

SYNOPSIS

1. The present Petition is preferred by the Petitioners in their personal as well as representative capacity of the populous of Guwahati city as well as in the entire state of Assam who have suffered immense 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, 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 of India under the specially situated facts and circumstances prevailing in Assam. It seeks to highlight the unconstitutionality of the Citizenship (Amendment) Act, 2019 in terms of the Assam Accord of 1985 and the illegal influx from the neighboring lands of Assam which has gradually altered the demography of the state of Assam since a very long time.
2. The Treaty of Yandaboo dated 24.02.1826 marks the Annexation of Assam in British India. At that time, Assam included the territorial demography of Sylhet which is a part of present day Bangladesh. During independence, Assam as a

Hindu Majority state, stayed with Union of India and Sylhet as a Muslim Majority State went with East Pakistan. However, there were continuous waves of Hindu and muslim “refugees” which continued to cross the newly drawn borders of the independent India and the indigenous Assamese people started questioning the influx and sought the help of the Central Government to check the influx of “refugees”. By 1951, the influx had been a grave problem of the indigenous people of Assam as by then the Bengali speaking refugees started cultivating the lands of Assam and thus brought out a major demographic change in Assam. Its population inflated alarmingly. The Union of India took a step by enacting a piece legislation for protection of the indigenous people of Assam by the name of *“Immigration (Expulsion from Assam) Act, 1950”*. The object of the said act was *“During the last few months a serious situation has 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”*. The Act was a step by the Union of India which recognized the vulnerability of the inhabitants of Assam. The first ever National Register of Citizens (NRC) was prepared in the state of Assam based on the census report of

1951 which contained around 80 lakh citizens and then enacted the Indian Citizenship Act, 1955. This Act had nothing to do with solving the immigration problem of Assam. In the year 1962, The Union of India started a project by the name of "*Project PIP (prevention of Infiltration into Assam of Pak Nationals)*" which was approved by the Ministry of Home Affairs, government of India in June 1962 to deal with the problems of Illegal Immigration from East Pakistan into Assam. However, nothing much could be achieved by the said project in putting a check in the influx of illegal immigrants to the land of Assam and their illegal stay in Assam.

3. In the year 1971, war broke out and the East Pakistan became secular "Bangladesh". At that time there was an exodus of Hindus from East Pakistan to Assam. A treaty was presented to the people of Assam giving the deadline which was midnight of 24.03.1971. The Hindus who wished to claim their properties left behind, were asked to return by the dateline. The revision of the electoral rolls in 1971 brought to light Assamese people's dilemma. In just one year, i.e. during the period of 1970-71, the numbers of electors increased by ten per cent. The Hindus and Muslims having the commonalities to being "Bengalis" who left during the struggle of Bangladesh entered Assam and the electoral role inflated.

4. The feeling of alienation in the minds of the Assamese people grew as continuous influx never stopped. The Assamese identity was in great threat. On 08.06.1979, the people of Assam answered to a call of agitation. This was the biggest agitation till date in independent India. The entire state of Assam was standstill and almost all Assamese people took part in the agitation. It was about Assamese identity and it was about justice for the Assamese.
5. The multifaceted agitation continued till the signing of “Assam Accord”, i.e. the Memorandum of Settlement on 15.08.1985 by the Union Government, the AASU, the AAGSP and the Government of Assam in presence of the then Prime Minister of India, Late Rajiv Gandhi. *The Assam Accord amongst others mandated that the Foreigners who came to Assam on or after March 25, 1971 shall continue to be **detected, deleted and practical steps shall be taken to expel** such foreigners. It also mandated Constitutional, legislative and administrative safeguard and also shall be provided to protect, preserve and promote the culture, social, linguistic identity and heritage of the Assamese people.*
6. The Section 6A was inserted into the Citizenship Act, 1955 with effect from 07.12.1985 in pursuant to the Assam Accord dated 15.08.1985. It provided amongst others that **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, whether detected foreigner or not 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.

