

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ **OF 2020**

(Petition under Article 32 of the Constitution of India read with Order XXXVIII of the Supreme Court Rules, 2013)

IN THE MATTER OF:

1. ADVOCATES' ASSOCIATION FOR INDIGENOUS RIGHTS OF ASSAMESE

[REDACTED]

2. SAMUDRAGUPTA DUTTA

[REDACTED]

...PETITIONERS

VERSUS

1. UNION OF INDIA,
THROUGH THE SECRETARY, MINISTRY OF HOME AFFAIRS, NORTH BLOCK, CENTRAL SECRETARIAT, NEW DELHI-110001
2. UNION OF INDIA,
THROUGH THE SECRETARY, MINISTRY OF EXTERNAL AFFAIRS, SOUTH BLOCK, CENTRAL SECRETARIAT, NEW DELHI-110001
3. UNION OF INDIA
THROUGH ITS SECRETARY, MINISTRY OF LAW AND JUSTICE SHASTRI BHAWAN, NEW DELHI-110001

...RESPONDENTS

**A WRIT PETITION UNDER ARTICLE 32 OF
THE CONSTITUTION OF INDIA INTER**

**ALIA CHALLENGING THE CITIZENSHIP
(AMENDMENT) ACT, 2019 AND SEEKING
ENFORCEMENT OF THE PETITIONERS'
RIGHTS GUARANTEED UNDER PART III OF
THE CONSTITUTION OF INDIA**

To

The Hon'ble Chief Justice of India and His Companion
Justices of the Hon'ble Supreme Court of India.

The humble Petition of the Petitioners above named.

MOST RESPECTFULLY SHEWETH:

1. The present Petition has been preferred by the Petitioners herein in their representative capacity for a large number of people living in Assam who have suffered and are still suffering the consequences of illegal immigration of Bangladeshi citizens in Assam, seeking enforcement of their fundamental rights as well as constitutional rights guaranteed under Articles 14, 15, 19, 21, 25, 29, 325, 326 and 355 of the Constitution of India. The present Petition inter alia challenges the Citizenship (Amendment) Act, 2019 as a whole, and/or specifically Sections 2, 3, 5 and 6 thereof, as discriminatory, arbitrary, illegal and against the basic structure of the Constitution.

ARRAY OF PARTIES

1. The Petitioner No.1 is the association of Advocates from State of Assam formed to legally protect, promote and

preserve the culture, language, ethnicity and indigenous diversity and the demography of Assam and Petitioner No.2 is a citizen of India,

2. The Petitioners do not have any personal interest or any personal gain or private motive or any other oblique reason in filing this Writ Petitioner in Public Interest. The Petitioner has not been involved in any other civil or criminal or revenue litigation, which could have legal nexus with the issues involved in the present Petition.
3. Respondent No. 1 is the Union of India, through the Ministry of Home Affairs and Respondent No. 2 is the Ministry of External Affairs of the Union of India. The Union of India has enacted the Citizenship (Amendment) Act, 2019, which is currently under challenge in the present Writ Petition. Respondent No. 3 is the Ministry of Law and Justice of the Union of India. All the three Respondents are proper and necessary parties to the present Petition and are likely to be affected by the orders sought in the present Petition.
4. The Petitioners, through the present writ petition, are invoking the civil original writ jurisdiction of this Hon'ble

Court to seek issuance of a writ, order or direction of like nature against the Respondents herein inter alia to quash the Citizenship (Amendment) Act, 2019 as a whole or Section 2, 3, 5 and 6 thereof, being unconstitutional and in violation of several provisions of the Constitution of India.

5. The Petitioners have no other equally efficacious remedy except to approach this Hon'ble Court by way of present Writ Petition. All annexures annexed to the Writ Petition are true copies of their respective originals.
6. That the Petitioners herein have never approached this Hon'ble Court or any other Court seeking a relief similar to the relief sought for in the present writ petition.

BRIEF FACTS OF THE CASE

7. That In 1935, when the Government of India Act was promulgated, Assam was, Under Section 46(1), stated to be a Governor's province. It was in this scenario that the Foreigners Act of 1946 was enacted under which the burden of proving whether a person is or is not a foreigner lies upon such person. At the commencement of the Constitution of India, Article 5 stated that every person who has his domicile in the territory of India and who was either born in the territory of India; or either of whose

parents were born in the territory of India; or who has been ordinarily resident in the territory of India for not less than 5 years immediately preceding such commencement shall be a citizen of India. Exception is made under Article 6 in respect of those who, or whose parents have migrated into India from Pakistan, before 19 July 1948. The base line date for being a citizen of India under the Constitution is 26th January 1950.

8. In recognition of the continuous influx and illegal migration from East Pakistan, Parliament enacted The Immigrants (Expulsion from Assam) Act, 1950 to protect the indigenous inhabitants. The Act empowered the Central Government to order expulsion of certain immigrants. The statement of objects and reasons of this Act says "during the last few months a serious situation had arisen from the immigration of a very large number of East Bengal residents into Assam. Such large migration is disturbing the economy of the province, besides giving rise to a serious law and order problem. The bill seeks to confer necessary powers on the Central Government to deal with the situation."
9. That between 1948 and 1971, there were large scale migrations from East Pakistan to Assam. As is well known, West Pakistan commenced hostilities against East

Pakistan on 25th March, 1971 culminating in the war which dismembered the two parts of Pakistan and in which a new nation, Bangladesh, was born.

10. That Bangladesh and India share a 4,096-kilometer international border, the fifth-longest land border in the world. Out of the said border, 262 kms fall in the State of Assam and 92 kms of the border in the State of Assam is riverine. It is respectfully submitted by the Petitioners that large scale illegal migration from Bangladesh over several decades has been altering the demographic complexion of the State of Assam. It poses a grave threat both to the identity of the Assamese people and to national security. Illegal migration into Assam was the core issue behind the Assam Movement. It was also the prime contributory factor behind the outbreak of insurgency in the State.
11. That given the continuing influx of illegal migrants from Bangladesh into Assam, the All Assam Students Union first submitted a memorandum to the then Prime Minister of India (in 1980) inviting her urgent attention to this issue. As a result of such representations, Parliament enacted the Illegal Migrants (Determination by Tribunal) Act, 1983. This Act was made applicable only to Assam and was expected to be a measure which speeded up the

determination of illegal migrants in the State of Assam with a view to their deportation. Not being satisfied with this parliamentary measure, and in view of large scale agitations in the State of Assam, an accord was signed known as the "Assam Accord" on 15th August, 1985 between the AASU, AAGSP and the Central and the State Governments.

12. The Assam Accord (1985) was a Memorandum of Settlement signed between representatives of the Government of India, State of Assam, the Petitioner No. 1 and other representative organisations in New Delhi on 15.08.1985. The Accord brought an end to the agitation and paved the way for the leaders of the agitation to form a political party and a government in the state of Assam soon thereafter.. The Assam Accord was signed in the presence of Mr. Rajiv Gandhi, the then Prime Minister of India. The Accord received widespread acceptance. The political party formed by the leaders of the agitation, namely, AsomGanaParishad (AGP), contested elections and formed the government in the elections held immediately thereafter. It may be mentioned that although the Assam Accord brought an end to the agitation, some of the vital clauses are yet to be implemented. The Assam Accord reads as under:

“ASSAM ACCORD

15th August, 1985

*(Accord between AASU, AAGSP, Central and State Government on the
Foreigner Problem Issue)*

MEMORANDUM of SETTLEMENT

- 1. Government have all along been most anxious to find a satisfactory solution to the problem of Foreigners in Assam. The All Assam Students' Union (AASU) and the All Assam GanaSangramParishad (AAGSP) have also expressed their Keeness to find such a solution.*
- 2. The AASU through their Memorandum dated 2nd February, 1980 presented to the Late Prime Minister Smt. Indira Gandhi, conveyed their profound sense of apprehensions regarding the continuing influx of foreign nationals into Assam and the fear about adverse affects upon the political, social, cultural and economic life of the State.*
- 3. Being fully alive to the genuine apprehensions of the people of Assam, the then Prime Minister initiated the dialogue with the AASU/AAGSP. Subsequently, talks were held at the Prime Minister's and Home Ministers levels during the period 1980-83. Several rounds of informal talks were held during 1984. Formal discussions were resumed in March, 1985.*
- 4. Keeping all aspects of the problem including constitutional and legal provision, international agreements, national commitments and humanitarian considerations, it has been decided to proceed as follows:*

FOREIGNERS ISSUE:

5.

1. *For purpose of detection and deletion of foreigners, 1-1-1966 shall be the base date and year.*

2. *All persons who came to Assam prior to 1-1-1966, including those amongst them whose names appeared on the electoral rolls used in 1967 elections, shall be regularized.*

3. *Foreigners who came to Assam after 1-1-1966 (inclusive) and upto 24th March, 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1939.*

4. *Names of foreigners so detected will be deleted from the electoral rolls in force. Such persons will be required to register themselves before the Registration Officers of the respective districts in accordance with the provisions of the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939.*

5. *For this purpose, Government of India will undertake suitable strengthening of the governmental machinery.*

6. *On the expiry of the period of ten year following the date of detection, the names of all such persons which have been deleted from the electoral rolls shall be restored.*

7. *All persons who were expelled earlier, but have since re-entered illegally into Assam, shall be expelled.*

8. *Foreigners who came to Assam on or after March 25, 1971 shall continue to be detected, deleted and expelled in accordance with the law. Immediate and practical steps shall be taken to expel such foreigners.*

9. *The Government will give due consideration to certain difficulties express by the AASU/AAGSP regarding the implementation of the Illegal Migrants (Determination by Tribunals) Act, 1983.*

Safeguards and Economic Development:

6. *Constitutional, legislative and administrative safeguards, as may be appropriate, shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people.*

7. *The Government takes this opportunity to renew their commitment for the speedy all round economic development of Assam, so as to improve the standard of living of the people. Special emphasis will be placed on the education and Science & Technology through establishment of national institutions.*

Other Issues:

1. *The Government will arrange for the issue of citizenship certificate in future only by the authorities of the Central Government.*

2. *Specific complaints that may be made by the AASU/AAGSP about irregular issuance of Indian Citizenship Certificates (ICC) will be looked into.*

9.

