

**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. CHANDRA SHEKHAR AAZAD

2. SWAMI AGNIVESH,

3. WAJAHAT HABIBULLAH,

4. BAHADUR ABBAS NAQVI,

...PETITIONERS

VERSUS

1. UNION OF INDIA,  
THROUGH ITS SECRETARY,  
MINISTRY OF LAW AND JUSTICE,  
4<sup>TH</sup> FLOOR, A-WING, SHASTRI BHAWAN,  
NEW DELHI-110001.

2. UNION OF INDIA  
THROUGH ITS SECRETARY  
MINISTRY OF HOME AFFAIRS,  
GOVERNMENT OF INDIA,  
NORTH BLOCK, NEW DELHI-110001.
  3. UNION OF INDIA  
THROUGH ITS SECRETARY  
MINISTRY OF EXTERNAL AFFAIRS,  
GOVERNMENT OF INDIA,  
SOUTH BLOCK, NEW DELHI-110001.
  4. UNION OF INDIA  
THROUGH ITS SECRETARY  
MINISTRY OF DEFENCE,  
GOVERNMENT OF INDIA,  
SOUTH BLOCK, NEW DELHI-110001.
  5. UNION OF INDIA  
THROUGH ITS SECRETARY  
MINISTRY OF MINORITY AFFAIRS,  
GOVERNMENT OF INDIA  
11th FLOOR, PANDIT DEENDAYAL ANTYODAYA BHAWAN,  
CGO COMPLEX, LODHI ROAD,  
NEW DELHI-110003
  6. UNION OF INDIA  
THROUGH ITS SECRETARY  
MINISTRY OF MINORITY AFFAIRS,  
GOVERNMENT OF INDIA  
SHASTRI BHAWAN,  
DR. RAJENDRA PRASAD ROAD,  
NEW DELHI-110 011
- ...RESPONDENTS

**WRIT PETITION UNDER ARTICLE 32 OF THE  
CONSTITUTION OF INDIA CHALLENGING THE  
CONSTITUTIONAL VALIDITY OF PASSPORT (ENTRY  
INTO INDIA) AMENDMENT RULES, 2015, PASSPORT  
(ENTRY INTO INDIA) AMENDMENT RULES, 2016,  
FOREIGNERS (AMENDMENT) ORDER, 2015,  
FOREIGNERS (AMENDMENT) ORDER, 2016 AND  
CITIZENSHIP AMENDMENT ACT, 2019 THE  
CITIZENSHIP (REGISTRATION OF CITIZENS AND  
ISSUE OF NATIONAL IDENTITY CARDS) RULES, 2003  
AND CITIZENSHIP RULES, 2009 AND NOTIFICATION  
DATED 10.01.2020**

TO,

THE HON'BLE CHIEF JUSTICE OF  
INDIA AND HIS COMPANION  
JUDGES OF THE HON'BLE  
SUPREME COURT OF INDIA

PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. That the present Writ Petition (PIL) challenges the constitutional validity of Passport (Entry into India) Amendment Rules, 2015 dated 07.09.2015, Passport (Entry into India) Amendment Rules, 2016 dated 18.07.2016, Foreigners (Amendment) Order 2015 dated 07.09.2015, Foreigners (Amendment) Order 2016 dated 18.07.2016, Citizenship Amendment Act, 2019 dated 12.12.2019 and notification dated 10.01.2020 (Hereinafter referred to as the 'Impugned Provisions').
2. The Petitioner No.1 is Mr. Chandra Shekhar Aazad, leader of the Bhim Army – an organization dedicated towards strengthening the Scheduled Caste citizens of India and providing them with a voice against the oppressive tendencies prevalent not only in the society but also at times in the policies and actions of the state authorities.

The Petitioner No.2 is a Sanyasi, follower of Arya Samaj movement, reformist and a social activist working tirelessly for

legal nexus with the issues involved herein. It is further stated that Petitioner No.2 does not have any personal interest or oblique motive in filing the present petition.

The Petitioner No.3 is a former Chairperson of the National Minority Commission.

herein. It is further stated that Petitioner No.3 does not have any personal interest or oblique motive in filing the present petition.

