## SYNOPSIS

The Petitioner is filing the instant writ petition in public interest under Article 32 of the Constitution of India for the enforcement of fundamental rights under Article 14 and 21 of the Constitution of India, of those illegal migrants in India, who are being arbitrarily discriminated against on the grounds of religion, country of origin, nature of persecution they have fled, date of entry into India and place of residence in India and are being exempt from the enabling provisions of Citizenship (Amendment) Act, 2019 (hereinafter referred to as the Amendment Act) that seeks to make only Hindu, Sikh, Buddhist, Jain, Parsi and Christian illegal migrants from Pakistan, Bangladesh and Afghanistan, who entered India without valid travel documents on or before December 31, 2014, fleeing religious persecution, eligible for citizenship by registration or naturalisation. The petitioner is also challenging as unconstitutional, the notifications G.S.R. 685(E), 686 (E ), 702( E ) & 703 (E) dated 7th September 2015 and 18th July 2016, issued by the central government, exempting illegal migrants from the above mentioned six religions, seeking shelter in India due to religious persecution, from Afghanistan, Bangladesh or Pakistan, from the provisions of the Passport Act 1920 and the Foreigners Act 1946.

These notifications and the Amendment Act are unconstitutional as they are discriminatory and violate the right to equality of all persons under the Constitutional scheme. They are discriminatory towards illegal migrants from other countries in the neighbourhood of India apart from the three countries above mentioned as well as discriminatory towards other minority communities such as Muslims, Jews, Ahmadiyas or Atheists who do not identify with a religious group. Besides these, the Statement of Objects and Reasons of the Amendment Act provides that those fleeing religious persecution from the three countries may be granted the citizenship under the Act. The Amendment Act is further applicable to that class of foreigners who by the rules framed under the Passport (Entry into India) Act,

1920 and the Foreigners Order, 1948, being persons belonging to Afghanistan, Bangladesh and Pakistan and fleeing religious persecution have been exempt from the application of the Passport Act, 1920 and the Foreigners Act 1946. The Act further proposes to relax the condition for acquisition of citizenship by naturalization for the above-mentioned illegal migrants from these three countries by reducing the period of residence in India or service in the Government, from 11 years to 5 years. The benefit of such a provision to a class of religious migrants from three countries alone, to the exclusion of some other religious communities is blatantly arbitrary and discriminatory.

This classification on the basis of religion, country of origin or kind of persecution or date of entry or place of residence in India, is an unreasonable classification and hence discriminatory. Minority communities from various other countries apart from those specified, such as from Myanmar and Srilanka have fled their countries to India and other countries due to ethnic and sectarian persecution and not just religious persecution. Article 14 disallows differentiation between groups of people when the rationale for doing so does not serve a reasonable purpose (State of West Bengal vs Anwar Ali Sarkar). If the proclaimed purpose of the Amendment Act is to accommodate minority communities suffering religious persecution, the distinction on the basis of religion and country of origin is irrational and unjustified. These distinctions do not include groups that must be included to meet the law's aim of accommodating minority communities facing religious persecution. None of these distinctions correspond with the ostensible purpose of the law and fail the test of reasonable classification under Article 14. The Statement of object and reasons of the Foreigners Act and the Passport Act do not encompass such a rationale for differentiating between illegal migrants on the basis of their religion, country or kind of persecution.

Granting citizenship on the basis of religion goes against the grain of our Constitution. Religious pluralism and secularism have

been the foundation of our country since Independence. While Article 11 empowers parliament to regulate citizenship, this does not mean that Parliament through an ordinary law, can destroy the fundamental values and basic structure of the Constitution. In Kesavananda Bharati Sripadgalvuru and Ors. V. State of Kerala and Anr AIR 1973 SC 1461, it has been held by this Hon'ble Court that secularism is part of the basic structure of the Constitution, that is beyond the amending power of the Parliament and that, "one cannot legally use the constitution to destroy itself." A purely religious classification, devoid of any determining principle, hence violates the fundamental constitutional value of secularism. These notifications and Amendment Act are hence discriminatory, communal and politically motivated and hence need to be struck down as unconstitutional, not only as engaging in unreasonable classification, and being arbitrary, but also as being violative of the basic structure of the Constitution.

The Act also violates Article 21 of the Constitution of India, as it violates the right to live with dignity of individuals who are not covered under the special dispensation of the Amendment Act, solely on the basis of their membership to a particular religion. This Hon'ble Court has held, in Francis Coralie Mullin v. The Union Territory of Delhi [1981 1 SCC 608] that Article 21's guarantee to life and personal liberty includes the right to live with human dignity and all that goes with it:

> "6. The right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. ... Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to life and it would have to be in accordance with reasonable, fair and

just procedure established by law which stands the test of other fundamental rights."

It is submitted that religious discrimination is a violation of human dignity. The State practicing discrimination, violates human dignity and consequently, the right to life of citizens, that are discriminated against.

LIST OF DATES

| Date | Event |
|---|---|
| 1920 | The Passport (Entry into India) Act, 1920 was enacted.<br>Section 3 of this Act, empowered the Central Government to make rules, including Rules pertaining to exemption from the applicability of its provisions. |
| 1946 | Foreigners Act, 1946 was enacted to provide the Central Government certain powers in respect of foreigners. |
| 10.2.1948 | Pursuant to the Foreigners Act, 1946, the Foreigners Order of 1948 was enacted. |
| 30.12.1955 | The Citizenship Act, 1955 was enacted, being an "Act to provide for the acquisition and determination of Indian citizenship." The Act, which recognized the following categories of Citizenship:<br>**a.** Citizenship by birth<br>**b.** Citizenship by descent<br>**c.** Citizenship by registration<br>**d.** Citizenship by naturalization<br>**e.** Special provisions as to citizenship of persons covered by the Assam Accord<br>**f.** Citizenship by incorporation of territory |
| 1986 | The Citizenship Amendment Act, 1986 was enacted, which marked a departure away from |

birth, as a ground for granting Citizenship, to persons who were born after the commencement of the Amendment Act of 1986.