1. *The international border shall be made secure against future infiltration by erection of physical barriers like walls barbed wire fencing and other obstacles at appropriate places. Patrolling by security forces on land and riverine routes all along the international border shall be adequately intensified. In order to further strengthen the security arrangements, to prevent effectively future infiltration, an adequate number of check posts shall be set up.*

2. *Besides the arrangements mentioned above and keeping in view security considerations, a road all along the international border shall be constructed so as to facilitate patrolling by security forces. Land between border and the road would be kept free of human habitation, wherever possible. Riverine patrolling along the international border would be intensified. All effective measures would be adopted to prevent infiltrators crossing or attempting to cross the international border.*

10. *It will be ensured that relevant laws for prevention of encroachment of government lands and lands in tribal belts and blocks are strictly enforced and unauthorized encroachers evicted as laid down under such laws.*

11. *It will be ensured that the law restricting acquisition of immovable property by foreigners in Assam is strictly enforced.*

12. *It will be ensured that Birth and Death Registers are duly maintained.*

Restoration of Normalcy:

13. *The All Assam Students Unions (AASU) and the All Assam GanaSangramParishad (AAGSP) call off the agitation, assure full co-operation and dedicate themselves towards the development of the Country.*

14. *The Central and the State Government have agreed to:*

1. *Review with sympathy and withdraw cases of disciplinary action taken against employees in the context of the agitation and to ensure that there is no victimization;*

2. *Frame a scheme for ex-gratia payment to next of kin of those who were killed in the course in the agitation.*

3. *Give sympathetic consideration to proposal for relaxation of upper age limit for employment in public service in Assam, having regard to exceptional situation that prevailed in holding academic and competitive examinations etc. in the context of agitation in Assam:*

4. *Undertake review of detention cases, if any, as well as cases against persons charged with criminal*

offences in connection with the agitation, except those charged with commission of heinous offences.

5. Consider withdrawal of the prohibitory orders/notifications in force, if any:

15. The Ministry of Home Affairs will be the nodal Ministry for the implementation of the above.”

13. It was in pursuance of this accord that Section 6A was inserted in the Citizenship Act in 1985. The Statement of Objects and Reasons of the Act specifically states that it is a legislation required to give effect to the Assam Accord. It was inserted into the Citizenship Act, 1955, via Act 65 of 1985 with effect from 07.12.1985.

Section 6A provides that, notwithstanding anything contained in any other law for the time being in force,

- a. all persons of Indian origin who came into Assam from the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985 (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the people held in 1967) before 01.01.1966, and who have been ordinarily resident

in Assam since the date of their entry into Assam, shall be deemed to be citizens of India;

- b. all persons of Indian origin who came to Assam from the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985, on or after 01.01.1966 but before 25.03.1971, and have been ordinarily resident in Assam and have been detected to be a foreigner, shall register with the Registering Authority and their names, if included in the electoral roll for any Assembly/Parliamentary Constituency in force on the date of such detection, shall be deleted therefrom for a period of 10 years.
- c. all persons of Indian origin who came to Assam from the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985, on or after 01.01.1966 but before 25.03.1971, from the date of detection as a foreigner, shall have the same rights and obligations as a citizen of India, except the right to have their name included in electoral rolls for any Assembly or Parliamentary constituency. Ten years from the date of detection as a foreigner, such person would be deemed to be a citizen of India.

14. That as part of the Assam Accord, a huge number of illegal migrants were made deemed citizens of India. It is interesting to note that Parliament has not enacted any law pertaining to refugees from other countries. Refugee status can be granted and has been granted in India through executive orders passed by the Central Government. In any case, Section 6A did not merely rest content with granting refugee status to those who were illegal migrants from East Pakistan but went on to grant them the benefit of citizenship of India so that all persons who had migrated before 1966 and all persons who migrated before 25th March, 1971 respectively were to become citizens of India either immediately or as is mentioned by the Act after a period of 10 years once there has been a determination that they have in fact settled in India between 1966 and 1971.
15. The Governor of Assam in his report dated 8th November, 1998 sent to the President of India has clearly said that unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State. It is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of Assam but

has more dangerous dimensions of greatly undermining our national security. The report also says that this can lead to the severing of the entire landmass of the north-east with all its resources from the rest of the country which will have disastrous strategic and economic consequences. The report is by a person who has held the high and responsible position of Deputy Chief of the Army Staff and is very well equipped to recognize the potential danger or threat to the security of the nation by the unabated influx and continued presence of Bangladeshi nationals in India. Bangladesh is one of the world's most populous countries having very few industries. The economic prospects of the people in that country being extremely grim, they are too keen to cross over the border and occupy the land wherever it is possible to do so. The report of the Governor, the affidavits and other material on record show that millions of Bangladeshi nationals have illegally crossed the international border and have occupied vast tracts of land like "Char land" barren or cultivable land, forest area and have taken possession of the same in the State of Assam. Their willingness to work at low wages has deprived Indian citizens and specially people in Assam of employment opportunities. This, as stated in the Governor's report, has led to insurgency in Assam. Insurgency is

undoubtedly a serious form of internal disturbance which causes grave threat to the life of people, creates panic situation and also hampers the growth and economic prosperity of the State of Assam though it possesses vast natural resources. This being the situation there can be no manner of doubt that the State of Assam is facing "external aggression and internal disturbance" on account of large scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution. Having regard to this constitutional mandate, the question arises whether the Union of India has taken any measures for that purpose. He said:

The dangerous consequences of large scale illegal migration from Bangladesh, both for the people of Assam and more for the Nation as a whole, need to be empathetically stressed. No misconceived and mistaken notions of secularism should be allowed to come in the way of doing so.

As a result of population movement from Bangladesh, the spectre looms large of the indigenous people of Assam being reduced to a

minority in their home state. Their cultural survival will be in jeopardy, their political control will be weakened and their employment opportunities will be undermined.

The silent and invidious demographic invasion of Assam may result in the loss of the geo-strategically vital districts of lower Assam. The influx of illegal migrants is turning these districts into a Muslim majority region. It will then only be a matter of time when a demand for their merger with Bangladesh may be made. The rapid growth of international Islamic fundamentalism may provide the driving force for this demand. In this context, it is pertinent that Bangladesh has long discarded secularism and has chosen to become an Islamic State. Loss of lower Assam will sever the entire land mass of the North East, from the rest of India and the rich natural resources of that region will be lost to the Nation.

16. That three judge bench of this Hon'ble Court struck down the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 as ultra vires in its judgment reported as Sarbananda Sonowal v. Union of India, (2005)

5 SCC 665 (hereinafter "Sonowal (I)"). It was inter alia held by this Hon'ble Court (at para 63) that illegal migration into the State of Assam constituted "external aggression" within the meaning of Article 355 of the Constitution of India. This Court referred to the Assam Accord and to the huge influx of illegal migrants into the State of Assam and came to the conclusion that the 1983 Act and the rules made thereunder operated in the reverse direction i.e. instead of seeing that illegal migrants are deported, it did the opposite by placing the burden of proof on the State to prove that a person happens to be an illegal migrant. This Court went on to hold that Article 355 of the Constitution had been violated, in as much as the Union had failed to protect the State of Assam against the external aggression and internal disturbance caused by the huge influx of illegal migrants from Bangladesh to Assam and went on to hold the 1983 Act to be violative of Article 14 as well.

17. That in the aforesaid case the Union of India filed a counter-affidavit on 18-7-2000, which has been sworn by Shri Jatinder Bir Singh, Director, Ministry of Home Affairs. In para 7 of this affidavit, it was stated that a proposal to repeal the IMDT Act is under consideration of the Government of India. A copy of the reply given by Shri

ID. Swami, Minister of State in the Ministry of Home Affairs in the Rajya Sabha on 8-3-2000 has been filed as Annexure R-2 to the counter-affidavit, wherein the Minister had said that in the State of Assam Foreigners Tribunals under the Foreigners Act, 1946 are functioning for detection of illegal migrants, who had come to the State of Assam after 1-1-1966 and up to 24-3-1971 and the Illegal Migrants Determination Tribunals under the IMDT Act have been constituted for detection and deportation of illegal migrants, who had entered into India on or after 25-3-1971. The Hon'ble Minister had further stated that the Government is of the view that application of the IMDT Act to the State of Assam alone is discriminatory and a proposal to repeal the said Act is under consideration of the Government. A true copy of the latest status report filed by the Government in Writ Petition No. 125 of 1998, which has been filed seeking deportation of all Bangladeshi nationals from India, has been filed as Annexure R-1 to the counter-affidavit and paras 3 to 7 of the said status report are being reproduced below:

Continuing influx of Bangladeshi nationals into India has been on account of a variety of reasons including religious and economic. There is a

combination of factors on both sides which are responsible for continuing influx of illegal immigration from Bangladesh. The important 'Push Factors' on the Bangladesh side include:

- (a) steep and continuous increase in population;
- (b) sharp deterioration in land-man ratio;
- (c) low rates of economic growth particularly poor performance in agriculture;

The 'Pull Factors' on the Indian side include:

- (a) ethnic proximity and kinship enabling easy shelter to the immigrants;
- (b) porous and easily negotiable border with Bangladesh;
- (c) better economic opportunities;
- (d) interested religious and political elements encouraging immigration;

18. In SarbanandaSonowal v. Union of India it was held by this Hon'ble Court that:

the influx of Bangladeshi nationals who have illegally migrated into Assam pose a threat to the integrity and security of north-eastern region. Their

presence has changed the demographic character of that region and the local people of Assam have been reduced to a status of minority in certain districts. In such circumstances, if the Parliament had enacted a legislation exclusively for the State of Assam which was more stringent than the Foreigners Act, which is applicable to rest of India, and also in the State of Assam for identification of such persons who migrated from the territory of present Bangladesh between 1 st January, 1966 to 24th March, 1971, such a legislation would have passed the test of Article 14 as the differentiation so made would have had rational nexus with the avowed policy and objective of the Act. But the mere making of a geographical classification cannot be sustained where the Act instead of achieving the object of the legislation defeats the very purpose for which the legislation has been made. As discussed earlier, the provisions of the Foreigners Act are far more effective in identification and deportation of foreigners who have illegally crossed the international border and have entered India without any authority of law and have no authority to continue to remain in India. For satisfying the test of Article 14, the geographical factor alone in

making a classification is not enough but there must be a nexus with the objects sought to be achieved. If geographical consideration becomes the sole criteria completely overlooking the other aspect of "rational nexus with the policy and object of the Act" it would be open to the legislature to apply enactments made by it to any sub-division or district within the State and leaving others at its sweet will. This is not the underlying spirit or the legal principle on which Article 14 is founded. Since the classification made whereby IMDT Act is made applicable only to the State of Assam has no rational nexus with the policy and object of the Act, it is clearly violative of Article 14 of the Constitution and is liable to be struck down on this ground also.

19. That the petitioner submits that it is difficult to make a realistic estimate of the number of illegal immigrants from Bangladesh because they enter surreptitiously and are able to mingle easily with the local population due to ethnic and linguistic similarities. The demographic composition in the districts bordering Bangladesh has altered with the illegal immigration from Bangladesh. The districts of Assam and West Bengal bordering Bangladesh have recorded growth of population higher than the

national average. The States of Meghalaya, Mizoram and Tripura have also recorded high rates of population growth. Illegal immigrants from Bangladesh have also been using West Bengal as a corridor to migrate to other parts of the country.