The Petitioner No.4 is

that there is no civil, criminal or revenue litigation involving Petitioner No.4 which has or could have a legal nexus with the issues involved herein. It is further stated that Petitioner No.4 does not have any personal interest or oblique motive in filing the present petition.

3. That the Respondent No.1 is the Union of India through Ministry of Law and Justice- the ministry responsible for coordinating between the various government functionaries on legal issues, for advising the Union in the course of formation of legal policy, and for drafting of legislative enactments, among other things.

Respondent No. 2 is the Union of India through the Ministry of Home Affairs, which is the primary ministry responsible for maintenance of law and order, intelligence, security, for conducting relations between the Union and the States, and also administers the police departments in Union Territories, among other functions.

Respondent No. 3 is the Union of India through the Ministry of External Affairs, which consults, advises, and coordinates with the Union government for formation of foreign policy, and is also charged with maintenance of friendly relations, negotiations, and interactions with foreign nations.

Respondent No. 4 is the Union of India through the Ministry of Defense, the state department which acts as a bridge between the elected civilian government and the armed forces of India, and attends to matters related to the functioning and administration of the Armed forces, including but not limited to formation of defense policy.

Respondent No.5 is the Union of India through the Ministry of Minority Affairs, the ministry charged with oversight of certain bodies involved in welfare of the minorities. The Ministry is a dedicated arm of the Union concerned with the welfare of linguistic and religious minorities, and the impact of the policies of the state on them, besides contributing in the

formation of such policy with the welfare and development of the minorities in mind.

Respondent No.6 is the Union of India through the Ministry of Tribal Affairs. This Ministry is concerned with the welfare and development of tribal communities and areas, and for formulation of state policy in furtherance of the interest of these communities.

4. The Petitioners have not filed any other petition for the same and similar relief in this Hon'ble Court or any other Court.
5. That the said Impugned Provisions deserve to be struck down as *ultra vires*. It is submitted that an attempt has been stealthily made since 2015, to dilute various provisions of the law in violation the Statute(s) and the Constitution, to make way for the Citizenship Amendment Act, 2019 by the following stealthy acts:-
  - a) The safeguards placed in the Foreigner's Amendment Order and Passport (Entry into India) Act 1920 and Rules to protect the safety and security of the Nation and ensure that unknown persons do not enter India without proper verification, was quietly diluted by the Foreigners Amendment Orders, 2015 and 2016 and Passport (Entry into India) Amendment Rules, 2015 and 2016.

- b) The Impugned provisions weaken the mechanism to regulate the entry, stay and exit of persons who are not citizens of India.
- c) Unverified and Unknown persons have been allowed entry by virtue of Passport (Entry into India) Amendment Rules, 2015 and 2016, and Foreigners Amendment Orders, 2015 and 2016, without valid documents.
- d) Neither the Foreigners Act 1946 nor the Passport (Entry into India) Act 1920 was amended to avoid drawing attention of the people or the Legislature to the intent of the Government.

Thereafter, the Citizenship Amendment Act, 2019 has been enacted fraudulently. Considering the gravity of the impact of the Bill, it ought to have been referred to the Joint Parliamentary Committee like its predecessor Bill i.e. Citizenship Amendment Bill, 2016. However, on the contrary, it was passed in great haste by being introduced in the Lok Sabha on 09.12.2019 and being passed on the same day and thereafter introduced and passed in Rajya Sabha on 11.12.2019. It is submitted that the Citizenship Amendment Bill of 2016, which was significantly different from the Citizenship Amendment Bill, 2019, was referred to a Committee which gave a Report thereon, being the Report of the Joint Parliamentary



Committee on Citizenship (Amendment) Bill, 2016. The said Bill of 2016 had lapsed. However, the Citizenship Amendment Bill, 2019, was not referred to any Committee, and was passed in great haste as stated above.

The Citizenship Amendment Act, 2019 which has been brought into force vide Notification dated 10.01.2020, is only a step leading to the promulgation of the National Register of Citizens with the clear intent of placing all the backward sections of citizens including Muslims into detention centers and removing them from the mainstream, thereby destroying the existing fabric of the Nation.

