

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2019
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

**IN THE MATTER OF:
DEMOCRATIC YOUTH
FEDERATION OF INDIA**

PETITIONER

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

WITH

I.A. NO. OF 2019

APPLICATION FOR STAY

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER: BIJU.P.RAMAN

SECTION

BIJU P. RAMAN
IN THE SUPREME COURT OF INDIA
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Total			=====

Filed by:

New Delhi
Dated: 16.12.2019

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Supreme Court of India
New Delhi-110014
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Code No. 2211

Mr. R. Purushothaman
I.C. No. 3527
Mob. No. 9313907738

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RECORD OF PROCEEDINGS

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LISTING PROFORMA

SECTION-X

The case pertains to (Please tick/check the correct box)”

<input type="checkbox"/>	Central Act: (Title)	Constitution of India
<input type="checkbox"/>	Section:	Article 14 and 21 of Constitution of India.
<input type="checkbox"/>	Central Rule: (Title):	NA
<input type="checkbox"/>	Rule No(s):	NA
<input type="checkbox"/>	State Act: (Title)	NA
<input type="checkbox"/>	Section:	NA
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<input type="checkbox"/>	Impugned Interim Order: (Date)	NA
<input type="checkbox"/>	Impugned Final Order/Decree: (Date)	NA
<input type="checkbox"/>	High Court: (Name)	NA
<input type="checkbox"/>	Names of Judges:	NA
<input type="checkbox"/>	Tribunal / Authority: (Name)	NA

1. Name of Matter: Civil Criminal

2. (a) Petitioner/Appellant No. 1: DEMOCRATICYOUTH

FEDERATION OF INDIA

- (b) E-mail ID:
- (c) Mobile Phone Number:
3. (a) Respondent No. 1: UNION OF INDIA & ORS.
(b) E-mail ID:
(c) Mobile Phone Number:
4. (a) Main category Letter Petition and PIL Matter
classification:
(b) Sub classification: Social Justice Matters
5. Not to be listed before: NA
6. Similar / Pending matter: Writ Petition (C) No.
7. **Criminal Matters:**
(a) Whether accused / convict
has surrendered Yes No
(b) FIR No. Date:
(c) Police Station:
(d) Sentence Awarded: NA
(e) Sentence Undergone: NA
8. **Land Acquisition Matters:** NA
(a) Date of Section 4 notification: NA
(b) Date of Section 6 notification: NA
(c) Date of Section 17 notification: NA
9. **Tax Matters:** State the tax effect: NA
10. **Special Category:** NA
(First petitioner/appellant only)
 Senior citizen > 65 SC/ST Woman/child Disabled Legal Aid Case In custody
11. Vehicle number (in case of Motor Accident Claim matters): NA
12. Decided cases with

citation:

Date: 16.12.2019

Place: New Delhi

(BIJU P RAMAN)

Advocate for the Petitioner

Email: advbijuraman@gmail.com

Code No. 2211

SYNOPSIS

The petitioner herein, Democratic Youth Federation of India (DYFI) is an organization of youth formed in the year 1980. The Petitioner organization inherits the progressive, rational, patriotic, secular and democratic aspirations of the people who fought for the country's independence. The whole gamut of activities of DYFI revolves around 'Service to the Humanity' by protecting India's secular fabric and developing democracy in all walks of life, human interactions, family, society and the nation with full participation by the youth. Petitioner is demonstratively upholding the cause of humanity taking active part in rescue, relief and re-habilitation in the case of almost every natural calamity. Petitioner stands always with the downtrodden, the rights for women and the backward/weaker sections of the society irrespective class, caste, gender or nationality. The petitioner federation had successfully assisted this Hon'ble Court by filing a Writ Petition in public interest for banning of the dangerous pesticide Endosulfan in which this Hon'ble Court ordered payment of compensation by the state to the victims of usage of Endosulfan and banned the endangerous pesticide. The Petitioner organization has been taking up issues genuinely concerning the society in various field such as environment, violation of fundamental rights & human rights, right of marginalized people,

scheduled caste & scheduled tribe, women & children etc. The Writ Petition filed by the Petitioner in the matter of Rohingyas against violation of their human rights, deportation and for granting them refugee status is pending before this Hon'ble Court being W.P (C) No.

The present public interest writ petition raises a seminal important questions related to the promulgation of Citizenship (Amendment), Act 2019, wherein first time religion is introduced as a reference point / condition for acquisition of Indian Citizenship for illegal / undocumented migrants from Afghanistan, Bangladesh and Pakistan. Citizenships being extended to certain a class of illegal / undocumented migrants belonging to the religion of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians coming from Afghanistan, Bangladesh and Pakistan. Such classification on the basis of religious identity of the individual clearly violates Article 14 and 21 of the Constitution. Moreover, the classification based on the religious identity of the individual offends the fundamental principle of 'Secularism', which is enshrined as basic structure of the Constitution.

