SYNOPSIS

The present Writ Petition is being filed by the Petitioners herein under Article 32 in the nature of a public interest litigation to challenge Citizenship Amendment Act, 2019 which has been duly notified in the Gazette of India on January 10, 2020 in exercise of powers conferred by Section (2) of the Section 1 of the Citizenship (Amendment) Act, 2019 (47 of 2019) and has become an enforceable Central Legislation. (hereinafter referred to as the "Impugned Act") and Notification No. G.S.R 685(E) dated 7.9.2015 ("First Impugned Notification"), Order No. G.S.R 686(E) dated 7.9.2015 ("Second Impugned Notification"), Notification No. G.S.R 702(E) dated 18.7.2016 ("Third Impugned Notification"), Order No. G.S.R 703(E) dated 18.7.2016 ("Fourth Impugned Notification") and Notification No. S. O. 2753(E) dated July 31, 2019 ("Impugned NPR Notification") (hereinafter collectively referred to as the "Impugned Notifications").

The present Writ Petition also challenges Section 3(1)(a) in so far as it introduces the caveat that a child born before 1st day of July, 1987 will not get citizenship by birth and Section 3(1)(b) & (c) of the Citizenship Act,1955 as unconstitutional.

The Petitioner No. 1 Society is a non-governmental organization for minority rights and protection and has been working for last 7 years for the upliftment of minorities. The Petitioner No. 1 Society was established with an objective to help the backward communities in acquiring quality education, getting jobs and having good health facilities. The Petitioner No. 1 organization has been involved in several philanthropic activities such as organizing events for Tourist Safety in Aurangabad, conducting Health Camps and Mega Tree Plantation events in different schools in Aurangabad, Maharashtra. The

C

Society also sponsored loans for students of backward classes. The Governing Body of the Petitioner No. 1 Society includes eminent educationists, academicians, lawyers and eminent citizens of Aurangabad. The Society does not take government grants and all its activities are self-sponsored. The Petitioner No. 1 Society aims to help the need and aims to promote National Integration and brotherhood amongst the citizens. The Petitioner No. 2 is the President of the Petitioner No. 1 Society.

The Petitioners are challenging the constitutionality of the Impugned Act as well as the First, Second, Third and Fourth Impugned Notifications as violative of Articles 14, 15, 21, 25, 51 (c) and 51 (a) and the basic structure of the Constitution of India. Further, the Impugned Act and the Impugned Notifications attempt to destroy the secular fabric of the nation by extending patronage to certain religious communities and are also in teeth of the principle of "Constitutional Morality". It is submitted that the Impugned Act and the Impugned Notifications are manifestly arbitrary and ought to be set aside.

It is submitted that at the time of framing of the Constitution an amendment was moved to Article 5 (by Dr. P.S. Deshmukh) which stipulated that – *Every person who is Hindu or Sikh by religion and is not a citizen of any other State, wherever he resides, shall be entitled to be a citizen of India.* The said amendment was justified by Prof. Shiban Lal Saksena on the grounds that Hindus and Sikhs have no other home but India. However, the Prof. Shiban Lal Saksena admitted that Dr. Deshmukh's amendment gave citizenship to almost everybody and therefore he suggested that if these Hindus and Sikhs have been in India for 5 years, they will be citizens. Needless to say that this amendment was ultimately negatived as it was

D

contrary to the secular principles abided by India. In this respect it is relevant to quote the following excerpt from the speech of Shri Alladi Krishnaswami Ayyar who was one of the members of the Constituent Assembly, who opposed the abovementioned amendment:-

> *"We are plighted to the principles of a secular State. We may make distinction between people who have voluntarily and deliberately chosen another country as their home and those who want to retain their connection with this country. But we cannot on any racial or religious or other grounds make a distinction between one kind of persons and another, or one sect of persons and another sect of persons, having regard to our commitments and formulation of our policy on various occasions."*

It is submitted that the Impugned Act is identical to the abovementioned amendment which was negatived by the framers of the Constitution. As held by this Hon'ble Court in *Navtej Singh Johar v. Union of India Ministry of Law* [(2018) 10 SCC 1] the Constitution of India does not merely provide a framework but it embodies a vision. Our Constitution, above all, is an essay in the acceptance of diversity. It is founded on a vision of an inclusive society which accommodates plural ways of life. Further Constitutional Morality requires that the citizens would respect the vision of the framers of the Constitution and would conduct themselves in a way which furthers that vision. Needless to say, that not only the Impugned Act is not in consonance with the vision of the founding fathers of our Constitution but is in fact completely divergent to it. It is therefore clear that the Impugned Act is unconstitutional as it is violative of the principle of constitutional morality. The Impugned Act is nothing but an attempt to do that which was expressly

forbidden by the framers of our constitution. It is therefore apparent that the Impugned Act instead of furthering the vision of the founding fathers, completely derails the same.

Additionally, on July 31, 2019, the Impugned NPR notification has been issued which stipulates that Population Register will be prepared within the period of April 1, 2020 to September 30, 2020. It is submitted that the preparation of the Population Register is a statutory exercise mandated by Rule 3(4) of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. It is relevant to note that these rules provide for preparation of NRC and for issuance of a National Identity Card to those persons whose names have been entered in the NRC. It is relevant to note that Rule 4 of the said rules provides for the steps to be followed for the preparation of NRC. Pertinently, Rule 4 (3) and Rule 4 (4) provide the reason for the preparation of the Population Register as the said rules specify that the data collected in the Population Register shall be verified and scrutinized by the Local Registrar and if the particulars of any individual are found to be doubtful, a remark shall be made in the Population register. Subsequently, the concerned person would be given an opportunity of hearing post which, it shall be decided whether the concerned person's name would be included in the NRC or not. It is therefore clear that the preparation of the Population Register is not only the first step but a precondition to the preparation of the NRC as it is on the basis of the data collected during this exercise that the doubtful citizens are to be identified. Further the fact that the Population Register is prepared only to aid in the exercise of preparation of the final NRC is evident from the text of the impugned NPR notification which excludes Assam from its purview as the NRC exercise in the state of Assam

F

has already been concluded. In such circumstances, when the Central Government has already taken a policy decision to not go ahead with the NRC (as mentioned by the Hon'ble Prime Minister of India in his speech dated December 22,2019 and as per the stand of the officials of the Ministry of Home Affairs – as per the media reports dated 24.12.2019), the preparation of the Population Register is nothing but a waste of time, energy and valuable resources of the Nation. It is submitted that as per media reports a sum of Rs 3,941.35 crore has been approved to be utilized for the exercise of preparing the National Population Register (NPR) which sum will be wasted as the preparation of National Population Register is not an isolated exercise and is intrinsically linked to the subsequent preparation of the NRC. It is relevant to note that in the present economic scenario, where there has been a sharp slowdown in economic growth, the entire sum sanctioned for preparation of the NPR will go down the drain as the Government is not planning to prepare a nationwide NRC.

In view of the foregoing, it is submitted that the Impugned Act along with the Impugned Notifications be set aside as unconstitutional.

Hence, the present Writ Petition.

LIST OF DATES

23.11.1946	The Foreigners Act, 1946 was enacted.
15.08.1947	India achieved independence from the British and was partitioned into two countries, *viz*, India and Pakistan.
10.12.1948	The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly. India voted in favour of the declaration.

26.01.1950	With the commencement of the Indian Constitution, persons domiciled in the territory of India automatically became Indian citizens by virtue of operation of the relevant provisions of the Indian Constitution.
30.12.1955	The Citizenship Act, 1955 was enacted.
13.12.1975	The United Nation Convention on the Reduction of Statelessness, 1961 which was adopted on August 30, 1961 came into force. India is not a signatory to this Convention.
10.04.1979	India acceded to the International Covenant on Civil and Political Rights and ratified the same.
15.06.1985	The Assam Accord which was a Memorandum of settlement (MoS), was signed between representatives of the Government of India and the leaders of the Assam Movement in New Delhi on August 15, 1985.
07.12.1985	In 1985, Parliament inserted Section 6A in the Citizenship Act, 1955. This section provided that those persons who migrated to India from Bangladesh on or before January 1, 1966 were to be deemed to be citizens of India from January 1, 1966. This section further provided that those persons who migrated to India from Bangladesh after January 1, 1966 but before March 25, 1971, will become citizens of India but will not be entitled

to have their name included in electoral roll at any time before expiry of 10 years.