**BRIEF FACTS:**

6. Brief facts leading to the filing of the present Petition are as follows:
  - (i) That the Passport (Entry into India) Act, 1920 was enacted to provide for the requirement that passport be carried by all persons entering India.
  - (ii) That the Foreigners Act, 1946 was enacted in order to enable the Central Government to exercise powers in respect of the entry, presence and departure of foreigners in India. Section 2(a) of the Foreigners Act, 1946 defines 'foreigner' as follows:

"foreigner" means a person who is not a citizen of India;

- (iii) That on 10.02.1948, the Foreigners Order 1948 was notified by the Ministry of Home Affairs inter alia prescribing the procedure for entry and exit into India.
- (iv) That the Passport (Entry into India) Rules, 1950 [hereinafter referred to as Passport Rules] were enacted by the Central Government in the exercise of powers under Section 3 of the Passport (Entry into India) Act, 1950.

Rule 3 of the Passport Rules specifies the conditions to be complied in order to secure entry into India. Rule 3 reads as follows:

- 3. Save as provided in Rule 4, no person proceeding from any place outside India shall enter, or attempt to enter, India by water, land or air—
  - (a) unless he is in possession of a valid passport conforming to the conditions prescribed in rule 5, and
  - (b) except through such port (including an airport) or other place as may be specified in this behalf by Central Government, and ports or

other places specified under clause (a) of subparagraph (1) of paragraph 3 of the Foreigners Order, 1948, shall be deemed to have been so specified.]

*Explanation.*—A person entering India by water or air shall not be deemed to be proceeding from a place outside India by reason only of the fact that he has traversed extra-territorial waters or land in the course of his journey.

Rule 4 mentions the exceptions to Rule 3 and reads as follows:

4(1) The following classes of persons shall be exempted from the provisions of Rule 3:

4 [\*\*\*]

(b) member of Naval, Military or Air Forces of India, entering India on duty, and members of the family of any such person when accompanying such person to India on a Government transport;

4 [\*\*\*]

4 [\*\*\*]

- (f) person domiciled in India entering India by land or by air over the Nepalese or Bhutanese frontier;
  - (g) Nepalese and Bhutanese entering India by land or by air over the Nepalese or Bhutanese frontier;
  - (h) *bona fide* Mohemmedan pilgrims domiciled in India returning from jeddah or Basra;
  - (i) other persons or classes of persons specified by general or special order of the Central Government.
- (2) In specifying any person or class of persons in accordance with the provisions of clause (i) of sub-rule (1), the Central Government may prescribe any conditions to which the exemption of such persons or class of persons from the provisions of Rule 3 shall be subjected.
- (v) That on 30.12.1955, the Citizenship Act, 1955 [Hereinafter referred to as the '**Act**'] was enacted by the Parliament to provide for the acquisition and determination of Indian citizenship.
  - (vi) Section 2(b) of the Act defined illegal migrant as follows:

"illegal migrant" means a foreigner who has entered into India—

- i. without 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; 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;]
- (vii) The said Act lays down several modes of acquiring as well as renunciation of Indian Citizenship. The different modes of acquiring citizenship are:
- a) Citizenship by Birth (Section 3)
  - b) Citizenship by Descent (Section 4)
  - c) Citizenship by Registration (Section 5)
  - d) Citizenship by Naturalization (Section 6)
  - e) Citizenship by Incorporation of Territory (Section 7)
- (viii) In exercise of the powers conferred by Section 18, of the Citizenship Act, 1955, the Central Government enacted the Citizenship Rules, 2009. The said rules provide for procedure of acquiring Citizenship under the modes prescribed by the said Act.

Hereto annexed and marked as **ANNEXURE P-1** is a copy of Citizenship Rules, 2009.