20. The large-scale influx of illegal Bangladesh immigrants has led to large tracts of sensitive international borders being occupied by foreigners. This has serious implications for internal security. a result of population movement from Bangladesh, the specter looms large of the indigenous people of Assam being reduced to a minority in their home State. Their cultural survival will be in jeopardy, their political control will be a weakened and their employment opportunities will be undermined. There was a large scale influx of persons from the then East Pakistan into India before the commencement of December 1971 Indo-Pak war.
21. Further in response to un-starred question no 332 pertaining to deportation of illegal Bangladeshi migrants from India, the Minister of State, Home Affairs submitted a statement to the Parliament indicating therein that the estimated number of illegal Bangladeshi immigrants in India as on 31/12/2001 was 1, 20, 53,950. Out of the

total figure of 1.20 crores, 50 lacs illegal Bangladeshi immigrants were in Assam alone.

22. On 3rd November, 1971, one month before the actual commencement of the war, Dr. Nagendra Singh, India's representative in the Sixth Committee of the General Assembly on the Definition of Aggression, made a statement, wherein he said :- ".....The first consideration, in the view of the Indian Delegation, is that aggression must be comprehensively defined. Though precision may be the first virtue of a good definition, we would not like to sacrifice the requirement of a comprehensive definition of aggression at any cost. There are many reasons for holding this view. Aggression can be of several kinds such as direct or indirect, armed in nature or even without the use of any arms whatsoever. There can be even direct aggression without arms..... We would accordingly support the categorical view expressed by the distinguished delegate of Burma, the U.K. and others that a definition of aggression excluding indirect methods would be incomplete and therefore dangerous., there could be a unique type of bloodless aggression from a vast and incessant flow of millions of human beings forced to flee

into another State. If this invasion of unarmed men in totally unmanageable proportion were to not only impair the economic and political well-being of the receiving victim State but to threaten its very existence, I am afraid, Mr. Chairman, it would have to be categorized as aggression. In such a case, there may not be use of armed force across the frontier since the use of force may be totally confined within one's territorial boundary, but if this results in inundating the neighbouring State by millions of fleeing citizens of the offending State, there could be an aggression of a worst order..... What I wish to convey, Mr. Chairman, is the complexity of the problem which does not permit of a fourline definition of aggression much less an ad-interim declaration on it."

23. This Hon'ble Court in its judgment dated 17.12.2014 in Assam SanmilitaMahasangha vs. Union of India, (2015) 3 SCC 1has observed that thirteen questions, enumerated therein, need to be answered by a minimum of 5 Judges under Article 145(3) of the Constitution of India, as most of them are substantial questions as to the interpretation of the Constitution An enumeration of these questions is as follows:

- (i) Whether Articles 10 and 11 of the Constitution of India permit the enactment of Section 6A of the Citizenship Act in as much as Section 6A, in prescribing a cut-off date different from the cut-off date prescribed in Article 6, can do so without a "variation" of Article 6 itself; regard, in particular, being had to the phraseology of Article 4(2) read with Article 368(1)?
- (ii) Whether Section 6A violates Articles 325 and 326 of the Constitution of India in that it has diluted the political rights of the citizens of the State of Assam;
- (iii) What is the scope of the fundamental right contained in Article 29(1)? Is the fundamental right absolute in its terms? In particular, what is the meaning of the expression "culture" and the expression "conserve"? Whether Section 6A violates Article 29(1)?
- (iv) Whether Section 6A violates Article 355? What is the true interpretation of Article 355 of the Constitution? Would an influx of illegal migrants into a State of India constitute "external aggression" and/or "internal disturbance"? Does the expression "State"

occurring in this Article refer only to a territorial region or does it also include the people living in the State, which would include their culture and identity?

- (v) Whether Section 6A violates Article 14 in that, it singles out Assam from other border States (which comprise a distinct class) and discriminates against it. Also whether there is no rational basis for having a separate cut-off date for regularizing illegal migrants who enter Assam as opposed to the rest of the country; and
- (vi) Whether Section 6A violates Article 21 in that the lives and personal liberty of the citizens of Assam have been affected adversely by the massive influx of illegal migrants from Bangladesh.
- (vii) Whether delay is a factor that can be taken into account in moulding relief under a petition filed Under Article 32 of the Constitution?
- (viii) Whether, after a large number of migrants from East Pakistan have enjoyed rights as Citizens of India for over 40 years, any relief

can be given in the petitions filed in the present cases?

- (ix) Whether Section 6A violates the basic premise of the Constitution and the Citizenship Act in that it permits Citizens who have allegedly not lost their Citizenship of East Pakistan to become deemed Citizens of India, thereby conferring dual Citizenship to such persons?
- (x) Whether Section 6A violates the fundamental basis of Section 5(1) proviso and Section 5(2) of the Citizenship Act (as it stood in 1985) in that it permits a class of migrants to become deemed Citizens of India without any reciprocity from Bangladesh and without taking the oath of allegiance to the Indian Constitution?
- (xi) Whether the Immigrants (Expulsion from Assam) Act, 1950 being a special enactment qua immigrants into Assam, alone can apply to migrants from East Pakistan/Bangladesh to the exclusion of the general Foreigners Act and the Foreigners (Tribunals) Order, 1964 made thereunder?

- (xi) Whether Section 6A violates the Rule of Law in that it gives way to political expediency and not to Government according to law?
- (xii) Whether Section 6A violates fundamental rights in that no mechanism is provided to determine which persons are ordinarily resident in Assam since the dates of their entry into Assam, thus granting deemed citizenship to such persons arbitrarily?

24. This Hon'ble Court in the aforesaid case of Assam SanmilitaMahasangha vs. Union Further, issued directions to the Union of India and the State of Assam to detect foreigners belonging to the stream of 1.1.1966 to 24.3.1971 and to detect and deport all illegal migrants who have come to the State of Assam after 25.3.1971. This Hon'ble Court also directed the Union of India to enter into necessary discussions with the Government of Bangladesh to streamline the procedure of deportation. The Hon'ble Chief Justice of the Gauhati High Court was requested to monitor the functioning of the Foreigners Tribunals by constituting a Special Bench. Specific directions to ensure effective border patrolling such as completion of fencing, installation of flood lights, laying of motorable roads along the border were issued to prevent

illegal access to the country from Bangladesh. The actions taken by Union of India and the State of Assam in this regard have been monitored by a two-Judge Bench of this Hon'ble Court from time to time.

25. On 07.09.2015, the Union of India promulgated Passport (Entry into India) Amendment Rules, 2015 (hereinafter "2015 Rules") under Section 3 of the Passport (Entry into India) Act, 1920 exempting Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution in Pakistan and Bangladesh and who have entered India on or before 31.12.2014 without valid documents (or who have overstayed), from the application of Rule 3 of the Passport (Entry into India) Rules, 1950. Rule 3 of the Passport (Entry into India) Rules, 1950 provides that no person, except those specified in Rule 4, may enter India without a "valid passport" (a valid passport is one which conforms to the requirements under Rule 5) and that no person may enter India via water, land or air except through such port or other place as may be specified in this behalf by the Central Government.
26. On the very same day, being 07.09.2015, the Union of India also promulgated the Foreigners (Amendment)

Order, 2015 (hereinafter "2015 Order") in purported exercise of powers under Section 3 of the Foreigners Act, 1946. The Foreigners (Amendment) Order, 2015 grants Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution in Pakistan and Bangladesh and who have entered India on or before 31.12.2014 without valid documents or who have overstayed, exemption from the application of the provisions of the Foreigners Act, 1946 and the orders made there under.

27. It is submitted that the effect of the 2015 Rule and the 2015 Order is thus that a class of foreigners, who have entered India without a valid passport or other legal authority or who stay in India beyond the period of authorisation, can continue to remain in India based on religious affiliation, due to alleged religious persecution or alleged fear of religious persecution. A Writ Petition, being W.P. (C) No. 68 of 2016 titled as *Pranab Kumar Mazumdar & Ors. v. Union of India & Anr.* has been filed challenging the 2015 Rule and 2015 Order and notice had been issued thereon on 10.03.2016
28. That on 23.12.2016 the Respondent No. 1 issued another notification/Order, which stated as follows:

“S.O. 4132(E).—In exercise of the powers conferred by section 16 of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby directs that powers exercisable by it, for registration as a citizen of India under section 5 or for grant of certificate of naturalisation under section 6 of the Citizenship Act, 1955, in respect of any person belonging to minority community in Afghanistan, Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians (herein this Order referred to as “the applicant”), residing in the States of Chhattisgarh, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan and Uttar Pradesh and Union territory of Delhi, shall also be exercisable by—

- (a) the Collector, within whose jurisdiction the applicant is ordinarily resident, in relation to the districts of—
 - (i) Raipur in the State of Chhattisgarh;
 - (ii) Ahmedabad, Gandhinagar and Kutch in the State of Gujarat;
 - (iii) Bhopal and Indore in the State of Madhya Pradesh;

- (iv) Nagpur, Mumbai, Pune and Thane in the State of Maharashtra;
 - (v) Jodhpur, Jaisalmer and Jaipur in the State of Rajasthan;
 - (vi) Lucknow in the State of Uttar Pradesh; and
 - (vii) West Delhi and South Delhi in the Union territory of Delhi; and
- (b) the Secretary of the Department of Home of the State or the Union territory, as the case may be, within whose jurisdiction the applicant is ordinarily resident, in relation to districts not covered under clause (a), in accordance with the provisions of the Citizenship Rules, 2009 (hereinafter referred to as the said rules), subject to the following conditions, namely:—
- (A) the application for registration as citizen of India or grant of certificate of naturalisation as citizen of India under the said rules is made by the applicant online;
 - (B) the verification of the application is done simultaneously by the Collector or the Secretary, as the case may be, at the district

level and the State level and the application and the reports thereon shall be made accessible simultaneously to the Central Government;

- (C) the Collector or the Secretary, as the case may be, makes such inquiry as he considers necessary for ascertaining the suitability of the applicant and for that purpose forward the application online to such agencies for verification and comments as may be required under the instructions issued by the Central Government in this regard;
- (D) the comments of the agencies referred to in clause (C) are uploaded online by such agencies and accessible to the Collector or the Secretary, as the case may be, and the Central Government;
- (E) the Collector or the Secretary, as the case may be, on being satisfied with the suitability of the applicant, grant him the citizenship of India by registration or naturalisation and issue a certificate of registration or naturalisation, as the case may be, signed by the Collector or the

Secretary, as the case may be, in the Form as prescribed in the said rules; and

- (F) the Collector and the Secretary shall maintain a register, in accordance with the said rules, containing the details of persons so registered or naturalised as a citizen of India and furnish a copy thereof to the Central Government within seven days of such registration or naturalisation..."