11.12.1992	India ratified the United Nations Convention on the Rights of the Child, 1990.
10.12.2003	The Central Government by virtue of its power conferred under conferred under Section 18(1) and (3) of the Citizenship Act, 1955 framed the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. The 2003 Rules provide the legal framework for the National Population Register (NPR) and the National Register of Indian Citizens (NRC).
07.09.2015	The Ministry of Home Affairs, Government of India *vide* the First Impugned Notification dated 7.09.2015 amended the Passport (Entry into India) Rules, 1950. The amendment stated that persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the December 31, 2014 either without valid documents or with valid documents, whose validity has subsequently expired, were granted exemption from the adverse penal consequences of Passport (Entry into India) Act, 1920.

Simultaneously, on the same date the Second Impugned Notification was issued. The said order was called the Foreigners (Amendment) Act, 2015 and it amended the Foreigners Order, 1948, by inserting Section 3A. By virtue of this section, persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the December 31, 2014 either without valid documents or with valid documents, whose validity has subsequently expired, were granted exemption from the provisions of the Foreigners Act,1946 and the orders made thereunder.

18.07.2016 The Ministry of Home Affairs, Government of India issued the Third Impugned Notification amending the Passport (Entry into India) Rules, 1950 to include, “Afghanistan” in Clause (ha) of Sub-Rule (1) of Rule 4 of the Passport (Entry into India) Rules 1950.

Simultaneously, on the same date, the Ministry of Home Affairs, Government of India issued the Fourth Impugned Notification to include, “Afghanistan” in Section 3A of the Foreigners Order, 1948.

19.07.2016 The Government introduced the “Citizenship Amendment Bill of 2016” in the Lok Sabha of Parliament

to make the Hindus, Sikhs, Jains, Parsis, Buddhists and Christians facing religious persecution in Afghanistan, Bangladesh, and Pakistan eligible for Indian Citizenship.

12.08.2016 The Citizenship Amendment Bill of 2016 was referred to the Joint Parliamentary Committee.

23.03.2017 Mr. Ripun Bora (Member of Rajya Sabha) raised following concerns to the Minister of External Affairs in the Rajya Sabha, regarding the lack of authoritative statistics on religious persecutions in Afghanistan and Pakistan after 1947 and in Bangladesh after 1971:

i) That whether Government has any report on any religious persecutions taking place in Afghanistan and Pakistan after 1947 and in Bangladesh after 1971 for which the people of different religions had to come to India for shelter;

ii) If so, the details of religious persecutions taken place in those countries;

iii) What is the number of people who have come to India due to this, country-wise and religion-wise; and

iv) What is the number of total Hindu Bengali families who are taking shelter in Assam due to such persecutions?

Mr. M. J Akbar (Minister of External Affairs) replied that there are no authoritative statistics available in this matter.

25.07.2018 Mr. Ripun Bora (Member of Rajya Sabha) asked Mr. Kiran Rijiju, the then Minister of State for Home Affairs regarding the country-wise and religion-wise breakup of citizenship applications. It was replied that no such data was maintained by the Government.

07.01.2019 The Joint Parliamentary Committee submitted its report on The Citizenship Amendment Bill, 2016.

03.06.2019 The Citizenship Amendment Bill, 2016 lapsed due to dissolution of Lok Sabha.

31.07.2019 The Ministry of Home Affairs, Office of the Registrar General Citizen Registration, Government of India, issued a notification announcing the preparation of a Population Register (NPR) under the Citizenship Rules, 2003. As per this notification, the schedule for the fieldwork of the proposed NPR was fixed between 1.4.2020 to 30.9.2020. Subsequently, the Government published the NPR Manual which *inter alia* provides for the documents to be considered in making the NPR. The Manual states that the legal framework for the NPR Manual is provided in Rule 3(4) of the Citizenship Rules, 2003.

31.08.2019	The exercise of preparation of National Register of Indian Citizens (NRC) was completed in the State of Assam wherein approximately 19 lakh persons were found to be illegal immigrants out of which approximately 5 lakh persons are Hindus.
04.12.2019	The Union Cabinet cleared the Citizenship (Amendment) Bill, 2019 for its introduction in the parliament.
09.12.2019	The Citizenship Amendment Bill, 2019 was introduced in Lok Sabha by the Hon'ble Home Minister.
10.12.2019	The Citizenship Amendment Bill, 2019 was passed by the Lok Sabha.
11.12.2019	The Citizenship Amendment Bill, 2019 was subsequently passed by the Rajya Sabha.
12.12.2019	The Citizenship Amendment Bill received the assent of the Hon'ble President of India and therefore the Citizenship (Amendment) Act, 2019 ("Impugned Act") came to be enacted. It is submitted that the Impugned Act by legitimising the stay of illegal migrants into India and affording them an opportunity of obtaining Indian citizenship in a fast track manner, violates Article 355 of the Constitution of India. Further, the Impugned Act creates arbitrary classification by giving on set of foreigners belonging to particular communities and certain countries over other foreigners and is thereby

violative of Article 14, 21, 25, 355 and the basic structure of the Constitution.

13.12.2019 The UN human rights office issued a Statement calling the Impugned Act as 'fundamentally discriminatory'.

18.12.2019 A batch of Writ Petitions challenging the Impugned legislation came up before this Hon'ble Court on December 18, 2019 and this Hon'ble Court was pleased to issue notice in the batch of Writ Petitions filed challenging the Impugned Act and directed the matters to be listed on January 22, 2020. The Petitioners herein crave leave to get the present petition tagged with the similar matters pending before this Hon'ble Court.

22.12.2019 The Hon'ble Prime Minister of India, in a speech mentioned that there was no discussion regarding the preparation of nationwide NRC.

24.12.2019 The Union Cabinet cleared a cost of Rs. 3941.35 crores for the preparation of the National Population Register (NPR), 2020. However, on the same day there were media reports stating that the officials of the Ministry of Home Affairs had stated that the Government had no plans at present to carry out an exercise to prepare a National Register of Citizens (NRC) for the whole country on the basis of data to be collected. It is submitted that as per the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules,

2003, the preparation of National Population Register was nothing a but the first step in the exercise of preparation of NRC. It is submitted that if Government has clearly specified that the NRC is not being prepared, no occasion arose for preparation of the Population Register which requires incurring of an expense of Rs. 3941.35 crores particularly when the nation is experiencing unprecedented economic slowdown.

10.01.2020 The Citizenship (Amendment) Act, 2019 has been duly notified in the Gazette of India on January 10, 2020 in exercise of powers conferred by Section (2) of the Section 1 of the Citizenship (Amendment) Act, 2019 (47 of 2019) and has become an enforceable Central Legislation.

13.01.2020 Hence, the present Writ Petition.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

(PUBLIC INTEREST LITIGATION)

WRIT PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:

1. MINORITY FRONT
   Through its President
   Dr. Feroz Khan

   … Petitioner No.1

2. DR. FEROZ KHAN

   … Petitioner No.2

-VERSUS-

1. UNION OF INDIA
   Through its Secretary
   Ministry of Home Affairs,
   Government of India,
   North Block, New Delhi - 110001 … Contesting Respondent No.1

2. UNION OF INDIA
   Through its Secretary
   Ministry of Law and Justice,
   Government of India,
   Shastri Bhawan, New Delhi - 110001 … Contesting Respondent No.2

3. UNION OF INDIA
   Through its Secretary
   Ministry of External Affairs,
   Government of India,
   South Block, New Delhi - 110001 … Contesting Respondent No.3

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA CHALLENGING THE CONSTITUTIONAL VALIDITY OF THE CITIZENSHIP (AMENDMENT) ACT, 2019, NOTIFICATION NO. S.O. 2753(E) DATED JULY 31, 2019 AND SECTION 3(1) OF THE CITIZENSHIP ACT, 1955

To,

The Hon'ble Chief Justice of India
and his companion justices of the
Hon'ble Supreme Court of India

The humble petition of the
above named Petitioners:

MOST RESPECTFULLY SHOWETH:

1. The Applicants/Petitioners herein have filed the present Writ Petition under Article 32 in the nature of a public interest litigation to challenge Citizenship Amendment Act, 2019 which has been duly notified in the Gazette of India on January 10, 2020 in exercise of powers conferred by Section (2) of the Section 1 of the Citizenship (Amendment) Act, 2019 (47 of 2019) and has become an enforceable Central Legislation. (hereinafter referred to as the "Impugned Act") and Notification No. G.S.R 685(E) dated 7.9.2015 ("First Impugned Notification"), Order No. G.S.R 686(E) dated 7.9.2015 ("Second Impugned Notification"), Notification No. G.S.R 702(E) dated 18.7.2016 ("Third Impugned Notification") ,Order No. G.S.R 703(E) dated 18.7.2016 ("Fourth Impugned Notification") and Notification No. S. O. 2753(E) dated July 31,2019 ("Impugned NPR Notification") (hereinafter collectively referred to as the "Impugned Notifications").

