

SYNOPSIS AND LIST OF DATES

The present Writ Petition under Article 32 of the Constitution of India is filed seeking the striking down of certain blatantly discriminatory statutes/ statutory provisions (and the Orders and Notifications issued thereunder) which collectively strike at the heart of the secular, plural character of the Indian Republic. The statutes in question are The Citizenship (Amendment) Act, 2019, Section 3(2)(c) of The Passport (Entry into India) Act, 1920 and Section 3A of the Foreigners Act, 1946.

Section 3 of The Passport (Entry into India) Act, 1920 gives a wide and uncanalized discretion to the Central Government to exempt any "*class of persons*" from the requirements of the said Act, without providing any legislative guidance whatsoever on the policy underlying this discretionary power or the manner in which it ought to be exercised. The said unbridled power, in respectful submission, constitutes a classic case of excessive delegation of legislative power and Section 3, to the extent it permits exemption from the application of the Act without any guiding legislative policy, is unconstitutional. For similar reasons, Section 3A of the Foreigners Act, 1946 is also unconstitutional.

Furthermore, and critically, the said unbridled and uncontrolled power wrongly vested with the Central Government has been referenced and utilized in Section 2 of the Citizenship

(Amendment) Act, 2019 in an explicitly discriminatory manner. Hence, The Citizenship (Amendment) Act, 2019 is unconstitutional and void *in toto*.

Lastly, it necessarily follows that Notification No. GSR 685 (E) and 686 (E) dated 08.09.2015 and Notification No. GSR 702 (E) and 703 (E) dated 18.07.2016 issued by the Ministry of Home Affairs are without authority of law, in any event hit by Article 14 of the Constitution, and therefore void.

DATE	EVENT
1920	The Passport (Entry into India) Act, 1920 was enacted.
1946	The Foreigners Act, 1946 was enacted.
26.01.1950	The Constitution of India came into force. The Preamble to the Constitution: <i>“resolved to constitute India into a sovereign, democratic republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all</i>

Fraternity assuring the dignity of the individual..."

- 1955 The Citizenship Act, 1955 was enacted. The Act provided for various modes of acquiring citizenship. Significantly, religion was in no manner a factor or criterion for grant or acquisition of citizenship, or favourable or unfavourable treatment with respect thereto.
- 08.09.2015 Vide Notification No. GSR 685 (E) and 686 (E) dated 08.09.2015, the Ministry of Home Affairs made amendments to the Passport Rules and Foreigners Order and permitted persons from Pakistan and Bangladesh belonging to six religious communities entry into the country, who had entered India on or before 31.12.2014 without valid documents.
- 18.07.2016 Vide Notification No. GSR 702 (E) and 703 (E) dated 18.07.2016 issued by the Ministry of Home Affairs, the exemptions granted on 08.09.2015 were broadened to the extent of including, apart from Pakistan and Bangladesh, similarly-situated persons from Afghanistan.

2019 The Citizenship (Amendment) Act, 2019 was enacted by Parliament and received the assent of the President of India on 12.12.2019.

2020 In spite of impassioned protests by the Petitioner and lakhs of other similarly-minded citizens and organizations across the length and breadth of the country, the Government has unequivocally stated publicly that it intends to proceed with implementation of the Act and is not willing to repeal or amend the same in order to resolve the glaring constitutional violations.

Hence, the Petitioner is constrained to approach this Hon'ble Court by way of the present Writ Petition under Article 32 of the Constitution of India.

In The Supreme Court of India
(Civil Original Jurisdiction)
Writ Petition (Civil) No. _____ of 2020
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

1. Students' Federation of India
Through its General Secretary
Mr. Mayukh Biswas

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[REDACTED]
[REDACTED] - 110001
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...Petitioner

Vs.