29. A Writ Petition, being W.P. (C) No. 20 of 2019 titled as *NagarikatwaAainSongsudhanBirodhi Mancha (Forum Against Citizenship Act Amendment Bill) vs. Union Of India* has been filed challenging inter alia the aforesaid notification/ Order dated 23.12.2016 and notice had been issued thereon on 27.02.2019.
30. That as per the directions of this Hon'ble Court, a National Register of Citizens (NRC) was being prepared by a team of NRC officials, being led by the State Coordinator, and the same was being continuously monitored by this Hon'ble Court. On December 31, 2018, a draft list was published by the NRC authorities which contained names of over 40 lakhs people most of whom were found to have migrated into Assam illegally and to be excluded from the final NRC. As per the Rules, these people were provided

the opportunity to present their claims for being included in the final draft and were also heard thereafter. In June 2019, according to a statement issued by the state coordinator of NRC, 1,02,462 persons were further declared ineligible during the process of verification carried out by the Local Registrars of Citizens Registration (LRCRs). The final list of persons which are excluded from the NRC has been published on August 31, 2019 wherein out of a total of 3,30,27,661 applicants, only 19,06, 657 people were excluded.

31. That the Union of India has enacted the Citizenship (Amendment) Act, 2019, on 12.12.2019, which inter alia seeks to make illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship. The said Act also makes amendments to provisions related to Overseas Citizen of India (OCI) cardholders, including a provision to allow cancellation of OCI registration if the person has violated any law notified by the central government. For the sake of convenience, the provisions of the Act are reproduced below:

"1. (1) This Act may be called the Citizenship (Amendment) Act, 2019.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Citizenship Act, 1955 (hereinafter referred to as the principal Act), in section 2, in sub-section (1), in clause (b), the following proviso shall be inserted, namely:—

"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;".

3. After section 6A of the principal Act, the following section shall be inserted, namely:—

"6B. (1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf,

grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.

(2) Subject to fulfilment of the conditions specified in section 5 or the qualifications for naturalisation under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalisation under sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India.

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him: Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section: Provided further that the person who makes the application for citizenship under this

section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application.

(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."

4. In section 7D of the principal Act,— (i) after clause (d), the following clause shall be inserted, namely:—

"(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".

(ii) after clause (f), the following proviso shall be inserted, namely:— "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."

5. In section 18 of the principal Act, in sub-section (2), after clause (ee), the following clause shall be inserted, namely:—

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

6. In the Third Schedule to the principal Act, in clause (d), the following proviso shall be inserted, namely:—

"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"."

It is submitted that Section 2 of the impugned Act amends Section 2(1)(b) of the 1955 Act to provide that Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan will not be treated as illegal migrants. In order to get this benefit, they must have also been exempted from the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920 by the central government.

The unamended 1955 Act allowed a person to apply for citizenship by naturalisation, if the person meets certain qualifications. One of the qualifications is that the person must have resided in India or been in central government service for the last 12 months and at least 11 years of the preceding 14 years. However, section 3 of the impugned Act has further inserted "Section 6B" in the 1955 Act, which inter alia created an exception for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, with regard to this qualification. For these groups of persons, the 11 years' requirement will be reduced to about five years. It further provides that on acquiring citizenship: (i) such persons shall be deemed to be citizens of India from the date of their entry into India, and (ii) all legal proceedings against them in respect of their illegal migration or citizenship will be closed.

Further, sections 5 and 6 of the impugned Act also makes consequent amendments to Sections 18 and the Third Schedule of the 1955 Act respectively. Further by Notification dated 10.1.2020 the Citizenship (Amendment) Act, 2019 was brought into force w.e.f 10.1.2020

True copy of the Citizenship Amendment Act, 2019 issued by Ministry of Law and Justice on 12th December, 2019 and Notification dated 10.1.2020 issued by Ministry of Law and Justice is filed herewith and marked as **ANNEXURE P-1** (Pg. to_) and **ANNEXURE P-2** (Pg.____to____)..

In the context of the relevant constitutional provisions and aforesaid statutory scheme, it is respectfully submitted that the impugned Act (especially Sections 2, 3, 5 and 6 thereof) is unreasonable, arbitrary, illegal and thus, violative of Article 14, 15, 19, 21, 29, 325, 326 and 355 of the Constitution of India. The impugned Act has been passed under extraneous political considerations and is in derogation of the rights of Indian citizens living in the state of Assam. The impugned Act is not in public interest and welfare. The result of the impugned Act will be that a large number of non-Indians, who have surreptitiously entered Assam after 25.03.1971, without possession of valid passport, travel documents or other lawful authority to do so, will be able to take citizenship and reside therein. The impugned Act seeks to do away with any sort of regulation for Hindus, Sikhs, Buddhists, Jains, Parsis and Christian foreigners entering India illegally from Bangladesh, Afghanistan and Pakistan.

32. Therefore, in light of the abovementioned facts, the Petitioners herein are constrained to file the present Writ Petition challenging the Impugned Act on the following amongst other grounds, which are being taken without prejudice to each other and the Petitioners seek liberty to urge further grounds at the time of hearing, if so advised.

VIOLATION OF ARTICLE 21 OF THE PEOPLE OF ASSAM GUARANTEED UNDER THE CONSTITUTION OF INDIA:

(A) Because the Citizenship Amendment Act, 2019 violates Article 21 of the people of Assam in that the lives and liberty of the Citizens of Assam will be affected adversely by the massive influx of illegal immigrant as citizens of India. It has been again and again observed by this Hon'ble Court that influx of illegal immigrant had massively affected the socio economic condition of the State of Assam and the same has serious implications for internal security. As a result of this grant of citizenship the indigenous people of Assam will be reduced to a minority in their home State. Their cultural survival will be in jeopardy, their political control will be a weakened and their employment opportunities will be undermined.

- (B) Because the early approach' to Article 21 which guarantees right to life and personal liberty was circumscribed by literal interpretation in A.K. Gopalan AIR 1950 SC 27. But in course of time, the scope of this application of the article against arbitrary encroachment by the executives has been expanded by liberal interpretation of the components of the article in tune with the relevant international understanding. Thus protection against arbitrary privation, of "life" no longer means mere protection of death, or physical injury, but also an invasion of the right to "live" with human dignity and would include all these aspects of life which would go to make a man's life meaningful. (Francis Coralie Mullin v. UT of Delhi (1981)1 SCC 608, P. Rathinam v. Union of India (1994)3SCC394, at SCC p.. 409, para 27,' C. MasilamaniMudaliar V. Idol of Sri SwaminathaswamiSwaminathaswamiThirukoil, (1996) 8 SCC 525, at page 536)
- (C) Because in Writ Assam SanmilitaMahasangha& Ors. vs Union of India & Ors (2015) 3 SCC 1, this Honourable Court observed that illegal migration has resulted in "periodic clashes between the citizens of India and migrants', leading to loss of life

and property, and thereby violating the constitutional rights of the Assamese people. It reaffirmed that illegal migration had eroded the cultural way of life of the Assamese people as they were being swamped by the illegal migrants who had no right to be in India.

- (D) Because considering the aforesaid aspect the constitutional validity of Section 6A of the Citizenship Act on the ground of it violating Article 21 of the Citizens of Assam is already referred to Constitution Bench of this Hon'ble Court. Under such a situation when the influx of illegal immigrants between 1951 to 1971 itself is pending consideration, the CAA,2019 could not have been introduced.
- (E) Because the Writ Petitioners state that State of Assam has repeatedly witnessed ethnic clashes and violence leading to loss of human lives and destruction of properties. The State is unable to ensure the safety and security of its inhabitants thereby resulting in a direct infringement of Article 21 of the Constitution of India. The ethnic riots and armed movements witnessed in Assam are well documented. It is submitted that the continuous and

frequent ethnic clashes and conflicts is hugely disruptive of community development and is also in gross violation of the right to life and dignity. Ethnic clashes arises out of existential threat perceptions, fear of being reduced to minority in one's own homeland and/or giving up territories to foreigners, imposition of foreign or alien culture. Ever since the dawn- of human civilization every group and community in the world has fiercely defended their homeland from alien attack and illegal occupation. Right to protect their own homeland, territory, culture, honor and dignity from illegal alien occupation is an inviolable right that exists in every group and community. The petitioners submit that the unabated influx of illegal immigrants into their land violates this basic right of the Assamese Community and has put at jeopardy the very existence of their culture, religion and national identity.

- (F) Because the State is the custodian of the natural resources which is to be used for the benefit of the people. In a country of over billion population with scarce natural resources, depleting forest cover and agricultural land, increase in pollution, limited

economic opportunities and almost half of the population living in abject poverty, the State cannot arbitrarily increase the population of the state without an effective policy for settlement, economic and political rights of the migrant population. Any action by the State without laying down any measures for protection of the said cultural and economic rights of the Citizens of India living in the state of Assam which are guaranteed as fundamental right under 21 of the Constitution of India would be both constitutionally as well as judicially susceptible.

- (G) Because the CAA in the guise of protecting the autonomy of indigenous persons across North Eastern States is essentially destructive of the right of the indigenous people of Assam to fully enjoy their right to life, liberty and dignity under Article 21 of the Constitution.

VIOLATION OF ARTICLE 29 (1) OF THE PEOPLE OF ASSAM GUARANTEED UNDER THE CONSTITUTION OF INDIA:

- (H) Because this Hon'ble Court in Sarbananda Sonowal's case observed that "Article 29(1) confers a Fundamental Right on all sections of the citizens

residing in the territory of India or any part thereof having a distinct language, script or culture of its own to conserve the same and any invasion of this ' Right would be ultra-vires. In this regard it is submitted that the application of section 3 of the CAA in allowing citizenship to large numbers of illegal migrants, to non-Tribal areas of Assam without adopting international standards for the intake of refugees and leaving the burden of proof of religious/ persecution largely on the state, seriously endangers its local people's right to conserve its own culture language and culture. The joint parliamentary committee and numerous representatives of the North East raised concerns that once persons who are illegal immigrants claimed protection under religious persecution in the past or fear of persecution, it would be almost impossible for the state to gather evidence to prove such a case. This essentially means that in the guise of persecution and no manageable standards being laid out, Section 2 and Section 3 of the CAA will grant citizenship without any safeguards against illegal immigration thereby simply abrogating Article 29 (1) of the Constitution qua the indigenous people of Assam.

(I) Because Article 29 (1) of the Constitution confers a fundamental right on all sections of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own to conserve the same and any invasion of this right would be ultra-vires. In this regard the petitioner respectfully submits that enforcement of the impugned Act will no doubt facilitate to a large extent the illegal migrants from Bangladesh to continue to reside in Assam. This has resulted in rapid changes in the demographic patterns in the state of Assam and it is emerging as a serious threat to the very identity of-the Assamese people. It is submitted that indigenous communities are losing control of their land while illegal Bangladeshi immigrants have embarked on a large-scale land grab policy. This has also given rise to ethnic problems as was recently faced by the Bodos. The problem of immigration is also leading to change in demography in the state, and a serious threat to the unity, integrity and security of India. The presence of millions of illegal immigrants in Assam has adversely affected the language, script and culture of the local indigenous people. As a matter of fact there are several districts in Assam where the local

indigenous people have already been reduced to a minority.