2. The present Writ Petition also challenges Section 3(1)(a) in so far as it introduces the caveat that a child born before 1st day of July, 1987 will not get citizenship by birth and Section 3(1) (b) & (c) of the Citizenship Act,1955 as unconstitutional.

3. The Petitioner No. 1 Society is a non-governmental organization for minority rights and protection and has been working for last 7 years for the upliftment of minorities. The Petitioner No. 1 Society was established with an objective to help the backward communities in acquiring quality

education, getting jobs and having good health facilities. The Petitioner No.1 organization has been involved in several philanthropic activities such as organizing events for Tourist Safety in Aurangabad, conducting Health Camps and Mega Tree Plantation events in different schools in Aurangabad. The Society also sponsored loans for students of backward classes. The Governing Body of the Petitioner No.1 Society includes eminent educationists, academicians, lawyers and eminent citizens of Aurangabad. The Society does not take government grants and all its activities are self-sponsored. The Petitioner No. 1 Society aims to help the need and aims to promote National Integration and brotherhood amongst the citizens. It is relevant to note that the Petitioner No. 1 is a registered society, which was registered with the Assistant Charity Commissioner, Aurangabad Region on December 6, 2013. A photocopy and translated copy of the Registration Certificate dated December 6, 2013 issued by the Assistant Charity Commissioner, Aurangabad Region is annexed hereto and marked as **Annexure P-1 [Page Nos. 50 to 51].**

4. The Petitioner No. 2 is the President of the Petitioner No. 1 Society. The Petitioner No.2 has been duly authorized by the Petitioner No.1 Society to sign the vakalatnama and the affidavit for filing the present Writ Petition before this Hon'ble Court. A true copy of the authorisation of the Petitioner No.1 Society authorizing the Petitioner No.2 for filing the present Writ Petition before this Hon'ble Court is annexed hereto and marked as **Annexure P-2 [Page No. 52].**

5. That the necessary details of the President through whom the Petitioner No.1 is approaching this Hon'ble Court and which is the details also of Petitioner No. 2 are as follows:-

(i)

of Petitioner No. 2 are annexed hereto and marked as **Annexure P-3 [Page No. 53]** and **Annexure P-4 [Page No. 54]** as personal identification in this Writ Petition because the same is being filed as a Public Interest Litigation.

6. The Petitioner No.2 is a citizen of India and also a President of Petitioner No.1 Society.

7. That the Petitioners have no personal gain, private motive or oblique reason in filing the present Petition. The petition is filed for common cause and the benefits of the society at large.

8. That the Petitioners state that no civil, criminal or revenue litigation involving the Petitioners, which has or could have a legal nexus with the issues involved in the Petition is pending.

9. That the Petitioners state, that there is no concerned Government authority which could be moved for the reliefs sought for by the Petitioners in the present Petition as the only efficacious remedy lies before this Hon'ble Court under Article 32 of the Constitution.

10. That the Respondents herein are the Union of India through the Secretary, Ministry of Home Affairs, Secretary, Ministry of Law & Justice and Secretary, Ministry of External Affairs.

11. The Brief facts leading to the filing of the present Writ Petition are as follows:-

(i) That on November 23, 1946, the Foreigners Act, 1946 was enacted.

(ii) That on August 15, 1947, India achieved independence from the British and was partitioned into two countries, *viz*, India and Pakistan.

(iii) That on December 10, 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly. India voted in favour of the declaration. A true copy of the Universal Declaration of Human Rights (UDHR) dated 10.12.1948 is annexed hereto and marked as **Annexure P-5 [Page Nos. 55 to 61].**

(iv) That on January 26, 1950, the Constitution of India came into force. With the commencement of the Indian Constitution, persons domiciled in the territory of India automatically became Indian citizens by virtue of operation of the relevant provisions of the Indian Constitution.

(v) That on December 30, 1955, the Citizenship Act, 1955 was enacted.

(vi) That on December 13, 1975, the United Nation Convention on the Reduction of Statelessness, 1961 which was adopted on August 30, 1961 came into force. It is relevant to mentioned that India is not a signatory to this Convention. A true copy of the United Nation Convention on the Reduction of Statelessness, 1961 is annexed hereto and marked as **Annexure P-6 [Page Nos. 62 to 77].**

(vii) That on April 10, 1979, India acceded to the International Covenant on Civil and Political Rights and ratified the same. A true copy of the International Covenant on Civil and Political Rights dated 23.3.1976

is annexed hereto and marked as **Annexure P-7 [Page Nos. 78 to 108].**

(viii) That on June 15,1985, the Assam Accord which was a Memorandum of settlement (MoS), was signed between representatives of the Government of India and the leaders of the Assam Movement in New Delhi on August 15, 1985.

(ix) That on December 7, 1985, Parliament inserted Section 6A in the Citizenship Act, 1955. This section provided that those persons who migrated to India from Bangladesh on or before January 1, 1966 were to be deemed to be citizens of India from January 1, 1966. This section further provided that those persons who migrated to India from Bangladesh after January 1, 1966 but before March 25, 1971, will become citizens of India but will not be entitled to have their name included in electoral roll at any time before expiry of 10 years.

(x) That on December 11, 1992, India ratified the United Nations Convention on the Rights of the Child, 1990. A true copy of the United Nations Convention on the Rights of the Child is annexed hereto and marked as **Annexure P-8 [Page Nos. 109 to 123].**

(xi) That on December 10, 2003, the Indian Government by virtue of its power conferred under conferred under Section 18 of the Citizenship Act, 1955 promulgated the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. The 2003 Rules provide the legal framework for the National Population Register (NPR) and the National Register of Indian Citizens (NRC).

(xii) The Ministry of Home Affairs, Government of India *vide* the First Impugned Notification dated 7.09.2015 amended the Passport (Entry into India) Rules, 1950. The amendment stated that persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the December 31, 2014 either without valid documents or with valid documents, whose validity has subsequently expired, were granted exemption from the adverse penal consequences of Passport (Entry into India) Act, 1920. Simultaneously, on the same date the Second Impugned Notification was issued. The said order was called the Foreigners (Amendment) Act, 2015 and it amended the Foreigners Order, 1948, by inserting Section 3A. By virtue of this section, persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the December 31, 2014 either without valid documents or with valid documents, whose validity has subsequently expired, were granted exemption from the provisions of the Foreigners Act,1946 and the orders made thereunder. A true copy of the Notification No. G.S.R 685(E) dated 7.9.2015 is annexed hereto and marked as **Annexure P-9 [Page Nos. 124 to 125].** A true copy of the Order No. G.S.R 686(E) dated 7.9.2015 is annexed hereto and marked as **Annexure P-10 [Page Nos. 126 to 127].**

(xiii) That on July 18,2016, the Ministry of Home Affairs, Government of India issued the Third Impugned Notification amending the Passport (Entry into India) Rules, 1950 to include, "Afghanistan" in Clause (ha) of Sub-Rule (1) of Rule 4 of the Passport (Entry into India) Rules 1950. Simultaneously, on the same date, the Ministry of Home Affairs, Government of India issued the Fourth Impugned Notification to include, "Afghanistan" in Section 3A of the Foreigners Order, 1948. A true copy of the Notification No. G.S.R 702(E) dated 18.7.2016 is annexed hereto and marked as **Annexure P-11 [Page No. 128].** A true copy of the Order No. G.S.R 703(E) dated 18.7.2016 is annexed hereto and marked as **Annexure P-12 [Page No. 129].**

(xiv) On July 19,2016, the Government introduced the "Citizenship Amendment Bill of 2016" in the Lok Sabha of Parliament to make the Hindus, Sikhs, Jains, Parsis, Buddhists and Christians facing religious persecution in Afghanistan, Bangladesh, and Pakistan eligible for Indian Citizenship.