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

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

The impugned Act by specifically excluding Muslim community from the category of citizenship has violated that very Fundamental right. The preamble of the constitution is the basic structure of the constitution and cannot be overridden by any act of the parliament. The preamble of the Constitution establishes India as a secular state, which means that every religion in India would be treated with same respect and that the Constitution of India recognizes and gives same rights to every person following any religion. The fundamental principal in Secularism is that persons shall not be discriminated based on the religion in their relationship with the State. Their right and privileges cannot be determined on the basis of their religion. This is all the more important and pertinent in interpreting Article 14 & 21 of the Constitution of India as they are not limited to Citizens of India but extended to each and every person. Any Act against the basic structure and basic feature of the Constitution emanating from the preamble is not valid and hence,

unconstitutional. The provisions of the Impugned Act infringe the very concept of the secularism as laid down in the constitution and it is violative of the Basic structure theory as pronounced by the Hon'ble Supreme Court.

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

It is pertinent to mention that The Citizenship (Amendment) Act, 2019 does not prescribed any standard principle or norm behind choosing aforesaid three neighboring countries, whereby it does not extend the benefit to religious minorities belonging to other neighboring countries such as Sri Lanka, Myanmar, Nepal and Bhutan. The religious persecution is in higher degree of harm in Sri Lanka and Myanmar. Indian origin Sri Lankan Eelam Tamil community had faced religious and ethnic

persecution from the Sri Lankan Government and Rohingya Muslims in the Rakhine State of Myanmar had also faced the most extreme forms of inhumane persecution at the hands of Myanmar Army. Therefore, there is no guiding principle to single out three countries (Afghanistan, Pakistan and Bangladesh) and extend the benefit of citizenship through naturalization to the religion minorities of the aforementioned three countries (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians).

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

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

In 2016, the Central Government allowed Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan to buy property for self-living, obtain driving licenses, and receive PAN and Aadhaar IDs, etc. in India. This benefit is not extended

to Rohingyas from Myanmar, or Tamil refugees from Sri Lanka etc. Now Section 2 of the impugned Act amends Section 2 of the Citizenship Act, 1955 by inserting following proviso in Sub-Section 1 in Clause (b);

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

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

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

LIST OF DATES

23.11.1946 The Central Legislative Assembly of British India enacted Foreigner Act, 1946 in order to confer certain power to Central Government in respect of dealing with foreigners in India. Section 2 (a) of the Foreigner Act, 1946 defines a foreigner as follows: "foreigner" means a person who is not a citizen of India.

Year 1955 The Indian Parliament enacted the Citizenship Act, 1955 in exercise of powers under Article 11 of the Constitution of India to provide a substantive and procedural framework with respect to acquisition and determination of the Indian Citizenship. Section 2 (1) (b) of the Citizenship Act, 1955 clearly provides the definition of illegal migrant and it is defined as follows; 2(1) (b)illegal migrant means’ a foreigner who has entered into India- (i) Without a valid passport or travel documents and such other documents or authority as may be prescribed by or under any law in that behalf; or (ii) With a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;

10.12.2003 The Govt. of India in exercise of powers under Section 18 of the Citizenship Act, 1955 on 10.12.2003 have promulgated the “Citizenship(Registration of Citizens and Issue of National Identity Cards) Rules, 2003”. The Rule 3 and 4 of the Citizenship Rules, 2003 provides outline for the maintenance and preparation of National Register of Citizens throughout the country. It is pertinent to note that the Rule 4(4) of the Citizenship Rules, prescribes as follows;

During the verification process, particulars of such individuals, whose Citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over.

The persons excluded from the National Register of Citizens in pursuant to Rule 4 of the Citizenship Rules, 2003, have to finally represent the proceedings before the Foreigner Tribunal in order to establish citizenship of the person. A person declared as Foreigner by the Tribunal shall result in detention at the detention center.

08.09.2015

The Ministry Home Affairs, vide Notification dated 08.09.2015 bearing number GSR 685(E) and GSR 686(E) made an amendment in the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 and allowed entry to 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, who entered into India on or before the 31st December, 2014 without valid documents.

18.07.2016 Ministry of Home Affairs vide Notification number GSR 702 (E) and 703(E) dated 18.07.2016 published in Gazette No. 495 made an amendment in the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 substituted the word “Bangladesh”, for words “Afghanistan, Bangladesh”.