7. In the mean time, this Hon'ble Court struck down the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 and as per the directions of this Hon'ble Court, an updated National Register of Citizens (NRC) was being prepared by a team of NRC officials and the final list of persons which are excluded from the NRC has been published on August 31, 2019.
8. Now, the Union Government enacted the Citizenship Amendment Act, 2019 wherein it 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 shall not be treated as illegal migrant for the purposes of this Act; and such amendment shall not 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.

9. The insertion of the proviso in Section 2(1)(b) by the impugned amendment Act is in direct contradiction to the Assam Accord of 1985 and Section 6A of the Citizenship Act, 1955 which was inserted as per the agreement and undertaking executed by the Union of India and the State of Assam known as the Assam Accord, 1985 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 and a specific assurance that illegal migrants entering the state of Assam after 25.03.1971 would be deported back to Bangladesh.
10. The insertion of Section 6B(3) and its proviso had rendered the purpose of insertion of Section 6A of the Citizenship Act and the Assam Accord of 1985 meaningless and thereby frustrated the entire systematic process of detection and deportation of illegal immigrants from the territory of Assam. The process of detection of illegal immigrants were started by the Union Government itself in the year 1955 by enacting *Immigration (Expulsion from Assam) Act, 1950* and later started a project by the name of "*Project PIP (prevention of Infiltration into*

Assam of Pak Nationals)” which was approved by the Ministry of Home Affairs, government of India in June 1962 to deal with the problems of Illegal Immigration from East Pakistan into Assam. However, by insertion of Section 6B(3) by which illegal immigrants would be declared Indian citizen, the entire systematic process of illegal immigrants has been diluted in spite of the fact that the Union Government is estopped by doing it according to its own agreement/undertaking and cause of actions all throughout the 72 years of creation of present day India and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

11. The Union Government and the State Government had been ineffective for upliftment of its own citizens in the rural areas of Assam with its unique problems such as flood, soil erosion and sedimentation of the fertile lands and as such bringing outsiders or including the illegal immigrants as citizens shall worsen the situation and cause serious aftereffects in the cultural, economical, social and political genre of Assam.
12. Moreover, the classification made by the impugned Act has no rational nexus with the object it is said to achieve. The respondents while espousing a humanitarian approach to accept refugees cannot discriminate on the basis of religion. The acceptance of refugees on basis of religion and country cannot stand opposed to very idea of existence of indigenous

people of Assam especially when there is a standing Memorandum of Settlement, i.e. the Assam accord of 1985 whose legal validity is unquestionable. Both religion based classification and country based classification, done in Sections 2, 3, 5 and 6 of the impugned Act, are unconstitutional and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

13. The Impugned Act is in direct violation of the rights of the people of Assam contained in Articles 14, 15, 19, 21, 25, 29, 325, 326 and 355 of the Constitution of India. The State of Assam and the Union Government failed to uphold the Assam Accord and also implemented the impugned Act from 10.01.2020. As such, the petitioners are constrained to file the instant case under the facts and circumstances contained in details in the petition and several grounds therein which shall establish that the Impugned “Citizenship (Amendment) Act, 2019” being ultra virus to constitution and inconsistent with the Assam Accord, is liable to be set aside and quashed. Thus, the petitioners are seeking appropriate relief from the Union of India and the State of Assam.

LIST OF DATES

| DATES | EVENTS |
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| 1200 Century | Since the beginning of 1200 century, there was |

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| | repeated invasion of land and people by the Sultans of Bengals. However, these invaders never enjoyed permanent victory. |
| 13 th Century | In the early part of 13 th century, a historic migration took place. A group of 9000 Ahom migrants of “Tai” race belonging to a region from upper Burma led by Sukapha came through Dihing-Patkai Range and settled in the present day Sivasagar. |
| 1526 & 1576 | Mongoloid Muslims by the name of Mughals invaded India and successfully defeated the Delhi Sultanate in the year 1526 and also overthrow the Sultan from Bengal in 1576. |
| 1819 | In 1819, the Burmese Army invaded Assam through the Patkai range and massacred the Assamese. |
| 24.02.1826 | The British Authorities waving its political option helped the Assamese and declared war against the Burmese in 1824 and later chased the Burmese out of Assam to reach Yandaboo on 24.02.1826, the Burmies King Bai-Gyi-Daw out of desperation signed a treaty of Yaandaboo with the British whereby the Burmese king denounce all claims on the principality of Assam and its dependents also promised no future interference. Assam was annexed to British India. |