(xv) On August 12,2016, the Citizenship Amendment Bill of 2016 was referred to the Joint Parliamentary Committee.

(xvi) On March 23,2017, Mr. Ripun Bora (Member of Rajya Sabha) raised following concerns to the Minister of External Affairs in the Rajya Sabha, regarding the lack of authoritative statistics on religious persecutions in Afghanistan and Pakistan after 1947 and in Bangladesh after 1971:

i. Whether Government has any report on any religious persecutions taking place in Afghanistan and Pakistan after

1947 and in Bangladesh after 1971 for which the people of different religions had to come to India for shelter;

ii. If so, the details of religious persecutions taken place in those countries;

iii. What is the number of people who have come to India due to this, country-wise and religion-wise; and

iv. What is the number of total Hindu Bengali families who are taking shelter in Assam due to such persecutions?

Mr. M. J Akbar (Minister of External Affairs) replied that there are no authoritative statistics available in this matter. This shows that the Impugned Act was not backed with empirical data which could support its provisions and the classifications it makes.

A true copy of the Unstarred Question No.2432 as answered on March 23, 2017 is annexed hereto and marked as **Annexure P-13 [Page No. 130].**

(xvii) On July 25, 2018, Mr. Ripun Bora (Member of Rajya Sabha) asked Mr. Kiran Rijiju, the then Minister of State for Home Affairs regarding the country-wise and religion-wise breakup of citizenship applications. It was replied that no such data was maintained by the Government. Again, this affirms that the Impugned Act was not backed with empirical data which could support its provisions and the classifications it makes. A true copy of the Unstarred Question No.885 as answered on July 25, 2018 is annexed hereto and marked as **Annexure P-14 [Page Nos. 131 to 132].**

(xviii) On January 7,2019, the Joint Parliamentary Committee submitted its report on the Citizenship Amendment Bill, 2016.

(xix) That on June 3,2019, the Citizenship Amendment Bill, 2016 lapsed due to dissolution of Lok Sabha.

(xx) On July 31,2019, the Ministry of Home Affairs, Office of the Registrar General Citizen Registration, Government of India, issued a notification announcing the preparation of a Population Register (NPR) under the Citizenship Rules, 2003. As per this notification, the schedule for the fieldwork of the proposed NPR was fixed between 1.4.2020 to 30.9.2020. Subsequently, the Government published the NPR Manual which *inter alia* provides for the documents to be considered in making the NPR. The Manual states that the legal framework for the NPR Manual is provided in Rule 3(4) of the Citizenship Rules, 2003. A true copy the Notification dated July 31, 2019 issued by the Ministry of Home Affairs is annexed hereto and marked as **Annexure P-15 [Page Nos. 133 to 134].** A true copy of the NPR Manual dated nil is annexed hereto and marked as **Annexure P-16 [Page Nos. 135 to 174].**

(xxi) That on August 31, 2019, the exercise of preparation of National Register of Indian Citizens (NRC) was completed in the State of Assam wherein approximately 19 lakh persons were found to be illegal immigrants out of which approximately 5 lakh persons are Hindus

(xxii) That on December 4, 2019, the Union Cabinet cleared the Citizenship (Amendment) Bill, 2019 for its introduction in the parliament.

(xxiii) That December 9, 2019, Citizenship Amendment Bill, 2019 was introduced in Lok Sabha by the Hon'ble Home Minister.

(xxiv) That December 10, 2019, the Citizenship Amendment Bill, 2019 was passed by the Lok Sabha.

(xxv) That December 11, 2019, the Citizenship Amendment Bill, 2019 was subsequently passed by the Rajya Sabha.

(xxvi) The Citizenship Amendment Bill received the assent of the Hon'ble President of India on December 12, 2019 and therefore the Citizenship (Amendment) Act, 2019 ("Impugned Act") came to be enacted. It is submitted that the Impugned Act by legitimising the stay of illegal migrants into India and affording them an opportunity of obtaining Indian citizenship in a fast track manner, violates Article 355 of the Constitution of India. Further, the Impugned Act creates arbitrary classification by giving on set of foreigners belonging to particular communities and certain countries over other foreigners and is thereby violative of Article 14, 21 and 25 of the constitution of India.

A true copy of the Citizenship (Amendment) Bill, 2019 along with its statement of objects and reasons is annexed hereto and marked as **Annexure P-17 [Page Nos. 175 to 181].**

A true copy of the Citizenship (Amendment) Act which received the Presidential assent on December 12, 2019 is annexed hereto and marked as **Annexure P-18 [Page Nos. 182 to 184].**

(xxvii) On December 13, 2019, the UN human rights office issued a Statement calling the Impugned Act as 'fundamentally discriminatory'.

A true copy of the report published by UN News on December 13, 2019 is annexed hereto and marked as **Annexure P-19 [Page Nos. 185 to 187].**

(xxviii) A batch of Writ Petitions challenging the Impugned legislation came up before this Hon'ble Court on December 18, 2019 and this Hon'ble Court was pleased to issue notice in the batch of Writ Petitions filed challenging the Impugned Act and directed the matters to be listed on January 22, 2020. The Petitioners herein crave leave to get the present petition tagged with the similar matters pending before this Hon'ble Court. A true copy of the order dated December 18, 2019 passed by this Hon'ble Court in Writ Petition (Civil) No. 1470 of 2019 is annexed hereto and marked as **Annexure P-20 [Page Nos. 188 to 199].**

(xxix) On December 22, 2019, the Hon'ble Prime Minister of India, in a speech mentioned that there was no discussion regarding the preparation of nationwide NRC. A true copy of the newspaper report published by the Hindu on December 22, 2019 is annexed hereto and marked as **Annexure P-21 [Page Nos. 200 to 202].**

(xxx) On December 24, 2019, the Union Cabinet cleared a cost of Rs. 3941.35 crores for the preparation of the National Population Register (NPR), 2020. However, on the same day there were media reports stating that the officials of the Ministry of Home Affairs had stated that the Government had no plans at present to carry out an exercise to prepare a National Register of Citizens (NRC) for the whole country on the basis of data to be collected. It is submitted that as per the

Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, the preparation of National Population Register was nothing a but the first step in the exercise of preparation of NRC. It is submitted that if Government has clearly specified that the NRC is not being prepared, no occasion arose for preparation of the Population Register which requires incurring of an expense of Rs.3941.35 crores particularly when the nation is experiencing unprecedented economic slowdown. A true copy of the Press Information Bureau Release on 24.12.2019 regarding approval of Rs. 3941.35 crores for the preparation of the National Population Register (NPR), 2020 is annexed hereto and marked as **Annexure P-22 [Page Nos. 203 to 205].** A true copy of the news report dated December 24, 2019 published by Business Standard is annexed hereto and marked as **Annexure P-23 [Page No. 206].**

(xxxi) The Citizenship (Amendment) Act, 2019 has been duly notified in the Gazette of India on January 10, 2020 in exercise of powers conferred by Section (2) of the Section 1 of the Citizenship (Amendment) Act, 2019 (47 of 2019). A true copy of the Gazette notification dated January 10, 2020 is annexed hereto and marked as **Annexure P-24 [Page No. 207].**

12. That the cause of action for filing the present petition last arose on December 12, 2019 when the Impugned Act was enacted. Further the Impugned Act and the Impugned Notifications are violative of Articles 14, 21, 25 and 355 of the Constitution and are therefore causing injury to the public.

13. That the Petitioners are therefore filing the present Writ Petition under Article 32 of the Constitution of India on the following amongst other grounds which are taken without prejudice to one another:-

GROUNDS

A. Because the Impugned Act is against constitutional morality and the basic structure of the Constitution as it grants citizenship based on religion which was never contemplated in the Constitution. It is submitted that citizenship based on religion was expressly rejected by the framers of the Constitution.

B. Because Part II of the Constitution (Articles 5 to 11) which deals with citizenship has no reference whatsoever to grant of citizenship based on an individual's religion. Therefore, the Impugned Act by introducing the idea of religion into matters of citizenship is unconstitutional.