31.07.2019 The office of the Register of General Citizens and Registration issued notification in pursuant to Rule 3(4) of Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003, wherein the Central Government decided to prepare and update the population Register between 1st April to 30th September 2020

31.08.2019 In pursuant to the series of Supreme Court orders in Assam SanmilthaMahasanga v Union of India W.P. (C) No 562/2012 & All Assam Public Work v Union of India 274 of 2009, the Government of Assam along with Union of India updated the National Register of Citizens (NRC) for the residents in the State of Assam. The Final list of NRC for the resident of Assam was published on 31.08.2019. There were applications of 3.3 crore people in NRC list and final list have included 3.11 crore people and excluded 19.06 lakh people. It is yet unclear exact number of how many people belonging to Hindu religion and Islam religion

are being excluded by virtue of the process of National Register of Citizens in the State of Assam.

9.12.2019 The Citizenship Amendment Bill, 2019 was introduced in Lok Sabha and was passed.

11.12.2019 The Citizenship Amendment Bill, 2019 was introduced in Rajya Sabha and passed.

12.12.2019, The President assented to the Citizenship (Amendment) Act, 2019, wherein it amended the

Section 2(1)(b) and amended clause is as follows:

“Provided that persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh

and Pakistan, who have been exempted by the Central Government by or under clause (c) of subsection (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the

Foreigners Act, 1946 or any order made thereunder,

shall not be treated as illegal migrants for the purposes

of that Act:” '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. (2) Subject to

fulfilment of the conditions specified in section 5 or

the qualifications for naturalisation under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalisation under sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India. (3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him: Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section: Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application.

By virtue of Section 6(B) read with proviso in Clause (d) in the 3rd Schedule of the Principal Act introduced by the Citizenship (Amendment) Act 2019 the liberalized reduced mandatory aggregate period of

residence required for Citizenship by registration or naturalization is available only to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan covered under proviso to Clause (b) of Sub-Section 1 of Section 2 of the Citizenship Act, 1955 introduced by Section 2 of the Citizenship (Amendment) Act, 2019.

16.12.2016

Hence this Writ Petition.

BAR &
BENCH

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2019
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

DEMOCRATIC YOUTH

FEDERATION OF INDIA (DYFI)

REPRESENTED BY ITS NATIONAL LEGAL CELL

CONVENOR ADV.SUBHASH CHANDRAN, K R,

DYFI CENTRAL EXECUTIVE COMMITTEE OFFICE,

BHAGAT SINGH BHAWAN

KAROLBAGH, NEW DELHI 110005

PETITIONER

VERSUS

1. UNION OF INDIA,
THROUGH ITS SECRETARY
MINISTRY OF HOME AFFAIRS
NORTH BLOCK, CENTRAL SECRETARIAT
NEW DELHI-110001

2. MINISTRY OF LAW & JUSTICE
THROUGH SERETARY,
SHASTRI BHAWAN,
NEW DELHI 110001.

RESPONDENTS

**PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF
INDIA**

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

THE HUMBLE PETITION OF
THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The present writ petition under Article 32 is preferred by the Petitioners herein since the Petitioner is aggrieved by the enactment of Citizenship(Amendment), Act 2019, wherein first time religion is introduced as a reference point / condition for acquisition of Indian Citizenship for illegal / undocumented migrants from Afghanistan, Bangladesh and Pakistan. Citizenship is being extended to certain a

class of illegal / undocumented migrants belonging to the religion of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians coming from Afghanistan, Bangladesh and Pakistan. Such classification on the basis of religious identity of the individual clearly violates Article 14 and 21 of the Constitution. Moreover, the classification based on the religious identity of the individual offends the fundamental principle of 'Secularism', which is enshrined as basic structure of the Constitution.

1A. The details of the Petitioner filing present Public Interested Litigation are as follows:

(a) The petitioner herein, Democratic Youth Federation of India (DYFI) is an organization of youth formed in the year 1980.

The Petitioner organization inherits the progressive, rational, patriotic, secular and democratic aspirations of the people who fought for the country's independence. The whole gamut of activities of DYFI revolves around 'Service to the Humanity' by protecting India's secular fabric and developing democracy in all walks of life, human interactions, family, society and the nation with full participation by the youth. Petitioner is demonstratively upholding the cause of humanity taking active part in rescue, relief and re-habilitation in the case of almost every natural calamity. Petitioner stands always with the downtrodden, the rights for women and the backward/weaker sections of the society irrespective class, caste, gender or nationality. The petitioner federation had successfully assisted this Hon'ble Court by filing a Writ Petition in public interest for

banning of the dangerous pesticide Endosulfan in which this Hon'ble Court ordered payment of compensation by the state to the victims of usage of Endosulfan and banned the endangerous pesticide. The Petitioner organization has been taking up issues genuinely concerning the society in various field such as environment, violation of fundamental rights & human rights, right of marginalized people, scheduled caste & scheduled tribe, women & children etc. The Writ Petition filed by the Petitioner in the matter of Rohingyas against violation of their human rights, deportation and for granting them refugee status is pending before this Hon'ble Court.