- (J) Because the right conferred upon the citizens residing in the territory of India or any part thereof to conserve their language, script or culture is made by the Constitution absolute,. Therefore any legislation that directly or indirectly affects this very valuable fundamental "right has to be necessarily struck down as ultra-vires.
- (K) Because the Assamese Culture has developed due to cultural assimilation of different ethno-cultural groups under various politico-economic systems in different periods of history. The term "Assamese" is often used to refer to those who are citizens of Assam. The Constitution of India has defined who shall be a citizen of India and therefore the reference point for determining the Assamese culture for recognition as a constitutional right has to be the date of commencement of the Constitution of India.
- (L) Because the Assamese language is the principal language of the state and is regarded as the lingua franca. The population of Assam largely comprised of numerous Assam Tribes with their varied

customs, languages, tradition, culture, dresses, and exotic way of life. Some of the prominent tribes of Assam are Bodo, Jingpho, Santha, Dimasas, people, Karbi, Kharnti, Khamyang, Mishings, Nishis, Phakes and Rabhas. The tribal communities of Assam have their individual languages, cultural traits, rites, rituals, festivals, folk music, dance contributing to the richness of the socio cultural fabric of Assam. Assam, being the home to many ethnic groups and different cultures, is rich in folk music. Painting is an ancient tradition of Assam.' Silk Weaving and Crafts is part of rich Assamese Culture. The Institution of Sattras is a unique feature of Vaishnavism in Assam, founded by Sankardeva (1449 to 1568), the father of Assamese culture. Institutions like sattras(monasteries) and village Namghars (prayer houses), had profound influence in the evolution of social makeup of Assam's society. The artistic oeuvres lead to engendering of new forms of literature, music (Borgeets or songs celestials), theatre (AnkiyaNaat) and dance (Sattriya dance). There are several important traditional festivals in Assam. Bihu is the most celebrated festival in Assam. The ethnic tribes in Assam have their own festivals.

(M) Because the immigration from Bangladesh is a real threat to the language, cultural and ethnic identity of the Assam. As stated above, these apprehensions are real given the/ fact that /he demography of the state is fast changing. The culture of Bengali migrants, (whether an individual is a Hindu or Muslim) which includes their language, respect for rule of law, their general acceptance of family planning schemes, perception towards nature, traditional social and cultural institutions of Assam and the liberal values etc is different to that of the Assamese culture and will definitely reduce the identity of Assamese in their own homeland.

VIOLATION OF ARTICLE 14 OF THE PEOPLE OF ASSAM

GUARANTEED UNDER THE CONSTITUTION OF INDIA:

(N) Because the explicit objective of section 6 B (4) of the Citizenship Act 1955 inserted through Section 3 of the CAA is to constitutionally protect indigenous people in North Eastern states. However, the classification of Assam into tribal and non-tribal areas for the purpose of application of the impugned Act bears no rational nexus to its objective of protecting indigenous people who are dispersed

across the entire state including its non-tribal areas. Section 3(4) therefore violates Article 14.

- (O) Because in Sarbananda Sonowal this Hon'ble Court further held as under: "For satisfying the test of Article 14 the geographical factor known in making a classification is not enough but there must be a nexus of the object sought to be achieved, If geographical consideration becomes the sole criterion completely overlooking the other aspect of "rational nexus with the policy and objects of the Act" it would be open to the legislature to apply enactments made by it to any subdivision or districts within the state and leaving others at its sweet will. This is not the underlying spirit of the legal principle on which Article 14 is founded."

In the above context it is submitted that Section 6B (4) also excludes the application of Section 6B of the Citizenship Act to areas covered under the Inner Line notified under the Bengal Eastern Frontier regulation 1873. This effectively excludes the entire states of Mizoram, Nagaland, Arunachal Pradesh and Manipur from having to grant citizenship to any persons from Bangladesh, Afghanistan or Pakistan under the CAA, to protect

their indigenous cultures. Given that Section 6B(4) of the Citizenship Act admittedly seeks to protect the constitutional guarantees of indigenous persons in the North Eastern states, not exempting the entire states of Assam which admittedly face the greatest influx of immigrants, is a wholly unreasonable classification vis a vis the other North Eastern states entirely excluded. This classification between wholly excluded states and partially excluded states bears no rational nexus to the object of protecting indigenous people sought. It is therefore a classification between states solely based on geography that has no nexus to its objects sought to be achieved and- hence Section 3 of the CAA and Section 6 B (4) of the Citizenship Act contravenes Article 14 of the Constitution.

- (P) Because This Hon'ble Court in *S.G. Jaisinghani v. Union of India and Ors.*, [1967] 2 SCR 703, at Para 18-19], elucidated upon the principles to examine if; the executive has been bestowed with arbitrary discretionary powers as under: "In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is

based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is Unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law."

In the aforesaid context it is submitted that even assuming that the bill grants protection only to illegal immigration facing religious persecution, Section 2 of the CM in granting "any person" belonging to Hindu, Sikh, Jain, Parsi or Christian community from Afghanistan, Bangladesh and Pakistan" to enjoy continued stay in India read with Section 3 of the CAA which also allows any such persons a path to citizenship grants unbridled, excessive and unanalyzed power to the Central Government to determine any class of persons "under clause (c) of sub-section 2 of section 3 of the

Passport (Entry into India) Act, 1920" to avail of the benefits of these provisions: Further, it does not enjoin a prescribed authority with the power to determine whether and in what manner and to what extent, if at all, such persons of the specified religion who have entered into India from Pakistan, Afghanistan and/or Bangladesh, form a special class and/or are eligible for a special treatment, thus granting legal 'right to citizenship of India to such persons arbitrarily and en- masse. The power to allow any class of persons and not just religiously persecuted communities goes far beyond the /stated objectives of the CAA to grant shelter to persecuted persons from the stated countries. Section's 2 and 3 are therefore excessive, manifestly arbitrary and violate Article 14 of the Constitution.

- (Q) Because the classification made by the impugned Act has no rational nexus with the object it is said to achieve. It is submitted that it would not be correct to say that the impugned Act has been enacted to protect persecuted communities from the neighbouring countries of India as there are several other minority communities also in the countries in

question which also face discrimination and/ or persecution from the other majority Muslim communities. It is further submitted that even the selection of just three countries with a specific state/ majority religion, while leaving out other countries with other state/ majority religions, inter alia like Sri Lanka, Myanmar, China etc. itself fails to withstand the test of a reasonable classification. It is therefore, submitted that both religion based classification and country based classification, done in Sections 2, 3, 5 and 6 of the impugned Act, are unconstitutional and liable to be struck down by this Hon'ble Court.

- (R) Because the impugned Act grants unbridled discretion for exclusion of a certain class of persons from the existing legal framework regulating the grant of citizenship of India, without prescribing guidelines/ determinable criteria for identification of such persons, who may have been persecuted. Further, they do not enjoin a prescribed authority with the power to determine whether and in what manner and to what extent, if at all, such persons of the specified religion who have entered into India from Pakistan, Afghanistan and/or Bangladesh, form a special class and/or are eligible for a special

treatment, thus granting legal right to citizenship of India to such persons arbitrarily and *en-masse*.

- (S) Because the Home Minister, Central Government in his debate in parliament has stated that a self declaration from Hindu,- Sikh, Buddhist, Jain, Parsis and Christian Illegal Immigrant stating that he/she entered India prior to 31st December 2014 will acceptable to consider his citizenship. If this procedure is adopted to consider the citizenship of a illegal immigrant then any person can enter anytime into India and claim citizenship. Even any other person who does not fall in the definition of the amended Act can change his name and swear a false affidavit. This as such shows that the entire Act is absurd and unreasonable and threatens the entire State of Assam as well the entire Nation.

VIOLATION OF ASSAM ACCORD AND THE AMENDMENT MADE IN CITIZENSHIP ACT, 1955 PURSUANT TO ASSAM ACCORD:

- (T) Because Sections 2, 3, 5 and 6 of the impugned Act is inconsistent of Section 6A of the Citizenship Act, 1955 (hereinafter referred to as "the 1955 Act"). Section 6A was inserted into the 1955 Act, by the Citizenship (Amendment) Act 1985, as a result of

the 1985 Assam Accord, whereby illegal migrants who have entered the State of Assam from Bangladesh up to 24.03.1971 were ultimately required to be granted citizenship of India, on the assurance that illegal migrants entering the state of Assam after 25.03.1971 would be deported back to Bangladesh. Sections 2, 3, 5 and 6 of the impugned Act are completely contrary to Section 6A of the 1955 Act, since it legitimises the entry and continued stay of "illegal migrants" as defined under Section 2(1) (b) the 1955 Act in the state of Assam, even if they entered India after 25.03.1971. It is submitted that the provisions of the impugned Act, thus, go contrary to the solemn promise made to the Assamese people by way of the enactment of Section 6A of the 1955 Act. Further when the validity of 6A itself is in question before the Constitution Bench of this Hon'ble Court bringing of CAA,2019 will further worsen the situation of the Citizens in Assam

- (U) Because Section 2 of the CAA which grants the Central Government excessive and uncanalized discretionary power to exclude any class of persons of the Hindu Sikh) Jain, Parsi or Christian

community from Afghanistan, Bangladesh or Pakistan as illegal migrants-; grossly violates the guarantee of Article 5.3 of the Assam Accord "to detect, delete and expel foreigners entering Assam after 24.03.1971" which is still in force. In this regard it is submitted that Section 2 of the CAA inserts a proviso to section 2(1) (b) of the Citizenship Act, 1955 ceases to treat as an illegal immigrant "any person belonging to the Hindu Sikh, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan who entered India on or before the 31 December 2014 and who has been exempted b|y.'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, it may be noted that by way of notifications of the Central Government dated 7th September, 2015, 'persons belonging to the Hindu Sikh, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan who were compelled to seek shelter in India due to religious persecution or fear of religious persecution and entered India on or before the 31 December 2014 were as a class made exempt'

under clause 3 (2) (c) of the Passport (Entry into India) Act, 1920 and the provisions of the Foreigners Act, 1946. This seriously jeopardises the basic cultural, social and linguistic rights of the Assamese people guaranteed under Articles 14, 21 and 29 (1) of the Constitution. Even assuming but not admitting that such classes of persons excluded are solely confined to those facing or in fear of religious persecution, there are very few manageable standards to measure persons from neighbouring countries that have allegedly faced past persecution as noted in the report of the JPC examining the CAB. Section 2 therefore only throws open the flood gates to illegal immigration and threatens the basic rights and security of the local people of Assam. This wholly abrogates the guarantee of Article 5.8 of the Assam Accord to detect and expel illegal immigrants and the stated objective of the CAA itself to protect indigenous populations of the North East.

