

**IN THE SUPREME COURT OF INDIA  
WRIT JURISDICTION  
WRIT PETITION (C) NO. 1470 OF 2019  
& OTHER CONNECTED MATTERS**

**IN THE MATTER OF :**

**INDIAN UNION OF MUSLIM  
LEAGUE** **...PETITIONER**  
**VS.**  
**UNION OF INDIA** **...**  
**RESPONDENT**

**PRELIMINARY COUNTER AFFIDAVIT ON BEHALF  
OF THE UNION OF INDIA**

I, B.C. Joshi S/o Late Shri Dayakrishna Joshi, aged 52 years presently working as Director in the Ministry of Home Affairs, Government of India, do hereby solemnly affirm and state as follows:

- 1.** That in my official capacity I am acquainted with the facts of these cases, I have perused the record and am competent and authorized to swear this affidavit on behalf of the Union of India.
  
- 2.** I state and submit that large number of petitions have been filed pertaining to direct or indirect challenge to the Citizenship [Amendment] Act, 2019. The Central Government is served with only some of the petitions as on date and remaining petitions are yet to be served, perused and examined.

- 3.** I state and submit that since I am filing this preliminary affidavit in reply as is necessary for the purpose of opposing, entertaining and grant of any interim order. Considering that all petitions filed are yet to be served/perused and due to the paucity of time, it was not possible to file a detailed reply at this juncture dealing with every contention raised in the petitions served so far and dealing with all the petitions parawise. I reserve liberty to file a further and a detailed affidavit hereinafter as and when I am so advised.
- 4.** I hereby deny and dispute all the facts stated, contentions raised and grounds urged in all the petitions except those which are specifically and unequivocally admitted in this reply. I state and submit that the non-dealing with the petitions parawise may not be considered as my having admitted the truthfulness or otherwise of any of the contents thereof.
- 5.** Before advertng to the petitions served so far in the present subject matter, the Respondent seeks to place a brief list of dates in order to apprise the Hon'ble Court of the bare facts pertaining to the present issue. The brief list of dates is as under :

DATE	PARTICULARS
1920	The Indian Passport Act, 1920 Act, 1920 is enacted and renamed as The Passport (Entry into India) Act, 1920 under section 25 of the Passport Act, 1967 (Act 15 of 1967). A copy of the Passport (Entry into India) Act, 1920 is

	attached herewith and marked as <b>Annexure – R 1. [Page 130 to 132]</b>
1946	<p>The Foreigners Act, 1946 is enacted to replace The Foreigners Act, 1864..</p> <p>A copy of the Foreigners Act, 1946, is attached herewith and marked as – <b>Annexure – R 2. [Page 133 to 141]</b></p>
1947	<p>Partition of Indian and Pakistan takes place. Millions of Hindus and Muslims migrate across Indian and Pakistan [including present day Bangladesh] borders.</p>
1948	<p>The Foreigners Order, 1948 is published in the Gazette of India.</p> <p>A copy of The Foreigners Order, 1948, is attached herewith and marked as <b>Annexure – R 3. [Page 142 to 160]</b></p>
26.01.1950	<p>The Constitution of India comes into force. Articles 5 to 9 of the Constitution determine who are Indian citizens at the commencement of the Constitution. Article 10 provides for continuance as Indian citizens, subject to law made by the Parliament.</p> <p>While providing for citizenship upon the commencement of the Constitution of India, the Constitution itself recognized the power of the Parliament to make provisions with respect to the acquisition and termination of citizenship. Thus, the Parliament has, undisputably, the legislative competence to make legislative provisions with regard to the acquisition of citizenship in a manner other than provided in Article 5 to Article 10. Article 11 reads as under:-</p>

	<p><i>“Article 11 - Parliament to regulate the right of citizenship by law</i></p> <p><i><u>Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship”</u></i></p>
April 8, 1950	<p>The <i>Nehru Liaqat</i> Agreement was signed by Heads of Governments of India &amp; Pakistan to protect religious minorities. A copy of the <i>Nehru - Liaqat</i> Agreement is attached herewith and marked as <b>Annexure – R 4. [Page 161 to 166]</b></p>
1950	<p>The Passport (Entry into India) Rules, 1950 are notified, in the exercise of powers conferred by section 3 of the Passport (Entry in to India) Act, 1920.</p> <p>A copy of Passport (Entry into India) Rules, 1950 is attached herewith and marked as <b>Annexure – R 5. [Page 167 to 173]</b></p>
05.06.1955	<p>The Citizenship Bill is introduced in Lok Sabha.</p> <p>The Citizenship Bill, which manifests the mandate of Article 11, provides for acquisition of citizenship after the commencement of the Constitution, by birth, descent, registration, naturalisation and incorporation of territory. It also made necessary provisions for the termination and deprivation of citizenship under certain circumstances.</p>
30.12.1955	<p>The Citizenship Act, 1955 comes into force after Presidential assent on 30.12.1955.</p>

	<p>After its enactment, the Act has gone through nine amendments [prior to the amendment in 2019], details of which are as under:</p> <ul style="list-style-type: none"> <li>(i) The Citizenship (Amendment) Act, 1957 (65 of 1957) (w.e.f. 27-12-1957)</li> <li>(ii) The Repealing and Amending Act, 1960 (58 of 1960) (w.e.f. 26-12-1960)</li> <li>(iii) The Citizenship (Amendment) Act, 1985 (65 of 1985) (w.e.f. 7-12-1985)</li> <li>(iv) The Delegated Legislation Provisions (Amendment) Act, 1985 (4 of 1986) (w.e.f. 15-5-1986)</li> <li>(v) The Citizenship (Amendment) Act, 1986 (51 of 1986) (w.e.f. 1-7-1987)</li> <li>(vi) The Citizenship (Amendment) Act, 1992 (39 of 1992) (w.e.f. 10-12-1992)</li> <li>(vii) The Citizenship (Amendment) Act, 2003 (6 of 2004) (w.e.f. 3-12-2004)</li> <li>(viii) The Citizenship (Amendment) Act, 2005 (32 of 2005) (w.e.f. 28-6-2005)</li> <li>(ix) The Citizenship (Amendment) Act, 2015 (1 of 2015) (w.e.f. 6-1-2015)</li> </ul> <p>A copy of the Citizenship Act, 1955 [prior to its amendment in 2019] is attached herewith and marked as <b>Annexure – R 6. [Page 174 to 186]</b></p>
1956	<p>The Citizenship Rules, 1956, are brought in to force.</p> <p>A copy of the Citizenship Rules, 1956 is attached herewith and marked as <b>Annexure – R 7. [Page 187 to 228]</b></p>
January – February	<p>The Nehru-Liaquat Pact to protect religious minorities in each other's territory had</p>

1964	<p>already been signed between India and Pakistan in 1950. However, Government of Pakistan did not implement it in its true spirit. This was recognised and highlighted by Government of India as early as in 1964.</p> <p>Consequent to the theft of the holy relic in Hazratbal Shrine in Jammu &amp; Kashmir on 27<sup>th</sup> December, 1963, there were large scale communal disturbances in East Pakistan from 3<sup>rd</sup> January, 1964 in which there was widespread lawlessness, arson, loot and huge loss of life and property of the minority community. Irresponsible and unrestrained statements by the political leadership, Press &amp; Radio in West Pakistan led to the flare up of communal violence in East Pakistan. Even though the holy relic was recovered on 4<sup>th</sup> January, 1964, and there was peace in J&amp;K, the communal disturbances in East Pakistan continued. A large number of refugees affected by the wave of communal violence in East Pakistan began crossing over to Assam, Tripura and West Bengal.</p> <p>The matter was debated at length in Lok Sabha on 11.02.1964 and 13.02.1964 on a Calling Attention Motion moved by Shri Hem Barua, M.P. and subsequently on a motion moved by the then Home Minister, Shri Gulzari Lal Nanda. During the debate, the then Home Minister had <i>inter alia</i> pointed out that while India was implementing the Nehru-Liaquat Pact completely and fully, it was not</p>
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	<p>being implemented by the other side. He further stated that it was expected that the Hindus in East Pakistan will live with equal rights, equal status and equal security and safety and that if Pakistan was failing to discharge its responsibilities, on human considerations, India will have to do something about it because India cannot take a purely legal and constitutional view. He also pointed out that India cannot shut its eyes to the fact that they are the people “who were part of ourselves, with whom we have ties of blood and who are our relations and friends and that we cannot turn our face against their sufferings, the torture of their bodies and spirit and all that they are undergoing there.” He further stated that if they find it impossible to “breathe the air of security in their country and they feel that they must leave it, then we cannot bar their way. We have no heart to tell them “You go on staying there and be butchered”.</p> <p>A copy of the heated Parliamentary debates in the matter are attached herewith and marked as <b>Annexure - R 8. [Page 229 to 262]</b></p>
<p>15.10.1952 to 15.09.2017</p>	<p>The Ministry of Home Affairs has issued various instructions to lay down/reiterate the provisions of Long Term Visa (LTV)/stay for minorities as well as other nationals of West Pakistan (the present day Pakistan) and East Pakistan (the present day Bangladesh) and Afghanistan. These instructions take into consideration the special circumstances of</p>

specified communities in Pakistan and Bangladesh who have been forced to migrate to India and want to stay for a long time in India considering the historical circumstances governing the issue. It may be noted that a more liberal and accommodative visa regime has been laid down for migrants of these classified communities vis-a-vis the provisions meant for the rest of the migrants from Pakistan and Bangladesh.

Further, in January 1986, the then Home Secretary prepared a note for Cabinet Committee on Political Affairs[CCPA] to change the policy regarding illegal entrance and settlement in India of minority communities from Pakistan. It was suggested that illegal crossers in India do not deserve any sympathetic consideration and should be pushed back. However, it was proposed in para 17(ii) that *“as regards the member of minority community who come to India for short visit by obtaining Indian visa, the existing policy is that if they desire to stay in India on long term basis with an intention to get ultimately Indian citizenship, their request for long term stay in India should be considered liberally”*. It may be noted that vide its decision dated 23rd January, 1986, the Cabinet Committee on Political Affairs, inter alia approved this proposal of the Home Ministry.

Further, the available instructions since 17.11.1984 specifically created a

	<p>relaxed/preferential LTV regime for a class of migrants belonging to “Hindu” and “Sikh” communities in Pakistan. In 2011, “Christians” and “Buddhists” from Pakistan were also added to the list of eligible categories of minorities for grant of LTV. Similarly, the word “Buddhist” was also added in the already existing regime of LTV for classified communities of Bangladesh in October, 2010.</p> <p>These executive instructions have flowed from the general powers available to Central Government under the Section 3 of the Foreigners Act, 1946 and provisions of Passport (Entry into India) Act, 1920. Therefore, a classification based on special circumstances of specified minorities migrating into India from Pakistan and Bangladesh for long term stay has been in existence since last many decades.</p> <p>A copy of the of the LTV instructions issued by the Ministry of Home Affairs since 03/12/1956 till 15/09/2017 and the Note of the Home Secretary along with its approval are attached herewith and marked as <b>Annexure – R9 . [Page 263 to 345]</b></p>
1985	<p>Assam Accord was signed in 1985 to tackle the unique problems arising out of the influx of illegal foreigners/immigrants from Bangladesh into the State of Assam.</p> <p>A copy of the Assam Accord is attached herewith and marked as <b>Annexure – R 10. [Page 346 to 351]</b></p>

	<p><b>Note</b> :I state that with regard to the peculiar situation emerging in the State of Assam &amp; Tripura and other North Eastern States, a separate bunch of petitions have been filed including one by [WP(C) No. 1481 of 2019, <b>All Assam Students Union vs Union of India</b>] in which a separate and detailed affidavit is being filed by the Central Government.</p>
12.12.2003	<p>The Department-Related Parliamentary Standing Committee on Home Affairs considered several questions and prepared a Report on the Citizenship (Amendment) Bill, 2003 which was tabled in the Lok Sabha.</p> <p>A copy of Department-Related Parliamentary Standing Committee on Home Affairs Report on the Citizenship (Amendment) Bill, 2003 is attached herewith and marked as <b>Annexure – R 11. [Page 352 to 426]</b></p> <p>It is submitted that India as a nation has always accepted an undeniable factual position of there being religious persecution of certain communities in Pakistan. This fact, apart from being corroborated from contemporaneous events, was never in dispute. It is submitted that even the Standing Committee of Parliament in its 107th Report on the Citizenship Amendment Bill, 2003, inter alia, categorically recorded as under:-</p> <p style="text-align: center;"><i>“5.5 During the course of deliberations in the Committee apprehensions were raised by the Members on several provisions of</i></p>

*the Bill as well as on other related issues such as illegal migrants/refugees, etc. on which a Member of the Committee, who headed the High Powered Committee on Indian Diaspora gave his clarifications. He stated that the neighbouring countries were not included in his list for obvious reasons and said that the Government had not been able to prevent unauthorised influx. He also said that those who were persecuted in those countries constituted a special class who deserved favourable consideration as distinguished from others who migrated to India for economic reasons.*

*6. The issue of constant influx of refugees from the neighbouring countries due to civil commotion and religious persecution was raised in the Committee. The Committee had received a large number of representations from different organizations particularly from West Bengal and certain parts of North-Eastern region expressing apprehensions that those who migrated to India from neighbouring countries like Bangladesh and Pakistan due to atrocities committed on the minorities by the theocratic rulers, would now be detected and deported under the proposed law. It was pleaded by the petitioners for grant of citizenship and other facilities to such migrants by the Government of India. The religious persecution of minorities in those countries which resulted into mass exodus of people from their ancestral lands particularly from Bangladesh was emphasized in the Committee. While expressing sympathies for such refugees,*

*Members were of the view that instead of granting citizenship to these refugees, it would be better if this problem was tackled as per the international law and convention. Adoption of a two-pronged strategy to deal with the problem was favoured. On the one hand, Members were for extending all humanitarian assistance to such refugees while on the other, they wanted the Government to put pressure through diplomatic channels on the Governments of the countries from where these refugees were coming, either as a result of religious persecution or civil commotion, to create conducive atmosphere in their countries for early return of the refugees. Members expressed the view that the commitment made by the national leaders at the time of partition was to facilitate the entry of Hindus from Pakistan to India with a view to save them from religious persecution because Pakistan had proclaimed itself as a theocratic nation. This commitment, they felt depended on circumstances but, was, however, not an unending or open-ended one. They believed that it would be extremely difficult for India to accommodate such refugees as its own citizens were feeling the pinch of growing population, poverty and unemployment. At the same time those Members were of the view that the Government should not completely forget the commitment of our national leaders at the time of partition and it should keep into account the plight of those displaced persons who were uprooted from their homes due to failure of their sovereign governments to protect them in the wake of certain developments.*

*Insofar as the migration of people from neighbouring countries to India due to economic reasons, Members were of the view that such migrants should be sternly dealt with as per the law of the land.”*

The concerns of the Committee members were expressly put across and highlighted by the Committee while recommending all major clauses of The Citizenship (Amendment) Bill, 2003. In its meeting on 2<sup>nd</sup> December, 2003 regarding the matter of persecuted minorities the Committee recorded the following deliberations :

*“2.2 Referring to the large number of representations received by the Committee from different organisations insisting that the refugees from erstwhile East Pakistan should be extended the citizenship rights, the Chairman stated that the Government had agreed to extend citizenship to those who came to India before 25<sup>th</sup> March, 1971 as per the Assam Accord. He enquired from the Home Secretary, how the Government could determine the refugees status and their eligibility to citizenship without making any legal provision because certain persons might be compelled to leave their country not only because of civil commotion but also because of religious persecution.”*

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*“6.4.1A point was raised as to whether it was possible to treat the persons who had migrated to India from their neighbouring countries due to religious and political persecution on a different footing. In that context it was suggested that a reference to the Foreigners*

	<p><i>(Tribunals) Order, 1964 may be included in sub-section (1) in relation to the cases of the victims of religious and political persecution in our neighbouring countries.”</i></p> <p>It is clear that the Committee was seized of the matter regarding religious persecution of migrants from minority communities though it did not recommend any special provision in The Citizenship (Amendment) Bill, 2003.</p> <p>The Committee further discussed Clause 12 which sought to insert a new Section 14A in the principal Act to provide for compulsory registration of every citizen of India and issuing of national identity cards. The Committee adopted this Clause as proposed by Government</p>
	<p>It must be noted that the Ministry of External Affairs, Govt. of India has raised the issue of persecution of religious minorities in Pakistan and Bangladesh through diplomatic channels.</p> <p>It must be noted that the Ministry has also submitted details of religious persecution of minorities in Pakistan and Bangladesh in various replies given in response to Parliament questions from time to time. The Ministry of External Affairs has also received numerous representations from various quarters on the subject. Further, the said issues have been raised in the Indian Parliament on numerous occasions by Hon'ble Members. The documents on the history of the</p>

	<p>efforts on part of the Government of India with regard to the issue of persecution of classified communities which was officially taken up with the Governments of Bangladesh and Pakistan along with the Parliamentary questions of atrocities against the classified communities in Afghanistan are attached and marked at <b>Annexure - R 12. [Page 427 to 558]</b>. From the details annexed, it is clear that members of classified communities have been specifically targeted for discrimination, maltreatment and atrocities in Pakistan, Bangladesh and Afghanistan and that the said classification, either on the basis of the identified communities or the identified countries is not novel in any manner whatsoever.</p>
28.2.2004	<p>The Government of India amended the Citizenship Rules, 1956 (statutory rules) by way of the Citizenship (Amendment) Rules, 2004.</p> <p>It is submitted that classified communities from Pakistan and Bangladesh &amp; Afghanistan crossing over to Indian territory is an acknowledged and recognised fact. This issue has been dealt with by various governments as a problem to be solved. For example, it has been an experience that the classified communities in Pakistan have crossed over to Indian territory into the border State of Rajasthan as well as border State of Gujarat. It may be noted that having already</p>

recognised the religious persecution of these communities as stated above as an acknowledged fact, the following chronology took place which resulted into the Government of India amending the statutory rules by way of the Citizenship (Amendment) Rules, 2004.

A copy of Citizenship (Amendment) Rules, 2004 is attached herewith and marked as **Annexure – R 13. [Page 559 to 564]**

By the said rules, which were framed on a request from the then Chief Minister of the State of Rajasthan, the power to grant citizenship to Hindu migrants [which is described by the statutory rules as “Pakistan Nationals of minority Hindu community”] was delegated to two District Collectors of Rajasthan & four District Collectors of Gujarat. This was otherwise vested in the Central Government which continued to be so vested with the Central Government except the exception carved out by the said Notification. This provision was extended subsequently by Central Government in 2005 & 2006.