2003 The Citizenship Act was amended by the enactment of the Citizenship Amendment Act, 2003. This Act, among other things, defined an "illegal migrant" as "a foreigner who entered India with improper travel documents or a foreigner who has stayed beyond the time permitted by his or her travel documents." It also made changes to Section 3 of the Citizenship Act, and the amended Act, thereafter, read as follows:

3. Citizenship by birth.- (1) Except as provided in sub- section (2), every person born in India-

(a) on or after the 26th day of January, 1950 , but before the 1st day of July, 1987

(b)on or after the 1st day of July, 1987 , but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth

(c) on or after the commencement of the Citizenship (Amendment) Act, 2003 , where-

(i) both of his parents are citizens of India; or

(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth

(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth

(a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or

(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.".

2011 In 2011 the government introduced a policy for issuing Long Term Visa to those who had been recognised as “refugees” by the government or UNHCR. The Ministry of Home Affairs policy clearly incorporated the Refugee Convention’s definition a refugee that does not discriminate in any manner on the basis of religion, country, date of entry, etc. The guidelines clearly mention that the Standard Operating procedure is to be followed when a foreign national claims to be a refugee. The guidelines state as follows:

> “In case it is found that prima facie the claim is justified (on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion), the matter will be recommended to MHA for grant of Long Term Visa within thirty days from the date of claim by the foreigner. One of the factors to be seen is the general perceived condition of the foreigner in question.”

Based on this operating procedure the MHA started issuing Long Term Visa to those who had been recognised as “refugees” by the government or the UNHCR. These included persons from various countries, religions or ethnicities.

7.9.2015 The Passport (Entry into India) Rules made under Section 3(2) (c) of the Passport (Entry into India) Act, 1920 were notified on 7th September 2015. These rules provided as follows:

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

...

(ha) persons belonging to minority communities in Afghanistan, Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhist, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered India on or before 31st 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."

7.9.2015 The Foreigners Order, 1948 as amended on 7th September 2015, reads as follows:

"3A. Exemption of certain class of foreigners –

1) Persons belonging to minority communities in Afghanistan, Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhist, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered India on or before 31st December, 2014 –

i) 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; or

ii) 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 (1 of 1946) and the orders made thereunder in respect of their stay in India without such documents or after the expiry of documents, as the case may be, from the date of publication of this order in the Official Gazette."

2016 — The Citizenship (Amendment) Bill, 2016 sought to amend the provisions of the Citizenship Act, 1955, by including an exception for Hindu, Sikh, Buddhist, Jain, Parsi and Christian illegal migrants from Afghanistan, Bangladesh and Pakistan. The Bill also reduced the naturalization period to just six years, rather than twelve, for these groups of migrants. The Bill lapsed with the dissolution of the 16th Lok Sabha.

9.12.2019 — The Lok Sabha passed the Citizenship (Amendment) Act, 2019 (hereinafter referred to as the Amendment Act).

Amendment Act inserts Section 6B in the Principal Act which states as follows:

"6B. (1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and

manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub-section (1) of section 2."

Further the Amendment Act adds a proviso to the Third Schedule of the Principal Act, in clause (d):

"Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence of service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven years".

The Amendment Act inserts Section 6B. Sub clause 4 states:

"Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873"

11.12.2019 The Rajya Sabha passed the Amendment Act.

12.12.2019 The Amendment Act received Presidential assent on the 12th of December 2019.

16..12.2019 Hence, this Writ Petition

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. _____ OF 2019

**(PUBLIC INTEREST LITIGATION)**

**IN THE MATTER OF:**

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4. IRFAAN HABIB
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5. PRABHAT PATNAIK
NATIONAL MEDIA CENTRE CAMPUS,
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VERSUS

UNION OF INDIA,
THROUGH ITS SECRETARY
MINISTRY OF HOME AFFAIRS
NORTH BLOCK, CENTRAL SECRETARIAT
NEW DELHI-110001 ….RESPONDENT NO.1

**WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA CHALLENGING THE**

**CITIZENSHIP (AMENDMENT) ACT, 2019 AND AMENDMENTS TO THE PASSPORT RULES, 1950 AND FOREIGNERS ORDER 1948 VIDE NOTIFICATIONS G.S.R. 685(E), 686 (E ), 702( E ) & 703 (E) AS BEING VIOLATIVE OF ARTICLE 14 AND 21 RIGHTS OF MIGRANTS RESIDING IN INDIAAND HENCE UNCONSTITUTIONAL AND VOID**

To,

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

The Humble Petition of the Petitioners above-named

MOST RESPECTFULLY SHOWETH:-

1. The Petitioner is filing the instant writ petition in public interest under Article 32 of the Constitution of India for the enforcement of fundamental rights under Article 14 and 21 of the Constitution of India, of those illegal migrantsin India, who are being arbitrarily discriminated against on the grounds of religion, country of origin, nature of persecution they have fled, date of entry into India and place of residence in Indiaand are being exempt from the enabling provisions of Citizenship (Amendment) Act, 2019(hereinafter referred to as the Amendment Act) that seeks to make only Hindu, Sikh, Buddhist, Jain, Parsi and Christian illegal migrants from Pakistan, Bangladesh and Afghanistan, who entered India without valid travel documents on or before December 31, 2014, fleeing religious persecution, eligible for citizenship by registration or naturalisation. The petitioner is also challenging as unconstitutional, the notifications G.S.R. 685(E), 686 (E ), 702( E ) & 703 (E) dated 7th September 2015 and 18th July 2016, issued by the central government, exempting illegal migrants from the above mentioned six religions, seeking shelter in India due to religious persecution, from Afghanistan, Bangladesh or Pakistan, from the provisions of the Passport Act 1920 and the Foreigners Act 1946. These notifications and the Amendment Act are unconstitutional as they arediscriminatory and violate the right to equality of all persons under the Constitutional scheme. They are discriminatory towards illegal

migrants from other countries in the neighbourhood of India apart from the three countries above mentioned as well as discriminatory towards other minority communities such as Muslims, Jews, Ahmadiyas or Atheists who do not identify with a religious group. Besides these, the Statement of Objects and Reasons of the Amendment Act provides that those fleeing religious persecution from the three countries may be granted the citizenship under the Act. The Amendment Act is further applicable to that class of foreigners who by the rules framed under the Passport (Entry into India) Act, 1920 and the Foreigners Order, 1948, being persons belonging to Afghanistan, Bangladesh and Pakistan and fleeing religious persecution have been exempt from the application of the Passport Act, 1920 and the Foreigners Act 1946. The Act further proposes to relax the condition for acquisition of citizenship by naturalization for the above-mentioned illegal migrants from these three countries by reducing the period of residence in India or service in the Government, from 11 years to 5 years. The benefit of such a provision to a class of religious migrants from three countries alone, to the exclusion of some other religious communities is blatantly arbitrary and discriminatory. This classification on the basis of religion, country of origin or kind of persecution or date of entry or place of residence in India, is an unreasonable classification and hence discriminatory. Minority communities from various other countries apart from those specified, such as from Myanmar and Srilanka have fled their countries to India and other countries due to ethnic and sectarian persecution and not just religious persecution. Article 14 disallows differentiation between groups of people when the rationale for doing so does not serve a reasonable purpose (State of West Bengal vs Anwar Ali Sarkar).If the proclaimed purpose of the Amendment Act is to accommodate minority communities suffering religious persecution, the distinction on the basis of religion and country of origin is irrational and unjustified. These distinctions do not include groups that must be included to meet the law’s aim of