C. Because the Impugned Act seeks to validate, what this Hon'ble Court has called, "majoritarian social morality" or "popular public morality" instead of constitutional morality. This Hon'ble Court has distinguished between social/public morality and constitutional morality and has categorically held that the Constitution envisages the protection of constitutional morality and not otherwise. With respect to popular morality, Hon'ble Dr Justice D.Y. Chandrachud in *State (NCT of Delhi) v. Union of India*, (2018) 8 SCC 501 at page 655, held as follows:

> *"Another major feature of constitutional morality is that it provides in a Constitution the basic rules which prevent institutions from turning tyrannical. It warns against the fallibility*

of individuals in a democracy, checks State power and the tyranny of the majority. Constitutional morality balances popular morality and acts as a threshold against an upsurge in mob rule."

Therefore, the fact that the Impugned Act is passed by the Parliament with brute majority would make it a popularly passed legislation, however, not constitutionally proper.

D. Because the principle of constitutional morality furthers the vision of the framers of the Constitution. In this regard, in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 page 284, Hon'ble Dr Justice D.Y. Chandrachud noted that:

"Constitutional morality determines the mental attitude towards individuals and issues by the text and spirit of the Constitution. It requires that the rights of an individual ought not to be prejudiced by popular notions of society. It assumes that citizens would respect the vision of the Framers of the Constitution and would conduct themselves in a way which furthers that vision. Constitutional morality reflects that the ideal of justice is an overriding factor in the struggle for existence over any other notion of social acceptance."

Further, in the same judgment, Hon'ble Mr Justice Dipak Misra's (CJI- as he then was) observations are of particular significance:

"We must not forget that the Founding Fathers adopted an inclusive Constitution with provisions that not only allowed the State, but also, at times, directed the State, to undertake

affirmative action to eradicate the systematic discrimination against the backward sections of the society and the expulsion and censure of the vulnerable communities by the so-called upper caste/sections of the society that existed on a massive scale prior to coming into existence of the Constituent Assembly. These were nothing but facets of the majoritarian social morality which were sought to be rectified by bringing into force the Constitution of India. Thus, the adoption of the Constitution, was, in a way, an instrument or agency for achieving constitutional morality and means to discourage the prevalent social morality at that time. A country or a society which embraces constitutional morality has at its core the well-founded idea of inclusiveness."

From the above observations, it is clear that any law which pervades constitutional ideas of inclusiveness and diversity on the basis of majoritarian perceptions or sentiments cannot pass the test of constitutional morality. The observations of Hon'ble Mr Justice Dipak Misra (CJI -as he then was) are of particular significance in the present case as the Constituent Assembly specifically rejected the idea of citizenship based on religion in favour of citizenship based on secular and democratic principles. In the Constituent Assembly, an amendment to Article 5 was proposed by Dr P.S. Deshmukh which provided for automatic citizenship to Hindus and Sikhs residing outside India on the ground that India was their natural homeland. This amendment was negatived by the Constituent Assembly in favour of a non-religious conception of citizenship. (Please See Constituent Assembly Debates dated August 11, 1949)

E. Because this Hon'ble Court has held in *S.R. Bommai v. Union of India,* (1994) 3 SCC 1, that secularism is a part of the basic structure of the Constitution. Moreover, as held by Hon'ble Mr Justice R.F. Nariman in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 at page 184,

> *"Constitutional morality is the soul of the Constitution, which is to be found in the Preamble of the Constitution, which declares its ideals and aspirations, and is also to be found in Part III of the Constitution, particularly with respect to those provisions which assure the dignity of the individual."*

As is evident from the above, the principle of secularism which is to be found in the Preamble forms an intrinsic part of the test of constitutional morality, which the Impugned Act fails to pass. Needless to say, that the Impugned Act which provides for the grant of citizenship based on religion is clearly violative of the principle of secularism and is thereby against constitutional morality and the basic structure of the Constitution.

F. Because the Impugned Act is against the intention of the framers of the Constitution, and therefore against constitutional morality, as it introduces a religion-based concept of citizenship. On August 11, 1949, Hon'ble Member of the Constituent Assembly, Dr P.S. Deshmukh moved an amendment to Article 5 of the Constitution which provides as follows:

> *"5. (ii) every person who is a Hindu or a Sikh by religion and is not a citizen of any other State, wherever he resides shall be entitled to be a citizen of India."*

Justifying his proposal, Dr P.S. Deshmukh argued as follows:

> *"In the second sub-clause I have proposed, I want to make a provision that every person who is a Hindu or a Sikh and is not a citizen of any other State shall be entitled to be a citizen of India. We have seen the formation and establishment of Pakistan. Why was it established? It was established because the Muslims claimed that they must have a home of their own and a country of their own. Here we are an entire nation with a history of thousands of years and we are going to discard it, in spite of the fact that neither the Hindu nor the Sikh has any other place in the wide world to go to. ..... I do not think this claim is in any way non-secular or sectarian or communal. If anybody says so, he is, to say the least, mistaken." (Please See Constituent Assembly Debates dated 11th August 1949)*

Supporting Dr. Deshmukh's amendment, Prof. Shibban Lal Saksena:-

> *"Dr. Deshmukh's amendment is quite correct, for the Hindus and Sikhs have no other home but India and I do not see how we can include everyone in this category unless we say it bluntly in this form. We should not be ashamed in saying that every person who is a Hindu or a Sikh by religion and is not a citizen of another State shall be entitled to citizenship of India. That will cover every class whom we want to cover and will be comprehensive. The phrase 'Secular' should not frighten us in saying what is a fact and reality must be faced. I therefore think that Dr. Deshmukh has given a very good suggestion."*

However, Professor Saksena admitted that Dr. Deshmukh's amendment gave citizenship to almost everybody and therefore, he suggested that if these Hindus and Sikhs have been in India for 5 years, they will be citizens. Pertinently, the speech made by the Hon'ble Minister for Home Affairs, Shri Amit Shah put forth the exact same arguments in the Houses of Parliament while defending the Impugned Act. It is relevant to note that subsequently, the Constituent Assembly negatived the amendment introduced by Dr. Deshmukh as it was mindful of the secular principles and envisioned an inclusive society. In this regard the comments made on secularism by Hon'ble Member of the Constituent Assembly, Shri Alladi Krishnaswamy Ayyar are extremely pertinent and gain special importance in the context of debate surrounding the Impugned Act. The relevant excerpts of his speech are as follows:

> *"We are plighted to the principles of a secular State. We may make a distinction between people who have voluntarily and deliberately chosen another country as their home and those who want to retain their connection with this country. But we cannot on any racial or religious or other grounds make a distinction between one kind of persons and another, or one sect of persons and another sect of persons, having regard to our commitments and the formulation of our policy on various occasions." (Please See Constituent Assembly Debates dated August 12, 1949)*

It is noteworthy that the observations on secularism made by Shri Alladi Krishnaswamy Ayyar are particularly relevant as they were

made long before the term 'secularism' was added in the Preamble. It substantiates the fact that the Constitution was inherently secular and the 42nd Constitutional Amendment adding the term was merely a confirmation of the same.

Therefore, the Impugned Act by introducing the language of religion in matters of citizenship goes against the foundational principles of the Constitution and the intention of the framers of the Constitution. In fact, instead of furthering the vision of the framers of the Constitution, it completely derails it by introducing anti-secular qualifications to attain citizenship of our country.

G. Because Section 2 of the Impugned Act violates Article 14 of the Constitution as it creates an unreasonable classification and is also manifestly arbitrary. The Impugned Act makes unreasonable classifications as there is no intelligible differentia for the classification and the said classification has no rational nexus with the object sought to be achieved by the Act. It is submitted that the stated objective of the Government for the Impugned Act is to protect minorities facing religious persecution in countries which have Islam as their state religion and were a part of undivided India. However, the said classification has glaring loopholes which make it unreasonable. These are:

a. the inclusion of countries with Islam as the state religion while excluding Sri Lanka and Bhutan who have Buddhism as state religion.

b. the inclusion of only three neighbouring countries when migration into India has happened from all neighbouring countries like China, Myanmar, Nepal, Bhutan and Sri Lanka.

c. the inclusion of Afghanistan even though it was not a part of undivided India.

d. the selection of six communities to the exclusion of Jews, Muslims, and atheists.

e. the exclusion of Tibetan Buddhists, Bhutanese Christians, Sri Lankan Tamil Hindus, Rohingya Muslims, Uighur Muslims, Shias, Hazaras, Ahmadiyyas while considering the list of persecuted persons.