- (v) Because Section 3 of the CAA by not excluding the application of section 6B (3) to non-Tribal areas of Assam frustrates the terms of the Assam Accord that disallows citizenship to illegal immigrants even

in the state's non-tribal areas. The petitioners respectfully submit that Section 3 of the CAA by way of inserting section 6B (3) in the Citizenship Act goes even further in creating a pathway to citizenship for illegal immigrants belonging to Hindu, Sikh, Jain, Parsi or Christian community from Afghanistan, Bangladesh and Pakistan who entered India before 31 December 2014. While, Section 3 of the CAA excludes the application of section 6B (3) to the Tribal Areas of Assam, it applies Section 6B (3) to all non-Tribal areas of Assam. Therefore, the binding terms of the Assam Accord that specifically seeks to deny citizenship to illegal immigrants and expel such person across even in the state's non-tribal areas stands wholly frustrated.

- (W) Because the amendment defeats the purpose of the accord and opens the floodgates to more illegal immigration and consequently increases claims on diminishing resources. The transformation of migrants, hitherto perceived as illegal encroachers, into legitimate citizens cannot be justified. The impugned amendments have enabled the post-1971 stream of illegal migrants apply for Indian citizenship via the route of naturalisation at a future

point of time. In order that these people can apply for citizenship under Section 6, they are proposed to be decriminalised by lifting the prefix 'illegal' before the word, 'migrants'.

- (X) Because the Citizenship Amendment Act, 2019 does not omit, modify or repeal Section 6 A of the Citizenship Act, 1955 which is a specific provision concerning grant of citizenship to foreigners in the state of Assam. It is submitted that if two directions are issued by an authority, one covering a large number of matters in general and another to selected matter, the latter direction should prevail as regards the small group of subject matter and for the rest the earlier directions must be given effect to. This is based on the rule that the general provision should yield to the specific provision. It is therefore submitted that in respect of Assam , Section 6A of the Citizenship Act, 1955, being a specific provision will be applicable.
- (Y) Because the newly incorporated Section 6B cannot prevail over Section 6A of the Citizenship Act, 1955. The principle that the latter Act would prevail over/override the earlier Act has consistently been held to be subject to the exception that a general provision does not derogate from a special one. Where the general enactment covers a situation for which

specific provision is made by another enactment contained in the earlier Act, it should be presumed that the situation was intended to be continued to be dealt with by the specific provision rather than the later general one. Furthermore, it is submitted that 6A has a non-obstante clause wherein it is stated that the provisions of Section 6 A will have preference over any other law existing for the time being in force. The newly incorporated Section 6B does not have a saving clause. It is therefore submitted that in respect of the state of Assam, the cut-off date for grant of citizenship to immigrants from Bangladesh would be 25.03.1971

VIOLATION OF ARTICLE 355 OF STATE OF ASSAM

GUARANTEED UNDER THE CONSTITUTION OF INDIA:

- (Z) Because the Citizenship Amendment Act 2019 will result in huge influx of immigrants to Assam not only from the porous borders with Bangladesh but also from other north eastern states in which this Act is exempted. By the exemption in the second proviso of Section 6B, the Citizenship Amendment Act, 2019 will be made applicable only to non-tribal areas of Assam in the whole of North East India. Resultantly, unequal laws of acquiring citizenship will be prevalent in North East India sometimes within a range of a few kilometres. This will consequently result in more influx

of immigrants to Assam from all the neighbouring states of North East for the purposes of obtaining citizenship of India.

(AA) Because in SarabanandaSonowal's case (Supra) it was specifically observed that there can be no manner of doubt that the State of Assam is facing "external aggression and internal disturbance" on account of large scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution. In such situation when there is specific observation from this Hon'ble Court that the illegal immigrants are causing "external aggression and internal disturbance" in the state of Assam, granting citizenship to illegal immigrants now would constitute further external aggression and internal disturbance and as such will violate Article 355. In this regard the petitioner submits that the impugned provisions seek to promote illegal infiltration and at the same time protect and regularize lacs of illegal migrants who have illegally entered into Assam. As noted by this Hon'ble Court, Assam is facing "external aggression

and internal disturbance" on account of large- scale illegal migration of Bangladeshi nationals. Therefore any law that- attempts to confer citizenship on these aggressors instead of detecting and deporting them has to be necessarily struck down as ultra-vires the Constitution.

(BB) FOR THAT the population patterns of Assam have been changed as a result of Illegal migration of foreign nationals. The huge magnitude of the problem and the serious threat to the territorial integrity of the nation that this influx of foreign nationals possesses, is clearly revealed by the following figures of census report of Assam.

PERCENTAGE OF INCREASE OF POPULATION PER DECADE ASSAM AND INDIA

Year	Population of Assam	% increase Assam	%increase India
1951	80,28,856	19.94	13.31
1961	108,37,329	34.98	21.64
1971/	146,25,152	34.95	24.80

Assam tops the list of states, which registered more than 50% increase during 1911-1961.

a comparative study of the increase of voters of Assam since 1957 to 1971 also reveals the gravity of the changing population pattern of Assam-

Year	No. of Electors	Increase	% of increase during the period
1957	44,93,359		
1962	49,42,816	4,49,457	10% (in 5 years)
1966	55,85,056	6,42,240	12.99% (in 4 years)
1970	87,01,805	31,16,749	2.09% (in 4 years)
1971	92,96,198	5,94,393	10.42% (in 1 year)

(CC) Because the United Nations Declaration on the Rights of Indigenous People adopted on 13.09.2007 and duly signed by India envisaged the need to respect and promote the inherent rights of the indigenous people which derive from their political, economic and social structures and from their' cultures, spiritual traditions, histories and philosophies, especially their rights to land, territories and resources. Hence, it is the duty of the Union of India to protect such rights of the indigenous people of Assam which have been violated by the impugned Act.

(DD) Because the ramification due to the vast and incessant flow of illegal migrants into the State of Assam has disrupted the traditional "socio fabric of Assam and the rights thereto of the indigenous people, even as per the latest Census figures of 2011, the figures for population density in the three Districts of Assam bordering Bangladesh i.e. Dhubri, Cachar and Karimganj and the adjoining Districts of Goalpara and Hailakandi have increased in the last decade (2001-2011) as against the State and National average, this grim reality has to be acknowledged:

[2001-2011]

	Population Density/ sq. km	Growth Rate (in %)
National Average	382	17.64
State Average	397	16.901

Dhubri	1171	24.40
Karimganj-	673	20.74

Cachar	459	20.17
Goalpara	553	22.74
Hailakandi	497	21.44

These figures would clearly go to conclusively prove that there is a continuous alarming rise in population in the bordering districts of Assam which is not only a potent threat to the security and well being of the people of Assam but the nation as well.

(EE) Because the Central Government failed to take note of its consistent stand on the issue large scale influx of person from the then East Pakistan into India (Assam) before and following Indo-Pak War of 1971. It has been noted by this Hon'ble Court in- SarbanandaSonowal (1) at para 56 that on 03.11.1971, Dr. Nagendra Singh, India's representative in the 6th Committee of the General Assembly on the definition of aggression, made a statement to the effect that influx of large number of persons from across the border into India is an act of aggression, Having regard to the said stand and also having regard to the constitutional scheme on acquisition of citizenship, the impugned notifications are not only inconceivable but are also plainly contrary to the constitutional scheme. The

purported action on the part of the Central Government to confer legitimacy to these hoards of illegal immigrants therefore cannot withstand legal scrutiny.

(FF) Because in SarbanandaSonowal's case this Hon'ble Court quoted certain observations of United States' Supreme Court made in 130 U.S. 581 (Chae Chan Ping vs. United States) which reads as under

"To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us. The Government, possessing the powers which are to be exercised for protection and security, is clothed with authority to determine the occasion on which the powers shall be called forth; and its determination, so far as the subjects affected are concerned, are necessarily conclusive upon all its departments and officers. If, therefore, the Government of the United States, through its legislative department, considers the presence of foreigners of a different race in the country, who will not assimilate with us to be dangerous to its peace and security, their exclusion is not

to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subjects. The existence of war would render the necessity of the proceeding only more obvious and pressing. The same necessity, in a less pressing degree, may arise when war does not exist and the same authority which adjudges the necessity in one case must also determine it in the other."

(GG) Lord Denning in his book "The Due Process of Law" has written an "Introduction" to Part Five "Entrances and Exits" (page155) and the opening paragraph thereof reads as under :

"In recent times England has been invaded not by enemies nor by friends but by those who seek England as a haven. In their own countries there are poverty, disease and no homes. In England there is social security a national health service and guaranteed housing all to be had for the asking without payment and without working for it. Once here, each seeks to bring his relatives to join him. So they multiply exceedingly." Thus, one of the most respected and learned Judges of the recent times has termed the influx of persons from erstwhile colonies of Britain into Britain as "invasion"

(HH) FOR THAT Article 355 of the Constitution demands that all States be protected by the Centre from

external aggression and internal disturbance. Large scale unchecked and illegal foreign immigration of the kind experienced by Assam that destroys local autonomy has been held by boifa-legislative bodies and the Hon'ble Supreme Court to be a cause of a serious security threat that amounts to external aggression that causes internal disturbance. The internal threat posed by the increase in the illegal immigrants was addressed in the Report of Parliamentary Standing Committee of Home Affairs on "the Illegal Migrants Laws (Replacing and Amending) Bill| 2003" which conclusively states that the illegal migration from Bangladesh is a prime contributory factor in the rise of insurgency in the North Eastern states. This Hon'ble Court in SarbanandaSonowal also held that: "The word "Aggression" in Article 355 of the Constitution of India is an all comprehensive word having very wide meaning having complex dimensions For example, there could be a unique bloodless aggression from a vast and incessant-.flow of millions of Human beings being forced to flee into, another state only to impair the economic and political wellbeing of the receiving state." In view of the aforesaidjt is submitted that the impugned Act not only allows a dangerously

large inflow of illegal immigrants without any checks and balances to stay but also guarantees all of them a pathway to citizenship. The threat to national security is ; only compounded by the testimony of national security agencies before the joint parliamentary committee that examined the CAB, that testified to the impossible task of verifying whether illegal immigrants in the past were genuinely faced or were under the fear of religious persecution. The CAA therefore amounts to an abdication of the Centre of its duty under Article 355 to protect states from external aggression and damages the federal structure envisaged under the Constitution.

VIOLATION OF ARTICLE 325 and 326 OF THE PEOPLE OF ASSAM GUARANTEED UNDER THE CONSTITUTION OF INDIA:

(II) Because the impugned Act violates Article 325 and 326 of the Constitution of India as the same dilutes the political rights of the original inhabitants/ bonafide citizens of the State of Assam. In this view the impugned amendment Act deserves to be declared ultra-vires the, Constitution and accordingly struck down.