(ix) On 07.09.2015, Passport (Entry into India) Amendment Rules, 2015 [Hereinafter referred to as the **2015 Rules**] were notified. The said Rules are as follows:

1. (1) These rules may be called the Passport (Entry into India) Amendment Rules, 2015. (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Passport (Entry into India) Rules, 1950, in rule 4, in sub-rule (I), after clause (h), the following clause shall be inserted, namely:-(ha) persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31<sup>st</sup> December, 2014:-

- (i) without valid documents including passport or other travel documents; or
- (ii) with valid documents including passport or other travel document and the validity of any of such documents has expired:

Provided that provision of this clause shall take effect from the date of publication of this notification in the Official Gazette."

- (x) That on the same day, i.e., 07.09.2015, the Central Government also notified the Foreigners Amendment Order, 2015 [Hereinafter referred to as the **Amendment Order**] which amended the Foreigners Order 1948. The Amendment Order reads as follows:-

1(1) This Order may be called the Foreigners (Amendment) Order, 2015.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Foreigners Order, 1948, after paragraph 3, the following paragraph shall be inserted, namely:—

**"3A. Exemption of certain class of foreigners.-**

(1) Persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear

of religious persecution and entered into India on or before the 31st December, 2014:-

- (a) without valid documents including passport or other travel documents and who have been exempted under rule 4 from the provisions of rule 3 of the Passport (Entry into India) Rules, 1950, made under section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920); or
- (b) with valid documents including passport or other travel document and the validity of any of such documents has expired, are hereby granted exemption from the application of provisions of the Foreigners Act, 1946 and the orders made thereunder in respect of their stay in India without such documents or after the expiry of those documents, as the case may be, from the date of publication of this order in the Official Gazette.”



- (xi) That on 18.07.2016, the Passport (Entry into India) Amendment Rules, 2016 were notified. The said rules read as under:-

“1(1) These rules may be called Passport (Entry into India) Amendment Rules 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Passport (entry into India) Rules, 1950, in clause (ha) of sub rule 1 of rule 4, for the word “Bangladesh”, the words “Afghanistan, Bangladesh” shall be substituted.”

- (xii) That on the same day, i.e., 18.07.2016, the Foreigners (Amendment) Order, 2016 was notified. The said Order reads as under:

“1(1) This Order may be called Foreigners (Amendment) Order, 2016.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Foreigners Order, 1948, in paragraph 3A, for the word “Bangladesh”, the words

“Afghanistan, Bangladesh” shall be substituted.”

- (xiii) That on 19.07.2016, The Citizenship Amendment Bill, 2016 was introduced in the Lok Sabha to amend the Citizenship Act, 1955 and make illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship.
- (xiv) That on 12.08.2016, the said Bill was referred to the Joint Parliamentary Committee with the mandate to submit its report on the first day of the last week of the Winter Session 2016. However, the Report could not be presented and the time for presentation of the Report was extended on 6 occasions, the last one being upto the first day of the last week of Winter Session (2018) for presentation of the Report.
- (xv) That on 07.01.2019, the Report of the Joint Committee on the Citizenship Amendment Bill, 2016 was presented to the 16<sup>th</sup> Lok Sabha
- (xvi) That on 03.06.2019 the 16<sup>th</sup> Lok Sabha was dissolved and in terms of Article 107 of the Constitution of India, the Citizenship Amendment Bill, 2016 lapsed with the dissolution of the House.

(xvii) That on 09.12.2019, the Citizenship Amendment Bill, 2019 was introduced in the Lok Sabha and on 11.12.2019, the Citizenship Amendment Act, 2019 was passed with unprecedented hurry.

(xviii) That on 10.01.2020, Citizenship Amendment Act, 2019 was brought into force.

Hereto annexed and marked as **ANNEXURE P-2** is a copy of Notification dated 10.01.2020.