The chronology which led to amendment of the said rules is as under:

<b>TABLE ON 2004 AMENDMENT TO THE CITIZENSHIP RULES, 1956</b>	
<b>LETTER DATE</b>	<b>ISSUE/REQUEST</b>
06.03.2002	After considering the
	representation of

		<p>refugees/displaced persons belonging to minority communities of Pakistan, the then Chief Minister of Rajasthan requests the Deputy Prime Minister (who was also the Home Minister) to issue statutory instructions eg. delegation of powers to SDM etc. to resolve the difficulties faced by Pakistan Hindu minority migrants for grant of visa and citizenship The letter specifically deals with the issue that most of these hapless migrants belong to Scheduled Casts (SCs) of Hindus and that the National Commission for SCs and STs in its meeting held on 19<sup>th</sup> July, 2001 had discussed this matter in detail so that these migrants can be granted Indian citizenship expeditiously .</p>
	04/02/2004	<p>The Chief Minister of Rajasthan requests the Minister of State in MHA to resolve the issue of grant of Indian citizenship to migrants of minority communities (Hindu) of Pakistan who have migrated to India due to persecution on religious</p>

		grounds.
	01/03/2004	Vide Notification dated 28/02/2004 published on 01/03/2004, the Citizenship (Amendment) Rules, 2004 came into force delegating power to grant citizenship through registration mode to Collectors of 6 districts in Gujarat and Rajasthan and to the Government of Gujarat for other districts in Gujarat, in respect of Pakistan nationals of minority Hindu community.
	13/07/2004	Shri Ashok Gehlot, the then MLA requests, the Minister of State in MHA to consider delegation of powers to collectors for speedy granting of citizenship to minority migrants from Pakistan who were forced to come to India due to persecution on religious grounds.
	15/09/2004	Shri Ashok Gehlot, the then General Secretary, AICC requests the Home Minister to implement the notification published on 1/03/2004 regarding delegation of powers to collectors for speedy grant of citizenship to Hindu minority migrants from Pakistan who

		were forced to come to India due to persecution on religious ground.
12.10.2004		The Minister of State in the MHA acknowledges letter dated 13 <sup>th</sup> September, 2004 of Shri Ashok Gehlot, MLA regarding delegation of special powers to the collectors of some Districts in Rajasthan and Gujarat for grant of Indian citizenship to Hindu migrants of Indo-Pak wars living illegally in those areas since decades. The Minister replies that appropriate notifications to amend the Citizenship Rules, 1956 have been issued.
10/12/2004		Shri Ashok Gehlot, the General Secretary, AICC requests the Home Minister to waive all kind of fees for visa extension and grant of citizenship in respect of migrants of Hindu minority community of Pakistan most of whom belong to the lower strata of society.
22/02/2005		The Citizenship (Amendment) Rules, 2005 come into force extending the provisions of the Citizenship (Amendment) Rules, 2004 notified on

		01/03/2004 to two years instead of one year.
	12/07/2006	The Citizenship (Amendment) Rules, 2006 come into force extending the provisions of the Citizenship (Amendment) Rules, 2004 notified on 01/03/2004 to three years instead of one year.
	08.04.2009	Shri Ashok Gehlot, the Chief Minister of Rajasthan writes to the Home Minister regarding “outstanding issues of large number of Pak oustees from Hindu/Sikh communities”. He argues that delegation of authority once again to grant citizenship, as done by aforementioned notifications could be considered for addressing the problems of the remaining Pak oustees who are illiterate and belong to SCs/STs and weaker sections of society.
	A copy of the documents mentioned in the above table regarding amendment of Citizenship Rules is attached herewith and marked as <b>Annexure – R 14. [Page 565 to 587]</b>	
07/ 08.09.2015	The Central Government in exercise of the powers conferred by section 3 of the Passport (Entry into India) Act, 1920 (34 of 1920),	

amends the Passport (Entry into India) Rules, 1950 to exempt persons belonging to classified communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered into India on or before the 31<sup>st</sup> December, 2014 either without valid documents including passport or other travel documents; or with valid documents including passport or other travel document and the validity of any of such documents has expired, from the penal provisions of the said Act regarding entry of foreigners in India.

A copy of the Notification Order No. GSR 685 (E) published on 08.09.2015 amending the Passport (Entry into India) Rules, 1950 is attached herewith and marked as **Annexure – R 15. [Page 588 to 590]**

The Central Government in exercise of powers under Section 3 of the Foreigners Act, 1946 amends the Foreigners Order, 1948 to exempt the persons belonging to classified communities in Bangladesh and Pakistan, viz. 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 31.12.2014 from application of the rigours of the Foreigners Act, 1946 and orders made thereunder, in respect of their stay in India.

	<p>A copy of the Notification Order No. GSR 686 (E) published on 08.09.2015 amending The Foreigners Order, 1948 is attached herewith and marked as <b>Annexure – R 16. [Page 591 to 593]</b></p> <p><b>Note :</b> This was a step taken by India as a nation to honour the longstanding commitments periodically made to the Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities from the aforesaid countries whose religious persecution was not only in public domain but was also acknowledged by the Government of India as stated above.</p>
18.07.2016	<p>The Central Government amends the Passport (Entry into India) Rules, 1950 by the Passport (Entry into India) Amendment Rules, 2016 in exercise of powers under Section 3 of the Passport (Entry into India) Act, 1920.</p> <p>In clause (ha) of sub-rule (1) of rule 4, for the word “Bangladesh”, the words “Afghanistan, Bangladesh” are substituted.</p> <p>A copy of the Notification Order G.S.R. 702 (E) dated 18.07.2016 amending the Passport (Entry into India) Rules, 1950 is attached herewith and marked as <b>Annexure – R 17. [Page 594 to 595]</b></p> <p>The Central Government in the exercise of powers under Section 3 of the Foreigners Act, 1946 amends the Foreigners Order, 1948 by The Foreigners (Amendment) Order, 2016 thereby in paragraph 3A, for the word “Bangladesh”, the words “Afghanistan, Bangladesh” were substituted.</p>

	A copy of the Notification Order G.S.R. 703 (E) dated 18.07.2016 amending the Foreigners Order, 1948 is attached herewith and marked as <b>Annexure – R 18. [Page 596 to 597]</b>
08.01.2016 & 14.09.2016	<p>The Central Govt. issues the Standing Operating Procedure (SOP) to all the visa granting authorities to grant Long Term Visa (LTV) to the aforesaid identified and acknowledged communities, viz. Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Pakistan Afghanistan &amp; Bangladesh. This was again a reiteration of the long overdue commitment which was to be honoured for a separate class already acknowledged by the Government and before the Parliament.</p> <p>A copy of the Standing Operating Procedures (SOP) to all the visa granting authorities to grant Long Term Visa (LTV) is attached herewith and marked as <b>Annexure – R 19. [Page 598 to 633]</b></p>
19.07.2016	The Citizenship (Amendment) Bill, 2016 (Bill No. 172 of 2016) was introduced in Lok Sabha to amend the Citizenship Act, 1955.
11.08.2016	A motion was moved and adopted by the Lok Sabha for the constitution of a Joint Parliamentary Committee for the purpose of examination of the Bill and to report to the House by the last day of the first week of the Winter Session, 2016.
12.08.2016	A motion was also moved in and adopted by Rajya Sabha on 12 August, 2016 concurring with the recommendation of Lok Sabha for

	nomination of Members from Rajya Sabha to join the Joint Parliamentary Committee.
2016	A Joint Parliamentary Committee (JPC) consisting 20 Members from Lok Sabha and 10 Members from Rajya Sabha under the Chairpersonship of Dr. Satyapal Singh, MP (LS) is constituted to examine the Bill and send a report.
23.12.2016	<p>In exercise of the powers conferred by section 18 of the Citizenship Act, 1955 (57 of 1955), the Central Government amends the Citizenship Rules, 2009. Besides the District Magistrate, the Sub Divisional Magistrate is also authorized to administer oath of allegiance to the Constitution of India to citizenship applicants belonging to six identified communities from three countries. Fees for various citizenship services to be granted to these identified migrant communities reduced acknowledging their precarious financial status.</p> <p>A copy of the Notification no. GSR 1168 about the Citizenship (Amendment) Rules 2016 is attached herewith and marked as <b>Annexure – R 20. [Page 634 to 639]</b>.</p>
23.12.2016	Central Government in exercise of powers under Section 16 of the Act directs that Collectors of 16 Districts in seven States and Governments of seven States in respect of remaining Districts shall also exercise powers of Central Government to grant Citizenship by registration or by naturalisation to applicants belonging to six specified communities from

	Afghanistan, Pakistan and Bangladesh. It may be noted that such power was granted for a period of 2 years. A copy of the Notification no. 4132 is attached herewith and marked as <b>Annexure – R 21. [Page 640 to 642]</b>
23.10.2018	Vide notification no. GSR 5377 dt 23/10/2018, Central Government extends the above delegation of powers till further orders. A copy of a GSR No.5377 (E) dated 23.10.2018 is attached herewith and marked as <b>Annexure – R 22. [Page 643 to 645]</b>
January 2019	The Joint Parliamentary Committee after conducting 14 hearings/meetings, touring relevant areas in the country and holding meetings with thousands of stakeholders including legal experts and after examining more than 9000 memoranda presents its Report to the Parliament. A copy of a Report of the Joint Parliamentary Committee 2019 is attached herewith and marked as <b>Annexure – R 23. [Page 646 to 1083]</b>
07.01.2019	The Union Cabinet accepts the recommendations of the Joint Parliamentary Committee and approves a revised Citizenship (Amendment) Bill, 2019.
08.01.2019	Lok Sabha passes The Citizenship (Amendment) Bill, 2019.
May 2019	As the Lok Sabha is dissolved, the Bill lapses.
04.12.2019	The Union Cabinet approves the Citizenship (Amendment) Bill, 2019.
09.12.2019	The Citizenship (Amendment) Bill, 2019 is passed by Lok Sabha.

11.12.2019	The Citizenship (Amendment) Bill, 2019 is passed by the Rajya Sabha.
12.12.2019	<p>The Citizenship (Amendment) Act, 2019 passed by Parliament receives assent of the Hon'ble President and is published in Gazette. A copy of the Citizenship (Amendment) Act, 2019 is attached herewith and marked as <b>Annexure – R 24. [Page 1084 to 1086]</b></p> <p>The Citizenship Act, 1955 was amended so as to provide the already identified and classified class i.e. persons belonging to Hindu, Sikh, Parsi, Jain, Buddhist and Christian communities in Afghanistan, Bangladesh and Pakistan, who were compelled to seek shelter in India due to religious persecution or fear of religious persecution in such countries and who have been exempted from penal provisions of the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920 or rules or others would no longer be regarded as “illegal migrants” even if they have no documents or have invalid/expired documents and to facilitate them to apply for citizenship by registration or naturalisation under the said Act.</p> <p>To illustrate, a number of Afghan, Bangladeshi and Pakistani nationals belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities were compelled to seek shelter in India due to persecution on grounds of religion or fear of such persecution and did not possess any travel documents or possessed invalid travel</p>

documents. However, as per Rule 3 of The Passport (Entry into India) Rules 1950, a person proceeding from any place outside India can enter India only with a valid passport and a valid visa. Besides, any foreign nationals entering India without valid documents or continuing to stay in India even after the expiry of the validity of these documents were termed as “illegal migrants” who were deprived of any facilities like long term visa and citizenship in India. With a view to untangle the legal hurdles, the Ministry of Home Affairs in the Government of India had already published in the Gazette of India (Extraordinary) The Passport (Entry into India) Amendment Rules, 2015 and 2016 and The Foreigners (Amendment) Orders, 2015 and 2016 exempting such persons from requirement of valid passport and visa to enter and stay in India thus de-criminalising their entry & stay in India if they have entered India on or before 31 December, 2014. However, it was noticed that these nationals belonging to Afghanistan, Bangladesh and Pakistan and belonging to six communities still continued to be termed as 'illegal migrants' under The Citizenship Act, 1955 and were denied opportunity to make requisite applications for citizenship in India. The amendment seeks to tackle that particular issue.

6. It is submitted that the present writ petitions have been filed on behalf of the Petitioners, seeking the following broad reliefs :

S. N.	PRAYERS
1.	A writ in nature of Certiorari or any other appropriate writ (s), order (s) or direction (s) declaring the Citizenship (Amendment) Act, 2019 as a whole, and/or specifically Sections 2, 3, 5 and 6 thereof as ultra-vires the Constitution being palpably discriminatory, manifestly arbitrary, illegal and violative of Articles 14,15, 19, 21, 25 and 29 and also against the basic structure of the Constitution and consequently striking down the impugned provision as ultra-vires the Constitution of India.
2.	Issue a writ, order or direction in the nature of mandamus or any other writ, directing the Respondents to (i) consider enacting a refugee law to address the claims of the persecuted persons in India in conformity with the Constitution of India and India's obligations under the United Nations human rights treaties ratified by the Government of India; and (ii) in the meantime not to deport any non-national without examining whether the person is a refugee or an economic migrant and any proceeding pending against a person who claims to be a refugee in respect of illegal migration shall stand abated on conferment of refugee status to him/her.
3.	Declare that Section 14A of the Citizenship Act, 1955 is <i>ultravires</i> the Constitution, unconstitutional and void ab initio.
4.	Issue a writ, order or direction in the nature of certiorari

	<p>quashing the following :</p> <p>(a) Notification Order No. GSR 685 (E) dated 08.09.2015;</p> <p>(b) Notification/ Order G.S.R. 686 (E) dated 08.09.2015;</p> <p>(c) Notification/ Order G.S.R. 702 (E) dated 18.07.2016;</p> <p>(d) Notification/ Order G.S.R. 703 (E) dated 18.07.2016;</p> <p>(e) Notification/ Order G.S.R. 1168 (E) dated 23.12.2016;</p> <p>(f) Notification/ Order G.S.R. 5377 (E) dated 23.10.2018;</p>
5.	Issue a writ in the nature of prohibition, prohibiting the Respondents from proceeding with preparation of pan-India National Register of Citizens.
6.	Direct the Central Government to produce definite statistics of persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities having come to India from Afghanistan, Bangladesh and Pakistan till 31.12.2014.

#### PRELIMINARY SUBMISSIONS

- 7.** At the outset, it is submitted that the Parliament is competent to make laws for the whole or any part of the territory of India as provided in Article 245 (1) of The Constitution of India.

"Citizenship" is a part of the entry number 17 in list-I (Union List) under the Seventh Schedule of the Constitution and under Article 246(1) read with Article 11 of the Constitution of India, the Parliament has the legislative competence to frame citizenship laws for the

country. Therefore, Citizenship Amendment Act, 2019 [hereinafter referred to as the “CAA”] has been enacted by a competent legislature. Further, Article 5 of the Constitution made every person domiciled in India on 26th January, 1950 a citizen provided such person was either born in India or either of whose parents was born in India or he had been ordinarily resident in India for not less than five years preceding 26th January, 1950.

Further, Article 6 of the Constitution deems all migrants from Pakistan in India as citizens of India if such persons or their parents or grandparents were born in undivided India (As per provisions of the 1935 Act) or such persons had migrated into India before 19th July, 1948. If such persons migrated after this date and got registered before a competent officer and had been resident in India for at least six months before the date of registration, then such persons were also deemed to be Indian citizens. It is obvious that the Article 6 deemed a special class of migrants post-partition [which clearly took place on religious lines which resulted in large scale migration also on religious lines] as citizens of India due to their very special circumstances.

8. It is submitted that CAA is a benign piece of legislation which seeks to provide a relaxation, in the nature of an amnesty, to specific communities from the specified countries with a clear cut-off date. It is submitted that the CAA is a specific amendment which seeks to tackle a specific problem prevalent in the specified countries i.e. persecution on the ground of religion in light of the undisputable theocratic constitutional position in the specified countries, the systematic functioning of such States and the perception of fear that may be prevalent

amongst minorities as per the de facto situation in the said countries. The Parliament, after taking cognizance of the said issues over the course of the past seven decades and having taken into consideration the acknowledged class of minorities in three specific countries, has enacted the present amendment.

- 9.** It is submitted that from the facts mentioned in the aforesaid list of dates, it becomes clear that the treatment given to the classified communities in the particular neighbouring countries has been attracting the attention of successive governments but no government took any legislative measure and merely acknowledged the problem.
  
- 10.** It is submitted that the CAA does not seek to recognize or seek to provide answers to all or any kind of purported persecution that may be taking place across the world or that may have taken place previously anywhere in the world. It is submitted that in that regard, the CAA is a narrowly tailored legislation seeking to address the specific problem which awaited India's attention for a solution since several decades as elaborated hereinabove.

It is respectfully submitted that the constitutionality of such a legislative measure ought to be tested within that legislative domain and cannot be conflated to extend beyond that object and the reasons behind the Parliamentary cognizance of the issue by which the competent Legislature has, in its wisdom, devised a legislative policy to deal with the acknowledged problem of persecution of the particular communities in the specified countries who are, by their very Constitutions,

theocratic countries. The Statement of Objects and Reasons appended to the Citizenship (Amendment) Bill, 2019 is reproduced as under :

*“The Citizenship Act, 1955 (57 of 1955) was enacted to provide for the acquisition and determination of Indian citizenship.*

2. It is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh. Millions of citizens of undivided India belonging to various faiths were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947. **The constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion. As a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries.** Some of them also have fears about such persecution in their day-to-day life where right to practice, profess and propagate their religion has been obstructed and restricted. Many such persons have fled to India to seek shelter and continued to stay in India even if their travel documents have expired or they have incomplete or no documents.

3. Under the existing provisions of the Act, migrants from Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Pakistan or Bangladesh who entered into India without valid travel documents or if the validity of their documents has expired are regarded as illegal migrants and ineligible to apply for Indian citizenship under section 5 or section 6 of the Act.