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| 1873 | The British Government enacted the Bengal Eastern Frontier Regulation, 1873 restricting trade and permanent settlement in Assam. |
| 23.11.1946 | The Union of India post independence already had legislation in place by the name of Foreigners Act 1946 which was enacted on 23.11.1946. |
| 15.08.1947 | The immigration into Assam from the erstwhile Bengal continued before 15 th August 1947 and it was internal immigration in British India and after 15 th August 1947, it was external immigration from East Pakistan. |
| 1951 | By 1951, the influx had been a grave problem of the indigenous people of Assam as by then the Bengali speaking refugees started cultivating the lands of Assam and thus brought out a major demographic change in Assam. |
| 1951 | <i>Immigration (Expulsion from Assam) Act, 1950.</i> The Act was a step by the Union of India which recognized the vulnerability of the inhabitants of Assam. |
| 1962 | In the year 1962, The Union of India started a project by the name of “ <i>Project PIP (prevention of Infiltration into Assam of Pak Nationals)</i> ” which was approved by the Ministry of Home Affairs, government of India in June 1962 to deal with the problems of Illegal |

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| | Immigration from East Pakistan into Assam. The project was watered down in 1969 only to deport those caught only at the border and those who re-entered after previous expulsion. The project was made inoperative for foreigners who escaped the detention net till 1969. |
| 1971 | War broke out and the East Pakistan became secular "Bangladesh". |
| 24.03.1971 | A treaty was presented to the people of Assam giving the deadline which was midnight of 24.03.1971. The Hindus who wished to claim their properties left behind, were asked to return by the dateline. The revision of the electoral rolls in 1971 brought to light Assamese people's dilemma, In just one year, i.e. during the period of 1970-71, the numbers of electors increased by ten per cent. |
| 08.06.1979 | On 08.06.1979, the people of Assam answered to a call of agitation. This was the biggest agitation till date in independent India. The entire state of Assam was standstill and almost all Assamese people took part in the agitation. It was about Assamese identity and it was about justice for the Assamese. |
| 1983 | Parliament enacted The Illegal Migrants (Determination by Tribunal) Act, 1983 and made the |

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| | same applicable only to Assam. |
| 15.08.1985 | The multifaceted agitation continued till the signing of "Assam Accord", i.e. the Memorandum of Settlement on 15.08.1985 by the Union Government, the AASU, the AAGSP and the Government of Assam in presence of the then Prime Minister of India, Late Rajiv Gandhi. |
| 07.12.1985 | Section 6A was inserted into the Citizenship Act, 1955, via Act 65 of 1985 with effect from 07.12.1985. The Statement of Objects and Reasons of the Citizenship (Amendment) Act, 1985 states that it was inserted pursuant to the Assam Accord dated 15.08.1985. |
| 14.07.2004 | That on 14.07.2004, the then Minister of State, Home Affairs, submitted a statement to the Parliament indicating that 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. |
| 12.07.2005 | The IMDT Act and Rules was declared to be unconstitutional by this Hon'ble Court. |
| 2006 | That after the judgment in Sonowal (I), the Central |

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| | <p>Government promulgated The Foreigners (Tribunal) Amendment Order, 2006, by which the Foreigners Order, 1964 was itself made inapplicable to the state of Assam. The Foreigners (Tribunal) Amendment Order, 2006 was called into question before this Hon'ble Court in W.P. (Civil) No. 117/2006 and W.P. (Civil) No. 119/2006.</p> |
| 13.09.2007 | <p>The United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter "UNDRIP"), with India voting in its favour.</p> |
| 17.12.2014 | <p>This Hon'ble Court in its judgment dated 17.12.2014 in Assam Sanmilita Mahasangha vs. Union of India, (2015) 3 SCC 1 has 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.</p> |
| 07.09.2015 | <p>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</p> |