accommodating minority communities facing religious persecution. None of these distinctions correspond with the ostensible purpose of the law and fail the test of reasonable classification under Article 14. The Statement of object and reasons of the Foreigners Act and the Passport Act do not encompass such a rationale for differentiating between illegal migrants on the basis of their religion, country or kind of persecution. Granting citizenship on the basis of religion goes against the grain of our Constitution. Religious pluralism and secularism have been the foundation of our country since Independence. While Article 11 empowers parliament to regulate citizenship, this does not mean that Parliament through an ordinary law, can destroy the fundamental values and basic structure of the Constitution. In Kesavananda Bharati Sripadgalvuru and Ors. V. State of Kerala and Anr AIR 1973 SC 1461, it has been heldby this Hon'ble Court that secularism is part of the basic structure of the Constitution, that is beyond the amending power of the Parliament and that, "one cannot legally use the constitution to destroy itself." A purely religious classification, devoid of any determining principle, hence violates the fundamental constitutional value of secularism. These notifications and Amendment Act arehence discriminatory, communal and politically motivated and hence need to be struck down as unconstitutional. The Act also violates Article 21 of the Constitution of India, as it violates the right to live with dignity of individuals who are not covered under the special dispensation of the Amendment Act, solely on the basis of their membership to a particular religion.It is submitted that religious discrimination is a violation of human dignity. The State practicing discrimination, violates human dignity and consequently, the right to life of citizens, that are discriminated against.

1 A. The petitioners are senior activists and academics of this country. Petitioner no. 1 is Mr. Harsh Mander, human rights and peace worker, author, columnist, researcher and teacher. He works with survivors of mass violence, hunger, homeless persons

and street children. He is the Director, Centre for Equity Studies, and founder of the campaigns Aman Biradari, for secularism, peace and justice and other important initiatives against communal violence. He was Special Monitor of the statutory National Human Rights Commission for Minority Rights. The petitioners bank account number is 007101031452, pan number is AAWPH4686H and aadhar number is 356777866512. Petitioner no. 2 is Aruna Roy. She is a social and political activist. She has worked in the Indian Administrative Service from 1968 to 1975.She is a founder member of the Mazdoor Kisan Shakti Sangathan. The MKSS works on the concerns of its primary constituents- peasants and workers, but also engages with wider issues of participatory democracy, and democratic struggle.She was awarded the Ramon Magsaysay Award in 2000, the Nani Palkiwala Award and the Lal Bahadur Shastri National Award for Excellence in Public Administration, Academia and Management in 2010. Petitioner no. 3 is Nikhil Dey. He is a founding member of the Mazdoor Kisan Shakti Sangathan. Since 1990, he has been a full time worker of the MKSS, and has been involved in struggles of the poor for justice, including grass root struggles for land and the payment of minimum wages. He has also been a part of peoples organisations taking responsibility for putting together “peoples drafts” of the Right to Information and Employment Guarantee Bills. Petitioner no. 4 is Irfan Habib. He is a historian of ancient and medieval India. He is presently appointed as Professor Emeritus at the Department of History at Aligarh Muslim University. Petitioner no. 5 is Prabhat Patnaik. He is an Indian economist and political commentator. He was a professor at the Centre for Economic Studies and Planning at Jawaharlal Nehru University in Delhi and retired in 2010.

The petitioners have no personal interest, or private/oblique motive in filing the instant petition. There is no civil, criminal, revenue or any litigation involving the petitioners, which has or could have a legal nexus with the issues involved in the PIL.

The petitioners have not made any representations to the respondent in this regard because of the extreme urgency of the matter in issue.

That the instant writ petition is based on the information/documents which are in public domain.

**FACTS OF THE CASE**

1. On the 9th of December and 11th December 2019 the Lok Sabha and the Rajya Sabha respectively, passed the Citizenship (Amendment) Act, 2019. It received Presidential assent on the 12th of December 2019. The Amendment Act, adds a proviso to Sec 2(1) (b) of the Citizenship Act, 1955 (hereinafter referred to as the Principal Act) which states as below:

> "Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi orChristian community from Afghanistan, Bangladesh or Pakistan, who entered intoIndia on or before the 31st day of December, 2014 and who has been exempted by theCentral Government by or under clause (c) of sub-section (2) of section 3 of thePassport (Entry into India) Act, 1920 or from the application of the provisions of theForeigners Act, 1946 or any rule or order made thereunder, shall not be treated asillegal migrant for the purposes of this Act;".

The Passport (Entry into India) Rules made under Section 3(2) (c ) of the Passport (Entry into India) Act, 1920 as notified on 7th September 2015, reads as follows:

> 4(1) The following classes of persons shall be exempted from the provisions of Rule 3:
> ...
> (ha) persons belonging to minority communities in Afghanistan, Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhist, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered India on or before 31st December, 2014 –
> iii) Without valid documents including passport or other travel documents; or
> iv) 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.

The Foreigners Order, 1948 as amended on 7th September 2015, reads as follows:

3A. Exemption of certain class of foreigners – 1) Persons belonging to minority communities in Afghanistan, Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhist, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered India on or before 31st December, 2014 –

iii) 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; or

iv) 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 (1 of 1946) and the orders made thereunder in respect of their stay in India without such documents or after the expiry of documents, as the case may be, from the date of publication of this order in the Official Gazette.