**VIOLATION OF PART II (CITIZENSHIP) OF THE
CONSTITUTION OF INDIA**

(JJ) Because while Section 3 of the Citizenship Act covers the acquisition of citizenship by birth for the rest of the country, Section 5A therein, incorporated by an amendment in 1985, and is meant for providing special provisions for citizenship in Assam covered under the Assam Accord. According to this 6A of the Citizenship Act, read with the provisions in the Schedule under Section 4A (4) of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, any person who crossed over to the Indian territory after March 25, 1971 shall be treated as an illegal migrant. But for the impugned Act, such a case of illegal migration would have attracted the relevant penal provisions of the Foreigners Act, 1946 and the Foreigners Tribunal Order, 1964.

(KK) Because the scheme of the Constitution of India does not anywhere provide for giving shelter to any illegal immigrant who have stealthily sneaked in through the border and settled down in the territory of India. As a matter of fact no where in the world would one find any legal provision which seeks to

shelter foreigners who have illegally entered that country. The only exception is perhaps Israel which is a "Jewish State" and offers the "right to return" to Jews from anywhere in the world.

(LL) Because Article 6 of the Constitution of India clearly states that a person, who came to India from the territory then included in Pakistan and whose parents or grandparents were born in India as understood under the Government of India Act, 1935, would be treated as an Indian Citizen. However, for acquiring citizenship, this Article has stated that such a person should migrate to India before July, 19, 1948. There is a rider, too, that if any other person had come to India before six months of the commencement of the Constitution in order to be treated as Indian Citizen, he or she must get himself / herself registered as an Indian Citizen with the prescribed authorities in the manner laid down by the Government of India. The Constitution was enforced with effect from January 26, 1950. Therefore, any person who came to India, the last date should be before 19 January, 1949 at the latest it is thus seen that there are two cut-off dates, i.e. July, 19, 1948 without application and January 19,

1949 with application, for acquiring Indian Citizenship. These are the laid down under the Constitution of India and till now provisions of Article 6 of the Constitution have remained unchanged. It is also provided by the Constitution that any law, which in any manner infringes the fundamental rights conferred on the citizens by the Constitution, is void. In this regard it is submitted that the impugned Act most arbitrarily and without any legal basis has fixed the cut-off date as 31/12/2014 for people of 6 minority communities who claim themselves to be victims of religious persecution in Pakistan, Afganistan and Bangladesh. It is stated that there cannot be any other cut-off date which is at a variance with the one that is given in the Constitution. The above provisions contravene Articles 14 & 21 of the Indian Constitution. In this view of the matter the impugned Act is ultra-vires the Constitution and hence liable to be quashed.

(MM) Because the founding fathers of our Constitution never intended to extend protection to illegal infiltrators and confer citizenship upon them at any stage. However, notwithstanding the same, the Government of India has failed to initiate effective

steps to free the country from such illegal infiltrators and on the contrary has actually enacted the impugned Act with the sole purpose and intent of conferring citizenship to illegal immigrants coming from Bangladesh, Pakistan and Afghanistan far beyond the time frame prescribed by the Constitution. There is absolutely no relevance of 31/12/2014 in so far as India or Assam is concerned. Yet such a cutoff date has been arbitrarily inserted forming the sole basis of the Act impugned herein.

(NN) Because Article 6 of the Constitution brings forth a closure to the issues of citizenship of such category of migrants from Pakistan by spelling out cut off dates in clear and unequivocal terms, Therefore, all persons illegally entering the Indian territory from Bangladesh contrary to the Constitutional scheme and beyond the time frame prescribed by the Constitution is required to be treated as an offender under the Indian Law and the Government is constitutionally-bound to take action against such a person by ensuring his/ her removal from the territory of India at the earliest. However, in a marked departure of the said principle, the

impugned Act seek to legitimize the entry and stay of the "illegal immigrants" of 6 minority communities who have entered on or before 31/12/2014. The net result of such an enactment would be that an illegal immigrant who enters Assam in violation of the Indian legal system gets an opportunity of legitimizing his/ her transgression as such, only by virtue of the impugned provisions. The question that would therefore arise is that, can an individual who is in conflict with the constitutional right on the very day of his/her illegal entry into Indian territory be accorded citizenship by operation of the impugned legislations by condoning his illegal entry into India, which act had been unconstitutional on the very date of its inception, more so when Art. 6 of the Constitution itself has not been amended to provide for enlarging the time frame prescribed by the Constitution.

(OO) Because the impugned provision is also contrary to Article 13 of the International Covenant of 1966 on Civil and Political Rights which provides that an alien lawfully entering the territory of a State party to the Covenant be expelled only pursuant to a decision reached by law. Ironically India is a signatory to the

said Covenant. Under the circumstances the purported attempt to confer legitimacy to the illegal migrants from the then East Pakistan by way of impugned provision is legally not sustainable. As a matter of fact in terms of Article 13 aforementioned migrants who; have entered illegally or unlawfully are not entitled to any substantive and procedural safeguards. All these fundamental aspects which have special relevance in the contextual facts were ignored by the lawmakers

VIOLATION OF THIS HON'BLE COURT'S DECISION:

(PP) Because Sections 2, 3, 5 and 6 of the impugned Act violate the obligations of Respondent No. 1 under the United Nations Declaration on the Rights of Indigenous Peoples. It is submitted that due to the continued influx of the illegal immigrants in Assam, the Respondents herein have failed to protect the rights of the indigenous people of Assam as enshrined under the said Declaration. It is submitted that the impugned Act is, in any manner, also in violation of the international obligations of India.

(QQ) Because Sections 2, 3, 5 and 6 of the impugned Act are in violation of the judgment of this Hon'ble Court

in Sonowal (I) wherein this Hon'ble Court gave a clear mandate to the Central Government to remove illegal migrants from India and equated the entry and stay of illegal migrants in the state of Assam with external aggression. All foreigners, irrespective of religion or place of origin, who enter India without valid travel documents, are illegal migrants and liable for expulsion. By establishing vague and indeterminable criteria, the effect of the impugned provisions will be to enable more illegal migrants to claim exemption from the existing statutory framework. On a similar reasoning, in the said judgment, this Hon'ble Court had struck down the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 as ultra vires the Constitution. Similarly, in Sonowal II also, the Hon'ble Court had emphasized that all illegal immigrants should be deported.

(RR) Because Sections 2, 3, 5 and 6 of the impugned Act are in violation of the judgment of this Hon'ble Court in All Assam SanmilitiaMahasangha v. Union of India (2015) 3 SCC 1 wherein this Hon'ble Court directed the Union Government to and to detect and deport

all illegal migrants who have come to the State of Assam after 25.3.1971. The impugned Act is an attempt to overreach the following directions of this Hon'ble Court.

“41. We are at loss to understand why 67 years after independence the Eastern border is left porous...”

*“42. ...we have considered the necessity of issuing appropriate directions to the Union of India and the State of Assam to ensure that effective steps are taken to prevent illegal access to the country from Bangladesh; to detect foreigners belonging to the stream of 1.1.1966 to 24.3.1971 so as to give effect to the provisions of Section 6(3) & (4) of the Citizenship Act **and to detect and deport all illegal migrants who have come to the State of Assam after 25.3.1971.** The Union will take all effective steps to complete the fencing (double coiled wire fencing) in such parts/ portions of the Indo-Bangla border (including the State of Assam) where presently the fencing is yet to be completed. The vigil along the riverine boundary will be effectively maintained by continuous patrolling. Such part of the international border which has been perceived to be inhospitable on account of the difficult terrain will be patrolled and monitored at vulnerable points that could provide means of illegal entry. Motorable roads alongside the international border, wherever incomplete or*

have not yet been built, will be laid so as to enable effective and intensive patrolling. Flood lights, wherever required, will also be provided while maintaining the present arrangements. The completed part of the border fencing will be maintained and repaired so as to constitute an effective barrier to cross border trafficking.” (Emphasis supplied)

As a result of the above directions of this Hon'ble Court, it is amply clear that the Respondent No. 1 has been directed to completely stem the flow of illegal migrants from Bangladesh into India, as well as to speedily detect and remove permanently all illegal migrants who are residing in the state of Assam, having entered after 25.03.1971. In the light of such directions, the impugned Act is clearly an attempt to bypass the express directions of this Hon'ble Court.

(SS) Because the impugned Act also have the potential to derail and nullify the gains made by updating the National Registrar of Citizens in Assam. Many persons who could not otherwise establish their claims and were therefore excluded from final NRC published recently can now take shelter under the impugned Act and subsequently become legitimate Indian citizens at the cost of the indigenous people

of Assam. It is thus apparent that the petitioners have been treated unfairly thus violating their fundamental right to equality. In this view of the matter the impugned notifications deserve to be declared ultra-vires and consequently struck down. **INCONSISTENT**

WITH THE IMMIGRANTS

(EXPULSION FROM ASSAM) ACT, 1950

(TT) Because Sections 2, 3, 5 and 6 of the impugned Act are also inconsistent with the immigrants (Expulsion from Assam) Act, 1950 which- was enacted to protect the indigenous inhabitants of Assam. As per the Statement of Objects and Reasons of the Immigrants (Expulsion from Assam) Act, 1950, refers inter alia to a serious situation having arisen from the immigration of a very large number of East Bengal residents into Assam, and states that such large migration is disturbing the economy of the province, besides giving rise to a serious law and order problem. The impugned Act is inconsistent with the powers granted to the Central Government under Sections 2 and 4 of the Immigrants (Expulsion from Assam) Act, 1950.

ABSURDITY AND UNREASONABLENESS WITH RESPECT

TO APPLICABILITY OF THE ACT:

(UU) Because even if the Respondents justify the class created by the impugned Act on the grounds of religious persecution, it is submitted that the same was not identified as one of the causes of illegal migration by the Government of India before this Hon'ble Court in Sonowal (I). The stand of the Government of India was that Bangladeshis enter India due to, "*steep and continuous increase in population, sharp deterioration in land-man ratio and low rates of economic growth particularly poor performance in agriculture*". It was further submitted that people of all religions from Pakistan and Bangladesh have come for the same reason. The same was recorded by this Hon'ble Court in its judgment in Sonowal (I), as follows.

"A true copy of the latest status report filed by the Government in Writ Petition No. 125 of 1998, which has been filed seeking deportation of all Bangladeshi nationals from India, has been filed as Annexure R-1 to the Counter Affidavit and paragraphs 3 to 7 of the said status report are being reproduced below

:

***3.** Continuing influx of Bangladeshi nationals into India has been on account of a variety of reasons including religious and economic. There is a combination of*

factors on both sides which are responsible for continuing influx of illegal immigration from Bangladesh. The important "Push Factors" on the Bangladesh side include: -

- a) steep and continuous increase in population;*
- b) sharp deterioration in land-man ratio;*
- c) low rates of economic growth particularly poor performance in agriculture;*

The "Pull Factors" on the Indian side include: -

- a) ethnic proximity and kinship enabling easy shelter to the immigrants;*
- b) porous and easily negotiable border with Bangladesh;*
- c) better economic opportunities;*
- d) interested religious and political elements encouraging immigration;"*

(VV) Because the impugned Act imposes an unreasonable and unfair burden on Indian states since no budgetary allocation has been made for the illegal migrants expected to take citizenship of India as a

result of the impugned Act. The Central Government has vested the power to identify and deport a foreign national illegally staying in the country under section 3 (2)(c) of the Foreigners Act, 1946 to the State Governments/Union Territory Administrations.