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| | <p>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.</p> |
| 07.09.2015 | <p>On 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.</p> |
| 23.12.2016 | <p>The Respondent No. 1 issued another notification/Order bearing no. S.O. 4132(E).</p> |
| 31.12.2018 | <p>On December 31, 2018, a draft list was published by the NRC authorities which contained names of over 40</p> |

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| | lakhs people most of whom were found to have migrated into Assam illegally and to be excluded from the final NRC. |
| 12.12.2019 | 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. |
| 18.12.2019 | This Hon'ble Court issued notice in a batch of Writ Petitions challenging the constitutional validity of the Citizenship Amendment Act, 2019. |
| 10.01.2020 | Amidst ongoing protests all over the country especially in Assam, The Citizenship (Amendment) Act, 2019 was implemented in the State of Assam. |
| 22.01.2020 | This Hon'ble Court directed the Registry to segregate the Writ Petition filed into two categories, viz., one pertaining the Assam and Tripura and the others. |
| February , 2020 | High Level Committee formed by the Ministry of Home Affairs (MHA) headed by Justice (retd) Biplab Sharma completed the report giving recommendation for implementation of clauses of Assam Accord. |
| 18.02.2020 | Hence the present Writ Petition |

3. THE UNION OF INDIA,
THROUGH THE SECRETARY,
MINISTRY OF LAW AND JUSTICE,
SHASTRI BHAWAN,
NEW DELHI-110001

4. THE STATE OF ASSAM,
THROUGH ITS CHIEF SECRETARY,
ASSAM SECRETARIAT,
DISPUR CAPITAL COMPLEX,
G.S. ROAD, GUWAHATI- 781006
ASSAM

...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 PETITIONER ABOVE
NAMED.

MOST RESPECTFULLY SHEWETH:

1. The present Petition is preferred by the Petitioner as mentioned herein above in their personal as well as representative capacity of the populous of Guwahati city as well as in the entire state of Assam who have suffered immense 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, 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 thereof, as discriminatory, arbitrary, illegal and against the basic structure of the Constitution of India.

A. DETAILS OF THE PARTIES TO THE LITIGATION

2. That the Petitioner No.2 is a Citizen of India and is a permanent of Guwahati city Assam, since his birth. The Petitioner No.2 is [REDACTED]. The Petitioner no.2 had always taken keen interest in the socio-political scenario of the country. The Petitioner no.2 has vision to serve the Assamese community along with the rest of the Country. In order to achieve his goal of service to the people, the Petitioner no.2 quit his job and started social work aimed at social reforms in his endeavor he joined the Petitioner No.1, i.e. M.S.F (Muslim Students Federation, Assam) which is affiliated to Indian Union Muslim Leagues and is an unregistered association. The Petitioner No.2 is the founding member of MSF in Assam on 08.04.2018 and a social worker. The MSF (Assam) was formed to prepare the students to carry on the mission of making a vibrant community to participate in the nation building activates and also to emphasis on communal amity and secular solidarity to safeguard the rich composite culture

of our nation and its integral part well acknowledged as Assam. The organization also works for overall community development in the society more particularly in Assam. It also seeks to bring about practical solutions to the socio-political and economic problem peculiar to the state of Assam. There are no civil or criminal cases pending against the Petitioners. Petitioners Income is non-taxable.

3. The Petitioner organization has no personal/ individual interest in the reliefs sought for in the present Petition and the same has only been filed in public interest. Be it mentioned herein that the parent organization of M.S.F., Indian Union of Muslim League had already filed the very first petition challenging the validity of Citizenship (Amendment) Act, 2019 but the instant petition filed by the Petitioners, seeks to highlight the unconstitutionality of the Citizenship (Amendment) Act, 2019 in terms of the Assam Accord of 1985 and the illegal influx from the neighboring lands of Assam which has gradually altered the demography of the state of Assam since a very long time. The Union Government standing up for the voices of the Assamese people, resolved the Assam Accord of 1985 along with the state of Assam which put an expire date on the age old illegal influx problem but the recent passing of the Citizenship (Amendment) Act, 2019 had wiped out the expire date and sought to pain the people of Assam by legalizing

influx which is otherwise illegal till 31.12.2014. Espousing this cause, the present Petitioners has filed the instant Public Interest Litigation/Writ Petition in interest and only in the interest of the people of Assam.