(b) The Petitioner submits that this Petition is maintainable under

Article 32 of the Constitution of India. The petitioner federation is an unregistered Non-Governmental Organization, duly represented by its National Legal Cell Convener Adv. Subhash Chandran K.R., a practicing lawyer before this Hon'ble Court, office at DYFI Central Executive Committee Office, Bhagat Singh Bhawan, Karol Bagh, New Delhi-11005 and residing at WZ-242, WZ Block, Inderpuri, New Delhi-110012. The e-mail id of the Petitioner herein is adv.subhashchandran@gmail.com and Mobile phone number is +91 8882375011. The annual income of the Petitioner is Rs. 6,00,000/-. PAN Card and Aadhar Card numbers of Petitioner are ASHPC1500A and 201865372127 respectively. A true copy of the identity proof of the Petitioner is annexed herewith and marked as **ANNEXURE P-1 (PAGES TO)**.

(c) The present public interest writ petition raises a seminal important questions related to the promulgation of Citizenship (Amendment), Act 2019, wherein first time religion is introduced as a reference point / condition for acquisition of Indian Citizenship for illegal / undocumented migrants from Afghanistan, Bangladesh and Pakistan. Citizenship is being extended to certain a class of illegal / undocumented migrants belonging to the religion of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians coming from Afghanistan, Bangladesh and Pakistan. Such classification on the basis of religious identity of the individual clearly violates Article 14 and 21 of the Constitution. Moreover, the classification based on the religious identity of the individual offends the fundamental principle of 'Secularism', which is enshrined as basic structure of the Constitution.

(d) The Petitioner has no personal or political interest of any kind except the prosperity of the nation and the integrity of the nation's administrative and legal processes aspiring for the welfare of the humanity as a whole.

(e) That the Petitioner has not filed any other petition seeking similar reliefs in this Hon'ble Court or any other courts in India.

(f) That the instant Writ Petition is filed without any delay or laches and there is no legal bar in entertaining the same. The petitioner federation has no other alternative or efficacious remedy except to file the present Writ Petition under Order XXXVIII Rule 12

of 'The Supreme Court Rules, 2013, before this Hon'ble Court, by invoking Article 32 of the Constitution of India.

(g) That the Annexures are true and correct copies of the respective originals.

BRIEF FACTS:

2. The Central Legislative Assembly of British India enacted Foreigner Act, 1946 in order to confer certain power to Central Government in respect of dealing with foreigners in India. Section 2 (a) of the Foreigner Act, 1946 defines a foreigner as follows: "foreigner" means a person who is not a citizen of India. A true typed copy of Foreigner Act, 1946 passed by the Central Legislative Assembly of British India dated 23.11.1946 is annexed herewith and marked as **ANNEXURE P-2 (PAGES TO)**.

3. The Indian Parliament enacted the Citizenship Act, 1955 in exercise of powers under Article 11 of the Constitution of India to provide a substantive and procedural framework with respect to acquisition and determination of the Indian Citizenship. Section 2 (1) (b) of the Citizenship Act, 1955 clearly provides the definition of illegal migrant and it is defined as follows; 2(1) (b) illegal migrant means 'a foreigner who has entered into India- (i) Without a valid passport or travel documents and such other documents or authority as may be prescribed by or under any law in that behalf; or (ii) With a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time. A true typed copy of Citizenship Act, 1955 passed by the

Parliament of India dated 30.12.1955 is annexed herewith and marked as **ANNEXURE P-3 (PAGES TO)**.

4. The Govt. of India in exercise of powers under Section 18 of the Citizenship Act, 1955 on 10.12.2003 have promulgated the “Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003”. The Rule 3 and 4 of the Citizenship Rules, 2003 provides outline for the maintenance and preparation of National Register of Citizens throughout the country. It is pertinent to note that the Rule 4(4) of the Citizenship Rules, prescribes as follows;

During the verification process, particulars of such individuals, whose Citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over.

The persons excluded from the National Register of Citizens in pursuant to Rule 4 of the Citizenship Rules, 2003, have to finally represent the proceedings before the Foreigner Tribunal in order to establish citizenship of the person. A person declared as Foreigner by the Tribunal shall result in detention at the detention center. A true typed copy of Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 dated 10.12.2003 issued by Union of India is annexed herewith and marked as **ANNEXURE P-4 (PAGES TO)**.