1. The Union of India
Through
The Cabinet Secretary
Cabinet Secretariat,
New Delhi - 110004

...Respondent No. 1

2. The Union of India
Through
The Secretary
Ministry of Law and Justice
Shastri Bhawan
New Delhi - 110001

...Respondent No. 2

3. The Union of India
Through
The Secretary
Ministry of Home Affairs
North Block
New Delhi - 110001

...Respondent No. 3

**A WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE**

**WRIT, ORDER OR DIRECTION DECLARING THE
CITIZENSHIP (AMENDMENT) ACT, 2019 AS
UNCONSTITUTIONAL BEING VIOLATIVE INTER ALIA OF
ARTICLES 14 AND 21 OF THE CONSTITUTION, AND FOR
FURTHER DECLARING SECTION 3(2)(c) OF THE PASSPORT
(ENTRY INTO INDIA) ACT, 1920 AS UNCONSTITUTIONAL
TO THE EXTENT THAT IT PERMITS EXEMPTION FROM THE
APPLICATION OF THE ACT AND FOR FURTHER DECLARING
SECTION 3A OF THE FOREIGNERS ACT, 1946 AS
UNCONSTITUTIONAL, AND FOR FURTHER DECLARING
NOTIFICATIONS DATED 08.09.2015 AND 18.07.2016 TO
BE WITHOUT AUTHORITY OF LAW AND AS
UNCONSTITUTIONAL**

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
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The instant Writ Petition under Article 32 of the Constitution of India seeks declaration of The Citizenship (Amendment) Act, 2019 as unconstitutional for violation of Articles 14 and 21 of the Constitution. The Petition further seeks declaration of Section 3(2) (c) of The Passport (Entry into India) Act,

1920, and the Orders/ Notifications framed thereunder, as unconstitutional on account of violation of Article 14 of the Constitution and the excessive delegation of legislative power to the Central Government. The Petition further seeks declaration of Section 3A of the Foreigners Act, 1946, and the Orders/ Notifications framed thereunder, as unconstitutional. The Petition specifically seeks declaration of Notification No. GSR 685 (E) and 686 (E) dated 08.09.2015 and Notification No. GSR 702 (E) and 703 (E) dated 18.07.2016 issued by the Ministry of Home Affairs to be without authority of law and unconstitutional.

2. The Petitioner is a student organization formed in the year 1970. More than 4 million students from across the length and breadth of the country are members of the Petitioner organization. The Petitioner regularly participates in Student Union elections in educational institutions across the country and has led Student Unions in the States of Himachal Pradesh, Delhi, Rajasthan, West Bengal, Tripura, Assam, Orissa, Maharashtra, Telangana, Andhra Pradesh, Tamil Nadu and Kerala.
3. The Petitioner - Students' Federation of India - stands for the establishment of a progressive, democratic and egalitarian education system which will ensure social justice and intellectual self-reliance. It strives to achieve this by uniting

the entire Indian student community towards the cause of a universal and free public education system ensuring education for all. It further stands for the advancement of India towards a socialistic pattern of society, ensuring social and economic equality and a life of dignity and prosperity to all. Hence it raises the slogan, 'Independence, Democracy, Socialism'.

4. The Petitioner comprises public spirited students bearing deep allegiance to the Constitution of India. Members of the Petitioner have participated in a series of protests against The Citizenship (Amendment) Act, 2019. Student members of the Petitioner are immensely disturbed by the enactment of The Citizenship (Amendment) Act, 2019 and view it as being destructive of core principles of Indian constitutionalism. Students who are members of the Petitioner, further, sincerely believe that it is their fundamental duty under Article 51A of the Constitution to file the present Petition thereby contributing, in their own small way, to safeguarding and strengthening the ethos and spirit of the Constitution.
5. The Petitioner does not have any personal interest/ gain or private or oblique motive for filing this Writ Petition in public interest. The Petitioner has not been involved in any other

civil, criminal or revenue litigation, which could have a legal nexus with the issues raised in the present Writ Petition.

6. The Petitioner-organization along with lakhs of other citizens and organizations nationwide has been protesting the enactment of The Citizenship (Amendment) Act, 2019. However, regrettably, the Government while fully aware of the protests and disaffection among the masses with respect to this legislation, has categorically and unequivocally reiterated its position and stated that there is no question of repeal or amendment of this statute. Hence, the Petitioner has no recourse except to file the present Writ Petition under Article 32 of the Constitution of India, seeking the intervention of this Hon'ble Court to safeguard the fundamental rights enshrined in Part III of the Constitution.
7. Respondent No. 1 is the Union of India through the Cabinet Secretary. Respondent No. 2 is the Union of India, arrayed through the Secretary, Ministry of Law and Justice. Respondent No. 3 is the Union of India, arrayed through the Secretary, Ministry of Home Affairs. In view of the nature of relief sought in the present Writ Petition, the Respondents are necessary and proper parties to the Writ Petition.