4. The Respondent No. 1 is the Union of India, through the Ministry of Home Affairs. The Respondent No. 2 is the Ministry of External Affairs of the Union of India. The Respondent No.3 is the Ministry of Law and Justice 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. Union of India was a signatory to the Assam Accord. Respondent No. 4 is the State of Assam, which was also one of the signatories to the Assam Accord and had resolved to implement the Citizenship (Amendment) Act, 2019 in the state of Assam from 10th January, 2020 and has its separate department called "Department for Implementation of Assam Accord". All the four Respondents are proper and necessary parties to the present Petition and are likely to be affected by the orders sought in the present Petition.
5. The Petitioner, 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. It may be relevant to mention here that the petitioner herein had been continuously opposing the introduction and thereafter the enactment of the impugned Act before various forums. However, no relief was granted to the Petitioner there from.

6. That the Petitioners had 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.
7. That the Petitioners herein have never approached this Hon'ble Court or any other Court or Government seeking a relief similar to the relief sought for in the present writ petition.

B. BRIEF FACTS/ HISTORY

8. It is most respectfully stated herein that at present while this instant petition is being filed, the whole of India is burning and is in a situation where resentment is extremely high against the passing of Citizenship (Amendment) Act 2019. But, the facts and circumstances under which the present petitioners had filed the instant petition has its own grievance and relevance, i.e. the plight of the indigenous Assamese people and the affects of the passage of Citizenship (Amendment) Act 2019. To come to the issue at hand and for proper and justified

adjudication, it is very pertaining to bring about a brief history of the place where the Petitioners belongs. The members of the Petitioner no.1 organization and the Petitioner no.2 belong to a state in the North-East corner of India namely Assam which is an integral part of India.

Assam was known in the ancient times as Pragjyotishpur and Kamarupa in the medieval times. It has a history relatable from sixth century. Several dynasties ruled the land where present day Assam and several districts of West Bengal are located. One of the remarkable dynasty that ruled these is the Koch dynasty. The rise of Mongoloid Koch power marked a new epoch in the history of modern day Assam which is socially, culturally and politically very relevant. In fact, Sri Sri Sankaradeva and his contribution to the Vaishnavite reforms and arts and culture was protected by the legendary king Naranarayana. It is pertinent to mention herein that, since the beginning of 1200 century, there was repeated invasion of land and people by the Sultans of Bengals. However, these invaders never enjoyed permanent victory. But, in the early part of 13th century, a historic migration took place. A group of 9000 Ahom migrants of "Tai" race belonging to a region from upper Burma led by Sukapha came through Dihing-Patkai Range and settled in the present day Sivasagar. These migrants rose to power and developed socio-economic ways

to assimilate the tribes to form a skillful administration complex social structure and strong encourages army. The Ahom kings spread their dominant over the entire Brahmaputra valley which range till Bengal. During that time Assam was ruled by the Ahom kingdom and the Koch Kingdom.

In the other part of the country, Mongoloid Muslims by the name of Mughals invaded India and successfully defeated the Delhi Sultanate in the year 1526 and also overthrow the Sultan from Bengal in 1576. The Mughals ruled from Delhi. The Mughal emperors in ambition to conquer Assam made repeated attempts to attack the Ahoms. However, there was a strong resistance from the Ahom forces and the Mughals could not defeat the Ahom after several decades of war. Assam always flourished from the ancient times. It flourished under the Koch dynasty and the Ahom dynasty. The rest of India in the meanwhile saw the advent of the colonial British-East-India Company who ruled the rest of India systematically. There was always strong leadership in the Ahom Kingdom more specifically Rudra Singha who was one of the most celebrated Ahom king who ruled from 1695 to 1714. During the presence of the Ahom Kingdom in Assam, there was no presence of the East- India Company or the British. However, in the end and by the beginning of the Eighteenth Century there was a fall in the Ahom Kingdom and it facilitated the British to expand its