5. The Ministry Home Affairs, vide Notification dated 08.09.2015 bearing number GSR 685(E) and GSR 686(E) made an amendment in the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 and allowed entry to 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, who entered into India on or before the 31st December, 2014 without valid documents. A true typed copy of Notification dated 08.09.2015 bearing number GSR 685(E) and GSR 686(E) issued by Ministry Home Affairs, vide Notification dated 08.09.2015 Ministry Home Affairs is annexed herewith and marked as **ANNEXURE P-5 (PAGES TO)**.
6. Ministry of Home Affairs vide Notification No. GSR 702 (E) and 703(E) dated 18.07.2016 published in Gazette No. 495 made an amendment in the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 substituted the word “Bangladesh”, for words “Afghanistan, Bangladesh”. A true typed copy of Notification No. GSR 702 (E) and 703(E) dated 18.07.2016 and published in Gazette No. 495 issued by Ministry Home Affairs, is annexed herewith and marked as **ANNEXURE P-6 (PAGES TO)**.
7. The office of the Register of General Citizens and Registration issued notification in pursuant to Rule 3(4) of Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003, wherein the Central Government decided to prepare

and update the population Register between 1st April to 30th September 2020. A true typed copy of Notification dated 31.07.2019 by Ministry Home Affairs, is annexed herewith and marked as **ANNEXURE P-7 (PAGES TO)**.

8. In pursuant to the series of Supreme Court orders in Assam Sanmiltha Mahasanga v Union of India W.P. (C) No 562/2012 & All Assam Public Work v Union of India 274 of 2009, the Government of Assam along with Union of India updated the National Register of Citizens (NRC) for the residents in the State of Assam.

9. The Final list of NRC for the resident of Assam was published on 31.08.2019. There were applications of 3.3 crore people in NRC list and final list have included 3.11 crore people and excluded 19.06 lakh people. It is yet unclear exact number of how many people belonging to Hindu religion and Islam religion are being excluded by virtue of the process of National Register of Citizens in the State of Assam.

10. That on 09.12.2019 'the Citizenship Amendment Bill, 2019' was introduced in Lok Sabha and was passed. That on 11.12.2019 The Citizenship Amendment Bill, 2019 was introduced in Rajya Sabha and passed. That on 12.12.2019, The President assented to the Citizenship (Amendment) Act, 2019, wherein it amended the Section 2(1)(b) and amended clause is as follows: "Provided that persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have been exempted by the Central

Government by or under clause (c) of subsection (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any order made thereunder, shall not be treated as illegal migrants for the purposes of that Act:” '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 naturalization to a person referred to in the proviso to clause (b) of sub-section (1) of section 2. (2) Subject to fulfillment of the conditions specified in section 5 or the qualifications for naturalization under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalization under sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India. (3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him: Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section: Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and

privileges to which he was entitled on the date of receipt of his application on the ground of making such application.

11. By virtue of Section 6(B) read with proviso in Clause (d) in the 3rd Schedule of the Principal Act introduced by the Citizenship (Amendment) Act 2019 the liberalized reduced mandatory aggregate period of residence required for Citizenship by registration or naturalization is available only to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan covered under proviso to Clause (b) of Sub-Section 1 of Section 2 of the Citizenship Act, 1955 introduced by Section 2 of the Citizenship (Amendment) Act, 2019.

12. But the impugned Act 2019 denies such right to religiously persecuted Ahammadiya Muslims and Shiyas Muslims. Same is the case with Rohingya Muslim refugee / migrants coming to India due to religious / racial persecution by Myanmar. Similarly Hindu illegal migrants from Sri Lanka on religious and racial persecution despite the fact the fact that they are of Indian origin are denied such rights and discriminated.

13. Thus being aggrieved, the Petitioners with leave of this Hon'ble Court are filing the present writ petition under Article 32 of the Constitution of India on inter-alia the following grounds:-

A. The impugned Act is violative of Article 14 of the Constitution of India as the proviso in Clause (b) of Sub-Section(1) of Section 2 inserted in the Principal Act suffers from the classification based only on religion. This classification is highly impermissible and discriminatory. It is without any intelligible differentia and rational

nexus with the apparent object of classification. Muslims are discriminated even in the case that they come to India due to religious persecution.