8. The Petitioner has no alternate, equally efficacious remedy save and except the filing of the present Writ Petition under Article 32 of the Constitution of India.
9. The Petitioner has not previously approached this Hon'ble Court or any other Court seeking a relief similar to the relief sought in the present Writ Petition.

FACTS LEADING TO THE FILING OF THE PRESENT PETITION:

10. Section 3 of The Passport (Entry into India) Act, 1920 empowers the Central Government to make rules requiring that persons entering into India shall be in possession of passport, and all matters dealing with such persons are dependent on that passport. Section 3(2) of the said Act empowers the Central Government to enact such rules which may under Clause (c) provide for exemption either absolutely or conditionally to any person or "*class of persons*" from the operation of the said Rules.
11. It is submitted that the said Act is a pre-constitutional enactment. Under Article 13(1) of the Constitution, the said Act is a law in force prior to the commencement of the Constitution and can only be adopted provided it is consistent with Part III of the Constitution. A copy of The Passport (Entry

into India) Act, 1920 is annexed hereto and marked as **Annexure P-1** (Page No_____ to _____).

12. The Foreigners Act, 1946 was enacted. A copy of The Foreigners Act, 1946 (as amended upto the present date) is annexed hereto and marked as **Annexure P-2** (Page No_____ to _____).

13. The Citizenship Act, 1955 was enacted by Parliament. The Act provided for various modes of acquiring citizenship. Significantly, religion was in no manner a factor or criterion for grant or acquisition of citizenship, or favourable or unfavourable treatment with respect thereto.

A copy of The Citizenship Act, 1955 (as enacted in the year 1955) is annexed hereto and marked as **Annexure P-3** (Page No_____ to _____).

A copy of The Citizenship Act, 1955 (as amended upto the present date including by The Citizenship (Amendment) Act, 2019) is annexed hereto and marked as **Annexure P-4** (Page No_____ to _____).

14. Vide Notification No. GSR 685 (E) and 686 (E) dated 08.09.2015, the Ministry of Home Affairs made amendments to the Passport Rules and Foreigners Order and permitted persons belonging to six religious communities from Pakistan and Bangladesh entry into the country, who had entered into India on or before 31.12.2014 without valid documents. A

copy of the Notification No. GSR 685 (E) and 686 (E) dated 08.09.2015 is annexed hereto and marked as **Annexure P-5** (Page No____ to ____).

15. Vide Notification dated 18.07.2016, the exemptions granted on 08.09.2015 were broadened to the extent of including, apart from Pakistan and Bangladesh, similarly-situated persons from Afghanistan. A copy of the Notification No. GSR 702 (E) and 703 (E) dated 18.07.2016 is annexed hereto and marked as **Annexure P-6** (Page No____ to ____).

16. The Citizenship (Amendment) Act, 2019 was enacted by Parliament. A copy of The Citizenship (Amendment) Act, 2019 is annexed hereto and marked as **Annexure P-7** (Page No____ to ____).

17. The Statement of Objects and Reasons of The Citizenship (Amendment) Act, 2019 reads, in relevant part, as below:

"Statement of Objects and Reasons: The Citizenship Act, 1955 (57 of 1955) was enacted to provide for the acquisition and determination of Indian citizenship.

...It is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh. Millions of citizens of

undivided India belonging to various faiths were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947. The constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. As a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries. Some of them also have fears about such persecution in their day-to-day life where right to practice, profess and propagate their religion has been obstructed and restricted. Many such persons have fled to India to seek shelter and continued to stay in India even if their travel documents have expired or they have incomplete or no documents.

3. Under the existing provisions of the Act, migrants from Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Pakistan or Bangladesh who entered into India without valid travel documents or if the validity of their documents has expired are regarded as illegal migrants and ineligible to apply for Indian citizenship under section 5 or section 6 of the Act.

4. The Central Government exempted the said migrants from the adverse penal consequences of the Passport (Entry into India) Act, 1920 and the Foreigners Act, 1946 and rules or orders made thereunder vide notifications, dated 07.09.2015

and dated 18.07.2016. Subsequently, the Central Government also made them eligible for long term visa to stay in India, vide, orders dated 08.01.2016 and 14.09.2016. Now, it is proposed to make the said migrants eligible for Indian Citizenship.