political campaign into Assam. In 1819, the Burmese Army invaded Assam through the Patkai range and massacred the Assamese. The Ahom king at that point of time had no other option but to seek help from the Britishers and the British Authorities waving its political option helped the Assamese and declared war against the Burmese in 1824 and later chased the Burmese out of Assam to reach Yandaboo on 24.02.1826, the Burmies King Bai-Gyi-Daw out of desperation signed a treaty of Yaandaboo with the British whereby the Burmese king denounce all claims on the principality of Assam and its dependents also promised no future interference in spite of the fact that neither the Britishers nor the Burmese were from Assam both the alien fought on the soil of Assam and as such, the Treaty of Yandaboo marks the Annexation of Assam in British India. However, the treaty of Yandaboo was not an instrument of transfer of power. The basic principle of the British East India Company was to do business and the said Britishers took Assam to be an important place for business of the Britishers.

The British connected Assam to the mainland India and the Indian sentiments griped into the people of Assam. By late 1800s and early 1900s, there was a strong opposition to the British rule and it saw participation of Assamese people under the leadership late Gopinath Bordoloi for the freedom of India.

At that time, Assam included the territorial demography of Sylhet. Rotating the clock to the time of independence of India, Rotating the clock to the time of independence of India, it is to state that Assam included Sylhet which is a part of present day Bangladesh. India became free in 1947. The British granted freedom but with a divisive cost. Indian subcontinent was divided into India and Pakistan. Assam was proposed to be a part East Pakistan. However, this scheme did not work. Many Assamese people saw it as a conspiracy. The Assamese politicians at that time resisted and tried to protect the oblivion Assamese identity. The partition plan of the British Government known as the Mountbatten plan recognized Assam as a Hindu Majority of State of the Union of India and Sylhet to be a Muslim Majority State and was given an option to stay with East Pakistan. At that time it was Mahatma Gandhi who himself said, *“if you don’t act correctly and now, Assam will be finished. Assam must not lose its soul. It must uphold it against the whole world else I will say that Assam had only mankind and no man. It is an impertinent question that Bengal should dominate Assam in anyway.”*

India became independent and the borders were drawn. Sylhet preferred to stay with East Pakistan. However, there were continuous waves of Hindu and muslim “refugees” which continued to cross the newly drawn borders of the independent

India. There was absolutely no check in the systematic influx. The indigenous Assamese people started questioning the influx and sought the help of the Central Government to check the influx of “refugees”. However, there was no means put together by the Union of India to check the said influx. By 1951, the influx had been a grave problem of the indigenous people of Assam as by then the Bengali speaking refugees started cultivating the lands of Assam and thus brought out a major demographic change in Assam. Its population inflated alarmingly. It was then the Union of India wrote *“It is patent, however, that if land is not available in Assam for the refugees, the rest of India had still less land”*. In the book of the then Prime Minister of India, “Discovery of India”, it was written *“If Assam adopts an attitude of incapacity to help solve the refugee problem, then the claims of Assam for financial help obviously suffer”*. This itself suggests that the influx of the refugees even during the period of British India was well recognized. The immigration into Assam from the erstwhile Bengal continued before 15th August 1947 and it was internal immigration in British India and after 15th August 1947, it was immigration from East Pakistan. The Union of India post independence already had legislation in place by the name of Foreigners Act 1946 which was enacted on 23.11.1946.

However, the Union of India took a step by enacting a piece

legislation for protection of the indigenous people of Assam by the name of *“Immigration (Expulsion from Assam) Act, 1950”*. The object of the said act was *“ During the last few months a serious situation has 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”*. The Act was a step by the Union of India which recognized the vulnerability of the inhabitants of Assam. But, it took more than ten years to in fact start and deport the infiltrators from Assam.