4. The Central Government exempted the said migrants from the adverse penal consequences of the Passport (Entry into India) Act, 1920 and the Foreigners Act, 1946 and rules or orders made thereunder vide notifications, dated 07.09.2015 and dated 18.07.2016. Subsequently,

*the Central Government also made them eligible for long term visa to stay in India, vide, orders dated 08.01.2016 and 14.09.2016. **Now, it is proposed to make the said migrants eligible for Indian Citizenship.***

*5. The illegal migrants who have entered into India up to the cut of date of 31.12.2014 need a special regime to govern their citizenship matters. For this purpose the Central Government or an authority specified by it, shall grant the certificate of registration or certificate of naturalisation subject to such conditions, restrictions and manner as may be prescribed. Since many of them have entered into India long back, they may be given the citizenship of India from the date of their entry in India if they fulfil conditions for Indian citizenship specified in section 5 or the qualifications for the naturalisation under the provisions of the Third Schedule to the Act.*

*6. The Bill further seeks to grant immunity to the migrants of the aforesaid Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities so that any proceedings against them in respect of their status of migration or citizenship does not bar them from applying for Indian citizenship. The competent authority, to be prescribed under the Act, shall not take into account any proceedings initiated against such persons regarding their status as illegal migrant or their citizenship matter while considering their application under section 5 or section 6 of the Act, if they fulfil all the conditions for grant of citizenship.*

*7. Many persons of Indian origin including persons belonging to the said minority communities from the aforesaid countries have been applying for citizenship under section 5 of the Citizenship Act, 1955 but they are unable to produce proof of their Indian origin. Hence, they are forced to apply for citizenship by naturalisation under section 6 of the said Act, which, inter alia, prescribes twelve years residency as a qualification for naturalisation in terms of the Third Schedule to the Act. This denies them many opportunities and*

*advantages that may accrue only to the citizens of India, even though they are likely to stay in India permanently. Therefore, it is proposed to amend the Third Schedule to the Act to make applicants belonging to the said communities from the aforesaid countries eligible for citizenship by naturalisation if they can establish their residency in India for five years instead of the existing eleven years.*

*8. Presently, there is no specific provision in section 7D of the Act to cancel the registration of Overseas Citizen of India Cardholder who violates any provisions of the Act or any other law for the time being in force. It is also proposed to amend the said section 7D so as to empower the Central Government to cancel registration as Overseas Citizen of India Cardholder in case of violation of any provisions of the Act or any other law for the time being in force.*

*9. Since there is no specific provision in the Act at present to provide an opportunity of being heard to the Overseas Citizen of India Cardholder before cancellation of the Overseas Citizen of India Card under section 7D, it is proposed to provide the opportunity of being heard to the Overseas Citizen of India Cardholder before the cancellation of the Overseas Citizen of India Card.*

*10. The Bill further seeks to protect the constitutional guarantee given to indigenous populations of North Eastern States covered under the Sixth Schedule to the Constitution and the statutory protection given to areas covered under "The Inner Line" system of the Bengal Eastern Frontier Regulation, 1873.*

*11. The Bill seeks to achieve the above objectives."*

***Emphasis supplied***

11. I submit that the following are the legislative changes carried out by the CAA [the amended portion/additions are underlined]:

*“Section 2 – Interpretation-*

*xx                      xx                      xx*

*(b) "illegal migrant" means a foreigner who has entered into India—*

*(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or*

*(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;*

**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;**

***Section 6 - Citizenship by naturalisation***

*xxx                      xxx                      xxx                      xxx*  
*xxx*

**Section 6A. Special provisions as to citizenship of persons covered by the Assam Accord.-**

xxx                      xxx                      xxx                      xxx  
    xxx

**6B. - Special provisions as to citizenship of person covered by proviso to clause (b) of sub-section (1) of section 2.**

**(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.

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

**7D. – Cancellation of registration as Overseas Citizen of India Cardholders :**

The Central Government may, by order, cancel the registration granted under sub-section (1) of section 7A, if it is satisfied that—

(a) the registration as an Overseas Citizen of India Cardholder was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) the Overseas Citizen of India Cardholder has shown disaffection towards the Constitution, as by law established; or

(c) the Overseas Citizen of India Cardholder has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business or commercial activity that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) the Overseas Citizen of India Cardholder has, within five years after registration under sub-section (1) of section 7A, been sentenced to imprisonment for a term of not less than two years; or

(da) the Overseas Citizen of India Cardholder has violated any of the

**provisions of this Act or provisions of any other law for time being in force as may be specified by the Central Government in the notification published in the Official Gazette; or**

(e) *it is necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public; or*

(f) *the marriage of an Overseas Citizen of India Cardholder, who has obtained such Card under clause (d) of sub-section (1) of section 7A,—*

*(i) has been dissolved by a competent court of law or otherwise; or*

*(ii) has not been dissolved but, during the subsistence of such marriage, he has solemnised marriage with any other person;*

**Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard.**

### **Section 18 - Power to make rules**

(1) *The Central Government may, by notification in the Official Gazette make rules to carry out the purposes of this Act.*

(2) *In particular and without prejudice to the generality of the foregoing power, such rules may provide for*

(a) *the registration of anything required or authorised under this Act to be registered, and the conditions and restrictions in regard to such registration;*

*(aa) the form and manner in which a declaration under sub-section (1) of section 4 shall be made;*

*(b) the forms to be used and the registers to be maintained under this Act;*

*(c) the administration and taking of oaths of allegiance under this Act and the time within which and the manner in which, such oaths shall be taken and recorded;*

*(d) the giving of any notice required or authorised to be given by any person under this Act;*

*(e) the cancellation of the registration of, and the cancellation and amendment of certificates of naturalisation relating to, persons deprived of citizenship under this Act, and the delivering up of such certificates for those purposes;*

*(ee) the manner and form in which and the authority to whom declarations referred to in clauses (a) and (b) of sub-section (6) of section 6A shall be submitted and other matters connected with such declarations;*

***(eei) the conditions, restrictions and manner for granting certificate of registration or certificate of naturalisation under sub-section (1) of section 6B;***

*(eea) the conditions and the manner subject to which a person may be registered as an Overseas Citizen of India Cardholder under sub-section (1) of section 7A;*

*(eeb) the manner of making declaration for renunciation of Overseas Citizen of India Card under sub-section (1) of section 7C;*

*(f) the registration at Indian consulates of the births and deaths of persons of any class or description born or dying outside India;*

*(g) the levy and collection of fees in respect of applications, registrations, declarations and certificates under this Act, in respect of the taking of an oath of allegiance, and in respect of the supply of certified or other copies of documents;*

*(h) the authority to determine the question of acquisition of citizenship of another country, the procedure to be followed by such authority and rules of evidence relating to such cases;*

*(i) the procedure to be followed by the committees of inquiry appointed under section 10 and the conferment on such committees of any of the powers, rights and privileges of civil courts;*

*(ia) the procedure to be followed in compulsory registration of the citizens of India under sub-section (5) of section 14A;*

*(j) the manner in which applications for revision may be made and the procedure to be followed by the Central Government in dealing with such applications; and*

*(k) any other matter which is to be, or may be, prescribed under the Act.*

*(3) In making any rule under this section, the Central Government may provide that a breach thereof shall be punishable with fine which may extend to one thousand rupees.*

*Provided that any rule made in respect of a matter specified in clause (ia) of sub-section (2) may provide that a breach thereof shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.*

*(4) Every rule made under this section shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of*

*session, immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.*

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### **THE THIRD SCHEDULE**

*(see section 6(1))*

#### **QUALIFICATIONS NATURALISATION**

**FOR**

*The qualifications for naturalisation of a person are—*

*(a) that he is not a subject or citizen of any country where citizens of India are prevented by law or practice of that country from becoming subjects or citizens of that country by naturalisation;*

*(b) that, if he is a citizen of any country, he undertakes to renounce the citizenship of that country in the event of his application for Indian citizenship being accepted;*

*(c) that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;*

*Provided that if the Central Government is satisfied that special circumstances exist, it may, after recording the circumstances in writing, relax the period of twelve months up to a maximum of thirty days which may be in different breaks.*

*(d) that during the fourteen years immediately preceding the said period of twelve months, he has either resided in India or been in the service*

*of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than eleven year;*

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

*(e) that he is of good character;*

*(f) that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution; and*

*(g) that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into, or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India:*

*Provided that the Central Government may, if in the special circumstances of any particular case it thinks fit—*

*(i) allow a continuous period of twelve months ending not more than six months before the date of the application to be reckoned, for the purposes of clause (c) above, as if it had immediately preceded that date;*

*(ii) allow periods of residence or service earlier than fifteen years before the date of the application to be reckoned in computing the aggregate mentioned in clause (d) above.”*

***Emphasis supplied***

- 12.** I state and submit that the CAA does not impinge upon any existing right that may have existed prior to the

enactment of the amendment and further, in no manner whatsoever, seeks to affect the legal, democratic or secular rights of any of the Indian citizens. It is submitted that the existing regime for obtaining citizenship of India by foreigners of any country is untouched by the CAA and remains the same. It is submitted that the legal migration, on the basis of valid documents and visa, continues to be permissible from all countries of the world including from the three specified countries. It is submitted that as per Sections 5 & 6 of the Citizenship Act, 1955 [hereinafter referred to as the “**1955 Act**”], all foreigners [irrespective of their religion] living in the said specified countries [or other countries] can legally migrate to India and subject to fulfilment of conditions mentioned therein, apply for and get Indian citizenship if found eligible. It is submitted that in light of the above, the CAA is merely a limited legislative measure, circumscribed in its application which does not affect the existing legal rights or regime concerning citizenship [falling outside the purview of specialized measure] in any manner.

- 13.** I state and submit that the gravamen of challenge posed by the present set of petitions, are the assertions surrounding Article 14 which prohibits arbitrariness. It is respectfully submitted that the scope, expanse and width of application of Article 14 and the corresponding power of the Legislatures to make a reasonable classification which has a clear nexus with the object of an enactment, varies as per the subject matter of the classification.

It is respectfully submitted that this Hon’ble Court has repeatedly held that in matters concerning foreign

policy, citizenship, economic policy, etc., a wider latitude for classification is available to the Parliament/Legislature considering the subject matters of the challenge and the nature of the field which the Legislature seeks to deal with.

14. Further, at the outset, it is submitted that the question of entitlement and conferment of citizenship and issues related thereto are within the plenary domain of the competent legislature. The competent legislature devises its own legislative policy with respect to the issues concerning the citizenship. It is submitted that by the very nature of the question regarding citizenship of the country and issues pertaining thereto, the said subject matter may not be within the scope of judicial review and may not be justiciable. It is submitted that such decisions are the result of *Parliamentary legislative policy* based upon the executive – foreign policy decision making for which the constitutional courts may not have the requisite expertise to examine the parameters based upon which such legislative policy is enacted.

Without prejudice to the aforesaid submission, it is submitted that even if this Hon'ble Court would consider exercising its power of judicial review, such review would be very restrictive and limited considering wider width of legislative policy and legislative wisdom available to the competent legislature. It is submitted that the legislative policy making in certain subjects and the enhanced scope of question available to the competent legislature in such matters has been recognized by the courts across the world which may not be examined on the touchstone of Article 14

of the constitution and that too in a public interest jurisdiction.

- 15.** It is humbly submitted that in matter concerning immigration policy and citizenship in particular, it is the *executive policy of the sovereign manifested by competent legislation*, which would govern the decision making. It is submitted that the legislative policies in this regard are designedly entrusted exclusively to elected representatives [to be carried out as per the procedure of legislation established by law]. It is humbly submitted that the power of exclusion of immigrants is, therefore, an incident of sovereignty belonging to a duly constituted Nation-State and immigration policy, which has an impact on the foreign policy of a State and by extension, affects the security apparatus of the State and would fall squarely within the domain of the Parliament.
- 16.** I state and submit that equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the legislature no longer has the power of distinguishing and classifying persons or things for the purposes of legislation. It is humbly submitted that the only requirement prior to making a particular classification or a special legislation [as is in the CAA] is that the legislative classification must not be based on any arbitrary classification and should be based on an intelligible differentia having a reasonable relation to the object which the legislature seeks to attain. It is humbly submitted that if the classification on which the legislation is founded fulfils the above said requirement,

then the differentiation which the legislation makes between the class of persons or things to which it applies and other persons or things left outside the purview of the subject matter of legislation cannot be regarded as a denial of the equal protection of the law.

- 17.** Further, as a proposition of law, this Hon'ble Court may be pleased to take note of the fact that a number of petitions before this Hon'ble Court concerning the present issue have been purportedly filed in "public interest" with regard to the above mentioned reliefs. It is respectfully submitted that matters concerning the sovereign plenary power of the Parliament, especially in regard to citizenship and the contours thereof, cannot be questioned before this Hon'ble Court by way of a public interest petition. It is submitted that the cardinal principle of *locus standi* has been diluted by this jurisprudence evolved by this Hon'ble Court only in limited fact situations which cannot be extrapolated to include the present constitutional challenge to the legislative measure of the Indian Parliament in the domain of issues concerning citizenship/immigration. It is therefore submitted that the scope of public interest petitions, and the maintainability thereof, especially in matters concerning immigration policy must be decided as question of law by this Hon'ble Court.

#### DETAILED SUBMISSIONS

- 18.** The Respondent seeks to place a consolidated reply to the assertions made by the Petitioners which are received so far in all connected matters and therefore seeks to deal

with broad submissions of the Petitioners by dividing the issues raised by them under the following heads :

- (i) The challenge on the basis of violation of Article 14;
- (ii) The challenge on the basis of violation of the principle of secularism which is a part of the basic structure and Article 25 – Article 28;
- (iii) The challenge on the basis of violation of Article 21 by the proposed NRC and the international covenants that may encompass the said rights;
- (iv) The challenge on the basis of violation of Articles 15 and 19 of the Constitution;
- (v) The challenge on the basis of violation of Article 5, Article 6, Article 7, Article 8, Article 9, Article 10 and Article 11;
- (vi) The challenge to Section 14A of the Act;
- (vii) The challenge to Section 9 of the Foreigners Act, 1946 and the procedure therein;
- (viii) The challenge to Section 3(1) of the Act [amended in 2004];
- (ix) The challenge to the cut-off date;
- (x) The challenge related to cancellation of OCI Cards;
- (xi) The challenge on the basis of violation of constitutional morality;
- (xii) The challenge on the basis of violation of principle of Federalism;

#### **THE CHALLENGE ON THE BASIS OF VIOLATION OF ARTICLE 14**

##### ***Broad Classifications***

- 19.** I state and submit that in the first tier of classifications in the CAA is the identification of six communities i.e. Hindus, Buddhists, Sikhs, Jains, Parsis and Christians

[hereinafter referred to as “**classified communities**”] to be provided the limited exemption contemplated in the amendment to the 1955 Act.

The second tier of classification is the identification of three countries in the Indian-subcontinent i.e. the People's Republic of Bangladesh, the Islamic Republic of Afghanistan and the Islamic Republic of Pakistan [hereinafter referred to as “**particular neighbouring countries**”] to identify the theocratic countries within the neighbourhood recognising the systematic functioning of such States/Countries and the acknowledged religious persecutions as well as the fear of such persecution on part of such classified communities in the particular neighbouring countries as per the *de facto* situation in said countries.

It is submitted that the third tier of classification is exclusion of the application of Section 6B to tribal areas of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the areas covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873 [hereinafter referred to as the “**excluded areas**”] representing the recognition of the Parliament of the constitutional and ethnic rights of the indigenous persons belonging to such areas.

- 20.** I state and submit that the first tier of the classification is the qualitative selection of Hindus, Buddhists, Sikhs, Parsis, Jains and Christians as a class in themselves in the particular neighbouring countries. It is humbly submitted that the said classification is grounded on an intelligible differentia of the said minorities as persecuted communities on the basis of a separate religion practiced by the said communities than the one recognised by the

Constitutions of such countries as State religion. The said classified communities are persecuted in the particular neighbouring countries as has been acknowledged and recognised by Parliamentary Committees as well as other contemporaneous official record and during the debates in the Indian Parliament.

- 21.** I state and submit that the situation with regard to the classified communities has been highlighted since decades ever since the partition took place. It is submitted that in 1947, the country was divided primarily on the basis of religion with no fault of citizens.

It is submitted that not only the partition of undivided India was based on religion, even cross-border migration took place based on religion. It is relevant to point out that the then Ministry of Relief and Rehabilitation created by the Government of India had prepared its first “Annual Progress Report on Evacuation, Relief and Rehabilitation” for the a period between September, 1947 and March, 1948. The said Ministry continued to prepare such Reports every year thereafter. However, it is relevant to note that even in the said Reports prepared contemporaneously by the Government of India, through its Ministry of Relief and Rehabilitation, the migration is discussed as migration of “Muslims” and “non-Muslims”.

It is submitted that the Government of India set up the said Ministry on 6th September, 1947 in view of the gigantic problem pertaining to evacuation, reception, relief and rehabilitation of desperate migrants. As per the said Report, mass migration of population started even before 15th August, 1947. As per the said Report,

the minorities were threatened with total annihilation and nearly 5 lakhs “non-Muslims” crossed over to the Indian Union even before 15th August, 1947. As per the said Report, the number of “non-Muslims” evacuated up to the end of March, 1948 was 10,36,598 on foot, 15,18,359 by rail transport and 4.64 lakhs by motor transport. Towards the end of August, 1947, the Government of India decided to provide facilities for the transport of refugees by air from different points in Pakistan. During the period from 15th August, 1947 to 7th December, 1947, the aircrafts belonging to BOAC [British Overseas Airways Corporation] carried 18,000 “non-Muslims” from Pakistan to India. As per the said Report, the migration of “non-Muslims” from East Bengal to West Bengal proceeded slowly. It was estimated that by the end of March, 1948, nearly 10 lakhs “non-Muslims” had migrated from East Bengal to West Bengal. The total population of displaced persons in India as recorded in All India Decennial Census of 1951 was 74.80 lakhs comprised roughly 49.05 lakhs refugees from West Pakistan and 25.75 lakhs from East Pakistan.

It is submitted that a perusal of the said Report and the Reports made subsequently would make it absolutely clear that what the competent legislature has done by the present amendment, is merely recognition of a historic fact and ensuring that the communities which are in numerical and religious minorities in the three countries and whose natural place of return would be India in case of a displacement are granted citizenship which is a sovereign function to be exercised by the competent legislature.

It is submitted that as per the report of the Ministry of Rehabilitation for the year 1964-65, new influx of members of minority communities from East Pakistan into West Bengal, Assam and Tripura which began in January 1964 assumed formidable proportions in the months of March, April and May, 1964. The Report further states that the persons who migrated from erstwhile East Pakistan till 31st January, 1965 were 8,94,137. Out of the said persons, 2,61,899 came with migration certificates while 1,76,602 came with Pakistani passport and Indian visas. Approximately 4,55,636 persons came without any travel documents. A striking feature of the new influx was that several thousand of Buddhists and Christians came from the erstwhile East Pakistan along with Hindus.

The history clearly depicts that persecuted minorities in the said three countries were left without any rights and the said historical injustice is sought to be remedied by the amendment without taking away or whittling down the right of any other person (Extracts from the copies of Annual Reports of 1947-48 (September 1947 to March 1948) of Ministry of Relief and Rehabilitation and 1964-65 of Ministry of Rehabilitation are placed at **Annexure – R 25 [Page 1087 to 1103 ]**).