- B. That furthermore, the Section 2 of Citizenship (Amendment) Act, 2019 allows the benefit of the naturalization under Section 6B of Citizenship (Amendment) Act, 2019 limiting it to the religious minority Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the countries of Afghanistan, Pakistan and Bangladesh only.
- C. That the Citizenship (Amendment) Act, 2019 does not have reasonable classification based on intelligible differentia. The classification based on religion ipso facto violates Article 14 of the Indian Constitution, wherein the legislation effectuate discrimination on the basis of the religious identity of the individual.
- D. That Section 2, Section 3 and Section 6 are per se discriminatory and suffer from manifest arbitrariness and the irrationality.
- E. That, this Hon'ble Court in *Navtej Singh Johar v Union of India*, (2018)10 SCC 1, has 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”.
- F. That similarly, the individuals belonging to the class of Muslims must not be excluded from the benefit under Section 6B of the Citizenship Act, on the basis of their religious identity. Therefore, the religious based classification is impermissible principle to be used for the purpose of classification.

- G. That Section 2 by which new proviso is inserted in Clause (b) of Sub-section 1 of Section 2 and Section 6 B in the Principal Act discriminate migrants from Myanmar. Rohingya Muslims are discriminated despite the fact that they are subjected to inhumane religious persecution and they come to India due to persecution.
- H. That, the Article 14 of the Indian Constitution envisages “equality before law and equal protection of law”. This protection of equality clause is not limited or restricted to Citizens alone. It extends to all persons. The impugned Act does not satisfy the twin test of Article 14 of the Indian Constitution.
- I. The religious classification of Citizenship (Amendment) Act, 2019 violates the twin test of classification under Article 14, wherein it requires that (i) there should be a reasonable classification based on intelligible differentia; and, (ii) this classification should have a rational nexus with the objective sought to be achieved.
- J. That the classification in the Citizenship (Amendment) Act, 2019 is not founded on the basis of intelligible differentia. The yardstick for the purpose of differentiating in the Citizenship (Amendment) Act, 2019 is that the ‘religious persecuted minorities’ belonging to the country of Afghanistan, Pakistan and Bangladesh. It includes Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, but at the same time exclude other minorities facing discrimination or persecution on the basis of their religious/sect belief, such as Ahmadiyya section in Pakistan and Shia Section and Hazara Section in Afghanistan.

K. The denial of similar benefit accrued in Citizenship (Amendment) Act, 2019 to the similarly situated persons belonging to the minority sections of Ahmaddiya and Shia sections, who face similar persecution alike religious minorities (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians) clearly constitutes an unreasonable classification and violates Article 14 of the Indian Constitution. It suffers from the vices of manifest arbitrariness and irrationality.

L. That, the classification does not satisfy the nexus prong test of Article 14. If the object of the Citizenship (Amendment) Act, 2019 is to protect the 'minorities who faced religious persecution in Afghanistan, Pakistan and Bangladesh', then, the Ahmaddiyya and Shia sections from these countries are entitled to equal treatment for the benefit of Citizenship (Amendment) Act, 2019. It is well documented that the section based discrimination within the religion exists in Pakistan and Afghanistan. Therefore, the extension of benefit of Citizenship (Amendment) Act, 2019 to the religious minority such as Hindus, Sikhs, Buddhists, Jains, Parsis and Christians, but denying the same to Ahmaddiyyas, Hazaras and Shia sections within these countries is unable to satisfy that the nexus prong of objective sought to be achieved, which is protection of minorities facing religious persecution in the Afghanistan, Pakistan and Bangladesh.

M. That the notification of the Ministry Home Affairs, dated 08.09.2015 bearing number GSR 685(E) and GSR 686(E) by which an amendment in the Passport (Entry into India) Rules, 1950 and

Foreigners Order, 1948 and allowed entry to 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, who entered into India on or before the 31st December, 2014 without valid documents. This order is highly discriminatory, manifestly arbitrary, unreasonable and irrational in as much as it excludes and discriminates other religiously persecuted groups such as Rohingyas from Myanmar and Ahammadiya, Shia Muslims from Afghanistan, Pakistan and Bangladesh.

N. That Section 2 read with Section 3 and 6 of the Citizenship (Amendment) Act, 2019 provide two pronged classifications, one in the name of religion and the other in terms of country. Both the classification are discriminatory manifestly arbitrary, unreasonable and irrational having regard to the object of classification.

O. Apart from the religious based exclusion of Muslims from the benefit of acquiring citizenship through naturalization. The benefit is limited to religious minorities belonging to Pakistan, Afghanistan and Bangladesh.

P. That, the arbitrary classification of the aforesaid countries without any rationale, or standard principles constitutes manifest arbitrariness and violate Article 14 of the Indian Constitution.