(A copy of the Passport (Entry into India) Rules made under Section 3(2) (c ) of the Passport (Entry into India) Act, 1920 is annexed as **Annexure P -1 (Page _____to _____)**

A copy of the Foreigners Order 1948 is annexed as **Annexure P - 2 (Page _____to _____).**

NotificationG.S.R. 685(E)is annexed as **AnnexureP - 3 (Page _____to _____)**

Notification 686 (E )is annexed as **Annexure P – 4 (Page _____to _____)**

Notification 702 ( E ) and 703(E)is annexed as **Annexure P -5 (Page ____to _____)**

Further the Amendment Act inserts Section 6B in the Principal Act which states as follows:

“6B. (1) The Central Government or an authority specified by it in this behalfmay, subject to such conditions, restrictions

> and manner as may be prescribed, on anapplication made in this behalf, grant a certificate of registration or certificate ofnaturalisation to a person referred to in the proviso to clause (b) of sub-section (1) ofsection 2."

Further the Amendment Act adds a proviso to the Third Schedule of the Principal Act, in clause (d):

> "Provided that for the person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan, the aggregate period of residence of service of Government in India as required under this clause shall be read as "not less than five years" in place of "not less than eleven years".

The Amendment Act inserts Section 6B. Sub clause 4 states:

> "Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873"

A copy of the Citizenship (Amendment) Act 2019 is Annexed as **Annexure P -6 (Page _____to _____).**

2. Therefore, these amendments seek to exempt from the definition of illegal immigrant in the Principal Act, only persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community, fleeing religious persecution, from three neighbouring countries, namely, Afghanistan, Bangladesh and Pakistan, who entered into India on or before 31 December 2014.Further the Amendment Act provides that, subject to the fulfilment of certain conditions, on an application made by the migrants from the six specified religious communities alone, the Central government or appropriate authority, may grant a certificate of registration of citizenship or certificate of naturalisation. Such persons shall be deemed to be citizens of India from the date of their entry into India and any proceedings pending against such a person in respect of illegal migration or citizenship shall stand abated on conferment of such citizenship. However, the Amendment Act arbitrarily exempts the tribal areas of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the

Constitution and the area covered under “Inner Line” notified under the Bengal Eastern Frontier Regulation, 1873, from the benefit of citizenship. Person in these areas will only be covered by the proviso to Sec. 2(1)(b) of the Principal Act. The notifications imply that the groups of illegal migrants from those 6 religions alone will not be deported or imprisoned for being in India without valid documents.

3. The petitioners submit, that citizenship in India was determined till 1987, by virtue of birth in India. The 2003 Amendment in the Principal Act, required that at least one parent must be an Indian citizen, for a person to qualify for citizenship. The Amendment in 2004 introduced the term illegal migrant, which was defined as a person who enters or stays in India without legal authorisation. This amendment required that any child born 2004 onwards to even one parent who is an illegal migrant would be disqualified from citizenship.

4. The petitioner submits that the Amendment Act of 2019 seeks to change this scheme arbitrarily, by removing the disqualification based on illegal migration for certain minority communities specifically Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan. These religious groups would not be considered illegal migrants thus allowing them and their descendants to be Indian citizens. The Amendment Act also shortens the minimum period of residence in India for these communities to obtain citizenship by naturalisation, from 11 to 5 years.

5. The petitioners submit that the Amendment Act violates Article 14 of the Indian Constitutions that guarantees the right to equality before law and equal protection of law to all “persons”, as the Act provides differential treatment to illegal migrants based on their religion, country of origin and the kind of persecution that they are fleeing, date of entry into India and

place of residence in India, in conferring citizenship rights on them.

6. Our constitutional scheme does not allow discrimination on the basis of religion or country of origin or kind of persecution. This cannot be the basis of granting citizenship. The religious basis of citizenship would be a negation of the secular and inclusive fabric of our Constitution. The Hon'ble Supreme Court has held in several cases that underlying the guarantee in Article 14 is that all persons in similar circumstances shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same. The classification of illegal migrants in the Act is thus arbitrary and impermissible.

7. The petitioners state that in 2011 the government introduced a policy for issuing Long Term Visa to those who had been recognised as "refugees" by the government or UNHCR. The Ministry of Home Affairs policy clearly incorporates the Refugee Convention's definition a refugee that does not discriminate in any manner on the basis of religion, country, date of entry,etc. The guidelines clearly mentions that the Standard Operating procedure to be followed when a foreign national claims to be a refugee. The guidelines state as follows:

> "In case it is found that prima facie the claim is justified (on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion), the matter will be recommended to MHA for grant of Long Term Visa within thirty days from the date of claim by the foreigner. One of the factors to be seen is the general perceived condition of the foreigner in question."

8. Based on this operating procedure the MHA started issuing Long Term Visa to those who had been recognised as “refugees” by the government or the UNHCR. These included persons from various countries, religions or ethnicities.
(A copy of the Standard Operating Procedure dated 29th December 2011 is annexed as **AnnexureP – 7 (Page ____to _____).**

9. The petitioners submit that the impugned notifications and the Amendment Act should be struck down as being violative of Article 14 as being arbitrary and unreasonable and hence discriminatory on the following basis:

- The Amendment Act exempts only six religious communities from the definition of illegal migrant under the Principal Act and provides that that they may be granted citizenship. The notifications similarly exempt migrants from these six religions alone from the provision of the Passport Act or Foreigners Act, to the exclusion of many other minority religious and other migrants in India such as Muslims, Jews,Ahmadiyas, etc.

- The Amendment Act exempts migrants from three countries only, namely, Afghanistan, Bangladesh and Pakistan, from the definition of illegal migrant under the Principal Act and provides that they may be granted citizenship. The notifications provide that they may be exempt from the provision of the Passport Act or Foreigners Act, to the exclusion of migrants from other neighbouring countries.

- The notifications exempt migrants fleeing religious persecution alone, from the provisions of the Passport Act and Foreigners Act. The Amendment Act exempts from the definition of illegal migrant under the Principal Act and provides for the grant of citizenship, to such illegal migrants from the above mentioned religions from three countries only, namely, Afghanistan, Bangladesh and Pakistan, if they

have fled religious persecution in the above mentioned countries, to the exclusion of migrants who have fled other forms of persecution such as linguistic or ethnic persecution.

- That is exempts from the definition of illegal migrant under the Principal Act, such illegal migrants from the above-mentioned religions from three countries only, namely, Afghanistan, Bangladesh and Pakistan, if they have fled religious persecution in the above-mentioned countries. However, the Sec 6 B (4) of the Amendment Act arbitrarily exempts persons in the tribal areas of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under “Inner Line” notified under the Bengal Eastern Frontier Regulation, 1873, from the benefit of citizenship.