It is submitted that after partition, India became a Secular State while at the same time the other nations namely Pakistan (including East Pakistan) and later on Bangladesh, chose to become theocratic States and adopted one religion as the State religion. It is submitted that it has been noticed that this has led to organised religious persecution of the named classified communities

which has continued for a long time. It is submitted that understanding the situation, the country had Nehru-Liaqat agreement on 8 April, 1950 but since Pakistan did not honour its commitments, religious persecution of the said classified communities continued there.

- 22.** It is submitted that many petitioners have contended that the amendment is unconstitutional as it applies to six named minorities in the three named countries and **there are** other minorities in the said three countries. It is submitted that conferment of citizenship is a sovereign function. The Indian Parliament, which doubtlessly has the legislative competence, is not required to take into consideration as to which other communities are treated as minorities in the said three named countries. The definition of the religious minorities for the purpose of the present Act contained in the legislation made by the Indian Parliament cannot be dependent upon the discretion of the respective Legislature and Governments of the said three named countries so far as the minority status in their countries are concerned.

In other words, the Parliament is competent, taking into consideration the historic background to earmark the religious minorities in the said three countries and is not be bound by the declaration of minority status to any other community or sect by the said three named countries.

- 23.** It is submitted that the Ministry of Home Affairs has, over the course of time, issued various instructions to lay down the provisions of Long Term Visa (LTV) for classified communities from West Pakistan (the present

day Pakistan) and East Pakistan (the present day Bangladesh).

Migrants of classified minorities from West Pakistan (present day Pakistan) and East Pakistan (present day Bangladesh) have always enjoyed special preferential privileges and facilities for entry and settlement in India since the partition of India. Ministry of Home Affairs [MHA], Government of India has been steadily issuing various instructions to State Governments, visa granting authorities, border guarding forces and other relevant authorities since 1950s in this regard. The instructions repeatedly emphasize provisions of special regime for entry and long term stay of migrants of classified communities from Pakistan and Bangladesh. They also recognize that these migrants are not economic migrants; they have been forced out of their homelands due to persecution. Therefore, they deserve and have been granted since India's independence a very liberal and accommodative/preferential visa regime including long term visa to settle in India with an aim to ultimately acquire Indian citizenship. Since 1980s, these minority migrants have also been specifically identified Hindus and Sikhs and later on as Buddhists or Christians also.

Further, in 1986, the then Home Secretary prepared a note for Cabinet Committee on Political Affairs [CCPA] to change the policy regarding illegal entrance and settlement in India of minority communities from Pakistan. It was suggested that illegal crossers in India do not deserve any sympathetic consideration and should be pushed back. However, it was proposed in para 17(ii) that "*as regards the member of minority community who*

*come to India for short visit by obtaining Indian visa, the existing policy is that if they desire to stay in India on long term basis with an intention to get ultimately Indian citizenship, their request for long term stay in India should be considered liberally*". It may be noted that vide its decision dated 23rd January, 1986, the Cabinet Committee on Political Affairs approved this proposal of the Home Ministry.

Further, the available instructions since internal guidelines of 1980 and those dated 17.11.1984 specifically identify these classified communities as "Hindus" and "Sikhs". In 2011, "Christians" and "Buddhists" from Pakistan were also added to the list of eligible categories of minorities for grant of liberal LTV. A similar LTV regime for such named communities of Bangladesh has also been prescribed since at least 2010. These executive instructions have flowed from the general powers available to Central Government under the Section 3 of the Foreigners Act, 1946 and provisions of Passport (Entry into India) Act, 1920. Therefore, a classification based on special circumstances of specified minorities migrating into India from Pakistan and Bangladesh for long term stay has been in existence since last many years. A copy of the of the LTV instructions, the instructions issued by the Ministry of Home Affairs since 03/12/1956 till 15/09/2017 and the Note dated 14.01.1986 of the Home Secretary along with its approval by CCPA are already attached herewith and marked as **Annexure - R 9**. A detailed table of the contents of the LTV instructions and the Note of the then Home Secretary in 1986 is as under :

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
1.	15.10.1952 (pages 7 –20)	Vide notes dated 14.01.1986 of the Home Secretary, Government of India, the Cabinet Committee on Political Affairs was informed that first passport and visa system for regulation of human traffic between India and Pakistan came into force on 15.10.1952. Members of minority community in Pakistan wishing to migrate to India could apply to an Indian Diplomatic Mission in Pakistan for this purpose. If Government of India agreed to such migration, an emergency certificate was issued to enable the holder to enter India without passport or visa. It is further recorded in para 5 of the aforementioned note that <u>“it, therefore, appears that during this period (1949-1964) also, members of the minority community were accorded all facilities for migration to India.”</u>
2.	03.12.1956 (Pages 21-22)	Instructions of the Ministry of Home Affairs to all States & Indian Missions regarding issue of visas to Pakistan nationals desiring to enter India for acquiring Indian citizenship. In these instructions, grant of long-term visas earlier introduced was discontinued in view of the enactment of the Citizenship Act, 1955 and framing of its rules. It was further provided that such Pakistani nationals desirous of entering India for acquiring Indian citizenship may be granted one year visas and then they may apply for citizenship. It was indicated that

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		<p>applications for this visa will be entertained only from those Pakistani nationals covered under categories like the case of re-union of divided families and for recovered abducted women. It was <u>further provided that those members of the minority communities in Pakistan even if they are not covered under item 18 of the Indo-Pakistan Passport Agreement, 1953 regarding re-union of undivided families can also apply for migration certificates.</u> This special window for minority communities of Pakistan facilitated their stay in India even if they were not covered under the aforementioned Passport Agreement</p>
3	30.03.1964 (Pages 23-24)	<p>Letter from MHA to the Deputy High Commissioner for India, East Pakistan informing <u>that in the case of minority community, Visas for 21 days may be granted by Indian Mission even if clearance of the State Government concerned is not given within a period of 45 day if there is no objection from the High Commission of India. However a slightly tougher visa regime for "majority community" in Pakistan</u> was envisaged where there was a provision to inform the State Government again to send their report else the visa would be granted.</p>
4	29.12.1964 (Page 25)	<p>Letter from MHA to Government of Bihar and Ministry of External Affairs informing that <u>the displaced persons from Pakistan</u></p>

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		<p><i>belonging to minority communities</i> in that country can continue to be employed in Government services in India by granting them eligibility certificates even before they are granted Indian citizenship. <u><i>This special facility was not available to any "fresh Pakistani national"</i></u> unless he was registered as an Indian citizen. Such a fresh Pakistani was also to be excluded from employment in vital undertakings in private sector in terms of MHA Letter dated 13th July, 1964.</p>
5.	05.08.1966 (Pages 26-27)	<p>Letter from MHA to State Governments/ UT Administrations regarding deportation of Pakistani nationals. It was informed that the Pakistani <u><i>nationals belonging to minority communities in Pakistan may continue to be accorded facilities for continued stay in India liberally as under existing instructions.</i></u> This facility was not available to other Pak nationals who would be "deported to Pakistan discreetly through unauthorized routes at the border in consultation with the border State Government concerned after serving them with quit India orders under Section 3(2)(c) of The Foreigners Act, 1946".</p>
6	10.12.1974 (Pages 18-19)	<p>Letter from MHA to State Governments/UT Administrations regarding deportation of Pakistani nationals, after the Indo-Pakistan war of 1971. These</p>

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		instructions reiterated the discreet deportation procedure regarding unwanted and unauthorized Pakistani nationals through border points at Barmer. However, “as regards the Pakistani nationals belonging to minority community in Pakistan, they may continue to be accorded facilities for continued stay in India liberally as under the existing instructions. If, however, it is proposed to deport any such person, his case may be referred to this Ministry before action is initiated against him under the Foreigners Act.”
7.	09.02.1978 (Pages 28-29)	Letter from MHA to Government of Rajasthan informing that some members of disadvantaged groups and other families had illegally crossed over to India early in 1971 because of repression of minorities in Pakistan. These families were reported to be other than those who came over from Pakistan on occupation of the Pakistan territories by the Indian Army. State Government was informed that such persons <u>who are members of the minority community &amp; who are persistent in staying in India and have not indulged in any undesirable activities and State Government thinks them to be deserving cases, they may be considered for long term stay</u> by the State Government. Such a liberal approach was not available to other migrants from Pakistan. Actually they were liable to be pushed back /

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		deported.
8	17.11.1984 (Pages 20-22)	Letter from MHA to Government of Rajasthan regarding illegal entry into India of Pak nationals belonging to minority community. It was instructed that such Pak nationals who are suspect and detrimental to the security of India may be sent back. However, “as the <u>minority communities in Pakistan including the Hindus are a persecuted lot, it is desirable to examine on merits each such case of Hindu families coming across from Pakistan before their repatriation to that country.</u> It is, therefore, requested that all such cases may be referred to this Ministry for decision.
9	Note dated 14.01.1986 of Home Secretary for Cabinet Committee on Political Affairs (pages 30-44)	The Home Secretary prepared a note for Cabinet Committee on Political Affairs to review the policy regarding illegal entrance and settlement in India of minority communities from Pakistan. It was suggested that illegal crossers in India do not deserve any sympathetic consideration and should be pushed back. This note <u>recognized the view of the Ministry of External Affairs that minority communities in Pakistan including the ‘Hindus’ are a persecuted lot. Therefore, it may be desirable to examine on merits each such case of Hindu families coming across from Pakistan before a decision is taken about their repatriation back to that</u>

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		<p><i>country. It further acknowledges internal guidelines issued in 1980 prescribing that the request of Hindu/Sikh Pakistani nationals who came into India for short visits as per the Indo-Pak Visa Agreement 1974 by obtaining Indian visa and desired to stay in India on long term basis with an intention to get ultimately Indian citizenship.</i> The note further acknowledges that members of the minority community in Pakistan when they have entered into India either illegally or with valid travel documents <i>have all along been accorded preferential treatment so far. It further documents that such migration may not be entirely on grounds of religious persecution but may also be for seeking better livelihood. These economic migrants may not be settled in India.</i> Taking into consideration the overall policy direction regarding entrance and settlement of persons of minority communities from Pakistan and after considering the report of Committee of Secretaries (which met on 19.11.1985), it was decided to <i>suitably modify the liberal policy adopted so far towards Pak nationals of minorities coming into India.</i> It was felt that policy of <i>preferential treatment to members of minority communities</i> in Pakistan regarding entry and stay of such persons <i>is based on historical and cultural</i></p>

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		<p><u>considerations. However, security considerations may also be henceforth taken into account.</u></p> <p>Therefore, despite the subtle change <u>in policy, the fundamental rule regarding the minorities remains the same, which was proposed in para 17(ii) that “as regards the member of minority community who come to India for short visit by obtaining Indian visa, the existing policy is that if they desire to stay in India on long term basis with an intention to get ultimately Indian citizenship, their request for long term stay in India should be considered liberally”.</u> Vide its decision dated 23<sup>rd</sup> January, 1986, the Cabinet Committee on Political Affairs approved this proposal of the Home Ministry.</p>
10.	03.02.1986 (pages 45-47)	<p>Ministry of Home Affairs issued instructions to Chief Secretaries of Government of Rajasthan as well as Government of Gujarat, DG, BSF and Ministry of Defence, after considering the decision of the Cabinet Committee on Political Affairs. Earlier instructions dated 16<sup>th</sup> April 1964, 15<sup>th</sup> August 1966 and 10<sup>th</sup> December 1974 were noted where persons belonging to minority communities of Pakistan were allowed to stay on in India <u>undisturbed without any</u></p>

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		<p><u>action being taken against them under the Indian Passport Act 1920 and the Foreigners Act 1946, even though they entered India without appropriate travel documents.</u> It was further noted in these instructions that <u>minority communities in Pakistan including Hindus and Sikhs are a persecuted lot, therefore, any decision to deport them should be taken by State Government only after taking approval of MHA.</u> The following instructions were accordingly issued:-</p> <p>“(i) The Pak nationals who cross over illegally to India do not deserve any sympathetic consideration. The security forces on the western borders should adopt push-back methods irrespective of the religious complexion of the infiltrants.</p> <p>(ii) <u>Members of the minority community of Pakistan who come to India for short visits by obtaining Indian visa, are allowed to stay in India on long term basis if they so desire with an intention to get ultimately Indian citizenship. But they should not be permitted to stay in four districts of Rajasthan (Ganganagar, Bikaner, Jaisalmer and Barmer) and two districts of Gujarat (Banaskantha and Kutch) bordering Pakistan.</u></p> <p>(iii) As regards such persons who have already been granted long term stay and are settled</p>

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		in the above mentioned border districts, strict security watch may be kept over them by I.B. and State Police. This watch will include security vetting of these persons staying in the border areas at regular intervals. Strict level action should be taken against persons indulging in unlawful/undesirable activities.”
11	13.07.1987 (pages 48-50)	The MHA issued instructions to various State Governments & UTs regarding grant of Long Term Visa to Pak nationals. It was specifically mentioned that <u>“requests from the minority communities of Pakistan i.e. Hindus and Sikhs who come to India by obtaining short term visa may be considered sympathetically after thorough checks from security angle.”</u>
12	10.06.1997 (Pages 51-52)	Letter from MHA to State Governments/ UT Administrations to extend <u>facility of long term visa for 5 years at a time</u> to (a) Young Pak nationals up to the age of 12 years and (b) <u>Pakistan nationals of minority communities in Pakistan of the age of 70</u> years and above. It also provided for grant of LTV to Pak women married to Indian nationals for 2 years at a time. This is another <u>instance of preferential treatment to Pak nationals</u> of minority communities where all other categories of Pak nationals were to be given only a Short Term Visa.

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
13	16.07.1997 (Pages 53-55)	Letter from MHA to State Governments/ UT Administrations regarding liberalization of procedure for grant of extension of long term visa to Pak nationals. These instructions <i>specifically mention the four</i> categories of Pak nationals who are eligible for LTV, which <i>specifically included Member of minority communities in Pakistan (Hindus and Sikhs)</i> . It is further mentioned that these instructions have been in existence since some time
14	23.02.1999 (Pages 56-57)	Letter from MHA to State Governments/ UT Administrations regarding grant of permission to Pak nationals staying in India on LTV to engage themselves in employment and permitting their children to take admission in schools, colleges, universities etc. These instructions also mentioned specifically the four categories of Pak nationals who are eligible for <i>LTV, including Members of minority communities in Pakistan (Hindus &amp; Sikhs)</i>
15	02.06.2010 (Pages 58-59)	Letter from MHA to State Governments/ UT Administrations advising them to consider cases of extension of LTV of Pakistan nationals who are covered by the MHA's Order S.O.No.1115(E) dated 15.05.2010 under their delegated powers <i>without insisting on validity of passports as per provisions in</i>

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		<i>this Order.</i> These instructions also mentioned specifically the four categories of Pak nationals who are eligible for LTV, <u>including Members of minority communities in Pakistan (Hindus &amp; Sikhs).</u> For such <u>Pak nationals exemption was granted from the provisions of The Passports (Entry into India) Act, 1920 for grant as well as extension of their LTV.</u>
16.	05.10.2010 (Pages 60-61)	Letter from MHA to State Governments/ UT Administrations regarding grant of LTV facility to eligible category of Bangladeshi nationals. This covered grant of LTV to Bangladeshi nationals of <u>minority community viz. Hindus, Sikhs and Buddhists married to Indian women.</u>
17	11.08.2011 (Page 62)	Letter from MHA to State Governments/ UT Administrations conveying the <u>addition of two more communities i.e. Christians and Buddhists in the list of minority communities in Pakistan in the eligible categories for the purpose of grant of LTV</u>
18	07.03.2012 (Page 63)	Letter from MHA to State Governments/ UT Administrations conveying that cases of <u>Pakistani nationals belonging to minority communities in Pakistan i.e. Hindus and Sikhs who have come to India on Pilgrim visa and who have not gone back to Pakistan on grounds of religious persecution may be considered for grant of LTV based on MHA's guidelines dated</u>

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		<u>29.12.2011</u> regarding the procedure to be followed to deal with foreign nationals who claim to be refugees
19	15.12.2014 (Pages 64-68)	Letter from MHA to State Governments/ UT Administrations conveying grant of <u>LTV for 5 years at a time to (i) Member of minority communities in Pakistan (Hindus, Sikhs, Christians and Buddhists)</u> , (ii) Pak women marked to Indian nationals and staying in India and (iii) Indian women married to Pak nationals and returning due to widowhood/ divorce and having no male member to support them in Pakistan. These <u>instructions also covered other facilities to all Pak nationals living in India on LTV like</u> - (i) permitting children of Pakistan nationals staying on LTV to take admission in schools, colleges, universities, technical/ professional institutions etc. without any specific permission, (ii) permitting a maximum of 2 additional places at any given point of time in addition to the place of stay, (iii) grant of No Objection to Return to India (NORI) facility for a maximum period of 90 days – once in a calendar year to go to Pakistan and once in a calendar year to go to a third country, (iv) grant of permission for change in mode of travel and port of exit etc.
20.	19.08.2016 (Pages 69-81)	Letter from MHA to State Governments/ UT Administrations conveying

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		<p>grant of various <u>facilities to persons belonging to minority communities in Afghanistan, Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians living in India on LTV</u>. These facilities are – (i) permission to take up self-employment or for doing business, (ii) allowing free movement within the State/ UT (excluding Protected/ Restricted/ Cantonment areas) &amp; permitting short term visit for a period of maximum 15 days to another State/ UT after informing the FRRO/ FRO concerned, (iii) permission for transfer of LTV papers from one State/UT to another State/ UT, (iv) reduction of penalty on non-extension of short term visa/ LTV on time, (v) permission to apply for LTV at the place of present residence in cases where the applicant has moved to the present place of residence without prior permission, (vi) opening of bank accounts without permission of RBI, (vii) purchase of a dwelling unit for self occupation and suitable accommodation for carrying out self employment without permission of RBI, (viii) issuance of driving license, (ix) issuance of PAN card and (x) issuance of Aadhaar number.</p>
21	2017 Visa Manual (updated upto 15 September 2017) (Pages 82-83)	The Visa Manual (a compendium of instructions regarding grant of visa of India) issued in Sept. 2017 indicated members of minority communities in Pakistan,

Serial Number	Date of Ministry of Home Affairs [MHA] Instructions	Summary of Visa/Long Term Visa(LTV) instructions
		Bangladesh and Afghanistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians as one of the categories eligible for grant of LTV.