(WW) Because the impugned Act is arbitrary, illegal, null and void.

(XX) Because the impugned Act is otherwise bad in law.

33. That the present Petition is filed bonafide and in the interest of justice.
34. That the Petitioners have not filed any other similar petition before this Hon'ble Court or any other court seeking similar reliefs.

PRAYER

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

- a) Issue a writ in the nature of mandamus and/ or any other writ/ order or direction declaring the Citizenship (Amendment) Act, 2019 as a whole, or Sections 2, 3, 5 and 6 thereof, as discriminatory, arbitrary, illegal and violative of Article 14, 21, 29, 325, 326, 355 consequently

setting aside the impugned Act as ultra-vires the Constitution of India;

- b) Pass any writ/order or direction to safeguard and protect the State of Assam and the rights of its indigenous people in the facts and circumstance of the present case by protecting the cultural, economic, linguistic, land and political rights of the people of Assam and also to maintain the internal harmony and peace in the Sate.
- c) Issue Rule Nisi in terms of prayers (a) and (b) above; and/or
- d) Pass any other such further or other writ, order or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

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

DRAWN ON: /01/2020

FILED BY:

PLACE : NEW DELHI
DATED: /01/2020

[DHARITRY PHOOKAN]

Advocate for the Petitioner(s)

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _ _ OF 2020

IN THE MATTER OF:

Advocates' Association for Indigenous Rights
of Assamese & Anr.

...Petitioners

Versus

Union of India & Ors.

...Respondents

AFFIDAVIT

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. NO. _____ OF 2020

IN

WRIT PETITION (CIVIL) NO. IN _____ OF 2020

THE MATTER OF:

Advocates' Association for Indigenous Rights

of Assamese & Anr.

....Petitioners

Versus

Union of India & Ors.

....Respondents

APPLICATION FOR INTERIM DIRECTIONS

To

The Hon'ble Chief Justice of India and His Companion
Justices of the Hon'ble Supreme Court of India

The Humble Petition of the Petitioner abovenamed

MOST RESPECTFULLY SHOWETH:

1. That the present Petition, in public interest, is being preferred invoking the extraordinary power of this Hon'ble Court under Article 32 of the Constitution of India. The present Petition has been preferred by the Petitioners herein in their personal as well as representative capacity for a large number of people living in Assam who have suffered and are still suffering the consequences of illegal immigration of Bangladeshi citizens in Assam, seeking enforcement of their fundamental rights guaranteed under the Constitution of India, inter alia including the rights contained in Articles 14, 15, 19, 21, 25, 29, 32, 325, 326 and 355 of the Constitution. The present Petition inter alia challenges the Citizenship (Amendment) Act, 2019 as

a whole, and/or specifically Sections 2, 3, 5 and 6 for being discriminatory, arbitrary, illegal and in violation of their fundamental rights. The Petitioner has made detailed submissions in the writ petition which may be read as part and parcel of the present application and the same are not being repeated herein for the sake of brevity.

2. That the Union of India enacted the Citizenship (Amendment) Act, 2019, on 12.12.2019 which was notified on 10.01.2020. The impugned Act inter alia seeks to make illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan and who entered India before 31.12.2014 eligible for citizenship. The impugned Act has been made applicable to all areas of Assam except the tribal areas included in the Sixth Schedule of the Constitution.
3. That the impugned Act invalidates the guarantees given to the people of Assam by the Union of India in the Assam Accord dated 15 August 1985. The Respondent had accepted and recognised that for the state of Assam the base date for regularising foreigners who came to Assam would be 1.01.1966. It was further agreed that foreigners who came to Assam after 25.03.1971, "shall continue to be

detected, deleted and expelled in accordance with the law.” Therefore, the cut-off date for any foreigner to be regularised in Assam is 25.03.1971. By way of the Citizenship Amendment Act, 2019 the Respondents have extended this date by 43 years to 31.12.2014 for immigrants of five religious identities from three countries to obtain citizenship thereby ensuring that millions of illegal immigrants become lawful citizens in Assam. The Assam Accord have been noticed and dealt with in detail in various judgments of the Hon’ble Apex Court and have been statutorily imbibed in Section 6A of The Citizenship Act, 1955 and as such it is legally binding on the Respondent, Union of India.

4. That citizenship of persons who migrated to India from Pakistan and Bangladesh is governed by Article 6 of the Constitution of India. Article 6 provides that

“.....a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if

(a) he or either of his parents or any of his grand parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b)(i) in the case where such person has so migrated before the nineteenth day of July, 1948 , he has been ordinarily resident in the territory of India since the date of his migration, or
(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948 , he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and

manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India or at least six months immediately preceding the date of his application.”

Since Bangladesh was part of Pakistan at the commencement of the Constitution of India and therefore, the cut-off date for grant of Indian citizenship to persons from Pakistan and Bangladesh under Article 6 of the Constitution of India is 19.07.1948.

5. That the question as to whether a new cut-off date for grant of citizenship to foreigners in Assam under Section 6A of the Citizenship Act and different from the date mentioned in Article 6 of the Constitution of India can be prescribed by way of a legislative enactment is sub-judice. This Hon'ble Court in the case of *Assam Sanmilita Mahasangha –vs- Union of India*, reported in (2015) 3 SCC 1 framed the following question of law for adjudication by a Constitution Bench "1. *Whether Article 10 and 11 of the Constitution of India permit the enactment of Section 6-A of the Citizenship Act inasmuch as Section 6-A in prescribing a cut-off date different from the cut-off date prescribed in Article 6, can do so without a "variation" of Article 6 itself, regard in particular, being had to the phraseology of Article 4 (2) read with Article 368 (1)?"*

The Respondent is well aware that the question as to whether a new cut-off date beyond what the date in Article

6 could have been prescribed for grant of citizenship is yet to be decided by a Constitution Bench of this Hon'ble Court. Despite which the Citizenship Amendment Act, 2019 was enacted giving a new cut-off date of 31.12.2014 which is clearly an attempt to over reach the jurisdiction of this Hon'ble Court.

6. That this Hon'ble Court in its judgment dated 17.12.2014 in *Assam Sanmilita Mahasangha vs. Union of India*, (2015) 3 SCC 1 while framing thirteen questions specific to the rights of people from Assam in view of unabated influx of illegal migrants into their territory, held that since most of the questions are substantial questions as to the interpretation of the Constitution the same needs to be answered by a minimum of 5 Judges under Article 145(3) of the Constitution of India. The Hon'ble Court in its judgment dated 17.12.2014 further held that, "*Section 6A of the Citizenship Act must be deemed to be valid until the larger Bench decides these matters*".

It is submitted that till the 13 substantial questions of law pertaining to the rights of people of Assam are decided by a larger Bench of this Hon'ble Court, the cut-off date for grant of citizenship to foreigners in Assam was to be 25.03.1971 as specified in Section 6A of the Citizenship Act. It is also most pertinent to note that the impugned

Act has not omitted, modified or repealed Section 6 A of the Citizenship Act, 1955. In view of the aforesaid, it is submitted that this Hon'ble Court may in the interest of justice direct that the cut-off date as specified in Section 6A of the Citizenship Act being 25.03.1971 will be applicable to the state of Assam pending decision of a larger Bench of the 13 questions of law referred to it by the judgment dated 17.12.2014 and pending adjudication of the issues raised in present writ petition.

7. That the interim directions of staying the operation of the impugned Act in Assam is also sought in view of the fact that the impugned Act have been notified on 10.01.2020 and once the same comes into effect irreparable loss would be caused to the state of Assam and its people as millions of immigrants illegally settled in various parts of Assam would become eligible for grant of citizenship. This is elucidated hereinbelow.
8. The second proviso to Section 6B of the Citizenship Amendment Act, 2019 exempts the tribal areas of Assam, Meghalaya, Mizoram and Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line". By the exemption in the second proviso of Section 6B, the Citizenship Amendment Act, 2019 will be made applicable only to non-tribal areas of Assam in the whole of North East India. Resultantly, unequal laws of

acquiring citizenship will be prevalent in North East India sometimes within a range of a kilometer from one place to another. This will consequently result in more influx of immigrants to Assam from all the neighbouring states of North East where illegal immigrants were residing for the purposes of obtaining citizenship of India. Insertion of Section 6A in the Citizenship Act, 1955 giving special protection to Assam from foreigners was necessitated owing to greater presence of Bangladesh origin immigrants in Assam. This Hon'ble Court in the case of SarbanandaSonowal –vs- Union of India reported in (2005) 5 SCC 665 have conclusively arrived at a finding that the unchecked influx of immigrants to Assam has undermined the security of the state and has furthermore resulted in internal disturbance. It is stated that the Citizenship Amendment Act, 2019 will further undermine the security of Assam as huge influx of immigrants will happen not only from the porous borders with Bangladesh but also from other North Eastern States in which the Act is exempted. It is submitted that such a scenario will be disastrous from the political, security, cultural and economic standpoint of Assam. The balance of convenience is therefore in favour of the Petitioner as against the respondent.

9. That the Home Minister, Central Government in his debate in parliament has stated that a self declaration

from Hindu,- Sikh, Buddhist, Jain, Parsis and Christian⁷³ illegal Immigrant stating that he/she entered India prior to 31.12.2014 will be acceptable to consider his grant of citizenship. If the procedure of a self declaration by an immigrant is adopted to grant their citizenship then any person regardless of the time when they illegally entered into Assam and claim citizenship. Even persons who do not fall in the definition of the amended Act can change his name and swear a false affidavit and be granted citizenship. It is submitted that the presence of illegal immigrants in Assam originating from Bangladesh is in millions and the simplistic procedure of a self declaration as stated hereinabove would be enough to grant citizenship to all such immigrants. The Petitioner submits that if the impugned Act is not stayed and illegal immigrants numbering in lakhs are allowed to obtain citizenship it will lead to irreparable loss and unforeseeable injury to the citizens of Assam.

10. This application is being filed bonafide and in the interest of justice.

PRAYER

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

- a) stay the implementation Citizenship Amendment Act, 2019 in the state of Assam and thereby not grant any Citizenship as well any other legal and constitutional rights to Illegal Immigrant as defined under Section 2 (1) (b) of the Unammended Citizenship Act, 1955
- b) any other direction which this Hon'ble Court deems fit to protect the interest of Citizens of State of Assam;
- b) any other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER(S) IS DUTY BOUND SHALL EVER PRAY

DRAWN ON: /01/2020

PLACE : NEW DELHI DATED: /01/2020

FILED BY:

[DHARITRY PHOOKAN]
Advocate for the Petitioner(s)