Q. That, this Hon'ble Court in *Sharma Transport v. Govt. of A.P.*, (2002) 2 SCC 188, wherein Para 25 states that "the expression "arbitrarily" means: in an unreasonable manner, as fixed or done

capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone”.

R. This Hon’ble Supreme Court in *ShayaroBano v Union of India* (2017) 9 SCC 1 had also noted that “And a constitutional infirmity is found in Article 14 itself whenever legislation is “manifestly arbitrary” i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc.”

S. That, as per Section 2 and 3 of the Impugned Act illegal migrants belonging to religious minorities from Afghanistan, Pakistan and Bangladesh who face persecution would be entitled to the benefit of proviso to Clause (b) of Sub-section 1 of Section 2 and naturalization under Section 6B of the amended Act. This country-based classification is irrational, unreasonable and manifestly arbitrary. That there is no rational in not extending such rights to religious minorities belonging to other neighboring countries such as Sri Lanka, Myanmar, and Bhutan.

T. That the impugned Act is bereft of any standard principal or norm in discriminating migrants from other neighboring countries such as Sri Lanka, Myanmar, and Bhutan. That there is no rational in not extending such rights to religious minorities belonging to other neighboring countries such as Sri Lanka, Myanmar, Nepal and

Bhutan. The classification of Afghanistan, Pakistan and Bangladesh is not founded on rationale principle to justify a separate special treatment for the religious minorities facing persecution on the basis of religion. The neighboring State of Sri Lanka has got a state religion namely Buddhism. The Tamilian people of Sri Lanka are severely persecuted lot and they are predominantly of Indian origin.

U. The impugned amendment Act is in direct conflict with the Secularism, the basic structure of the Constitution of India. It promotes radicalization of members of the minority due to discrimination. It violates Art. 51 of the Constitution of India of promotion of International peace, fostering respect for International law. It is against the Charter of the United Nations.

V. The direct and inevitable consequence of the impugned Act shall be that only Muslims would be targeted in the proposed pan-India NRC proceedings. The fundamental rights violation of Citizenship (Amendment), Act 2019 must be adjudged in the light of 'direct and inevitable effect' of the legislation on the individuals belonging to the Muslim migrants.

W. This Hon'ble Court in *Bachan Singh v. State of Punjab*, (1982) 3 SCC 24, wherein it was observed "that in order to locate the fundamental right violated by a statute, the court must consider what is the direct and inevitable consequence of the statute. The impugned statute may in its direct and inevitable effect invade more than one fundamental right and merely because it satisfies the requirement of one fundamental right, it is not freed from the

obligation to meet the challenge of another applicable fundamental right.”

The violation of fundamental rights are to be considered on ‘direct and inevitable consequence test’.

X. That the impugned Act is in conflict with Art. 14 of Universal Declaration of Human Rights (UDHR) which says that ‘everyone has the right to seek and enjoy in other countries asylum from persecution’

Y. That the impugned Act is in total conflict with Article 15 of the Universal Declaration of Human Rights (UDHR) which provides that “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.” The universal anti-discrimination norm and the principle that statelessness should be avoided have emerged to constrain state discretion on citizenship under International Law.

Z. The impugned Citizenship Amendment Act 2019 violates India’s International obligation under Universal declaration of human rights (UDHR), International Covenant on Civil and Political Rights (ICCPR). It violates Art. 26 of ICCPR. That, the Article 26 of ICCPR clearly imposes obligation to prohibit any discrimination on the ground of religion and mandates effective protection against discrimination on the basis of religious identity. That, Article 26 of ICCPR is provided herein below: “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.”The freedom from discrimination is considered as one of the core principles of human rights and the same has been provided in Universal declaration of human rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Social, Cultural and Economic Rights (ICESCR).

AA. The Supreme Court has time and again declared that any International Convention and law not inconsistent with fundamental rights and in harmony with its spirit must be read into provisions of Municipal Law. Art. 51 of the Constitution also mandates this. This declaration of law in *Visakha Vs. State of Rajasthan* 1997 (6) SCC 241 has been approved, confirmed and enlarged by 9 Judge Bench of This Hon’ble Court in *Privacy Judgment* (2017) 10 SCC 1 *Puttaswamy Vs. Union of India*, wherein the Court has held that “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”.

BB. That for these grounds and the grounds that would be urged at the time of hearing, in the interest of justice, Petitioner seeks to pray

following directions / orders from this Hon'ble Court under Article 32 of the Constitution of India.