*Emphasis supplied*

24. I state and submit that the Joint Parliamentary Committee constituted by Parliament in 2016 to examine the Citizenship (Amendment) Bill, 2016 conducted detailed factual surveys and collected more than 9000 memoranda from various stakeholders in order to arrive at the said classification. It is further submitted that Joint Parliamentary Committee took oral evidence and was apprised of the situation in first hand by the persons who have migrated from the particular neighbouring countries belonging to the classified communities. In its report, the Joint Parliamentary Committee has noted the following: -

*“1.23 Gist of the important points brought to the notice of the Committee at Jodhpur is as under:*

*(i) Most of the immigrants in Refugee colonies in Jodhpur had come from Rahim Yar Khan city in Punjab province and TandoAllahyar town in Sindh province of Pakistan, respectively. They used to be farmers in Pakistan and are now working as casual labourers.*

*(ii) Migrants were forced to convert their religions. Girls were forcefully converted to Islam.*

*(iii) Untouchability was practiced in Pakistan. Hindus are suppressed in Pakistan. Ladies have*

*to wear muslim dress and gents have to wear skull cap.*

*(iv) Discrimination towards Hindu children was very common in Pakistani schools. Students were subjected to mental torture in schools/colleges. They were forced to study Islam. Urdu language was their medium of study.*

*(v) Hindus were tortured irrespective of their castes (Meghwal, Bhil, Adivasi, Raika, Rajput, Kumar). They were called Kafir.*

*(vi) Snatching, theft, dacoity, kidnapping were very common. No Hindu was in Government service.*

*(vii) Temples had been destroyed specially after Babri Masjid demolition in India. No facilities for pujas, kirtan etc. were available.*

*(viii) No cremation ground was available. People were finding difficulties in burning dead bodies.*

*xxx*

*1.24 Gist of the pertinent concerns expressed before the Committee at Ahmedabad and Rajkot is as under:*

*(i) In Karachi there was hardly any temple to perform religious rituals. All the temples were converted to Godowns or Masjids.*

*(ii) Snatching, theft, dacoity and kidnapping was a common phenomenon with Hindus staying in Pakistan.*

*(iii) Temples were destroyed in Pakistan. Very few temples were left for Hindus to perform religious activities such as pujas, kirtan etc.*

*(iv) In order to survive, Hindus who were called Kafirs had to change their names which sounded similar to Muslim names. 300 Hindu migrant families came to Rajkot due to religious*

*persecution in Pakistan. They faced all types of harassment in Pakistan.”*

The Joint Parliamentary Committee, in this regard, also noted as under:

*“2.15 The Committee then enquired whether the fear of religious persecution was a very subjective view. In reply, the MHA stated as follows:*

*“Oral evidences given in the Committee clearly establish that the fear of religious persecution is real and widely prevalent in all the three countries under reference.””*

- 25.** I state and submit that India has on previous occasions highlighted the said issue to the particular neighbouring countries as explained hereinafter. It is submitted that the condition of minorities in Pakistan, especially those of the Hindus and Sikhs therein, had been taken up with Government of Pakistan in the context of incidents that members of these communities, or the communities themselves, face from time to time. It is submitted that it has been emphasised upon the Government of Pakistan on those occasions that protecting the classified communities is its responsibility. It is submitted that many instances of religious persecution came to notice, in case of Afghanistan between mid 1990s and 2001, when the Taliban were in power in Afghanistan. It is submitted that the atrocities perpetrated by them against non-Muslims were noted across the world. It is submitted that in case of Bangladesh, the Central Government has from time to time highlighted the responsibility of the said Government of that country to protect the interest and promote welfare of its citizens belonging to the classified communities. It is further submitted that the classified

communities from the particular neighbouring countries appear to be most closely connected, in interest or in sympathy, with Indian nationality considering the closely connected history of such communities within the territorial/geographical landmass of India.

- 26.** I state and submit that the issue of persecution of classified communities on grounds of their religion has been raised in the form of *note verbales* or *demarche* or during bilateral talks between India and the said countries. It is submitted that certain correspondence in this regard is classified in nature and cannot be made public and the same can be handed over for the perusal of the Hon'ble Court. It is submitted that in this regard *note verbales* sent to High Commission of Pakistan on 29/12/2009 regarding sale of agricultural land associated with Gurudwaras in Pakistan is one such example. It is submitted that various Press releases have also been made in this regard by Government officials. It is submitted that External Affairs Minister and Minister of State in MEA have made statements in Parliament on this issue on many occasions. It is submitted that the issue of persecution of classified communities has also been raised in Parliament Questions on many occasions. It is submitted that in reply to these questions, successive Governments have acknowledged reports of persecution of classified communities in these countries. It is submitted that various governments have also stated in these Parliament questions that the matter has been taken up with these Governments. It is submitted that the Ministry of External Affairs has also received numerous representations from various organizations in India regarding atrocities against aforesaid communities

in Pakistan. It is submitted that these representations speak about persecution of the aforesaid minorities. The annexures on the history of the efforts on part of the Government of India with regard to the issue of persecution of classified communities which was officially taken up with the Governments of Bangladesh and Pakistan along with the Parliamentary questions of atrocities against the classified communities in Afghanistan are already attached and marked as **Annexure - R 12**. The Details of *note verbales*, press releases, statements, Parliament Questions replied and representations received about persecution of aforesaid minorities in Annexure 12 are listed below :

SR. No	PARTICULARS
1.	Note Verbale sent to High Commission of Pakistan on 29 December 2009 on sale of agricultural land associated with Gurdwaras in Pakistan
2.	Note Verbale sent to Ministry of Foreign Affairs of Pakistan on 28 November 2011 on conversion of birth place of Maharaja Ranjit Singh into a Police Station
3.	Statement by External Affairs Minister in Lok Sabha on 02 May 2012 on persecution and intimidation of minority communities in Pakistan
4.	Statement made by MoS for External Affairs on 07.12.1992 on violence and brutality on minority (Hindus, Jains and Sikhs)
5.	Statement by MoS for External Affairs on 13.12.1992 on acts of terrorism and arson on minority communities in Pakistan, on reports of destruction of 124 temples, 2 Gurdwaras and 5 churches
6.	SuoMotu Statement by External affairs Minister on 24.02.2010 on 'beheading of a Sikh in Pakistan'

SR. NO	PARTICULARS
7.	Lok Sabha Parliament Question No.4135 answered on 19.02.2014 on attacks on minorities in neighbouring countries.
8.	Lok Sabha Parliament Question No.5388 answered on 09.05.2012 on discrimination against Hindu minorities in Bangladesh and Pakistan.
9.	Lok Sabha Parliament Question No.132 answered on 30.11.2011 on killing of Hindus in Pakistan.
10.	Lok Sabha Parliament Question No. 879 answered on 16.07.2014 on migration of Hindus from Pakistan on grounds of religious persecution.
11.	Lok Sabha Parliament Question No. 815 answered on 16.07.2014 on desecration of temples in Pakistan.
12.	Lok Sabha Parliament Question No. 293 answered on 31.08.2012 on migration of Hindu and Sikhs from Pakistan and incidents of alleged looting, kidnapping, particularly of girls and conversion of Hindus and Sikhs. (Demarche was made with Pakistan on 08 May 2012 conveying India's serious concerns on matter of abduction, forced conversion and marriage).
13.	Lok Sabha Parliament Question No.5493 answered on 09.05.2012 on killing of Hindus in Pakistan.
14.	Lok Sabha Parliament Question No. 160 answered on 10.08.2011 on atrocities committed against Hindus and Sikhs in Pakistan.
15.	Lok Sabha Parliament Question No. 389 answered on 23.11.2011 on migration of Hindus from Pakistan due to ill-treatment meted out to them in Pakistan.
16.	Lok Sabha Parliament Question No. 294 answered on 16.03.2011 on alleged atrocities committed on Hindus, Sikhs and other minorities in Pakistan.

SR. No	PARTICULARS
17.	Lok Sabha Parliament Question No. 467 answered on 03.08.2011 on desecration of Gurudwara Sahib in Rawalpindi, Pakistan and temples in Pakistan.
18.	Lok Sabha Parliament Question No. 6512 answered on 05.05.2010 on killing of Sikhs in Pakistan.
19.	Lok Sabha Parliament Question No. 4229 answered on 21.04.2010 on attack on Hindus in Pakistan.
20.	Lok Sabha Parliament Question No. 366 answered on 29.07.2009 on displacement of Sikh, Hindu families living in Pakistan and forced to pay 'jaziya'.
21.	Lok Sabha Parliament Question No. 1253 answered on 07.03.2007 on report by Human Rights Commission of Pakistan on abduction, disappearances and forced conversion of Hindus in Pakistan.
22.	Lok Sabha Parliament Question No. 2077 answered on 16.12.2006 on alleged conversion of temple to abattoir in Pakistan.
23.	Lok Sabha Parliament Question No. 2166 answered on 07.12.2005 on kidnapping of Hindus in Pakistan.
24.	Lok Sabha Parliament Question No. 1734 answered on 28.11.2001 on plight of Hindus in Pakistan, complaining of increasing insecurity and systematic discrimination.
25.	Statement by MEA Spokesperson on 01 May 2009 on reports of Sikh families in Pakistan being driven out of their homes and being subjected to Jaziya.
26.	Representation of Lama Chospel Zotpa to Hon'ble External Affairs Minister dated 22.10.2007 on the issue of destruction of the statue of Lord Buddha at Swat valley in Pakistan
27.	Representation of the Buddhist Society of India to the

SR. NO	PARTICULARS
	Hon'ble Prime Minister of India dated 14.09.2007 regarding the desecration and destruction of Bhagwan Buddha's Monuments in the Pakistan
28.	Representation of the Centre for Legal Aid Assistance & Settlement dated 04.07.2009 on the brutal attack on Christian Community by Muslims at BahminWala
29.	D.O. letter of Dr. M.S. Gill, MOS, Youth Affairs & Sports to the Hon'ble External Affairs Minister dated 13.09.2009 regarding the plight of Hindus in Sindh, Pakistan
30.	Representation of Shiromani Gurdwara Parbandhak Committee to the Hon'ble External Affairs Minister dated 16.12.2009 regarding the beating up a Pakistan-Sikh Lawyer by some Muslims
31.	Representation submitted by Shri Sudhir Aggarwal , Regional Convenor BJP on 03.05.2011 on human rights violation against Minorities in Pakistan
32.	Representation of Shiromani Gurdwara Parbandhak Committee to the Hon'ble Prime Minister of India 19.07.2011 regarding the infringement of religious rights of Sikhs in Pakistan
33.	Representation of Shri Avinash Rai Khanna, M.P to the Hon'ble External Affairs Minister dated 23.09.2011 regarding the Pak Sikh leader under threat in Pakistan, wants to migrate to India
34.	Representation of Shri Avinash Rai Khanna, M.P to the Hon'ble Prime Minister of India dated 08.11.2011 regarding the four Hindu doctors gunned down in Pakistan
35.	Representation of Shri Avtar Singh, President, Shiromani Gurdwara Parbandhak Committee to the

SR. NO	PARTICULARS
	Hon'ble Prime Minister of India dated 09.01.2012 regarding disallowing the Sikhs to enter Gurdwara Sahib Bhai Taru Singh ji in Lahore during observance of his Martyrdom day
36.	Representation of Shri B B Palit to the Hon'ble Speaker, Parliament House dated 10.01.2012 regarding the inhuman conditions of Hindu girl's in Pakistan
37.	Representation of Shri Avinash Rai Khanna, M.P to the Hon'ble Prime Minister of India dated 09.03.2012 regarding kidnapping of Hindus in Pakistan.
38.	Representation of Shri Tarlochan Singh to the Hon'ble Prime Minister of India dated 10.04.2012 regarding demolition of a Sikh heritage building at Khaibar Pakhtunkhwa, Pakistan
39.	Representation of Shiromani Gurdwara Parbandhak Committee to the Hon'ble External Affairs Minister dated 30.05.2012 regarding the issue of demolition and misappropriation of the Sikh historic properties and buildings in Pakistan
40.	Representation of Bharat Nirman Sena to the Hon'ble Prime Minister of India dated 12.06.2011 regarding the demand for justice for Pakistani Hindus
41.	Representation of Shri Avinash Rai Khanna, M.P to the Hon'ble External Affairs Minister dated 13.08.2012 regarding kidnapping of a minor Hindu girl in Pakistan
42.	Representation of Smt. Chandresh Kumari, M.P to the Hon'ble Minister of State for External Affairs dated 06.09.2012 forwarding the representation of Seemant Lok Sangthan regarding condition of Minorities in Pakistan

SR. NO	PARTICULARS
43.	Answer tabled in Parliament LSQ 4815 on 20/12/2000 on the Fate of Sikh and Hindu Families in Afghanistan
44.	Answer tabled in Parliament LSQ 60 on 25/07/2001 on the Taliban Decree
45.	Answer tabled in Parliament RSQ 546 on 26/07/2001 on the dress Code for Hindus in Afghanistan
46.	Official Statement by GOI: October 23, 2001 on issue of attacks on Minority in Bangladesh.
47.	Rajya Sabha (RS) Parliament Question (PQ) No.516 (November 22, 2001) - Answer tabled by EAM Shri Jaswant Singh on harassment of Minorities in Bangladesh.
48.	Parliament Question RS PQ No.265 (November 21, 2002) regarding the damage to temples in Bangladesh: Answer tabled by MEA in Parliament
49.	Parliament Question Lok Sabha (LS) PQ No.603 (November 21, 2001) on the attacks on Hindus in Bangladesh
50.	Parliament Question LS PQ No.58 (17 July 2002) on the Atrocities on minorities in Bangladesh : Reference made to action taken by GOI authorities in discussions with Bangladesh authorities about attacks on minorities
51.	Information provided by Bangladesh Hindu, Buddhist, Christian Unity Organization regarding communal attacks and repression in Bangladesh in 2001.
52.	Letter to Indian High Commission by Bangladeshi Non Governmental Organization PRIP TRUST dated 18/10/2001 listing cases of violence against Hindus, Christians and Buddhists in Bangladesh.
53.	Letter from Indian National Sikh Youth Forum

SR. NO	PARTICULARS
	(REGD.) to Minister for Home Affairs dated 25.02.2010 to condemn brutal killing of innocent Sikhs in Pakistan by terrorist groups.
54.	Letter from Seemant Lok Sangathan to General Secretary, Indian National Congress New Delhi dated 30.05.2012 regarding condition of minorities in Pakistan.
55.	Letter from President, Shiromani Gurudwara Parbandhak Committee, to Hon'ble Prime Minister of India dated 30.05.2012 regarding the issue of demolition and misappropriation of the Sikh historic properties and buildings in Pakistan.
56.	Letter from Hindu Janjagruti Samiti to NHRC, New Delhi dated 17.08.2012 with the request to give immediate asylum and Indian citizenship to the Pakistan Hindus seeking refuge in India.
57.	Letter from Sayonjak, Bihar Pradesh, Congress Committee, to Smt Sonia Gandhi, Shri Rahul Gandhi, Shri Salman Khurshid dated 27.08.2012 regarding forcible conversion of Hindus, Sikhs and Christians in Pakistan.
58.	Letter from Shri. Avinash Rai Khanna then Member of Parliament to Minister of External Affairs, dated 24.09.2012 regarding undisclosed ban on giving passports to Hindus in Pakistan.
59.	Letter from Shri. Mansukh L. Mandaviya, then Member of Parliament to Hon'ble Minister of External Affairs dated 20.11.2012 regarding compulsory religious conversion, rape, kidnap of minority community in Pakistan
60.	Letter from Shri. Tarun Vijay, then Member of

SR. NO	PARTICULARS
	Parliament to the Prime Minister of India dated 04.12.2012 regarding continuous violence against Hindus in Pakistan.
61.	Letter from Chief Minister, Punjab to Prime Minister of India dated 06.12.2012 regarding demolition of Sri Ram Pir Mandir, Soldier Bazar, Karachi, Pakistan.
62.	Letter from Shri Avinash Rai Khanna, then Member Parliament (Rajya Sabha), Punjab to Minister for External Affairs, Govt. of India, dated 30.12.2013 to put the international pressure on the Pakistan Govt. so that they should not violate the human rights of minorities in Pakistan.
63.	Letter from Shri Avinash Rai Khanna, then Member Parliament (Rajya Sabha), Punjab to Minister for External Affairs, Govt. of India, dated 15.02.2014 regarding kidnapping of 2 Sikhs in Pakistan.
64.	Letter from the Trustee, The Art of Living to Minister of the External Affairs dated 11.03.2014 regarding damage of Art of Living Center, Bani Gala, Islamabad, Pakistan.
65.	Letter from President, Shiromani Gurdwara Parbandhak committee. Amritsar to External Affairs Minister dated 10.09.2014 regarding killings of the members of Sikhs community in Pakistan. Sikhs have been targeted in Pakistan for quite some time now and the issue is a serious matter which has attained dangerous proportions.
66.	Letter from Pratap Singh Bajwa, Punjab Pradesh Congress Committee, to the Prime Minister of India dated 04.10.2014 to raise concerns with President and Prime Minister of Pakistan in the wake news reports of

SR. No	PARTICULARS
	“Pakistani Sikhs living under threat of terrorists, 8 killed in 18 months”
67.	Letter from Shri. Rajesh Maheshwari, Sindh Minority Migrants Association to the Prime Minister dated 27.10.2014 regarding alleviation of hardships faced by Pakistani Hindu migrants.

**27.** It is further submitted that considering the totality of factors, including factors of international geopolitics, the demographic profile of nations surrounding the particular neighbouring countries, the situation of or the presence of other persons of classified communities in other nations surrounding the neighbouring classified countries and the presence of state religions/theocratic regimes in other countries surrounding the neighbouring classified countries, makes it amply clear that India represents the sole rational and logically feasible place to seek shelter for the said communities.

It is further submitted that unlike the particular neighbouring countries, India is a constitutionally secular country and further has a large population of persons belonging to the classified communities already residing as Indian citizens. It is therefore submitted that the said classification is logically complete and made as a legislative policy strictly in light of prevailing geo-political and other allied reasons which would not be justiciable. In totality of the above mentioned factors, it is submitted that the first tier of classification is just, fair and reasonable and has a reasonable nexus with the object sought to be achieved by the Act.