7. It is respectfully submitted that The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 and Citizenship Rules, 2009 are ultra vires the parent statute, i.e., Citizenship Act, 1955 and Constitution of India, in that, they seek to supplant the provisions of the Act and are in violation of Part III of the Constitution.
8. It is submitted that Passport (Entry into India) Amendment Rules, 2015 and 2016, Foreigners Amendment Orders, 2015 and 2016, Citizenship Amendment Act, 2019 are ultra vires the Constitution of India, and an attempt to play a fraud on the People of India. The said enactments are steps leading to the promulgation of the National Register of Citizens with the clear intent of placing all the backward sections of citizens including Muslims into detention centers and removing them from the mainstream, thereby destroying the existing fabric of the Nation. Hence the present petition has been filed on the

following amongst other grounds without prejudice to one another:-

### **GROUND S**

#### **Article 14 violation**

- A. Because there is no preamble to the Citizenship Amendment Act.
- B. Because there is no mention of the object of the Citizenship Amendment Act.
- C. Because the classification made by the Citizenship Amendment Act, 2019 is arbitrary, irrational, devoid of intelligible differentia and has no nexus with the object and the purpose sought to be achieved by the Citizenship Act, 1955.
- D. Because there is no cogent or sustainable reason to amend the Citizenship Act, 1955, which confers citizenship on the basis of descent, birth, registration, naturalization and not by virtue of religion.
- E. Because the Citizenship Amendment Act, 2019 creates a classification based on religion, thereby violating the basic structure of the Constitution.
- F. Because the classification made by the Citizenship Amendment Act, 2019 is arbitrary and devoid of any legal basis in so far as it covers certain persons belonging to few specific religions i.e.

Hindu, Sikh, Buddhist, Jain, Christian and Parsis while excluding Muslims.

- G. Because the Citizenship Amendment Act, 2019 is devoid of any explanation or rationale for prescribing a cutoff date of 31<sup>st</sup> December 2014. The said cut-off date discriminates against those persons who have entered India after 31.12.2014 and is arbitrary, illegal, devoid of intelligible differentia and deserves to be struck down.
- H. Because the classification made by the Citizenship Amendment Act, 2019 is arbitrary and devoid of any legal basis in so far as it covers persons from only three neighboring countries i.e. Pakistan, Afghanistan and Bangladesh and excludes other neighboring countries such as Myanmar, Nepal, Sri Lanka and Maldives. Therefore, the Citizenship Amendment Act, 2019 fails to qualify the 'neighboring country' test as the basis for classification.
- I. Because The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 and Citizenship Rules, 2009 are ultra vires the parent statute, i.e., Citizenship Act, 1955 and Constitution of India, in that, they seek to supplant the provisions of the Act and are in violation of Part III of the Constitution.
- J. Because the Lok Sabha discussions held on 09.12.2019, in support of the Citizenship Amendment Bill, 2019, mention that

the basis of the proposed enactment is to protect minorities of the above mentioned three countries, who have fled on the ground of religious persecution, no such mention is found in the text of the Citizenship Amendment Bill or the Citizenship Amendment Act.

- K. Because there is no definition of 'Persecuted Minorities' in the Citizenship Amendment Act and the term has been deliberately left vague in the Statute and is being sought to be read in with Passport (Entry into India) Amendment Rules, 2015 and 2016 and Foreigners (Amendment) Orders, 2015 and 2016 which were stealthily and fraudulently notified in 2015 and 2016.
- L. Because the reference to persecuted minorities who have fled the said three countries has been deliberately omitted from the Citizenship Amendment Act to enable the Respondent to misuse the same and grant citizenship to persons who are not persecuted.
- M. Because a conscious decision has been taken to keep out certain persecuted minorities like the Ahmaddiyas & Bohras Ismailis, Hazaras, Atheists from Pakistan, Rohingyas from Myanmar, Tamils from Sri Lanka, Buddhists from Nepal and Jews, Yemenis.
- N. Because the Citizenship Amendment Act, 2019 deliberately and *mala-fidely* omits to refer specifically to the Passport (Entry into

India) Rules, 2015 & 2016 and Foreigners Amendment Order, 2015 & 2016 where amendments had been stealthily carried out by way of executive action to exempt Hindus, Sikhs, Buddhist, Jains, Parsis, Christians from the definition of 'foreigner' and 'illegal migrant'.