5. The illegal migrants who have entered into India up to the cut of date of 31.12.2014 need a special regime to govern their citizenship matters. For this purpose the Central Government or an authority specified by it, shall grant the certificate of registration or certificate of naturalisation subject to such conditions, restrictions and manner as may be prescribed. Since many of them have entered into India long back, they may be given the citizenship of India from the date of their entry in India if they fulfil conditions for Indian citizenship specified in section 5 or the qualifications for the naturalisation under the provisions of the Third Schedule to the Act.

6. The Bill further seeks to grant immunity to the migrant of the aforesaid Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities so that any proceedings against them regarding in respect of their status of migration or citizenship does not bar them from applying for Indian citizenship. The competent authority, to be prescribed under the Act, shall not take into account any proceedings initiated against such persons

regarding their status as illegal migrant or their citizenship matter while considering their application under section 5 or section 6 of the Act, if they fulfil all the conditions for grant of citizenship.

7. Many persons of Indian origin including persons belonging to the said minority communities from the aforesaid countries have been applying for citizenship under section 5 of the Citizenship Act, 1955 but they are unable to produce proof of their Indian origin. Hence, they are forced to apply for citizenship by naturalisation under section 6 of the said Act, which, inter alia, prescribe twelve years residency as a qualification for naturalisation in terms of the Third Schedule to the Act. This denies them many opportunities and advantages that may accrue only to the citizens of India, even though they are likely to stay in India permanently. Therefore, it is proposed to amend the Third Schedule to the Act to make applicants belonging to the said communities from the aforesaid countries eligible for citizenship by naturalisation if they can establish their residency in India for five years instead of the existing eleven years...

10. The Bill further seeks to protect the constitutional guarantee given to indigenous populations of North Eastern States covered under the Sixth Schedule to the Constitution and the statutory protection given to areas covered under

"The Inner Line" system of the Bengal Eastern Frontier Regulation, 1873.

11. The Bill seeks to achieve the above objectives."

A copy of the Statement of Objects and Reasons of The Citizenship (Amendment) Act, 2019 is annexed hereto and marked as **Annexure P-8** (Page No____ to ____).

18. For reasons that will be elaborated in succeeding paragraphs, The Citizenship (Amendment) Act, 2019 is discriminatory in nature and its substantive provisions in no way coherently or acceptably subserve the goal of providing succour to persons suffering religious persecution in India's neighbourhood.

19. In light of the above-mentioned facts and circumstances, the Petitioner is constrained to file the present Writ Petition seeking the relief detailed hereunder on the following amongst other grounds, each of which are taken without prejudice to the others:

GROUND:

A. BECAUSE explicit preference to certain religious groups to the exclusion of others can never, in the Indian Constitutional scheme, constitute a valid and reasonable classification meeting the test of Article 14 of the Constitution. Hence, The Citizenship (Amendment) Act,

2019 is violative of Article 14 of the Constitution and therefore void.

- B. BECAUSE the intent to prefer certain religious groups over others with respect to important civil rights and privileges can never be a valid or permissible legislative intent and hence the classification made in The Citizenship (Amendment) Act, 2019 cannot be regarded as a valid or reasonable classification.
- C. BECAUSE The Citizenship (Amendment) Act, 2019 is violative of Article 14 of the Constitution since it discriminates only on the ground of religion, inasmuch as identically situated persons who face persecution in India's neighbourhood stand excluded from the beneficial embrace of the Act only because they do not fall within the six religious communities listed in the Act.
- D. BECAUSE from the Statement of Objects and Reasons of The Citizenship (Amendment) Act, 2019 it appears that the Central Government seeks to justify as the basis of the discrimination made the alleged fact of religious persecution of persons belonging to the listed six religious communities within the three sovereign States in question. It is submitted that this cannot be a valid basis of justification inasmuch as the Indian Parliament - which is State under Article 12 of

the Constitution of India - while possessing plenary power of legislation, cannot assume alleged events of religious persecution within another sovereign State as an objective condition of a valid legislation. Such an assumption is against the principle of 'the comity of nations', which is a well-established principle of public international law.