It is therefore clear that instead of following the principle of secularism, where the State ought to be equal in its treatment to all religions, the Impugned Act extends patronage to only a few selective religions, which is in teeth of the principle of secularism and is also against the principles of inclusiveness as envisaged by the framers of the Constitution.

H. Because the Impugned Act is manifestly arbitrary as it is capriciously designed to have a wide scope, contrary to its stated, narrow objective. It is submitted that the test of manifest arbitrariness as laid down by this Hon'ble Court in *Shayara Bano v. Union of India*, (2017) 9 SCC 1 is as follows:

> *"The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as*

well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary."

It is submitted that the stated objective of the Government, as it emerges from the speech made by the Hon'ble Minister for Home Affairs, Shri Amit Shah in both the Houses of Parliament and the Statement of Objects and Reasons appended to the Impugned Act, is to give refuge to persecuted minorities in countries which were part of undivided India. However, the text of the Impugned Act makes no reference whatsoever to the requirement of persecution. It is submitted that the term "any person" in Section 2 of the Impugned Act is not saddled with the requirement of persecution and hence the scope of the Act is of the widest amplitude. Therefore, the Impugned Act is manifestly arbitrary as its scope is capriciously designed to be of the widest amplitude and not restricted to its stated objective and is thereby violative of Article 14 of the Constitution.

I. Because, according to the judgment of this Hon'ble Court in *N.P. Basheer v. State of Kerala,* (2004) 3 SCC 60, while making reasonable classification, the legislature is permitted only marginal under-exclusiveness or over-exclusiveness. It is submitted that the exclusion of several persecuted communities and neighboring border-sharing countries from the Impugned Act is not marginal and hence unreasonable.

J. Because, according to the judgment of this Hon'ble Court in *Navtej Johar v. Union of India*, (2018) 10 SCC 1, if a law classifies based on an intrinsic or core trait of an individual, such classification would be violative of Article 14. Hon'ble Ms. Justice Indu Malhotra in her concurring judgment held that:

> *"Where a legislation discriminates on the basis of an intrinsic and core trait of an individual, it cannot form a reasonable classification based on an intelligible differentia."*
>
> *The learned judge further explains that: "Race, caste, sex, and place of birth are aspects over which a person has no control, ergo they are immutable. On the other hand, religion is a fundamental choice of a person. Discrimination based on any of these grounds would undermine an individual's personal autonomy."*

It is submitted that the inclusion of the six communities and the discrimination against Jews and Muslims in the Impugned Act is based on religion which is based on the intrinsic choice of an individual and hence, an impermissible classification.

K. Because the classification made under the Impugned Act is absolutely irrational as the Central Government did not conduct any empirical study or collect any data with respect to persecution of the minority communities in the three prescribed countries. It is submitted that this Hon'ble Court in *Kailash Chand Sharma v. State of Rajasthan*, (2002) 6 SCC 562, held that the rationale of classification must be based on

empirical data or survey or scientific study and not on assumptions as to the existence of a state of affairs.

L. Because the Central Government has stated on record that it has no authoritative statistical data on persecution of minorities in Pakistan and Afghanistan after 1947 and in Bangladesh after 1971. In response to questions asked in the Rajya Sabha in 2016, the then Minister for External Affairs stated that the Government had no data on persecution. In such circumstances, the Impugned Act which is made without any data on persecution when it specifically concerns the same, is irrational and hence, manifestly arbitrary.

M. Because, according to the judgment of this Hon'ble Court in *Kailash Chand Sharma v. State of Rajasthan*, (2002) 6 SCC 562, that the rationale of classification must be based on empirical data or survey or scientific study and not on assumptions as to the existence of a state of affairs. As mentioned above, the Government has admitted that it does not have any data to support the selection of a specific class of people within multiple classes of persecuted persons who have migrated into the territory of India.

N. Because the cut-off date of December 31, 2014 for entry into India in Section 2 of the Impugned Act has no rational basis, is without adequate determining principle and therefore, suffers from manifest arbitrariness.

O. Because the Impugned Act facilitates the influx of illegal migrants into India and in fact, retrospectively legitimizes such illegal entry into the nation by enabling them to apply for Indian citizenship. It is submitted

that this Hon'ble Court in the case of *Sarbananda Sonowal v. Union of India* (2005) 5 SCC 665 has held that massive influx of illegal migrants from neighboring countries is "external aggression and internal disturbance" within the meaning of Article 355 of the Constitution. Article 355 casts a duty upon the Union to protect every state against external aggression and internal disturbance, however by virtue of the Impugned Act, the Respondent Union has not only violated the said constitutional mandate but has in fact devised a procedure to grant citizenship to these illegal migrants, that too in a fast track manner.

P. Because the Impugned Act is a fraud on the Constitution as it legitimises illegal immigration into the country under the garb of protecting persecuted persons. This is not only a fraud on the Constitution but is also a dereliction of the Government's duty to protect against external aggression under Article 355 of the Constitution.

Q. Because it is apparent that the Impugned Act ('CAA') is part of a design when combined with the National Population Register ('NPR') and the National Register of Indian Citizens ('NRC'). The Impugned Act (which is an amendment to the Citizenship Act, 1955), the NPR, and the NRC are all envisaged under the Citizenship Act, 1955 and hence part of the same legal framework. Therefore, the Impugned Act cannot be seen in isolation but will have to be seen chronologically with the Government's notification to prepare the NPR followed by an eventual nationwide NRC. It is submitted that the CAA-NPR-NRC trinity has created huge unrest in the country due to the

apprehensions of the impact it will have on the poor and marginalised sections of the society, particularly Muslims. In that regard, the notification dated July 31, 2019 announcing the preparation of the NPR assumes significant importance in connection with the larger issue. Accordingly, it is necessary to challenge the NPR exercise along with the challenge to the Impugned Act.

R. Because the Impugned NPR notification dated July 31, 2019 which mandates the preparation of the Population Register within the period of April 1, 2020 to September 30, 2020 would be completely redundant as the Central Government has already taken the stand that there are no plans to prepare a nationwide National Register of Indian Citizens (NRC). It is submitted that the preparation of the Population Register is a statutory exercise mandated by Rule 3(4) of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

S. Because it is relevant to note that the 2003 Rules provide for preparation of NRC and for issuance of a National Identity Card to those persons whose names have been entered in the NRC. It is further relevant to note that Rule 4 of the said rules provides for the steps to be followed for the preparation of NRC. Pertinently, Rule 4(3) and Rule 4(4) provide the reason for the preparation of the Population Register as the said rules specify that the data collected in the Population Register shall be verified and scrutinized by the Local Registrar and if the particulars of any individual are found to be doubtful, a remark shall be made in the Population register. Subsequently, the concerned person would be given an opportunity

of hearing post which, it shall be decided whether the concerned person's name would be included in the NRC or not. Therefore, it is clear that the preparation of the Population Register is not only the first step but a precondition to the preparation of the NRC as it is on the basis of the data collected during this exercise that the doubtful citizens are to be identified. Further the fact that the Population Register is prepared only to aid in the exercise of preparation of the final NRC is evident from the text of the impugned NPR notification which excludes Assam from its purview as the NRC exercise in the state of Assam has already been concluded.

T. Because as the Central Government has already taken a policy decision to not go ahead with the NRC (as mentioned by the Hon'ble Prime Minister of India in his speech dated 22.12.2019 and as per the stand of the officials of the Ministry of Home Affairs – as per the media reports dated 24.12.2019), the preparation of the Population Register is nothing but a waste of time, energy and valuable resources of the Nation. It is submitted that as per media reports a sum of Rs 3,941.35 crore has been approved to be utilized for the exercise of preparing the National Population Register (NPR) which sum will be wasted as the preparation of NPR is not an isolated exercise and is intrinsically linked to the subsequent preparation of the NRC.