PRAYER

That in the facts and circumstances mentioned herein above it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- (a) Issue a writ, order or direction declaring the Citizenship (Amendment) Act, 2019 to be in violation of Article 14 of the Constitution as it is discriminatory, manifestly arbitrary, unreasonable and irrational hence striking down the same as unconstitutional.
- (b) Issue a writ or direction declaring the Notifications bearing number GSR 685(E) dated 08.09.2015, the Notification bearing number GSR 702 (E) dated 18.07.2016 to be in violation of Article 14 and 21 of the Constitution and striking down the same.
- (c) Pass such other order as this Hon'ble Court may deem fit and proper in the interest of equity, justice and conscience

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

DRAWN BY:
SUBHASH CHANDRAN K.R.
ADVOCATE

FILED BY

(BIJU P. RAMAN)
ADVOCATE FOR THE PETITIONER

SETTLED BY:
SHRI.PV SURENDRANATH
SENIOR ADVOCATE.

DRAWN ON: 15.12.2019
FILED ON: 16.12.2019
PLACE: NEW DELHI

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2019
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

DEMOCRATIC YOUTH

FEDERATION OF INDIA

PETITIONER

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

AFFIDAVIT

I, Subhash Chandran K.R., Aged 36 Years, Convener, National Legal Cell, Democratic Youth Federation of India, Bhagat Singh Bhawan, Karol Bagh, New Delhi – 110005, do hereby solemnly affirm and state as follows:

1. That I am the Convener, National Legal Cell of the Petitioner organization in the instant matter and as such, I am well conversant with the facts and circumstances of the case.
2. I say that I have read and understood the contents of the Synopsis and List of Dates at Pages to and contents of Para to at pages to of the Writ Petition and state that the facts mentioned therein are true to my knowledge and belief and information derived from the records of the case as per the legal advice received and believed by me. I say that the facts and circumstances stated in the Writ Petition and the Applications are true and correct.
3. I say that there is no personal gain, private or oblique reason for the petitioner in filing the instant Public Interest Litigation.

4. That the Annexures filed are true copies of their respective originals.
5. I say that the averments of facts stated herein above are true to my knowledge and no part of it is false and nothing material has been concealed there from.

DEPONENT

VERIFICATION:

I the above named deponent affirms that the contents of Para 1 to 5 of this affidavit are true and correct to my knowledge and belief and no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this the 16th day of December 2019.

DEPONENT

**BAR &
BENCH**

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO. OF 2019

IN

WRIT PETITION (CIVIL) NO. OF 2019

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

DEMOCRATIC YOUTH

FEDERATION OF INDIA

PETITIONER

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

APPLICATION FOR STAY

TO

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

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the present writ petition under Article 32 is preferred by the Petitioners herein since the Petitioner is aggrieved by the enactment of Citizenship(Amendment), Act 2019, wherein first time religion is introduced as a reference point / condition for acquisition of Indian Citizenship for illegal / undocumented migrants from Afghanistan, Bangladesh and Pakistan. Citizenship is being extended to certain a class of illegal / undocumented migrants belonging to the religion of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians coming from Afghanistan, Bangladesh and Pakistan. Such classification on the basis of religious identity of the individual clearly violates Article 14 and 21 of the Constitution. Moreover, the classification

based on the religious identity of the individual offends the fundamental principle of 'Secularism', which is enshrined as basic structure of the Constitution.

2. That present public interest writ petition raises a seminal important questions related to the promulgation of Citizenship (Amendment), Act 2019, wherein first time religion is introduced as a reference point / condition for acquisition of Indian Citizenship for illegal / undocumented migrants from Afghanistan, Bangladesh and Pakistan. Citizenship is being extended to certain a class of illegal / undocumented migrants belonging to the religion of Hindus, Sikhs, Buddhists, Jains, Parsis and Christians coming from Afghanistan, Bangladesh and Pakistan. Such classification on the basis of religious identity of the individual clearly violates Article 14 and 21 of the Constitution. Moreover, the classification based on the religious identity of the individual offends the fundamental principle of 'Secularism', which is enshrined as basic structure of the Constitution.
3. In the above circumstances and in as much as to safeguard the fundamental rights under Constitution of India this court may kindly stay the impugned act till the final disposal of the instant petition.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Stay the Citizenship (Amendment) Act, 2019 to be in violation of Article 14 of the Constitution as it is discriminatory, manifestly

arbitrary, unreasonable and irrational hence striking down the same as unconstitutional.

- b) Stay the Notifications bearing number GSR 685(E) dated 08.09.2015, the Notification bearing number GSR 702 (E) dated 18.07.2016 to be in violation of Article 14 and 21 of the Constitution and striking down the same.
- c) pass any other or further order or orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

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

FILED BY:

(BIJU P. RAMAN)
ADVOCATE FOR THE PETITIONER

Place: New Delhi
Dated: 16.12.2019

BAR & BENCH