- That the notifications exempts from the provisions of the Passport Act and Foreigners Act and Amendment Act exempts from the definition of illegal migrant under the Principal Act, such illegal migrants from the above mentioned religions from three countries only, namely, Afghanistan, Bangladesh and Pakistan, if they have fled religious persecution in the above mentioned countries and have entered India on or before 31, December 2014

**Arbitrary and impermissible classification**

10. The petitioner submits that this Amendment Act, differentiates between illegal migrants only on the basis of religion thereby exempting six religious communities from being illegal migrants and thus eligible for citizenship whereas similarly placed migrants from other religious communities such as Muslims and Jews will not be able to apply for citizenship by registration or naturalisation. Further a child born in India after 2003 to a parent of migrants from these six religious communities mentioned in the Amendment Act, will qualify as citizens by birth. Whereas if the child is born after 2003 to a

person deemed to be an illegal migrant of any other religious community, such child would not qualify for citizenship. Therefore, to exclude migrants from other religions is arbitrary and unreasonable and hence discriminatory.

11. Vide this Act, certain classes of immigrants will be denied citizenship solely on the basis of their religious identity. The Act excludes multiple communities that are similarly subjected to persecution in neighbouring states, such as Muslim Rohingyas in Buddhist-majority Myanmar, Buddhist Tibetans, Muslim Uighurs in China, Muslim minorities in Pakistan, such as Shias and Ahmadis, among others. Our constitutional scheme does not allow discrimination on the basis of religion. The Ahmadis make up a sizable minority in Pakistan (with a population of about 2 million members) that regularly faces religious violence, religion-based prosecution, and anti-Ahmadi laws. Thus, they fit soundly into the category of a religiously persecuted minority group in Pakistan.There are also multiple records of atheists in Bangladesh being attacked for their views. News articles cover the murders of bloggers, authors and activists who espoused atheist and secular views. The persecution of atheists for their lack of religious beliefs also amounts to religious persecution, and therefore, merely using religious identity and country of origin as a proxy of persecution is unreasonable, and also suffers from the vice of arbitrariness.

12. The Act also places residents who have illegally migrated from other countries like Sri Lanka, Nepal, China and Myanmar at a disadvantage by arbitrarily excluding them from the provisions of the Amendment Act. It would be immaterial if their religious identity and reasons for migration were the same. The criteria has been confined to three countries alone, Afghanistan, Bangladesh and Pakistan. For example, while a Buddhist who illegally migrated from Pakistan owing to religious persecution would qualify for grant of citizenship, a Buddhist who fled China for the

same reason would not. This is an arbitrary classification on the basis of country of origin.

13. The Statement of Objects and Reasons mention that the criterion is undivided, pre-Partition India. Then Afghanistan ought not to have been a part of the list. If the criterion is neighbouring nations, then there are a host of countries surrounding India that have witnessed violence upon minorities. The Rohingya Muslims of Myanmar have been subjected to ethnic cleaning and genocide. Sri Lankan Tamils have suffered systematic discrimination and state-sponsored persecution. This classification also fails because though the statement of objects and reasons mentions that Afghanistan, Pakistan and Bangladesh have an official state religion (Islam), other neighbour like Sri Lanka also has an official State religion (Theravada Buddhism).

14. The petitioner submits that it is further impermissible that the migrants in India be accorded differential treatment on the basis of the kind of persecution they have fled. The Act excludes other minority communities from the three countries and other countries that have found refuge in India, not just fleeing religious persecution but other forms of persecution such an ethnic or linguistic persecution. For instance, the Muslim Rohingyas in Buddhist-majority Myanmar have fled ethnic violence and genocide and are arbitrarily excluded from the provisions of the Act. Various other minority communities in India’s neighbourhood have suffered severe persecution, not only based on their religious beliefs, but also their race, ethnicity and language. The case of the Tamils in Sri Lanka and Tibetans in China are the most prominent examples.

15. The Amendment Actfurther sets an arbitrary cut-off date as eligibility for the grant of citizenship. It further arbitrarily excludes person in tribal areas of four northeastern States and Inner Line Permit areas from the benefit of grant of citizenship.

16. It is further submitted that no legislation can be manifestly arbitrary. The Supreme Court has consistently been reading this requirement under equal protection to mean that no statue can be capricious, irrational or without an adequate determining principle. A Constitution Bench of this Hon'ble Court held in E.P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3:

> 85. ...The basic principle which therefore informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice : in fact the matter comprehends the former. Both are inhibited by Arts. 14 and 16

17. Again in Ajay Hasia and others v Khalid MujidSehravardi and other (1981) 1 SCC 722, Justice P.N. Bhgawati held:

> 16. ... It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because any

> action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not para-phrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14would be breached. **Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs though the whole of the fabric of the Constitution.**
>
> (emphasis supplied)

18. The Amendment Act fails the touchstone of Article 14 since it discriminates against persons residing in India using an arbitrarily classification on the basis of religion, country of origin and extends its scope to only those persons who have fled religious persecution. This Hon’ble Court in Re The Special Courts Bill, 1978 (1979) 1 SCC 380 clarified the various propositions with regard to Article 14:

- 72. . As long back as in 1960, it was said by this Court in KangsariHaldar (Supra) that the prepositions applicable to cases arising under Article 14 "have been repeated so many times during the past few years that they now sound almost platitdinous". What was considered to be platitudinous some 18 years ago has, in the natural course of events, become even more platitudinous today, especially in view of the avalanche of cases which have flooded this Court. Many a learned Judge of this Court has said that it is not in the formulation of principles under Article 14 but in their application to concretcases that difficulties generally arise. But, considering that we are sitting in a larger Bench than some which decided similar cases under Article 14, and in view of the peculiar importance of the questions arising in this reference, though the questions themselves are not without a precedent, we propose, though undoubtedly at the cost of some repetition, to state the prepositions which emerge from the judgments of this Court in so far as they

are relevant to the decision of the points which arise for our consideration. Those propositions may be stated thus:

1. The first part of Article 14, which was adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination of favourtism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.

2. The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

3. The Constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

5. By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

8. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

9. If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the

face of it to be discriminatory, irrespective of the way in which it is applied.

10. Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an apprehension. Discretionary power is not necessarily a discriminatory power.

11. Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

12. Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

13. A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination"

**The Amendment Act fails the Article 14 test of reasonable and permissible classification**

19. The differential treatment of Indian residents must meet the requirement of equality before law and equal protection of laws under Article 14 of the Constitution. The Constitution extends this right to all persons within the territory of India irrespective of citizenship. Equal protection demands that any differential treatment be reasonable and justified. The courts have held that the classification made by a law should be rational and the differentiation must correspond with its proclaimed purpose.

While the statement of objects and reasons of the Act argues that the purpose behind the Amendment Act is to accommodate minorities facing religious persecution, the Act specifically excludes from its ambit many communities that have faced religious persecution in the mentioned countries such as Muslim Shias and Ahmadiaysin Pakistan, Shia Muslim communities like the Hazaras in Afghanistan, etc. Religious persecution of minorities is equally pervasive outside these three neighbours. Muslim Uighurs from China and Tibetan Buddhists have been subjected to religious persecution at the hands of the Chinese.

20. Therefore, if the proclaimed purpose of the Amendment Act is to accommodate minority communities suffering religious persecution, the distinction on the basis of religion and country of origin is irrational and unjustified. None of these distinctions correspond with the ostensible purpose of the law. These distinctions do not include groups that must be included to meet the law's aim of accommodating minority communities facing religious persecution.

21. In **R.K. Garg v Union of India**reported in **(1981) 4 SCC 675**, a Constitution Bench clearly held that classification for the purpose of legislation must not be arbitrary but must be rational and the there must be a rational nexus between the basis of the classification and the object of the Act.

> 6. That takes us to the principal question arising in the writ petitions namely, whether the provisions of the Act are violative of Article 14 of the Constitution. The true scope and ambit of Article 14 has been the subject matter of discussion in numerous decisions of this Court and the propositions applicable to cases arising under that Article have been repeated so many times during the last thirty years that they now sound platitudenous. The latest and most complete exposition of the propositions relating to the applicability of Article 14 as emerging from "the avalanche of cases which have flooded this Court" since the commencement of the Constitution is to be found in the Judgment of one of us (Chandrachud, J. as he then was) in Re: Special Courts Bill It not only contains a lucid statement of the propositions arising under Article 14, but

being a decision given by a Bench of seven Judges of this Court, it is binding upon us. That decision sets out several propositions delineating the true scope and ambit of Article 14 but not all of them are relevant for our purpose and hence we shall refer only to those which have a direct bearing on the issue before us. They clearly recognise that classification can be made for the purpose of legislation but lay down that:

1. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely,(l) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

2. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

It is clear that Article 14 does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. What is necessary in order to pass the test of permissible classification under Article 14 is that the classification must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. The question to which we must therefore address ourselves is whether the classification made by the Act in the present case satisfies the aforesaid test or it is arbitrary and irrational and hence violative of the equal protection clause in Article 14.

7. Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule

> is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

22. Further the Hon'ble Supreme Court has held in NavtejSingh Johar v Union of India (2018) 10 SCC 1 that negative discrimination by the State on the basis of an intrinsic trait of an individual cannot form reasonable classification and hence violates Article 14. The Court held:

> 352. "...The very purpose of the fundamental rights chapter in the Constitution of India is to withdraw the subject of liberty and dignity of the individual and place such subject beyond the reach of majoritarian governments so that constitutional morality can be applied by this Court to give effect to the rights, among other, of "discrete and insular" minorities...
>
> 637.3 ...Where a legislation discriminated on the basis of an intrinsic and core trait of an individual, it cannot form a reasonable classification on an intelligible differentia."

**Amendment Act violates the basic structure of the Constitution**

23. The Citizenship Amendment Act, 2019, allows for persons 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, not be treated as illegal immigrantsand who may be registered or

naturalised as citizens. By specifying persons of only certain religions to be included, and consequently leaving out other religions, namely Muslims Jews, etc. the act violates Article 14 of the Constitution of India which provides equality before the law and equal protection of laws to all persons within the territory of India, thereby violating the secular principles which form a basic structure of Constitution of India.

24. In the case of His Holiness Kesavananda Bharti Sripadagalvaru v State of Kerala and Anr. **[(1973) 4 SCC 225]** it was upheld that the basic structure doctrine forms the basis of power of the Indian judiciary to review, and strike down amendments to the Constitution of India enacted by the Indian Parliament which conflict with or seek to alter this basic structure of the Constitution. The Secular character of the Constitution was held to be a part of the basic structure. The court held:

> “1480. The words "amendment of the Constitution" with all their wide sweep and amplitude cannot have the effect of destroying or abrogating the basic structure or framework of the Constitution. It would not be competent under the garb of amendment, for instance, to change the democratic government into dictatorship or hereditary monarchy nor would it be permissible to abolish the Lok Sabha and the Rajya Sabha. The secular character of the state according to which the state shall not discriminate against any citizen on the ground of religion only cannot likewise be done away with. Provision regarding the amendment of the Constitution does not furnish a pretence for subverting the structure of the Constitution nor can Article 368 be so construed as to embody the death wish of the Constitution or provide sanction for what may perhaps be called its lawful harakiri. Such subversion or destruction cannot be described to be amendment of the Constitution as contemplated by Article 368.”

25. In S.R. Bommai And Ors. v. Union of India **[(1994) 3 SCC 1]** it was held by the majority judgement that secularism is a part of the basic structure of the Constitution and also the soul of the Constitution. It was held that the 42nd Amendment only made explicit what was implicit and embedded in our constitutional philosophy, and if any political party in power in a State, supports or encourages acts which subvert, sabotage or erode secularism then it can be said that a situation has arisen where the Government of the State cannot be run in accordance with the Constitution. Mixing of politics with religion is not countenanced by the Constitution. It court held as follows:

> "148. One thing which prominently emerges from the above discussion on secularism under our Constitution is that whatever the attitude of the State towards the religions, religious sects and denominations, religion cannot be mixed with any secular activity of the State. In fact, the encroachment of religion into secular activities is strictly prohibited. This is evident from the provisions of the Constitution to which we have made reference above. The State's tolerance of religion or religions does not make it either a religious or a theocratic State. When the State allows citizens to practise and profess their religions, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. The freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life which is different from the secular life. The latter falls in the exclusive domain of the affairs of the State.
> 153. VIII. Secularism is a part of the basic structure of the Constitution. The acts of a State Government which are calculated to subvert or sabotage secularism as enshrined in our Constitution, can lawfully be deemed to give rise to a situation in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution."