U. Because it is further relevant to note that in the present economic scenario, where there has been a sharp slowdown in economic growth, the entire sum sanctioned for preparation of the NPR will go down the drain as the Central Government is not planning to prepare a nationwide NRC. In such circumstances, preparation of NPR will

serve no purpose and will only lead to wastage of the precious resources of the nation. In fact it the NPR is prepared at this stage, then the entire amount sanctioned for this exercise will be wasted as the NRC exercise has been indefinitely delayed by the Central Government.

V. Because Section 2 of the Impugned Act makes the same classification which was already effected through the Impugned Notifications. It is submitted that these notifications suffer from the same vice as the Impugned Act and make impermissible classifications which is being the origin of the Impugned Act are also unconstitutional for violation of Articles 14, 21, 25, and the basic structure of the Constitution.

W. Because the Impugned Act violates Article 25 of the Constitution which guarantees to all persons, the right to freely practice, profess, and propagate religion. It is submitted that the Impugned Act incentivizes conversion to the religions which fall within the purview of the Impugned Act from the religions which are excluded. All the undocumented immigrants currently residing in India who are Muslim, Jew or otherwise will be incentivized to convert to any of the six religions provided under the Impugned Act to get the benefit of the same. Not only does this encourage misuse of the Impugned Act by illegal immigrants but also violates Article 25 of the Constitution.

X. Because the Impugned Act violates Article 21 of the Constitution for violation of the principle of *non-refoulement* – which prohibits the State from deporting refugees to their home country where there is an imminent threat to their life and personal liberties. It is settled law that

the principle of *non-refoulement* is a part of the right to life and personal liberties under Article 21 of the Constitution of India. It is submitted that the Impugned Act by excluding other persecuted communities from its ambit violates the principle of *non-refoulement* as the persons belonging to other communities who are currently taking refuge in India on account of persecution in their home country are facing imminent threat of deportation to their home country. [Please see *Dongh Lian Kham & Anr. v. Union of India,* (2015) SCC Online Del 14338 at para 32; *Ktaer Abbas Habib Al Qutaifi And Anr v. Union of India* (1998) SCC Online Guj 304 at para 23]

Y. Because, while India is not signatory to the Refugee Convention, 1951, which incorporates the principle of *non-refoulement*, it is submitted that the principle has crystallized into customary international law and has achieved the status of *jus cogens*, i.e., a peremptory norm of International Law. Therefore, it is incumbent on the state to abide by and respect the principle of *non-refoulement*.

Z. Because Article 51(b) and (c) of the Constitution mandate the State to maintain just and honorable relations between nations and foster respect for international law and treaty obligations in the dealings of organized peoples with one another. It is submitted that Impugned Act violates multiple international obligations of India contained in the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR).

AA. Because the Impugned Act is in violation of multiple provisions of the UDHR, most of which have been crystallized into customary

international law. Particularly, the obligation under Article 15 of the UDHR which stipulates that no person shall be arbitrarily deprived of their nationality is particularly contravened by the Impugned Act.

BB. Because the Impugned Act is not in consonance with India's international obligations contained under Articles 2, 9, 10, and 26 of the ICCPR. Para 1 of Article 2 of the Covenant prescribes as follows:

> *"Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

Further, Article 26 of the Covenant contains the obligation of non-discrimination which corresponds to Article 14 of the Indian Constitution and Articles 9 and 10 of the Covenant contain the obligation of non-deprivation of life and personal liberties which corresponds to Article 21 of the Indian Constitution. Therefore, the Impugned Act is contrary to the mandate of Article 51 on account of ignoring India's international obligations under the ICCPR.

CC. Because the data concerning the NRC as prepared on August 31, 2019 for the State of Assam reveals that, at present, there are 19 lakhs illegal migrants from Bangladesh present in the State of Assam. Out of these 19 lakh illegal migrants, over 5 lakhs are Hindus. In *Sarbananda Sonowal v. Union of India* (2005) 5 SCC 665, this Hon'ble Court has noted that illegal migrants from Bangladesh have illegally

entered India in search of better economic prospects. It is further relevant to mention that, the Impugned Act though in its Statement of Objects and Reasons provides that the same is being enacted for protection of persecuted communities, however, the condition of persecution is omitted altogether from the provisions of the Impugned Act. Accordingly, it is apparent that out of 19 lakhs foreigners identified by the NRC, 5 lakhs would be entitled to apply for fast track citizenship. This is nothing but giving preference to a special class of foreigners which is not available to the other foreigners. Not only is this in teeth of the judgment of this Hon'ble Court in *Sarbananda Sonowal v. Union of India* (2005) 5 SCC 665, but is also violative of Articles 14 and 355 of the Constitution and is a colorable exercise of legislative power.

DD. Because the Impugned Act has to be read comprehensively with the other provisions of law particularly the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 which provide for the identification of illegal migrants from citizens through the preparation of a National Register of Indian Citizens (NRIC – popularly known as 'NRC'). It is submitted that the joint reading of the Impugned Act and the 2003 Rules reveals a clear scheme to single out certain communities and deny them the benefit of the Impugned Act, which is impermissible.

EE. Because the Impugned Act creates a façade of exempting tribal area (of Assam, Meghalaya and Mizoram) and the area covered under "The Inner Line". It is however submitted that once the illegal immigrants present in the non-exempted areas are granted

citizenship, they cannot be restricted to a particular place in India and will have the fundamental right to move freely throughout the country including the areas so exempted.

FF. Because Section 2 of the Impugned Act is the principle provision while Sections 3, 5, and 6 are ancillary provisions which have been enacted to facilitate the implementation of Section 2. Therefore, any unconstitutionality in the principle provision (Section 2) would *ipso facto* render the ancillary provisions (Sections 3, 5, and 6) unconstitutional as the former is not severable from the latter provisions of the Impugned Act.

GG. Because Section 4 of the Impugned Act stipulates that under Section 7D of the Citizenship Act, 1955, the OCI card of a citizen may be cancelled if he violates any of the provisions of law as may be specified by the Central Government in this regard. It is submitted that by delegating the function of listing the actions which may potentially result in cancellation of the OCI card is an excessive delegation of legislative power. It is further submitted that a delegation by the Legislature to the Executive has to be of an ancillary nature, however, in the present provision, the delegation is of a substantive nature and for the exercise of which no parameters or legislative policy have been specified by the legislature. Such an unconditional delegation leaves the legislature with virtually no control over the exercise of such power, which may be used in a manner which has neither been anticipated by the legislature nor is in line with the intended objective of the Impugned Act.

HH. Because since Sections 2, 3, 5, and 6 are unconstitutional for violation of Articles 14, 21, 25, 355, and the basic structure of the Constitution and Section 4 is ultra vires the Constitution for excessive delegation, the entire Impugned Act is liable to be struck down as unconstitutional.

II. Because Section 3(1)(a) of the Citizenship Act, 1955 is unconstitutional in so far as it introduces a caveat that the child should have been born on or before 1.7.1987. Further, the provisions of Section 3(1)(b) and 3(1)(c) of the Citizenship Act, 1955 are unconstitutional as they are violative of Articles 14, 15, 21, 51(c) and 51-A of the constitution. This is evident from the following:-

i) That the provisions relating to the grant of citizenship as contained in Section 3 of the Citizenship Act,1955 give rise to the following scenarios relating to the children who are born to a couple who are illegal migrants:

a) The first scenario is of the children born between 26th January 1950 and before 1st July 1987, such children are entitled to Indian citizenship.

b) Second scenario is that children born on or after 1st July 1987 and 3rd December 2004, the date of commencement of the Citizenship Amendment Act, 2003 and either of his parents is a citizen of India at the time of his birth, they are entitled to the citizenship. Therefore, any child born after 1st July 1987 and before 3rd December 2004 none of his parents is the citizen of India has no right to citizenship. Therefore, during this period,

if a child is born to a couple of illegal migrants is not the citizen of India but at the same time, he is not an illegal migrant as defined under Section 3(2)(b) proviso of the Citizenship Act. Such child is a stateless child without any country.