28. I state and submit that the second tier of classification is the identification of the People's Republic of Bangladesh, the Islamic Republic of Afghanistan and the Islamic Republic of Pakistan within the Indian subcontinent. It is submitted that these countries are a class in themselves, which is centered on a recognition of countries with a specific state religion within the neighbourhood of India. It is submitted that the intelligible differentia in the three countries is in fact, enshrined in their respective Constitutions, their geographical locations and systematic functioning of their organs of State. It is further submitted that inclusion of one particular country in the list and non-inclusion of other(s) cannot be subject-matter of judicial review. It is humbly submitted that the same is in the domain of legislative decision making and the legislative wisdom. It is submitted that if such an exercise is treated to be a part of judicial review, it will not only be an unending process but it will render all legislative classifications *ultra vires*.
29. The following provisions of the constitutions of the particular neighbouring countries would further illustrate the same :

**THE CONSTITUTION OF THE ISLAMIC  
REPUBLIC OF PAKISTAN**

*Preamble*

*Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust;*

XX XXXX

*Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;*

***Introductory***

***Article 1: The Republic and its territories***

(1) *Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan.*

**XXXX XX**

***Article 2- Islam to be State religion***

***Islam shall be the State religion of Pakistan.***

***Article 19 - Freedom of speech, etc.***

*Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.*

***Article - 40 - Strengthening bonds with Muslim world and promoting international peace.***

***The State shall endeavour to preserve and strengthen fraternal relations among Muslim countries based on Islamic unity, support the common interests of the peoples of Asia, Africa and Latin America, promote international peace and security, foster goodwill and friendly relations among all nations and encourage the settlement of international disputes by peaceful means.***

***Article 62 - Qualifications for membership of Majlis-e-Shoora (Parliament):***

(1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless-

(a) *he is a citizen of Pakistan;*

....

(e) he has adequate knowledge of Islamic teachings and practises obligatory duties prescribed by Islam as well as abstains from major sins ;

(f) he is sagacious, righteous and non-profligate, honest and ameen, there being no declaration to the contrary by a court of law;

### **Chapter 3A: Federal Shariat Court**

*Article 203A - Provisions of Chapter to override other Provisions of Constitution*

The provisions of this Chapter shall have effect notwithstanding anything contained in the Constitution.

### Article 203C - The Federal Shariat Court.

(1) *There shall be constituted for the purposes of this Chapter a court to be called the Federal Shariat Court.*

(2) The Court shall consist of not more than eight Muslim Judges, including the Chief Justice, to be appointed by the President in accordance with Article 175A

### **Article 203D - Powers, Jurisdiction and Functions of the Court.**

(1) The Court may, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam.

(1A) *Where the Court takes up the examination of any law or provision of law under clause (1) and such law or provision of law appears to it to be repugnant to the Injunctions of Islam, the Court shall cause to be given to the Federal Government in the case of a law with respect to a matter in the Federal Legislative List, or to the Provincial Government in the case of a law with respect to a matter not enumerated in the Federal Legislative List, a notice specifying the particular provisions that appear to it to be so repugnant, and afford to such Government adequate opportunity to have its point of view placed before the Court.*

(2) *If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, it shall set out in its decision:*

(a) *the reasons for its holding that opinion; and*

(b) *the extent to which such law or provision is so repugnant; and specify the day on which the decision shall take effect. Provided that no such decision shall be deemed to take effect before the expiration of the period within which an appeal therefrom may be preferred to the Supreme Court or, where an appeal has been so preferred, before the disposal of such appeal.*

**(3) If any law or provision of law is held by the Court to be repugnant to the Injunctions of Islam –**

**(a) the President in the case of a law with respect to a matter in the Federal Legislative List or the Concurrent Legislative List, or the Governor in the case of a law with respect to a matter not enumerated in either of those Lists, shall take steps to amend the law so as to bring such law or provision into conformity with the Injunctions of Islam; and**

**(b) such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect.**

**Article 203DD - Revision and other Jurisdiction of the Court.**

(1) The Court may call for and examine the record of any case decided by any criminal court under any law relating to the enforcement of Hudood for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed by, and as to the regularity of any proceedings of, such court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

(2) *In any case the record of which has been called for by the Court, the Court may pass such order as it may deem fit and may enhance the sentence: Provided that nothing in this Article shall be deemed to authorize the Court to convert a finding of acquittal into one of conviction and no order under this Article shall be made to the prejudice of the accused unless he has had an opportunity of being heard in his own defence.*

(3) *The Court shall have such other jurisdiction as may be conferred on it by or under any law.*

**Article 227 - Provisions relating to the Holy Qur'an and Sunnah.**

**(1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.**

*Explanation:- In the application of this clause to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.*

(2) *Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.*

Article 228 - Composition, etc. of Islamic Council

(1) There shall be constituted within a period of ninety days from the commencing day a Council of Islamic Ideology, in this part referred to as the Islamic Council.

(2) The Islamic Council shall consist of such members, being not less than eight and not more than twenty, as the President may appoint from amongst persons having knowledge of the principles and philosophy of Islam as enunciated in the Holy Quran and Sunnah, or understanding of the economic, political, legal or administrative problems of Pakistan.

(3) While appointing members of the Islamic Council the President shall ensure that:

(a) so far as practicable various schools of thought are represented in the Council;

(b) not less than two of the members are persons each of whom is, or has been, a Judge of the Supreme Court or of a High Court;

(c) not less than one-third of the members are persons each of whom has been engaged, for a period of not less than fifteen years, in Islamic research or instruction; and

(d) at least one member is a woman.

(4) The President shall appoint one of the members of the Islamic Council to be the Chairman thereof.

(5) Subject to clause (6) a member of the Islamic Council shall hold office for a period of three years.

Article 229 - Reference by Majlis-e-Shoora (Parliament), etc. to Islamic Council.

The President or the Governor of a Province may, or if two-fifths of its total membership so requires, a House or a Provincial Assembly shall, refer to the Islamic Council for advice any question as to whether a proposed law is or is not repugnant to the Injunctions of Islam.

Article 230 - Functions of Islamic Council

(1) The functions of the Islamic Council shall be –

(a) to make recommendations to Majlis-e-Shoora (Parliament) and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Quran and Sunnah;

(b) to advise a House, a Provincial Assembly, the President or a Governor on any question referred to the Council as to whether a proposed law is or is not repugnant to the Injunctions of Islam;

(c) to make recommendations as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect; and

(d) to compile in a suitable form, for the guidance of Majlis-e-Shoora (Parliament) and the Provincial Assemblies, such Injunctions of Islam as can be given legislative effect.

CONSTITUTION OF AFGHANISTAN

Article Two

The sacred religion of Islam is the religion of the Islamic Republic of Afghanistan. Followers of other faiths shall be free within the bounds of law in the exercise and performance of their religious rituals.

Article Three

No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan.

Article Thirty-Five

To attain moral and material goals, the citizens of Afghanistan shall have the right to form associations in accordance with provisions of the law. The people of Afghanistan shall have the right, in accordance with provisions of the law, to form political parties, provided that:

1. Their manifesto and charter shall not contravene the Holy religion of Islam and principles and values enshrined in this constitution;

Article Sixty-Two

The individual who becomes a presidential candidate shall have the following qualifications:

1. Shall be a citizen of Afghanistan, Muslim, born of Afghan parents and shall not be a citizen of another country;

Article One Hundred Forty-Nine

The principles of adherence to the tenets of the Holy religion of Islam as well as Islamic Republicanism shall not be amended.

CONSTITUTION OF BANGLADESH

Article 2A. The state religion.

The state religion of the Republic is Islam, but other religions may be practiced in peace and harmony in the Republic.

*Emphasis supplied*

**30.** In light of the above, apart from the empirical data gathered by the Joint Parliamentary Committee establishing actual religious persecution on part of such classified communities, it is submitted that the constitutional order of the particular neighbouring countries rather than protecting the social conditions and position of classified communities, it justifies the apprehension of religious persecution.

It is further submitted that due to the actual and apprehended persecution, numerous persons had to flee the respective countries. At this juncture, it is clarified that though the mere presence of a 'state religion' in a country's constitution may not be the sole criteria for a legislative classification, though it is intrinsically embedded in record of the Joint Parliamentary Committee regarding the past experiences, the parliamentary recognition of persecution of specified communities, the systematic functioning of the respective neighbouring countries, the perception of fear that may be prevalent amongst minorities and the *defacto* situation in respective neighbouring countries.

**31.** It is further submitted that the *defacto* situation of the particular neighbouring countries is also to be appreciated in light of the historical events/functioning of the said countries. It is submitted that it is common knowledge that there have been numerous military regimes in Pakistan over the course of seven decades. It may further be noted that Afghanistan has also suffered numerous invasions, civil wars, the Taliban and Mujaheedin regimes and other destabilising events. It is submitted that East Pakistan, now Bangladesh, saw horrific civil war which led to the creation of the new

state. It is submitted that above said events, along with other factors, have an intrinsic connection with the classification of the three countries wherein the classified religious minorities were afforded certain relaxations. It is submitted that these specific circumstances prevailing in these countries accentuate the otherwise existing religious persecution of the classified communities.

**32.** I state and submit that for both – first tier of classification of communities and the second tier of classification of countries, the scope of judicial review in the legislative choice made is, respectfully, limited and ought to be narrowly tailored. It is submitted that the classification of foreigners into categories and the selection of theocratic states with a state religion is a reasonable and rational classification and so does not, on the authority of this Hon'ble Court's previous decisions, offend Article 14. It is submitted that there is no individual discrimination and it is easily understandable that *reasons of State* may make it desirable to classify foreigners into different groups and select limited countries for the otherwise benign exercise.

**33.** I state and submit that the three tier classification made by the Parliament in the present case represents a typical class or special legislation based on an intelligible principle having a reasonable relation to the object which the legislature seeks to attain. It is submitted that the equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purposes of

legislation. It is submitted that the mere production of inequality is not enough to attract the constitutional inhibition because every classification is likely in some degree to produce some inequality. It is submitted that the Parliament is legitimately empowered to frame laws for classification for securing the requisite requirements for citizenship. It is submitted that in applying the wide language of Articles 14 to the present three tiers classifications, a doctrinaire approach should be avoided and the matter considered in a practical way without whittling down the equality clauses. The classifications made are founded on an intelligible differentia which on rational grounds distinguishes persons grouped together from those left out. It is further respectfully submitted that the differences which warrant the present classification are real and substantial and bear a just and reasonable relation to the object sought to be achieved. It is submitted that therefore, the above said classifications are well within the permissible legislative domain for classification in matter concerning the plenary powers of the Parliament. I state and submit that, based on the foregoing paragraphs, there is no merit in the contentions raised in the petitions concerning the broad initial basis of classification.

***The non-identification of certain groups/countries is Discriminatory***

**34.** I state and submit that the assertion of the Petitioners in this regard is that the exclusion of Ahmadiis, Shias, Bahaiis, Hazras, Jews, Atheists or Baloch communities from the first tier of classification is arbitrary and hence, discriminatory. It is submitted that the said submissions

are erroneous and ignore the intelligible differentia of classification of the communities in the particular neighbouring countries. It is submitted that the intelligible differentia that operates at the first tier of classification is persecution on the basis of religion which cannot be said to be equated with the purported persecution of the communities mentioned in the petitions filed by the Petitioners. It is submitted that intra-religious persecutions or sectarian persecution or persecution due to non-recognition of particular sects to be within the fold of majority religion in the said countries, cannot be equated with the persecution of religious minorities admittedly following and practicing a different and completely distinct religion than the majority religion in particular neighbouring countries. It is further submitted that purported persecution arising out of political movement within the recognised border of the particular neighbouring countries cannot be equated with the systematic religious persecution that the CAA seeks to deal with.

- 35.** It is respectfully submitted that the first tier of classification, as submitted above, is not a solution for all possible persecutions, at a community level or individual level that may be prevalent in the particular neighbouring countries. It is respectfully submitted that it may be a legislative impossibility to surgically segregate the said classes of persons that may have been excluded without interminably expanding the scope of the classifications made, thereby impairing the limited legislative measure that has been adopted by the Parliament.

**36.** I state and respectfully submit that as per the test laid down by this Hon'ble Court under Article 14, the mere production of inequality is not enough to attract the constitutional inhibition because every classification is likely in some degree to produce some inequality. It is respectfully submitted that merely because the classification has not been carried out with mathematical precision, or that there are some categories distributed across the dividing line, is hardly a ground for holding that the legislation falls foul of Article 14, as long as there is broad discernible classification based on intelligible differentia, which advances the object of the legislation, even if it be class legislation. It is respectfully submitted that as long as the extent of over-inclusiveness or under-inclusiveness of the classification is marginal, as may be in the present case, the constitutional vice of infringement of Article 14 would not infect the legislation. It is respectfully submitted that in case of permissible classification as is in the present one, mathematical nicety and perfect equality are not required and if there is equality and uniformity within each group, the law ought not to be condemned as discriminative, though due to some fortuitous circumstances arising out of a peculiar situation some included in a class get an advantage over others. It is further respectfully submitted that in the application of the arbitrariness and non-discrimination principles, in view of the inherent complexity in dealing with wide mosaic of society, immigration, foreigners and citizenship, foreign policy, national security, cultures and religions, it is not conceivable to perfectly tailor a legislation and therefore larger discretion to the Legislature ought to be permitted in such matters of classification. It is respectfully submitted that the

legislature enjoys considerable latitude while exercising its wisdom taking into consideration myriad circumstances, enriched by its experience and strengthened by people's will and as long as the classification can withstand the test of Article 14 of the Constitution, it cannot be questioned why one subject was included and the other left out and why one was given more benefit than the other.

**37.** It is humbly submitted that legislation is not meant to be all-embracing in its scope, as if that was the case, no question could arise of classification being based on intelligible differentia having a reasonable relation to the legislative purpose. It is further humbly submitted that legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is most respectfully submitted that it is for the Legislature, in its plenary wisdom, to determine what categories it would include within the scope of such a legislation and merely because certain categories claim to stand on the same footing as those which are covered by the legislation are not included, the same would not render the legislation which has been enacted in any manner discriminatory or ultra vires.

**38.** I further state and submit that the other assertion of some of the Petitioners in this regard is non-recognition of China, Myanmar and Sri Lanka from the second tier of classification. The Petitioners allege that the said exclusion for the classification of particular neighbouring countries results in excluding the Rohingya community in Myanmar, the Tamil community in Sri Lanka and the

Buddhist community in Tibet and hence, is discriminatory and arbitrary.

- 39.** At the outset, it is submitted that the classification of particular neighbouring countries is directly relatable to the foreign policy of the nation and cannot be questioned on the ground of under-inclusiveness. It is submitted that the classification, as stated above, is based upon an intelligible differentia arrived on the basis of recognisable criterion. It is further respectfully submitted that the relationship of any minority or any community, seeking citizenship in the manner provided in the 1955 Act, with the constitutional order of the original country from wherein such community belongs is relevant recognizable criterion for distinction and classification as the same has obvious and palpable political and foreign policy implications. Further, as stated above, without prejudice to the merits of the purported persecution of the communities mentioned in this paragraph, the CAA is not meant to be an omnibus solution to issues across the world and the Indian Parliament cannot be expected to take note of possible persecutions that may be taking place across various countries in the world. It is submitted that the classification is based upon the Parliamentary recognition of the situation prevalent in the classified neighbouring countries which is based on intelligible factors, constitutional provisions, numerous circumstances. It is submitted that if the under-inclusiveness argument of the Petitioners is accepted, it would make any classification in the second tier impermissible as every classification would fall short of including certain countries wherein certain communities may be purportedly persecuted.

**40.** It is respectfully submitted that so far as the illustration of Sri Lanka is concerned, the Central Government has separately and independently dealt with the said subject which has no comparison with the issue in question. It is submitted that so far as the issues raised with regard to Rohingya community is concerned, the said issue also has separate parameters as the said issue is also being dealt with under a separate regime by the Union of India for which separate legal proceedings – totally unconnected with the present proceedings - are pending and are being dealt with separately by this Hon'ble Court. It is submitted that the purported persecution of the Rohingya community from Myanmar is more related to ethnic and linguistic discrimination which is to be differentiated from persecution on religious grounds alone. It is further submitted that thousands of Rohingyas have come into India mainly through Bangladesh in search of better economic opportunities. It is submitted that Rohingyas are not on the same footing as the religiously persecuted minorities who have fled into India from the particular neighbouring countries.

**THE CHALLENGE ON THE BASIS OF VIOLATION OF THE PRINCIPLE OF SECULARISM WHICH IS A PART OF THE BASIC STRUCTURE AND ARTICLE 25 - ARTICLE 28**

**41.** I state and submit that the Petitioner have challenged the validity of the CAA on the touchstone of principles of secularism which form a part of the basic structure of the constitution. In this regard, at the outset, it is submitted that the assertion that the CAA is against any particular community is erroneous, unfounded and designedly

mischievous. It is submitted that the CAA also results in not granting any kind of exceptions/exemptions to Tibetan Buddhists from China and Tamil Hindus from Sri Lanka and therefore, the assertion that the CAA attempts to classify the persons belonging only to the Muslim community as 'illegal migrants' has no basis in law or in fact. It is further submitted that the recognition of religious persecution in the particular neighbouring states, which have a specific state religion and long history of religious persecution of minorities, is actually a reinstatement of Indian ideals of secularism, equality and fraternity.

- 42.** I state and submit that as per the existing legal regime in India, any person of any religion from any country in the world can legally travel/migrate to India, satisfy the conditions mentioned in Section 6 read with the Third Schedule or Section 5 of the 1955 Act and become an Indian citizen. It is unequivocally submitted that the CAA has, in no manner whatsoever, made religion a basis of determining citizenship of a person. It is further submitted that as stated above, the CAA is a limited and narrowly tailored legislation, which is a manifestation of the executive/legislative policy of the Government and the Parliament since decades.

It is submitted that the CAA reaffirms India's faith and commitment to secularism by protecting the minorities in non-secular countries within the neighbourhood. It is submitted that as on date, numerous persons from majority community from the classified particular neighbouring countries are residing on valid visa in India and the said persons, subject to conditions in the Act, would always be eligible for the citizenship. It is

further submitted that hundreds of foreigners belonging to the majority community in the 3 specified countries, have been granted Indian citizenship during the last few years when they satisfied the conditions mentioned in Section 6 read with The Third Schedule or Section 5 of the 1955 Act. It is submitted that limited recognition of religious persecution in limited theocratic countries with a State Religion neither violates the principles of secularism nor falls foul of the arbitrariness clauses. A copy of the note depicting the information of number of valid visa granted to the persons belonging to majority community in the particular neighbouring countries is attached herewith and marked as **Annexure – R 26. [Page 1104]**. It is therefore further submitted that foreigners belonging to the classified communities from these three classified countries are being granted long-term Indian visas as well as citizenship if they satisfy the laid down conditions under the Visa Regulations and the Citizenship Act, 1955.