26. It was held again in Ismail Faruqui (Dr) v. Union of India, **(1994) 6 SCC 360**

> 135. That secularism is a part of the basic features of the Constitution was held in Kesavananda Bharati v. State of Kerala [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 : 1973 Supp SCR 1] . It was unanimously reaffirmed by the nine-Judge Bench of this Court in S.R. Bommai v. Union of India [(1994) 3 SCC 1] . Sawant, J. analysed the Preamble of the Constitution and various articles therein and held that

these provisions, by implication, prohibited the establishment of a theocratic State and prevented the State from either identifying itself with or favouring any particular religion. The State was enjoined to accord equal treatment to all religions. K. Ramaswamy, J. quoted the words written by Gandhiji that are as apposite now as they were when he wrote them: “The Allah of Muslims is the same as the God of Christians and Ishwara of Hindus.” B.P. Jeevan Reddy, J. said: (SCC p. 233, para 304)

“While the citizens of this country are free to profess, practise 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. How is this equal treatment possible, if the State were to prefer or promote a particular religion, race or caste, which necessarily means a less favourable treatment of all other religions, races and castes. How are the constitutional promises of social justice, liberty of belief, faith or worship and equality of status and of opportunity to be attained unless the State eschews the religion, faith or belief of a person from its consideration altogether while dealing with him, his rights, his duties and his entitlements? Secularism is thus more than a passive attitude of religious tolerance. It is a positive concept of equal treatment of all religions. This attitude is described by some as one of neutrality towards religion or as one of benevolent neutrality. This may be a concept evolved by Western liberal thought or it may be, as some say, an abiding faith with the Indian people at all points of time. That is not material. What is material is that it is a constitutional goal and a basic feature of the Constitution as affirmed in KesavanandaBharati v. State of Kerala [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 : 1973 Supp SCR 1] and Indira Nehru Gandhi v. Raj Narain [1975 Supp SCC 1 : (1976) 2 SCR 347] . Any step inconsistent with this constitutional policy is, in plain words, unconstitutional.”

**International covenants on non-discrimination on the basis of religion and nationality**

27. International human rights law protects the rights of all persons against discrimination on the basis of religion, nationality, country, status, etc. Various international conventions that have been ratified by India or to which India is a signatory have recognised this right of all persons to equality before the law and to equal protection of the law without discrimination. The Hon’ble Supreme Court has in many cases directed that action of the

States must be in conformity with international law and conventions.

28. In Gramophone Company Of India Ltd vs Birendra Bahadur Pandey &Ors, (1984 SCC (2) 534), the Apex Court had held that the comity of Nations requires that Rules of International law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament.

> '5. There can be no question that nations must march with the international community and the Municipal law must respect rules of International law even as nations respect international opinion. The comity of Nations requires that Rules of International law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament...The doctrine of incorporation also recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with Act of Parliament."

29. The International Covenant on Civil and Political Rights

Article 26

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

30. Universal Declaration of Human Rights

Article 7

"All are equal before the law and are entitled without any

discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

31. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief
Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or belief.
2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

32. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief
Article 2
"Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations."

33. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief
Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief

in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or belief in this matter.

34. That the petitioner has not filed any other petition seeking the same relief in this Hon’ble Court any other Court of this Country.

## GROUNDS

A. Because the Citizenship (Amendment) Act, 2019 violates article 14 of the Constitution of India which provides for equality before law and equal protection of the law. The impugned Act accords differential treatment without intelligible differentia to illegal migrants on the basis of (a) their country of origin - Afghanistan, Bangladesh, and Pakistan; (b) religion - Hindus, Sikhs, Buddhists, Jains, Parsis and Christians; (c) date of entry into India (d) place of residence in India e) kind of persecution they have fled.Further for the grant of citizenship the tribal areas of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873, have been excluded. The Hon’ble Supreme Court has held in several cases that underlying the guarantee in Article 14 is that all persons in similar circumstances shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is

substantially the same. The classification of illegal migrants in the Act is thus arbitrary and impermissible.

B. Because this Amendment Act, differentiates between illegal migrants on the basis of religion thereby exempting six religious communities from being illegal migrants and thus eligible for citizenship whereas similarly placed migrants from other religious communities such as Muslims and Jews will not be able to apply for citizenship by registration or naturalisation. Therefore to exclude migrants from other religions is arbitrary and unreasonable and hence discriminatory.Our constitutional scheme does not allow discrimination on the basis of religion.

C. Because the Act also places residents who have illegally migrated from other countries like Sri Lanka, Nepal, China and Myanmar at a disadvantage by arbitrarily excluding them from the provisions of the Amendment Act.There is no reasonable justification for restricting the benefit under the amendment Act to three countries along to the exlusion of many other neighbouring country that have been war torn and witnessed ethnic cleansing and genocide against persons from various religious and linguistic communities.

D. Because the Act arbitrarily accords differential treatment to migrants in India on the basis of the kind of persecution they have fled. The Act excludes other minority communities from the three countries and other countries that have found refuge in India, not just fleeing religious persecution but other forms of persecution such an ethnic or linguistic persecution.

E. Because the Act is discriminatory and unconstitutional in excluding persons from tribal areas of tribal areas of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under “Inner Line” notified under the Bengal Eastern Frontier

Regulation, 1873, from the benefit of citizenship. The cut off date for grant of citizenship has been arbitrarily decided is hence discriminatory. Such an arbitrary classification is unreasonable and cannot be justified as having any reasonable nexus to the purpose of the Act.

F. Because the differential treatment of Indian residents must meet the requirement of equality before law and equal protection of laws under Article 14 of the Constitution. The Constitution extends this right to all persons within the territory of India irrespective of citizenship. Equal protection demands that any differential treatment be reasonable and justified. The courts have held that the classification made by a law should be rational and the differentiation must correspond with its proclaimed purpose.If the proclaimed purpose of the Amendment Act is to accommodate minority communities suffering religious persecution, the distinction on the basis of religion and country of origin is irrational and unjustified. None of these distinctions correspond with the ostensible purpose of the law. These distinctions do not include groups that must be included to meet the law's aim of accommodating minority communities facing religious persecution.