- E. BECAUSE if the legislative objective is the protection of persons who are suffering from religious persecution in three neighbouring countries, the setting of a cut-off date (as done in the impugned legislation) is illogical and counter-productive, and it is clear that the classification made in the legislation has no link or nexus with the stated objective.
- F. BECAUSE Section 2(3)(c) of The Passport (Entry Into India) Act, 1920 is *ultra vires* the Constitution to the extent it grants unbridled power to the Central Government to exempt a "*class of persons*" from the provisions of the Act.
- G. BECAUSE Section 3A of The Foreigners Act, 1946 is *ultra vires* the Constitution to the extent it grants unbridled power to the Central Government to exempt any "*individual foreigner or class or description of foreigner*" from the provisions of the Act.

H. BECAUSE the above-referenced two statutory provisions (and orders/ Notifications issued thereunder) suffer from the vice of excessive delegation of legislative power and are therefore unconstitutional. It is well-settled by this Hon'ble Court *inter alia* in *In Re Delhi Laws Act, 1912* 1951 SCR 747 and *Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills* (1968) 3 SCR 251 that the "*determination of the legislative policy*" cannot be left to the executive. In the present context, there is no guiding principle or policy relating to the basis on which any "*class of persons*" may be exempted from the Act, and the Act is bad in law to that extent.

I. BECAUSE The Citizenship (Amendment) Act, 2019 is destructive of the concept of secularism, which is an integral part of the basic structure of the Indian Constitution. In this regard, it is pertinent to highlight that this Hon'ble Court has held unequivocally, in *S.R. Bommai v. Union of India* (1994) 3 SCC 1, that Secularism is a part of the basic structure of the Constitution. Hence, such discriminatory access to the path to Indian citizenship would be impermissible even by way of constitutional amendment, much less by way of statute as sought to be done by The Citizenship (Amendment) Act, 2019.

- J. BECAUSE the right to equality and non-discrimination enshrined in Article 14 of the Constitution of India and the right to life enshrined in Article 21, as is apparent on a plain reading of the said provisions, are enjoyed by all persons and not merely by citizens.
- K. BECAUSE it is well-settled by this Hon'ble Court including *inter alia* in *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1 that cases of explicit classification between groups of people based on intrinsic and core traits of individuals (such as gender, religion, sexual orientation etc) cannot be considered to constitute a reasonable classification satisfying the test of Article 14 of the Constitution.
- L. BECAUSE while non-citizens may not have any vested right to be granted citizenship of India, such persons undoubtedly have a fundamental right to be considered for citizenship in accordance with law. It is trite law that "*procedure established by law*" within the meaning of Article 21 of the Constitution necessarily implies "*just, fair and reasonable*" procedure. It is submitted that the law set out in The Citizenship (Amendment) Act, 2019 cannot be regarded as "*just, fair and reasonable*" law and thus violates the fundamental right to life, under Article 21 of the Constitution, of such non-citizens who are adversely affected by the said law.

- M. BECAUSE it is well-settled in law that deference to legislative judgment by the Courts may be appropriate in matters of taxation, regulation or other economic legislation which are of a technical nature, but emphatically not in cases involving the basic civil liberties of individuals.
- N. BECAUSE the impugned legislation/ statutory provisions, and the various Rules/ Orders framed thereunder, are even otherwise violative of the Constitution and hence void *ab initio* and liable to be so declared by this Hon'ble Court.

PRAYER

In view of the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- I. Issue a suitable Writ, Order or direction declaring The Citizenship (Amendment) Act, 2019 to be violative of the Constitution of India and thus void *ab initio*;
- II. Issue a suitable Writ, Order or direction declaring Section 3(2)(c) of The Passport (Entry into India) Act, 1920 and the Rules/ Orders issued thereunder to be violative of the Constitution of India and thus void *ab initio*;
- III. Issue a suitable Writ, Order or direction declaring Section 3A of The Foreigners Act, 1946 and the Rules/ Orders issued thereunder to be violative of the Constitution of India and thus void *ab initio*;

- IV. Issue a suitable Writ, Order or direction declaring Notification No. GSR 685 (E) and 686 (E) dated 08.09.2015 and Notification No. GSR 702 (E) and 703 (E) dated 18.07.2016 issued by the Ministry of Home Affairs to be without authority of law and violative of the Constitution of India and thus void *ab initio*; and
- V. Pass any such further order(s) as this Hon'ble Court may feel fit and proper in the facts and circumstances of the case and in the interest of justice.

FILED BY:

**RISHAD A. CHOWDHURY
ADVOCATE FOR THE PETITIONER**

PLACE: NEW DELHI
DRAWN ON: 10.01.2020
FILED ON: 18.01.2020