- 43.** It is submitted that the Indian Parliament has, on numerous issues, recognised religion as a distinct criteria and made classification on the basis of the same. It is submitted that the merely because religion is the starting point of any classification [and not the sole basis of classification], would not imply such classification falls foul of the principles of secularism. It is submitted that the Indian secularism is not irreligious rather it takes cognizance of all religions and promote comity and brotherhood between all. It is further submitted that across subjects, the Indian Parliament and State Legislature, have made classifications on the basis of religious identities of Indian citizens as a starting point.

**44.** I state and submit that legislative recognition of religious persecution in a limited geographical area with established non-secular states cannot be termed to be against the concept of secularism. It is submitted that the said recognition, in a different manner, resonates in legislations across the world and is in no manner a novel or an immoral form of classification as alleged. It is submitted that the CAA, is in the nature of a measure, thereby recognising the religious persecution systematically faced by the classified communities in the particular neighbouring countries is a representation of the country's legislative policy with regard to relaxation of qualifications of citizenship. It is submitted that the said measures are merely in the nature of prescribing qualifications for citizenship based upon rational and reasonable classifications and do not grant carte-blanche citizenship to the classified communities. It is submitted that the CAA is in consonance with the statutory regime of the 1955 Act and the Foreigner Act, 1946. It is submitted that the CAA does not classify or differentiate on the ground of religion rather it classifies on the ground of "religious persecution" in countries functioning with a state religion. The CAA therefore does not violate the cherished principle of secularism. It is submitted that the speech of the Home Minister in the Rajya Sabha and the Lok Sabha is also a reflection of the legislative policy of the Parliament. A copy of the speech of the Home Minister in the Rajya Sabha and the Lok Sabha is attached herewith and marked as **Annexure – R 27.**  
**[Page 1105 to 1202]**

**45.** I state and submit that with regard to the submissions of the Petitioners on “freedom of religion” and rights of minorities recognised in India under the Constitution, it is submitted that the freedom of religion of any person, including illegal migrants for that matter is not being violated by the CAA. Therefore, it is submitted that the assertion that the CAA, and the limited relaxation contained therewith, would result in persons’ freedom of religion being violated, has no basis in law or in fact. It is submitted that the requirement of the cut-off date further protects the freedom of religion as the relaxation in CAA cannot be used *in futuro*. It is further submitted that in fact, the CAA represents a protection of rights of the classified communities and their freedom of religion, which is an invaluable human right. It is submitted that rather than breaching any principle of ‘freedom of religion’ the CAA seeks to protect the ‘freedom of religion’ of the classified communities who have been persecuted for exactly expressing and practicing their respective religions in the particular neighbouring countries.

**THE CHALLENGE ON THE BASIS OF VIOLATION OF ARTICLE 21 BY THE PROPOSED NRC AND THE INTERNATIONAL COVENANTS THAT MAY ENCOMPASS THE SAID RIGHTS**

**46.** It is submitted that the Petitioners have alleged that the CAA may result in the expulsion/deportation/refoulement of person who may be classified as ‘illegal migrants’ and therefore, it violates Article 21.

At the outset, in this regard, it is submitted that the CAA does not result in expulsion/deportation/refoulement of any person who may be classified as ‘illegal migrant’. It

is submitted that the CAA is merely a classification for relaxations in qualifications of otherwise settled principles of citizenship. It is submitted that regime concerning the expulsion/deportation/refoulement of person who may be classified as 'illegal migrants' is governed by other statutes which are not under challenge in the present petitions.

**47.** I state and submit that the legal provisions regarding the National Register of Citizens i.e. Section 14A of the 1955 Act have been part of said 1955 Act since December, 2004. It is submitted that said provisions consist merely of the procedure and the authority concerned for the preparation of a national register of citizens. It is submitted that the preparation of a national register of citizens is a necessary exercise for any sovereign country for mere identification of citizens from non-citizens. It is submitted that as per the existing statutory regime, there are three classes of persons residing in India – Citizens, Illegal migrants and foreigners on valid visas. It is therefore, the responsibility entrusted on the Central Government, on a combined reading of the Foreigners Act, The Passport (Entry into India) Act, 1920 and the 1955 Act to identify/detect illegal migrants and thereafter, follow the due process of law.

**48.** It is submitted that the assertion of the Petitioners with regard to the International Conventions and prayers with regard to the non-deportation of any non-national without examining whether the person is a refugee or an economic migrant and the consideration by the Parliament to enact a refugee law is completely misplaced. It is submitted that the subjects like foreign affairs, all matters which

bring the Union into relations with any foreign country, diplomatic relations, citizenship, extradition, admission into and emigration and expulsion from India etc. form part of the Union List [List I] contained in the Seventh Schedule to the Constitution read with Article 246 of the Constitution. It is thus, within the domain of Parliament to make laws and for the Central Government to take executive / administrative decisions with regard to the said subjects. It is respectfully submitted that the measures governing the foreigners are found in -

- (i) The Foreigners Act, 1946; and
- (ii) The Registration of Foreigners Act, 1939
- (iii) The Passport (Entry into India) Act, 1920

The Parliament enacted the Foreigners Act, 1946 with an object which is reflected in the following Statement of Objects and Reasons:

**“Statement of Objects and Reasons**

*At present the only permanent measures governing foreigners specifically are the Registration of Foreigners Act, 1939 and the Foreigners Act, 1864. The Act of 1939 provides for the making of rules to regulate registration of foreigners and formalities connected therewith, their movement in, or departure from, India. The Act of 1864 provides for the expulsion of foreigners and their apprehension and detention pending removal and for a ban on their entry into India after removal; the rest of the Act which provides for report on arrival, travel under a licence and certain incidental measures can be enforced only on the declaration of an emergency. The powers under this Act have been found to be ineffective and inadequate both during normal times and during an emergency.*

*The needs of the war emergency were met by the enactment of a Foreigners Ordinance in 1939 and the promulgation under it of the Foreigners Order and the Enemy Foreigners Order. Even at that time the need for more satisfactory permanent legislation was recognised but it was decided to postpone consideration of such a measure until after the war. The Ordinance was, therefore, replaced by the Foreigners Act, 1940, the life of which was to expire on the 30<sup>th</sup> September, 1946, but has recently been extended by the Foreigners Act (Amendment) Ordinance, 1946, up to the 25<sup>th</sup> March, 1947.*

*Meanwhile the question of permanent legislation, more or less on the lines of the Act of 1940 has been examined, in consultation with the Provincial Governments. All Provincial Governments agree that such permanent legislation in repeal of the Act of 1864, is necessary. The Bill in the main reproduces the provisions of the Foreigners Act of 1940.”*

Section 2(a) defines the term “Foreigners” as under:

**“2(a) "foreigner" means a person who is not a citizen of India”**

Section 3 of the Act empowers the Central Government to make an Order “either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner”. Section 3 of the Act reads as under:

**“3. Power to make orders. —**

*(1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure there from or their presence or continued presence therein.*

*(2) In particular and without prejudice to the generality of the foregoing powers, orders made*

*under this section may provide that the foreigner —*

*(a) shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;*

*(b) shall not depart from India or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;*

*(c) shall not remain in India, or in any prescribed area therein;*

*(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;*

*(d) shall remove himself to, and remain in, such area in India as may be prescribed;*

*(e) shall comply with such conditions as may be prescribed or specified*

*(i) requiring him to reside in a particular place;*

*(ii) imposing any restrictions on his movements;*

*(iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;*

*(iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;*

*(v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;*

*(vi) prohibiting him from association with persons of a prescribed or specified description;*

*(vii) prohibiting him from engaging in activities of a prescribed or specified description;*

*(viii) prohibiting him from using or possessing prescribed or specified articles;*

*(ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;*

*(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or prescribed or specified restrictions or conditions; (g) shall be arrested and detained or confined; and may make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.*

*(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under Clause (e) for Clause (f) of subsection (2)."*

**49.** I state and submit that the Foreigners Act, 1946 confers the power to expel foreigners from India. It vests the Central Government with absolute and unfettered discretion and, as there is no provision fettering this discretion in the Constitution, an unrestricted right to expel remains. It is further submitted that the provisions of the Foreigners Act, 1946 fell for consideration of this Hon'ble Court in the case of *Hans Muller of Nuremburgvs Superintendent, Presidency Jail, Calcutta & ors.*, AIR 1955 SC 367 which has upheld the classifications made therein while examining the scheme, scope and ambit of the legislation and expanse of powers conferred upon the Central Government under the said Act.

**50.** It is submitted that in light of clear mandate of the Foreigners Act, 1946 and the 1955 Act, no illegal migrant can crave leave of this Hon'ble Court under Article 32 seeking a right to settle and reside in India or further, make any claim for citizenship. It is submitted that the Central Government has unfettered discretion in matter concerning deportation of illegal migrants whilst

following a due process of law. It is further submitted that powers of Central Government to detain & deport an illegal foreigner have been entrusted since 1958 to State Government under Article 258(1) of the Constitution of India. It is submitted that the expanse of Article 21 is extremely wide in India and it cannot be argued that the whole expanse would be available to illegal migrants. It is further submitted that the procedure under the Foreigners Act has been consistently held by this Hon'ble Court, to be just fair and reasonable. It has further been held that foreigners, especially illegal immigrants, would not be entitled to place a challenge to the provisions of the said Act. It is submitted that therefore, the identification of illegal migrants in the country, as a principle of governance, is a sovereign, statutory and moral responsibility of the government and is in conformity with Article 21.

- 51.** I state and submit that the Petitioners have placed reliance on numerous International Conventions and Treaties, to some of which India is not a signatory. The following is a table depicting the relied upon treaties and the status with regard to India being a signatory to them :

S.No.	Subject of UN Conventions/ Declarations/ Resolutions	Status regarding signing/ ratification by India
1	United Nations Declaration on the Rights of Indigenous Peoples	There is no signing/ ratification
2	International Covenant on Civil and Political Rights (ICCPR)	Acceded

S.No.	Subject of UN Conventions/ Declarations/ Resolutions	Status regarding signing/ ratification by India
3	Resolution No. 6/37 of the United Nations titled "Elimination of all forms of intolerance and of discrimination based on religion or belief"	There is no signing/ ratification
4	Universal Declaration of Human Rights 1948 (UDHR)	There is no signing/ ratification
5	UN Declaration of Territorial Asylum in 1967	There is no signing/ ratification
6	International Covenant on Social, Cultural and Economic Rights (ICESCR)	Acceded
7	International Convention on Elimination of All Forms of Racial Discrimination Against Women 1979 (CEDAW)	Ratified
8	Convention Relating to Status of Stateless Person 1954	Not Signed/ratified
9	Convention on the Reduction of Statelessness 1961	Not Signed/ratified
10	Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment (CAT) 1987	Signed but not ratified
11	Convention on the Rights of the Child 1990	Acceded
12	UN Convention on Status of Refugees 1951 and 1967 Protocol	Not signed

**52.** It is at the outset submitted that the standard for judicial review of legislation in India is the constitution and not on the basis of international conventions. Further, it is unequivocally submitted that while this Hon'ble Court, has on certain occasions, relied upon certain international convention. However, it is emphatically submitted that the said conventions/treaties cannot become a standard of judicial review of legislation made by competent legislature in India. Further, it is submitted that the reliance on international conventions cannot be placed when the specific field is occupied by domestic parliamentary law. It is submitted that in order to obtain reliefs from this Hon'ble Court, the Petitioners claim that the respondents are bound by the principles enshrined in the International Conventions further placing reliance on Article 21 and Article 51(c) of the Constitution which as per the Petitioner's submissions, obligate the respondent to respect International law.

**53.** In this regard, it is submitted that India is neither a signatory to nor has ratified the 1951 Refugee Convention or the 1967 Protocol. It is further respectfully submitted that the fundamental rights provisions of the Constitution, in the context of this case articles 14 and article 21, cannot be interpreted with reference to any international convention or treaty to which India is neither a signatory nor it has ratified the same. It is further submitted that the assertion of the Petitioners that the principle of non-refoulement is a part of customary international law is erroneous in law, and therefore does not merit acceptance by this Hon'ble Court. It is further submitted that the principle of non-

refoulement cannot be derived from the UDHR, the ICCPR, and the ICEFDR, on which considerable reliance has been placed by the Petitioners.

**54.** It is respectfully submitted that the use of international treaties and conventions by this Hon'ble Court has always been contingent on the answer to a factual inquiry *viz.* has the Indian government signed and or ratified the particular international treaty or convention that the Hon'ble Court wishes to use as a constitutional interpretative aid. In other words, it is clear from the Hon'ble Court's doctrine on the point that if the Indian government has not signed or ratified the particular international law treaty or convention, such treaty or convention cannot be used for constitutional interpretive purposes. Further, it is submitted that as matter of constitutional interpretation, the treaty making power of any sovereign government is always subject to whatever constitutional restrictions that may be determinable by the text or the structure of the Constitution. Therefore, it is submitted that the treaty-making power is exercised in the manner contemplated by the Constitution and subject to the limitations imposed by it

**55.** Without prejudice to the above, it is respectfully submitted that the doctrine of incorporation of international law recognises the position that the rules of international law are incorporated into national law and considered to be part of the national law only if they are not in conflict with an Act of Parliament. It is respectfully submitted that in essence, the domestic courts cannot say yes if Parliament has said no to a principle of international law. It is submitted that if statutory

enactments are clear in meaning and mandate, they must be construed according to their meaning even though they are contrary to the comity of nations or international law.

**THE CHALLENGE ON THE BASIS OF VIOLATION OF ARTICLE 15, 19 OF THE CONSTITUTION**

**56.** The Petitioners have placed reliance on Article 15 and Article 19 while challenging the validity of the CAA. It is submitted that the said rights are specifically available only to Indian citizens and not to illegal migrants or other foreigners. Further, it is submitted that Petitioner who are citizens, while challenging the CAA, in public interest jurisdiction, cannot invoke Article 15 and Article 19 as the CAA does not affect Indian citizens. It is further submitted that Article 15 and Article 19 cannot be invoked in matters concerning recognition of religious persecution in specific countries. It is submitted that it is a settled principle of law that what cannot be done directly, cannot be done indirectly. It is therefore submitted that Indian citizens cannot claim rights under Article 15 and Article 19 on behalf of illegal migrants at large within the country or on behalf of foreigners living outside the territorial borders of the country across any part of the world. It is submitted that in subjects concerning the ingress or deportation of illegal migrants and other allied subjects, it has been consistently held that Article 15 and Article 19 cannot be pleaded.

**THE CHALLENGE ON THE BASIS OF VIOLATION OF ARTICLE 5, ARTICLE 6, ARTICLE 7, ARTICLE 8, ARTICLE 9, ARTICLE 10 AND ARTICLE 11**

**57.** It is submitted that the Petitioners have challenged the validity of the CAA on the ground that the same violates the principles in Article 5, Article 6, Article 7, Article 8, Article 9, Article 10 and Article 11. It is submitted that the aforementioned provisions in the Constitution, even when they were being discussed, were to be limited in nature and could not have governed all aspects of citizenship in India. It is submitted that contours of citizenship are controlled by the 1955 Act. It is submitted that the mandate of Article 11 protects the legislative measures of the Parliament from any ground of challenge on the basis of Article 5 – Article 10. Article 11 reads as under :

***“Article 11 - Parliament to regulate the right of citizenship by law***

***Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship”***

**58.** It is submitted that during the debate that took place on Articles 5 and 6 on 10 August, 1949 in Constituent Assembly, Dr. B.R. Ambedkar, the Chairman of the Drafting Committee of the Constitution of India had expressed hardship in drafting Article 5 when he stated as under:

*“this Article refers to, citizenship not in any general sense but to citizenship on the date of commencement of this Constitution. It is not the object of this particular Article to lay down a*

*permanent law of citizenship for the country. The business of laying down permanent law of citizenship has been left to the Parliament, and as members will see from the wording of Article 6 (present day Article 11) as I have moved, the entire matter regarding citizenship has been left to Parliament to determine by any law it may deem fit".*

Dr. Ambedkar also pointed out as under:

*"... but the Parliament may make altogether a new law embodying new principles. That is the first proposition that has to be borne in mind..." and also that "...they must not understand that the provisions that we are making for citizenship on the date of commencement of this constitution are going to be permanent or unalterable. All that we are doing is to decide ad hoc for the time being."*

Dr. B.R. Ambedkar, further emphasized as under :

*"... It is not possible to cover every kind of case for a limited purpose, namely, the purpose of conferring citizenship on the date of commencement of the constitution. If there is any category of people who are left out by the provisions contained in this amendment, we have given power to Parliament subsequently to make provision for them."*

It is therefore submitted that 1955 Act being a legislation framed under Article 11, cannot be questioned on the grounds of Articles 5-10. Without prejudice to the above, it is submitted that the 1955 Act and the CAA, is actually a reinstatement of idea of citizenship envisaged under Articles 5-10.

#### **THE CHALLENGE TO SECTION 14A OF THE ACT;**

- 59.** It is submitted that Section 14A of The Citizenship Act, 1955 reads as under :

***“14A. Issue of national identity cards –***

*(1) The Central Government may compulsorily register every citizen of India and issue national identity card to him.*

*(2) The Central Government may maintain a National Register of Indian Citizens and for that purpose establish a National Registration Authority.*

*(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2003, the Registrar General, India, appointed under subsection (1) of section 3 of the Registration of Births and Deaths Act, 1969 (18 of 1969) shall act as the National Registration Authority and he shall function as the Registrar General of Citizen Registration.*

*(4) The Central Government may appoint such other officers and staff as may be required to assist the Registrar General of Citizen Registration in discharging his functions and responsibilities.*

*(5) The procedure to be followed in compulsory registration of the citizens of India shall be such as may be prescribed.”*

It is submitted that the said section was inserted by Act No.6 of 2004 which came into effect on 3<sup>rd</sup> December, 2004. The Central Government had published it after it received assent of President of India on 7<sup>th</sup> January, 2004. It is submitted that Department-related Parliamentary Standing Committee on Home Affairs consisting of fifteen members of Rajya Sabha and 30 members of Lok Sabha under the Chairmanship of Shri Pranab Mukherjee had examined The Citizenship (Amendment) Bill, 2003 and presented its report to Rajya Sabha on 12<sup>th</sup> December, 2003. It is submitted that the issuance of a national identity card to every citizen of the country is completely in the domain of the legislative or executive policy of the Government.