G. Because a Constitution bench in In R.K. Garg v Union of India (1981) 4 SCC 675, clearly held that classification for the purpose of legislation must not be arbitrary but must be rational and the there must be a rational nexus between the basis of the classification and the object of the Act to meet the requirements of Article 14. The Court held:

> 6. ...
>
> 1. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a

reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely,(l) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

2. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

It is clear that Article 14 does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. What is necessary in order to pass the test of permissible classification under Article 14 is that the classification must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. The question to which we must therefore address ourselves is whether the classification made by the Act in the present case satisfies the aforesaid test or it is arbitrary and irrational and hence violative of the equal protection clause in Article 14.

H. Because no legislation can be manifestly arbitrary. The Supreme Court has consistently been reading this requirement under equal protection to mean that no statue can be capricious, irrational or without an adequate determining principle. A Constitution Bench of this Hon’ble Court held in E.P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3:

> 86. ...The basic principle which therefore informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-

> embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice: in fact the matter comprehends the former. Both are inhibited by Arts. 14 and 16

I. Because the Citizenship Amendment Act, 2019by specifying persons of only certain religions to be included, and consequently leaving out other religions, namely Muslims Jews, etc. the act violates Article 14 of the Constitution of India which provides equality before the law and equal protection of laws to all persons within the territory of India, thereby violating the secular principles which form a basic structure of Constitution of India.

J. Because the Preamble of the Constitution of India declares India a secular state. The Preamble is quoted below:

> *“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST*

***SECULAR*** *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*
*FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;*
*IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."*

[Emphasis supplied]

K. Because this Hon'ble Court held that secularism is a basic feature of the Indian Constitution in landmark cases like *Kesavananda Bharati(1973) 4 SCC 225*, *Minerva Mills (1980)*, *S.R. Bommai v. Union of India reported in* (1994) 3 SCC 1*, R.C. Pondyal v. Union of India reported in AIR 1993 SC 1804*; and the Citizenship (Amendment) Act, 2019 offends the principle of secularism being discriminative against migrants of particular religious communities. It is submitted that since the basic structure of the constitution cannot be violated by a constitutional amendment, the same cannot be done, by a legislation. What is impermissible through a constitutional amendment remains impermissible through legislation.

L. Because the notifications G.S.R. 685(E), 686 (E ), 702( E ) & 703 (E) dated 7th September 2015 and 18th July 2016, issued by the central government, exempting illegal migrants from the above mentioned six religions, seeking shelter in India due to religious persecution, from Afghanistan, Bangladesh or Pakistan, from the provisions of the Passport Act 1920 and the Foreigners Act 1946, Act are unconstitutional as they arbitrarily discriminate and violate the right to equality of all persons under the Constitutional scheme.

M. Because this Hon'ble Supreme Court has held in Navtej Singh Johar v Union of India (2018) 10 SCC 1 that negative

discrimination by the State on the basis of an intrinsic trait of an individual cannot form reasonable classification and hence violates Article 14. Discrimination on the basis of religion which forms part of a persons intrinsic trait, would thus be an impermissible classification In upholding Constitutional morality the court held:

> 352. "...The very purpose of the fundamental rights chapter in the Constitution of India is to withdraw the subject of liberty and dignity of the individual and place such subject beyond the reach of majoritarian governments so that constitutional morality can be applied by this Court to give effect to the rights, among other, of "discrete and insular" minorities...

N. Because the notifications and the Amendment Act also violate Article 21 of the Constitution of India, as it violates the right to live with dignity of individuals who are not covered under the special dispensation of the Amendment Act, solely on the basis of their membership to a particular religion. This Hon'ble Court has held, in ***Francis Coralie Mullin v. The Union Territory of Delhi*** [1981 1 SCC 608] that Article 21's guarantee to life and personal liberty includes the right to live with human dignity and all that goes with it:

> *"6. The right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.* ***... Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to life and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights."***

Religious discrimination is a violation of human dignity. The State practicing discrimination, violates human dignity and consequently, the right to life of citizens, that are discriminated against.

It is submitted that Hon'ble Dickson, C.J. has held in *R.* v. *Keegstra*, [1990] 3 S.C.R. 697 as decided by the Supreme Court of Canada that a *"person's sense of human dignity and belonging to the community at large is closely linked to the concern and respect accorded the groups to which he or she belongs"* and that the Hon'ble Commission in the *East African Asians v. the United Kingdom* case adopted on 14 December 1973 (Decisions and Reports 78-A, p. 62) in the European Court of Human Rights had concluded that treatment, which is discriminatory against individuals on the basis of their ethnic origin, race and religion, results in hardships which affect such individuals in their daily lives and attain a level of severity which constitute an affront to their human dignity

O. Because the grant of citizenship on a discriminatory basis is in clear violation of Article 26 of The International Covenant on Civil and Political Rights and Article 7 of the Universal Declaration of Human Rights , which prohibit discrimination based on racial, ethnic or religious grounds, read with Article 51 of our Constitution which mandates fostering respect for international law and treaty obligations in dealings with organised peoples with one another.

## **PRAYERS**

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

a) Issue an appropriate writ or direction striking down from the proviso to Section 2(1)(b) of the Citizenship (Amendment) Act 2019 the words "Hindu, Sikh, Buddhist, Jain, Parsi or Christian Community from Afghanistan, Bangladesh or

Pakistan, who entered into India on or before 31st day of December, 2014 and", or alternatively striking down the entire proviso to Section 2(1)(b) introduced by the Citizenship (Amendment) Act, 2019 as unconstitutional, illegal and void.

b) Issue an appropriate writ or direction striking down section 6B introduced by the Citizenship (Amendment) Act, 2019 as unconstitutional, illegal and void.

c) Issue an appropriate writ or direction striking down the proviso to clause (d) of the third schedule as introduced by the Citizenship (Amendment) Act, 1955 as unconstitutional, illegal and void.

d) Issue an appropriate writ or direction declaring the notifications G.S.R. 685(E), 686 (E ), 702( E ) & 703 (E) dated 7th September 2015 and 18th July 2016, issued by the central government by which Section 4(1)(ha) was added to the Passport (Entry into India) Rules, 1950 and Section 3A was added to the Foreigners Order, 1948, as unconstitutional, illegal and void.

e) Pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

THROUGH:

**(PRASHANT BHUSHAN)**
COUNSEL FOR THE PETITIONERS

**DRAWN BY:**

CHERYL D'SOUZA, ADVOCATE
SUROOR MANDER, ADVOCATE
HEMANT POTHULA, ADVOCATE
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ANKITA RAMGOPAL, ADVOCATE

DRAWN & FILED ON : 16.12.2019
PLACE: NEW DELHI