c) The third scenario is the children born after 3rd December 2004 of those couples where one of them is a citizen of India and other is not an illegal migrant at the time of his birth; Such children are citizens of India by birth. Therefore, children born to a couple one of whom is an illegal migrant is not entitled to the status of citizenship by birth. However, such children for the premises as stated above will not be illegal migrant but Stateless children. Thus, on principle of citizenship by birth the Law provides different treatment to a person as to when he/she was born; in the case of children born between 1st July, 1987 and 3rd December, 2004 if none of his parents is a citizen of India, has no right to citizenship and such children are stateless. Then again children born after 3rd December, 2004 in India whose one of the parents is not a citizen of India and other is not an illegal migrant then such children are also stateless children. To treat a person as stateless on the basis of his or her date of birth is manifestly arbitrary. Such stateless children cannot be classified as illegal migrant as defined u/s 2(b)(1) of the Impugned Act. Nonetheless such persons born as

stateless children have the fundamental rights under Article 14 and 15 of the Constitution and to threaten them with deportation or incarceration in detention camp is manifestly arbitrary and is therefore unconstitutional.

d) The treatment of such person who are born as stateless person is also violative of the Rights of Children as per the Convention of the Rights of Child 1990 which India has ratified.

ii) That Section 3 of the Citizenship Act gives right to three scenarios relating to the children born on different dates those children born between 26th January 1950 and before 1st July 1987 are entitled to Indian Citizenship without any condition. Those children born on or after 1st July 1987 and 3rd December 2004 are the citizens of India only if either of his parents are citizens of India at the time of his birth and secondly, any child born after 1st July 1987 and before 3rd December 2004, but none of his parents is the citizen of India has no right to citizenship, and thirdly, children born after 3rd December 2004 of those couples were one of them is a citizen of India and other is not an illegal migrant at the time of his birth. Such children are citizens by birth. Therefore, children born to a couple one of whom is an illegal migrant is not entitled to the status of citizenship by birth.

iii) That it is submitted that these provisions contained in the Citizenship Act as well as in the Impugned Act are against the

rights of the children contained in Article 15 of the Universal Declaration of Human Rights ("**UDHR**")1948 which is signed by India and has now become the part of the International Customer Law. Article 15 of Human Rights clearly provides as follows:

> ***"Article 15"***
>
> (i) *Everyone has the right to a nationality. (ii) No one shall be arbitrarily deprived of his nationality nor deny the right to change his nationality."*

The cumulative effect of the impugned provisions of the Citizenship Act of 1955 is to arbitrarily deprive nationality to the children born in India after 1st July 1987. This right to nationality enshrined in Article 15 of UDHR is further operationalized / expanded by the UN Convention on the Reduction of Statelessness 1961, which provides as follows:

> ***Article 1 –*** *A contracting state shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:*
>
> *(a) At birth, by operation of law, or*
>
> *(b) Upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.*

A contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national Law.

Though India has not signed this convention nor ratified the right of a child to nationality has become a part of the International Customary Law. Further, Article 7 and 8 of UN convention on the Rights of Child, 1990, which is signed and ratified by India. By Articles 7 and 8 provides as follows:

Article 7 *–*

(1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality as far as possible, the right to know and be cared for by his or her parents.

(2) State parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8 *–*

(1) State parties undertake to respect the right of the child to preserve his or her identity, including

nationality, name and family relations as recognized by law without unlawful interference.

(2) Where a child is illegally deprived of some or all of the elements of his or her identity, State parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

As mentioned above, though India has not signed nor ratified UN Convention of Reduction of Stateless 1961, the content of Articles 1 to 15 has become the part of International Customary Law.

iv) That the impugned provisions of the Citizenship Act of 1955 and the Impugned Act go completely contrary to the above quoted conventions of the rights of children, which are accepted by India under Article 50(c) of the Constitution of India, which occurs in Part IV of the Constitution clearly providing to "*foster respect for international law and treaty obligations in the dealings of organized people with one another*". Under Article 37 which also occurs in Part IV of the Constitution of India imposes obligations on the State that the principles laid down in Part IV of the Constitution are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

v) That the enactment of the impugned provisions of the Citizenship Act, 1955 and the Impugned Act, clearly is in

violation of the fundamental principles in the governance of the country and enacting such impugned provisions, the legislature has violated of its constitutional duties to observe the principles laid down in Article 51(c) of the Constitution. It is submitted that the enactment of any legislation which is in contravention of the directive principles of State policy enunciated in Part IV shows that the legislature has acted in manifestly in an arbitrary manner as it is the act of whimsicality to disregard of the duty imposed on the State to apply the principles of Part IV in the governance of the State. Therefore, the impugned provisions of the Citizenship Act are also violative of Article 21 of the Constitution.

JJ. Because the Respondent, Union of India is required to comply with the Global Human Rights Regime and the International Covenants while drafting municipal laws. This Hon'ble Court has already approved the interpretation which abides by India's international obligations especially on issues of human rights. In this regard, the principles of Customary International Law assume special importance. This Hon'ble Court has held that the principles of Customary International Law shall be deemed to be a part of the Municipal laws of the country. The two relevant paras in the case entitled as "*K.S. Puttaswamy (Privacy-9J.) v. Union of India"*, (2017) 10 SCC 1 at page 425 are relevant and this Hon'ble Court explained the legal position with respect to the interrelation between International Law and local Municipal Law as follows:

> *"The position in law is well settled. Where there is a contradiction between international law and a domestic statute, the Court would give effect to the latter. In the present case, there is no contradiction between the international obligations which have been assumed by India and the Constitution. The Court will not readily presume any inconsistency. On the contrary, constitutional provisions must be read and interpreted in a manner which would enhance their conformity with the global human rights regime. India is a responsible member of the international community and the Court must adopt an interpretation which abides by the international commitments made by the country particularly where its constitutional and statutory mandates indicate no deviation. In fact, the enactment of the Human Rights Act by Parliament would indicate a legislative desire to implement the human rights regime founded on constitutional values and international conventions acceded to by India."*

Further, in the case entitled as "*People's Union for Civil Liberties (PUCL) v. Union of India"*, (1997) 1 SCC 301 at page 311-312, this Hon'ble Court held that the provisions of Customary International Law shall *ipso facto* be a part of the Municipal Law:

> *"International law today is not confined to regulating the relations between the States. Scope continues to extend. Today matters of social concern, such as health, education and economics apart from human rights fall within the ambit of*

International Regulations. International law is more than ever aimed at individuals.

It is almost an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law."

14. The Petitioners crave liberty to urge other grounds in addition to the grounds above at a later stage of the proceedings as appropriate.

15. The Petitioners have not filed any other petition before this Hon'ble Court or any other Court within the territory of India on the subject matter of the instant Petition and for the reliefs prayed for herein.

16. In the aforesaid premises and in the interests of justice, it is most respectfully prayed that this Hon'ble Court may be graciously pleased to:-

PRAYER

(a) a writ in the nature of mandamus, or any other writ, order or direction, declaring the Citizenship (Amendment) Act, 2019 to be unconstitutional; and/or

(b) a writ in the nature of mandamus, or any other writ, order or direction, declaring the Impugned NPR Notification No. S.O.2753(E) dated July 31, 2019 to be unconstitutional; and/or

(c) issue an appropriate writ or direction strike down the provisions of Section 3(1)(a) so far it introduces caveat that child is born before 1st day of July, 1987 and section 3 (1)(b) & (c) of the Citizenship Act, 1955 as unconstitutional, illegal and void; and/or

(d) a writ in the nature of mandamus, or any other writ, order or direction, declaring Notification No. G.S.R 685(E) dated 7.9.2015 to be unconstitutional; and/or

(e) a writ in the nature of mandamus, or any other writ, order or direction, declaring the Order No. G.S.R 686(E) dated 7.9.2015 to be unconstitutional; and/or

(f) a writ in the nature of mandamus, or any other writ, order or direction, declaring the Notification No. G.S.R 702 (E) dated 18.7.2016 to be unconstitutional; and/or

(g) a writ in the nature of mandamus, or any other writ, order or direction, declaring the Order No. G.S.R 703(E) dated 18.7.2016 to be unconstitutional; and/or

(h) pass such other/further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

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

FILED BY:-

EJAZ MAQBOOL
Advocate for the Petitioners

DRAWN BY:-
Mr. Ejaz Maqbool, Advocate
Ms. Akriti Chaubey, Advocate
Mr. Kunwar Aditya Singh, Advocate
Mr. Muhammad Isa M. Hakim, Advocate
Ms. Aishwarya Sarkar, Advocate

Drafted on: 01.01.2020

New Delhi
Filed on: 13.01.2020