTATION FORM

L.P. No. 15/2020 (PTL)
Bangalore District

Serial No. _____
Advocate Sri SIRAJUDDIN AHMED
KAR 1329/16

Between
Publ & HRF & Anr.



And
Union of India & others

Sl. No.	Description of Paper Presented	Court Fee Affixed On the paper
1.	On the Memo of <u>W.P. No. 54306/2019</u> petition	.....
2.	On the Memo of Appeal	.....
3.	On Vakalath	.....
4.	On Certified Copies	.....
5.	On I.A. No. _____ for	.....
6.	On Process Fee	.....
7.	On Copy Application	.....
8.	_____	.....
9.	_____	.....
10.	_____	.....