

## **SYNOPSIS**

The petitioner herein, TAMIL NADU THOWEED JAMATH is an organization formed in the year 2003 is a registered society under the Tamil Nadu Societies Registration Act 1975 bearing Registration Number 333 of 2003. The Petitioner 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 TAMIL NADU THOWEED JAMATH revolves around 'Service to the Humanity' by protecting India's secular fabric and developing democracy in all walks of life, human interactions, family, society and the nation with full participation by the youth. Petitioner is demonstratively upholding the cause of humanity taking active part in rescue, relief and re-habilitation in the case of every natural calamity. Petitioner stands always with the downtrodden, the rights for women and the backward/weaker sections of the society irrespective class, caste, gender or nationality. The petitioner organisation had successfully undertaken various schemes within an intention of social welfare . The Petitioner 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.

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 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.

The present Impugned Act in question, that is the Citizenship (Amendment) Act, 2019 has raised severe insecurity and apprehension in the mind of Muslim minority all over the country as the Act stands to be anti- Muslim community and anti- minority even on the face of it. The Act has made a clear exclusion of Muslim community in regards to the government policy of giving citizenship to the undocumented migrants and refugees. The Citizenship Act, 1955 is on a principle that the citizenship as a unifying idea. Its shared identity is at the core of citizenship and has been at the core since the time the constitution was enacted in India. The Act has set guidelines for providing citizenship to

the migrants who have migrated to India and there are further regulations for the illegal migrants and includes all aspect of the law in detail. A reading of Section 2 & 3 of the Impugned Act would make it clear that there is exclusion of Muslims in the matter of giving Citizenship by registration or naturalization even in the case of religious persecution. The Citizenship (Amendment) Act, 2019 provides the provisions for giving Indian citizenship to the six minority communities from Bangladesh, Afghanistan, and Pakistan. These six communities are - Hindu, Buddhist, Jain, Parsi, Christian and Sikhs. This Act has exclusively excluded the Muslims community which is entirely against the spirit of the constitution and it is against the mandate of Articles 14 and 21.

The impugned Act by specifically excluding Muslim community from the category of citizenship has violated that very Fundamental right. The preamble of the constitution is the basic structure of the constitution and cannot be overridden by any act of the parliament. The preamble of the Constitution establishes India as a secular state, which means that every religion in India would be treated with same respect and that the Constitution of India recognizes and gives same rights to every person following any religion. The fundamental principal in Secularism is that persons shall not be discriminated based on the religion in their relationship with the State. Their right and privileges cannot be determined on the basis of their religion. This is all the more

important and pertinent in interpreting Article 14 & 21 of the Constitution of India as they are not limited to Citizens of India but extended to each and every person. Any Act against the basic structure and basic feature of the Constitution emanating from the preamble is not valid and hence, unconstitutional. The provisions of the Impugned Act infringe the very concept of the secularism as laid down in the constitution and it is violative of the Basic structure theory as pronounced by the Hon'ble Supreme Court.

That the classification in The Citizenship (Amendment) Act, 2019 is not founded on the basis of any intelligible differentia. The yardstick for the purpose of differentiating in The Citizenship (Amendment) Act, 2019 is that the 'religious persecuted minorities' belonging to the country of Afghanistan, Pakistan and Bangladesh. It includes Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, but at the same time exclude other minorities facing discrimination or persecution on the basis of their religious/sectional belief, such as Ahmadiyya section in Pakistan and Shia Section and Hazara Section in Afghanistan. The denial of similar benefits provided in The Citizenship (Amendment) Act, 2019 to the similarly situated persons belonging to the minority section of Ahmaddiya and Shia sections, who faces similar persecution alike religious minorities (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians) clearly constitutes an unreasonable classification and violates Article 14 of the Indian Constitution. It is manifestly arbitrary

and irrational.

It is pertinent to mention that The Citizenship (Amendment) Act, 2019 does not prescribe any standard principle or norm behind choosing aforesaid three neighboring countries, whereby it does not extend the benefit to religious minorities belonging to other neighboring countries such as Sri Lanka, Myanmar, Nepal and Bhutan. The religious persecution is in higher degree of harm in Sri Lanka and Myanmar. Indian origin Sri Lankan Eelam Tamil community had faced religious and ethnic persecution from the Sri Lankan Government and Rohingya Muslims in the Rakhine State of Myanmar had also faced the most extreme forms of inhumane persecution at the hands of Myanmar Army. Therefore, there is no guiding principle to single out three countries (Afghanistan, Pakistan and Bangladesh) and extend the benefit of citizenship through naturalization to the religious minorities of the aforementioned three countries (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians).

The Rohingya population is denied citizenship under the 1982 Myanmar nationality law and they remain one of the most persecuted minorities in the world. Beginning in 1978, several cycles of mass violence unleashed by the military forced tens of thousands of them to flee to Bangladesh, India, Thailand, Malaysia and other countries. Those who could not flee were left to face mass murders, gang rapes, burning of entire villages and torture in camps.

It is pertinent that similarly Tibetans, the Chakmas of Bangladesh, Afghans and ethnic Tamil from Sri Lanka are among those given refugee status in India. Tibetans who got asylum are one lac in number. They can take land on lease and seek jobs in the private sector. Similarly, Tamil refugees from Sri Lanka, mostly in Tamil Nadu, numbering about a lakh get state government aid there. Still now as per the impugned Act they are excluded and discriminated in the matter of liberalized Citizenship by registration or naturalization.

In 2016, the Central Government allowed Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan to buy property for self-living, obtain driving licenses, and receive PAN and Aadhaar IDs, etc. in India. This benefit is not extended to Rohingyas from Myanmar, or Tamil refugees from Sri Lanka etc. Now Section 2 of the impugned Act amends Section 2 of the Citizenship Act, 1955 by inserting following proviso in Sub-Section 1 in Clause (b);

"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;".

This benefit - right and privilege are also specifically denied to Muslims by specific exclusion.

The impugned Act in letter in spirit is violative of Article 14 and basic structure of the Constitution of India. It would only promote schism in the society in religious and communal terms destructing the Secular fabric of Indian body politic and ultimately negating the idea of India as a Secular nation with composite culture and identity.