- O. Because on a bare reading of the Citizenship Act it is clear that any illegal migrant irrespective of his religion was not entitled to acquire Indian Citizenship under the Citizenship Act, 1955 before the amendment and no illegal migrant is entitled to acquire Indian Citizenship after 31.12.2104.
- P. Because in order to incorporate the concept of 'Persecuted Minorities' the Passport (Entry into India) Rules, 2015 & 2016 and Foreigners Amendment Orders, 2015 & 2016 has been notified by way of an executive action, even though said Passport (Entry into India) Rules, 2015 and Foreigners Amendment Order, 2015 transgress the provisions of the Statute under which they have been framed and notified. The fraudulent intention of the Respondent of avoiding placing the same before the Legislature as an amendment in the Statute, is writ large.
- Q. Because the classification is palpably arbitrary as laid down in (1979) 2 SCR 476 and amounts to creation of a class within a class which is impermissible as laid down in (2010) 1 SCC 639, (2002) 4 SCC 154, (2005) 1 SCC 394, 2008 (12) SCALE 360).

- R. Because a combined reading of Citizenship Amendment Act, 2019 with the Passport (Entry into India) Rules, 2015 & 2016 and Foreigners Amendment Orders, 2015 & 2016 indicate religious persecution/fear of religious persecution of Hindus, Sikhs, Buddhists, Jains, Parsi and Christian as a ground to grant citizenship to illegal migrants while excluding those migrants who are Muslims.
- S. Because the Impugned Amendment treats migrants belonging to certain specific religions as a separate class from other illegal migrants and creates a class within a class which is impermissible.
- T. Because the Impugned Amendment treats illegal migrants who have entered India on or before 31.12.2104 as a separate class from other illegal migrants and creates a class within a class which is impermissible.
- U. Because the Impugned Ordinance is based on arbitrary, hostile discrimination and is devoid of reasonable classification.
- V. Because as laid down in (1959) SCR 279, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of holding that there must be some undisclosed and unknown reason for



subjecting certain individuals to hostile or discriminating legislation.

- W. Because as laid down in AIR 1960 SC 457, it is only after having ascertained the policy and the object of the Impugned Amendment that the Court applies the dual test to examine its validity, i.e., (a) whether the classification is rational and based on intelligible differentia; and (b) whether the basis of differentiation has any rational nexus with its avowed policy and object? And if either of the two tests is not satisfied the statute must be struck down as violative of Article 14.
- X. Because as laid down in AIR 1958 SC 538, if no reasonable basis of classification appears on the face or can be deduced from the surrounding circumstances, or matters of common knowledge, the Court will strike down the law as an instance of naked discrimination. More so in the present case, as there is no preamble to ascertain the true intent of the legislature.
- Y. Because as laid down in AIR 1953 SC 91, when a piece of legislation is palpably unreasonable and discriminatory and the selection or classification made by it cannot be justified on any conceivable or rational ground, the court has to invalidate the enactment on the ground of its violating the equal protection clause.
- Z. Because the Impugned Ordinance is manifestly arbitrary, capricious and irrational in light of the Judgement of Shayara

Bano v/s Union of India (2017)9 SCC 1 which lays down the following:

“The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation Under Article 14.

Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary.”

**Passport (Entry into India) Amendment Rules, 2015 & 2016 and Foreigners (Amendment) Orders, 2015 & 2016 are against the legislative policy regarding Indian Citizenship.**

- AA. Because neither the Passport (Entry into India) Act, 1920 nor the Foreigners Act 1946, contain any reference or preference to religion.
- BB. Because any reference to religion in such matters is against the legislative policy regarding Indian Citizenship and against the Constitution of India.

- CC. Because classification of 'illegal migrants' and 'foreigners' on the basis of religious persecution/religion by notifying Rules and Orders amounts to modifying the legislative policy.
- DD. Because it is settled law that the power to modify legislative policy cannot be delegated as it is an essential legislative function. Therefore, the notifications of Passport (Entry into India) Rules 2015 and 2016, which discriminates on the basis of religion are a delegation of essential legislative function and are impermissible under Section 18 of the Passport (Entry into India) Act, 1920.
- EE. Because as held in *Agricultural Market Committee v/s. Shalimar Chemical Works*, (1997) 5 SCC 516, it is settled law that the power of delegation is a constituent element of legislative power under Article 245 of the Constitution of India.
- FF. Because in the matter of *Rajnarain Singh vs. Chairman, Patna Administration Committee*, AIR 1954 SC 569, the Supreme Court declared the delegation ultra vires on the ground that power to pick out a section for application to another area amounts to delegating power to change the policy of the Act which is an essential legislative power and hence cannot be delegated.
- GG. Passport (Entry into India) Amendment Rules, 2015 & 2016 and Foreigners (Amendment) Orders, 2015 & 2016 are ultra vires as they envisage discrimination on the basis of religion which

amounts to a major alteration in Passport (Entry into India) Act, 1920 and Foreigners Act, 1946 and transgresses beyond the Statute.