- 60.** It is submitted that with regard to issue concerning delegations, it is stated that the Committee unanimously adopted clause 12 of this Bill to insert Section 14A in the principal Act with the following amendment as proposed by Government;

*“The procedure to be followed in compulsory registration of the citizens of India shall be such as may be prescribed”.*

Therefore, this multiparty Parliamentary Committee not only agreed with the need for compulsory registration of citizens of India and issuance of National Identity Cards to them but left it to the executive to prescribe merely a procedure to implement the legislative mandate. It is submitted that after the recommendations of this Parliamentary Committee, the Parliament passed The Citizenship (Amendment) Bill in December, 2003 which was finally notified for commencement on 3<sup>rd</sup> December, 2004.

- 61.** The Statement of Objects & Reasons for this Bill brought before the Parliament by the then Home Minister on 7<sup>th</sup> May, 2003 proposed to, inter-alia, “(v) provide for the compulsory registration and issuance of national identity cards to all citizens of India”. It is submitted that previously, the Central Government in exercise of powers conferred by sub-sections (1) and (3) of Section 18 of The Citizenship Act, 1955 had vide Gazette Notification dated 10<sup>th</sup> December, 2003 already notified The Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003. The Citizenship (Amendment) Act, 2004 provided legislative backing to these rules framed under delegated legislation by the Central Government.

- 62.** It is submitted that the assertions of the Petitioners that the requirement for registration of citizenship have been delegated to the executive are erroneous as the National Register of Citizens does not create any embargo on any form of citizenship. It is submitted that the delegation has been only of the procedure to be adopted while conducting the said exercise. It is submitted that the provisions of the Section 14 A and the 2003 rules apply to all citizens of India without any discrimination and empower the Central Government through the machinery of Registrar General of India to take further action in compliance of the legislative mandate.
- 63.** It may not be out of place to mention that as per information available in open sources in many countries, there is a system of maintaining register of their citizens. In fact, national identification cards are issued based upon the exercise of identification of citizens in these countries. In Afghanistan, Bangladesh and Pakistan also there is a system of issuance of such cards.
- 64.** It is submitted that the assertion of the Petitioners that Section 14A results in excessive delegation by Parliament is erroneous as the only delegation contemplated in Section 14A is the delegation of power to frame rules with regard to the procedure to be followed. It is submitted that the delegation does not include the delegation of power to frame criterion or requirements of citizenship of Indian nationals. It is submitted that the same is already governed in the 1955 Act and therefore, the Rule framed therein under cannot be contrary to the main enactment.

It is submitted that Section 14A and the Rules thereunder broadly govern the process of registration of Indian citizens and issuance of national identity cards to them. It is further clarified that these legal provisions have been on the statute books for more than one and a half decades and the CAA has not altered them in any way whatsoever.

**THE CHALLENGE TO SECTION 9 OF THE FOREIGNERS ACT, 1946  
AND THE PROCEDURE THEREIN;**

**65.** It is respectfully submitted that section 9 of the Foreigners Act, 1946 reads as follows: -

*“9. Burden of proof. — If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.”*

Section 8 of The Foreigners Act, 1946 deals with determination of nationality and it reads as follows: -

*“8. Determination of nationality.— (1) When a foreigner is recognised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality if any is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected:*

*Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognised as entitled to protection by the Government of the country whose nationality he has so acquired.*

*(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court:*

*Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision.”*

**66.** It is respectfully submitted that section 106 of the Indian Evidence Act, 1872 reads as follows:-

**“106. Burden of proving fact especially within knowledge —** *When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*

*Illustrations*

*(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.*

*(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”*

**67.** It is further respectfully submitted that the provision of section 9 of the Foreigners Act, 1946 have been present since 1946. It is submitted that this Hon’ble Court in its judgment dated 12.07.2005 in W.P.(Civil) No. 131 of 2000

– *Sarbananda Sonowal v. Union of India &Anr.* had *inter alia* made the following observations:-

“14. ....

*This Act confers wide ranging powers to deal with all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner for prohibiting, regulating or restricting their or his entry into India or their presence or continued presence including his arrest, detention and confinement. The most important provision is section 9 which casts the burden of proving that a person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall lie upon such person. Therefore, where an order made under the Foreigners Act is challenged and a question arises whether the person against whom the order has been made is a foreigner or not, the burden of proving that he is not a foreigner is upon such a person. In Union of India v. Ghaus Mohammed AIR 1961 SC 1526, the Chief Commissioner of Delhi served an order on Ghaus Mohammed to leave India within three days as he was a Pakistani national. He challenged the order before the High Court which set aside the order by observing that there must be prima facie material on the basis of which the authority can proceed to pass an order under Section 3(2)(c) of the Foreigners Act, 1946. In appeal, the Constitution Bench reversed the judgment of the High Court holding that onus of showing that he is not a foreigner was upon the respondent.”*

“17. *There is a good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one’s citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Sometimes the place of birth of his grandparents may also be relevant like under Section 6A(1)(d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State*

*authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”*

- 68.** This Hon’ble Court had also observed that though in a criminal case the general rule is that the burden of proof is on the prosecution but if any fact is especially within the knowledge of the accused, he has to lead evidence to prove the said fact. This Hon’ble Court had also referred to a number of cases in which this Hon’ble Court had held this view earlier. In *Sonowal I*[supra], this Hon’ble Court has also made the following observations:-

*“19. Section of the Foreigners Act regarding burden of proof is basically on the same lines as the corresponding provision is in U.K. and some other Western nationals and is based upon sound legal principle that the facts which are peculiarly within the knowledge of a person should prove it and not the party who avers the negative.”*

- 69.** It is respectfully submitted that in its order dated 05/12/2006 in Writ Petition (Civil) No. 117 of 2006 – Sarbananda Sonowal vs. Union of India [*Sonowal II*], this Hon’ble Court had observed as follows: -

*“41. In Sonowal I, this Court clearly held that the burden of proof would be upon the proceedee as he would be possessing the necessary documents to show that he is a citizen not only within the meaning of the provisions of the*

*Constitution of India but also within the provisions of the Citizenship Act.”*

**70.** In the abovementioned judgment, this Hon’ble Court has also referred to the observations of this Hon’ble Court in its judgment dated 12.07.2005 in W.P.(Civil) No. 131 of 2000 – Sarbananda Sonowal v. Union of India &Anr. specifically, with regard to section 9 of the Foreigners Act, 1946. It is respectfully submitted that in the aforementioned judgments, this Hon’ble Court have considered in detail the interpretation, the validity and the rights of either parties with regard to the application of section 9 of the Foreigners Act, 1946 and this Hon’ble Court not found any infirmity with the same.

**THE CHALLENGE TO SECTION 3(1) OF THE ACT [AMENDED IN 2004];**

**71.** It is submitted that Article 11 of Constitution gives unrestricted power to Parliament to frame laws regarding citizenship. In exercise of the same, the Citizenship Act, 1955 has been amended from time to time since its enactment in 1955. It is submitted that section 3 does not violate Article 14 or any other provision of Constitution. It is submitted that that said section has been amended twice in past representing a clear parliamentary intent to make the provision stringent as per the needs of the nation at the said times. It is submitted that that the requirement under the said provision represents the legislative policy of the elected representatives with regard to question concerning citizenship. It is submitted that the said provision does not create any class on the basis of any constitutionally unviable parameters. It is

submitted that the intent of the Legislature, on both occasions of amendments, was to strengthen the provision and the application thereof, considering the peculiar situation faced by the nation.

- 72.** It is submitted that previously, the Cabinet in its meeting held on 11 Jun 1986 and 19 Aug 1986 took a decision to amend the Citizenship Act, 1955 to make acquisition of Indian citizenship difficult for persons who have entered India clandestinely. It was noted that a large number of persons from Bangladesh and other countries have entered into India and residing in the country and may have entered clandestinely. Consequently, the Citizenship (Amendment) Bill, 1986 was introduced with above objective in Lok Sabha on 04 Nov 1986. The Bill was passed in Lok Sabha and Rajya Sabha on 11 Nov and 19 Nov 1986 respectively and received assent of president on 28 Nov 1986, The statement of objects of the Bill is reproduced below: -

*“STATEMENT OF OBJECTS AND REASONS*

*A large number of persons of Indian origin have entered the territory of India from Bangladesh, Sri Lanka and some African countries and they are residing in India. Government has taken a serious view of the entry of persons clandestinely into India and with a view to making the provisions of the Citizenship Act relating to the grant of Indian citizenship more stringent it is proposed inter alia to make the following changes in the Citizenship Act, 1955, namely:-*

*(i) under the existing provisions, every person born in India on or after the 26th day of January, 1950, shall be a citizen of India by birth. With a view to preventing automatic acquisition of citizenship of India by birth, it is proposed to amend the Act to provide that every*

*person born in India after the commencement of the amending Act will become a citizen of India by birth only if at the time of his birth either of his parents is a citizen of India;*

*(ii) under the Act, certain categories of persons may apply for citizenship by registration. One such category is those persons of Indian origin who are ordinarily resident in India and have been so resident for six months immediately before making an application for registration. Another category is women who are, or have been, married to citizens of India. These provisions are proposed to be made more stringent by providing that a person would be eligible for citizenship by registration only if he is ordinarily resident in India and have been so resident for five years immediately before making an application for registration. It is also proposed to change the word "women" by "persons" in the later category so that the eligibility of citizenship through marriage to citizens of India now admissible to women only is extended to men also.*

*(iii) under the Act, a person who is not a citizen of a Commonwealth country referred to in the First Schedule to the Act may apply for the grant of a certificate of naturalization if he has resided in India for the period of at least five years. It is proposed to increase this period to ten years.*

*2. The Bill seeks to achieve the aforesaid objects."*

- 73.** Thereafter, in 2003, the Citizenship (Amendment) Bill, 2003 was introduced with the objective to make the process of acquisition of Indian citizenship more stringent. It is submitted that Statement of Object and Reasons (at page 52 of the Report of the Department related Parliamentary Standing Committee on MHA which is already attached as Annexure-R 11) of the Citizenship (Amendment) Bill, 2003 states that the Bill aims to make acquisition of Indian citizenship by registration and by naturalisation more stringent. It is

submitted that furthermore, the Bill aims to define illegal migrants for the purposes of the Citizenship Act, 1955 and make illegal migrants ineligible to acquire citizenship by birth, by registration or by naturalisation. The Bill was introduced in Rajya Sabha in May, 2003. It was referred to a Department Related Parliamentary Standing Committee on MHA. The Standing Committee recommended the provisions proposed in the Bill. Thereafter, the Bill was passed in Parliament in December, 2003 and came into force on 3<sup>rd</sup> Dec. 2004.

#### **THE CHALLENGE TO THE CUT-OFF DATE**

- 74.** It is submitted that the Petitioners allege that the CAA suffers from arbitrariness as much as it makes 31st December 2014 as cut-off date for inclusion as citizen via proposed Section 6B. It is submitted that the said assertion is erroneous as the Petitioners ignore that the country does not have and has never had an open ended provision for citizenship. It is submitted that the dates mentioned in the Constitution in article 6 or the dates mentioned in Section 6A of the 1955 clearly represent that the Parliament or the constitution makers have never intended the grant of citizenship or the criterion governing the citizenship to be open ended. It is submitted that merely because one date is mentioned in a legislative enactment and not some other date, does not mean that the said date is arbitrary.
- 75.** It is submitted that the Petitioners have placed reliance on the example of Baldev Kumar, ex-Member of the

Provincial Assembly from Pakistan's Khyber Pakhtunkhwa (KP), who fled in September 2019 and had sought asylum in India. The Petitioner allege that those who have entered India after 31.12.2014 are discriminated despite being in similarly placed situation. It is submitted that as mentioned above, there is no estoppel on the legal migration in the country and subject to fulfilment of conditions in Section 6 read with The Third Schedule or section 5 of the 1955 Act, making an application of citizenship. It is submitted that the above-mentioned category of persons would equally be governed by the prevailing position.

**THE CHALLENGE RELATED TO CANCELLATION OF OCI CARDS;**

- 76.** It is respectfully submitted that Overseas Citizen of India (OCI) cardholders are not Indian citizens. It is submitted that OCI card holders are foreign nationals holding passports of their respective country. It is submitted that the OCI card serves only as a lifelong visa which gives the foreigner certain rights as specified by the Government of India by issue of notification under section 7B of the Citizenship Act, 1955. It is further respectfully submitted that section 7D of the Citizenship Act, 1955 empowers the Central Government to cancel the registration as Overseas Citizen of India (OCI) Cardholder in certain circumstances provided therein. It is submitted that prior the enactment of the Citizenship (Amendment) Act, 2019, there was no specific provision in section 7D of the Act empowering the Central Government to cancel the registration as OCI cardholder for violation of the provisions of the Act or any other law for the time being in force. Further, there was no specific provision for

providing a reasonable opportunity of being heard to a person before cancellation of his/ her registration as OCI cardholder under section 7D of the Act. It is submitted that since OCI card is a life-long visa to enter and stay in India without any time limit and also it bestows certain rights on the OCI cardholder, it was considered necessary to have a specific provision in the Act to enable the Central Government to cancel the OCI card in the event of the OCI cardholder violating any of the provisions of the Citizenship Act, 1955 or any other law for the time being in force.

- 77.** It is respectfully submitted that the amendment done in section 7D of the Citizenship Act, 1955 by the Citizenship (Amendment) Act, 2019 was based on the recommendation of the Joint Committee on the Citizenship (Amendment) Bill, 2016. The Joint Committee on the Citizenship (Amendment) Bill, 2016 in their report presented to Lok Sabha on 7<sup>th</sup> January, 2019 and laid in Rajya Sabha on 7<sup>th</sup> January, 2019 had examined the amendment to section 7D of the Citizenship Act, 1955 in detail and had recommended as follows:-

*“3.13 The Committee observe that at present there is no specific provision in Section 7D of the Principal Act to cancel the registration of Overseas Citizen of India (OCI) cardholders who violate Indian law. The Government, therefore, propose to amend the said section 7D so as to empower the Central Government to cancel registration as OCI in case of violation of the provisions of the Act or any other law for the time being in force. In response to the concerns raised by some stake holders including State Government representatives that it would be appropriate to restrict the scope of the proposed Amendment,*

*the Legislative Department have suggested that further suitable Amendments may be carried out in the proposed Amendment of Section 7D so as to clarify that cancellation would be applicable in case of violation of specific offences. The Department of Legal Affairs have concurred with the views of the Legislative Department. The Committee are of the considered opinion that it would be prudent to restrict the scope of the expressions 'violations of the provisions of any other law' lest it leads to misuse of the provisions and harassment of OCI cardholders for very minor or petty violation of law like traffic violations etc. The Committee, therefore, suggest the following Amendment to Section 7D (da):*

*“(da) the Overseas Citizen of India cardholder has violated any of the provisions of this Act or provisions of any other law for the time being in force as may be specified by the Central Government by notification; or”*

*3.14 Further, with a view to giving a reasonable opportunity to the OCI cardholders to put forth their explanations, the Committee suggest the following Amendment after Clause (f) of Section 7D:*

*'Provided that no order under this section shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard.' ”*

- 78.** It is respectfully submitted that in the Statement of Objects and Reasons appended to the Citizenship (Amendment) Bill, 2019, following was provided:-

*“8. Presently, there is no specific provision in section 7D of the Act to cancel the registration of Overseas Citizen of India Cardholder who violates any provisions of the Act or any other law for the time being in force. It is also proposed to amend the said section 7D so as to empower the Central Government to cancel registration as Overseas Citizen of India*

*Cardholder in case of violation of any provisions of the Act or any other law for the time being in force.*

*9. Since there is no specific provision in the Act at present to provide an opportunity of being heard to the Overseas Citizen of India Cardholder before the cancellation of the Overseas Citizen of India Card under section 7D, it is proposed to provide the opportunity of being heard to the Overseas Citizen of India Cardholder before the cancellation of the Overseas Citizen of India Card.”*

- 79.** It is respectfully submitted that the amendments made in section 7D of the Citizenship Act, 1955 by the Citizenship (Amendment) Act, 2019 can in no way be considered as excessive delegation of legislative power. It is submitted that it would not have been practicable to specify the provisions of any other law for time being in force, violation of which may lead to cancellation of the registration as OCI card, in the Act itself. It is submitted that before cancellation of the registration as OCI cardholder, an opportunity will be provided to the OCI cardholder concerned to put forth his/ her explanation. Therefore, this has been left to be specified by subordinate legislation. It is submitted that as per the provisions now inserted in the Citizenship Act, 1955, the Central Government has to specify the provisions of any other law for time being in force in a notification to be published in the Official Gazette. Therefore, all such provisions, the violation of which may lead to cancellation of the registration as OCI card, will be considered carefully by the Central Government in consultation with all stake holders and the same would be notified in the Official Gazette. The challenge with regard to the same

apart from being premature is not based on any constitutional parameters.

**THE CHALLENGE ON THE BASIS OF VIOLATION OF  
CONSTITUTIONAL MORALITY**

- 80.** It is submitted that the Petitioners have submitted that the present legislative measure violate the principle of constitutional morality and is thereby unconstitutional. It is respectfully submitted that the principle of constitutional morality cannot be invoked in isolation and must in fact be located within the fundamental right provisions. It is submitted that in light of the submissions made herein above, it is submitted that the CAA does not violate any fundamental right provisions of the constitution and therefore, the question of violation of constitutional morality does not arise. It is submitted that constitutional morality is not an unruly horse and cannot become an independent basis for challenging the constitutionality of validly enacted legislations.
- 81.** The CAA, 2019 does not confer any arbitrary or unguided powers upon the executive. Under Section 6B(1) the Central Government or a specified authority would grant citizenship only in a manner where certain conditions & restrictions would be satisfied by the applicant. Appropriate rules under Section 6B are being framed to clearly lay down these conditions, restrictions and manner of grant of citizenship
- 82.** I state and submit that with regard to the peculiar situation emerging in the State of Assam & Tripura and

other North Eastern States, there is a separate bunch of petitions which have been filed including one by [WP(C) No. 1481 of 2019, All Assam Students Union vs Union of India] in which a separate and detailed affidavit is being filed by the Central Government.

- 83.** In light of the above, it is submitted that the said petitions are liable to be dismissed by this Hon'ble Court. I further submit that the Union of India reserves the right to file a more detailed affidavit with the leave of this Hon'ble Court, if necessary, at a later stage as the present affidavit has been filed in the limited time available with the Respondent and after perusing the limited petitions which were served to the Union of India.

**DEPONENT**

**VERIFICATION**

Verified at New Delhi on this        day of March, 2020, that the contents of the above affidavit are true and correct to my knowledge and belief derived from the official records. No part of the above affidavit is false and nothing material has been concealed there from.

**DEPONENT**