HH. Because as held by this Hon'ble Court in (2006)4 SCC 327, it is settled law that:

- i. An administrative Rule is not only required to be made in conformity with the enabling Act but also with the provisions of any other existing law. A subordinate legislation cannot be violative of a legislation which is enacted by the Legislature.
- ii. The power of the State to make Rules is limited only for the purpose of 'carrying out the purpose of the Act'. Therefore, rules cannot be framed in matters not contemplated under the Act. Rules must not also be framed in contravention to any constitutional provisions or legislative measure.
- iii. Any rule framed beyond the policy and purpose of the Act is an unconstitutional exercise of rule-making power of the State.
- iv. Administrative Rule making must satisfy the requirement of reasonableness of Articles 14 and 19 of the Constitution.

- v. Every executive action which operates to the prejudice of any person without the authority of law is unlawful.
- II. Because as held by this Hon'ble Court in Indian Oil Corporation vs. Municipal Corporation (1993) 1 SCC 333, a delegated legislation must be consistent with the parent Act and must not violate legislative policy and guidelines. A delegatee cannot have more legislative powers than that of the delegator.
- JJ. Because this Hon'ble Court in Narendra Kumar vs Union of India AIR 1960 SC 430 has held that even though the enabling Act is intra vires, the constitutionality of delegated legislation can still be considered because the law cannot be presumed to authorize anything unconstitutional.
- KK. Because there is no data substantiating the conclusion that persons belonging to Hindu, Buddhist, Sikh, Jain, Parsi, Christian communities have fear of persecution in their day to day life. Moreover, there is no mechanism put in place to verify the same.

### **Secular Fabric destroyed**

- LL. Because the Impugned provisions destroy the secular fabric of India.
- MM. Because the Impugned provisions classify persons on the basis of religion and allow illegal migrants of certain selected communities/religion from certain neighbouring countries only

to acquire Indian Citizenship, while discriminating against the rest.

NN. Because only migrant Muslims will now remain 'foreigners' by virtue of an executive Order (Foreigners Amendment Order 2015) making them illegal migrants under the Citizenship Act, 1955.

OO. Because this Hon'ble Court in S.R. Bommai vs. Union of India (1994) 3 SCC 1 held as follows:

“...while the citizens of this Country are free to profess , practice and propagate such religion, faith or belief as they choose, so far as the State is concerned I.e. from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally.”

PP. Because as held in (1994) 3 SCC 1, it is settled law that Secularism is the basic structure of the Indian Constitution and as held in 'M. Ismail Farooqui vs Union of India' reported in AIR 1995 SC at page 630, any step inconsistent with the constitutional policy is, in plain words, unconstitutional.

### **Fraudulent practice in adopting CAA**

QQ. Because the Citizenship Amendment Bill, 2019 was introduced and passed hurriedly without any proper consideration;

reference to any Parliamentary Committee or being circulated for the purpose of eliciting an opinion. The Bill was introduced and passed in the Lok Sabha on the same day i.e. 09.12.2019 and in Rajya Sabha on 11.12.2019.

- RR. Because there was an unexplained haste/hurry in passing the Citizenship Amendment Bill, 2019, resulting in wide spread protests.
- SS. Because the Citizenship Amendment Act , 2019 has significant and long term effects on the demography, economy, education, health and national security of India and the same deserved to have been examined in detail either by the Parliamentary Committees or eliciting opinions of the States and Union Territories.
- TT. Because the Citizenship Amendment Act, 2019 was introduced by misusing executive power and after having stealthily excluded Hindus, Sikhs, Christians, Parsis and Jains from the definition of 'foreigner' under the Foreigners Act 1946 and from the definition of 'illegal migrant' under the Citizenship Act, 1955.
- UU. Because the Citizenship Amendment Act, 2019 deliberately conceals the specific amendments, made by the Passport (Entry into India) Rules 2015 & 2016 and Foreigners (Amendment) Orders, 2015 & 2016.
- VV. Because a bare reading of the Lok Sabha Debate held on 09.12.2019 shows that the intention behind the Citizenship

Amendment Bill is to reverse the effects of Partition and emerge as protector of Hindus and become a Hindu Rashtra.

WW. Because the Citizenship Amendment Act, 2019 is a sinister precursor to the National Population Register and the National Register of Citizens which are tools for identification Muslims and backward sections of citizens. The intent to stealthily ensure that Muslims and backward sections of citizens are excluded from the mainstream Indian population and placed in Detention Centers is clear and is being openly boasted about.

XX. Because the Constitutional Offices held by the Members of Parliament are being misused to enact laws that are regressive, divisive and against the interests of Indian Citizens and in violation of the Constitution.

YY. Because the Citizenship Amendment Act, 2019 has enacted without specifying any procedure for granting citizenship thereunder and no procedure has been notified even after the Act has been brought into force w.e.f. 10.01.2020. However, there are reports from some States like Gujarat and U.P that citizenship has already been granted to persons after the enactment of the Citizenship Amendment Act, 2019.

ZZ. Because the status of 'citizen' is privileged and associated with all constitutional and statutory rights. Conferring the status of



‘citizen’ on a person entitles him/her to vote, seek employment, acquire property, enjoy the benefits of the Govt. Schemes etc.

AAA. Because implementation of Citizenship Amendment Act, 2019 would entail heavy financial pressure on the public exchequer and would cause additional pressure on the limited resources of India.

### **Threat to National Security**

BBB. Because as per the Report of the Joint Parliamentary Committee for the Citizenship Bill 2016, the Research and Analysis Wing of the Government of India has expressed concerns that the Bill could be misused by Foreign Agents to infiltrate India, thereby causing a National threat to the Security of the Nation.

9. The Petitioners crave leave to plead and refer to additional grounds at the time of hearing.
10. The Petitioners have not moved/approached to government authority for the relief sought in the petition. The Petitioners have no other alternative and efficacious remedy but to approach this Hon’ble Court.
11. The Petitioners have not filed any other Petition either before this Hon’ble Court or any High Court challenging the Constitutional validity of the Impugned Ordinance.

12. The present Petition is filed bona-fide and in the interests of justice.

**P R A Y E R**

Therefore, in view of the above mentioned facts, it is most respectfully prayed that, this Court may be pleased to:

- A. pass a writ, order or direction in the nature of declaration or any other writ, order or direction declaring Passport (Entry into India) Amendment Rules, 2015 dated 07.09.2015, Passport (Entry into India) Amendment Rules, 2016 dated 18.07.2016, Foreigners (Amendment) Order, 2015 dated 07.09.2015, Foreigners (Amendment) Order, 2016 dated 18.07.2016 Citizenship Amendment Act, 2019 dated 12.12.2019, The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 and Citizenship Rules, 2009 and notification dated 10.01.2020 as ultra vires to the Constitution of India;
- B. pass a writ, order or direction in the nature of certiorari or any other writ, order or direction quashing Passport (Entry into India) Amendment Rules, 2015 dated 07.09.2015, Passport (Entry into India) Amendment Rules, 2016 dated 18.07.2016, Foreigners (Amendment) Order, 2015 dated 07.09.2015, Foreigners (Amendment) Order, 2016 dated 18.07.2016, Citizenship Amendment Act, 2019 dated 12.12.2019 and notification dated 10.01.2020.

C. pass any other or further order as this Hon'ble Court deems fit in the facts and circumstances of the present case.

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

DRAWN AND FILED BY:

Advocate for the Petitioners

SETTLED BY:

ADVOCATE

DRAWN ON: 20.01.2020  
FILED ON: \_\_\_\_ .01.2020