In fact, the first ever National Register of Citizens (NRC) was prepared in the state of Assam based on the census report of 1951 which contained around 80 lakh citizens. Subsequent to that, the Union of India enacted the Indian Citizenship Act, 1955 with an object to implement Article 10 of the Constitution of India. This enactment dealt primarily with the regulation of the citizenship and the various modes for acquiring Indian citizenship. This Act had nothing to do with solving the immigration problem of Assam. In the year 1962, The Union of India started a project by the name of *“Project PIP (prevention of Infiltration into Assam of Pak Nationals)”* which was approved by the Ministry of Home Affairs, government of India

in June 1962 to deal with the problems of Illegal Immigration from East Pakistan into Assam. The project was watered down in 1969 only to deport those caught only at the border and those who re-entered after previous expulsion. The project was made inoperative for foreigners who escaped the detention net till 1969.

The then East Pakistan was suffering under the dominion of Pakistan and there was increasing sentiments for creation of Bengali speaking sovereign. In the year 1971, war broke out and the East Pakistan became secular "Bangladesh". At that time there was an exodus of Hindus from East Pakistan to Assam. A treaty was presented to the people of Assam giving the deadline which was midnight of 24.03.1971. The Hindus who wished to claim their properties left behind, were asked to return by the dateline. The revision of the electoral rolls in 1971 brought to light Assamese people's dilemma, In just one year, i.e. during the period of 1970-71, the numbers of electors increased by ten per cent. The Hindus and Muslims having the commonalities to being "Bengalis" who left during the struggle of Bangladesh entered Assam and the electoral role inflated. All these years were nothing but a tragedy for the people of Assam. The immigration from neighboring East Pakistan now Bangladesh had continued its migration to Assam and there was no policy or law which is strict enough for restricting these

immigrants. Be it mentioned herein that the PIP scheme did not solve any purpose and the infiltrators again resurfaced in 1971.

The magnitude of migration and illegal immigration into Assam before and after Independence in the seventy years from 1901 to 1971 was summed up by the Registrar General of 1971 which is reproduced below:

“taking the whole population of 3.39 million of Assam in 1901 as ‘indigenous’ and apply the All – India rate of increase of 129.67 from 1901-1971, its population in 1971 should have been 7.56 million instead of 14.63 million”

In the circular of 17.02.1976, the Union of India it was clearly stated that *“persons who (had) come to India from erstwhile East Pakistan/Bangladesh prior to 24th March 1971 are not to be sent back”* This had been the fact and the living tragedy of Assamese indigenous people.

The feeling of alienation in the minds of the Assamese people grew as continuous influx never stopped. The Assamese identity was in great threat. On 08.06.1979, the people of Assam answered to a call of agitation. This was the biggest agitation till date in independent India. The entire state of Assam was standstill and almost all Assamese people took

part in the agitation. It was about Assamese identity and it was about justice for the Assamese.

Meanwhile, in 1983, Parliament enacted The Illegal Migrants (Determination by Tribunal) Act, 1983 and made the same applicable only to Assam. Although it was stated to be a measure which would expedite the determination of illegal migrants in the State of Assam with a view to their deportation, the said Act in fact provided a far more onerous and cumbersome process for the detection of illegal migrants in the State of Assam, than the procedure prescribed by the Foreigners Act, 1946 applicable in the rest of India.

The student organization namely AASU was spear heading the agitation. Another organization was formed namely All Assom Gana Sangram Parishad (AAGSP). The multifaceted agitation continued till the signing of "Assam Accord", i.e. the Memorandum of Settlement on 15.08.1985 by the Union Government, the AASU, the AAGSP and the Government of Assam in presence of the then Prime Minister of India, Late Rajiv Gandhi. The Assam Accord is as follows:-

"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 Gana Sangram Parishad (AAGSP) have also expressed their keenness 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 effects upon the political, social, culture 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 Minister's level 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 provisions, international agreements, national commitments and humanitarian considerations, it has been decided to proceed as follows:

Foreigners Issue

5.1 For purposes of detection and deletion of foreigners, 1.1.1966 shall be the base data and year.

5.2 All persons who come 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.

5.3 *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 1964.*

5.4 *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.*

5.5 *For this purpose, Government of India will undertake suitable strengthening of the government machinery.*

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

5.7 *All persons who were expelled earlier, but have since reentered illegally into Assam shall be expelled.*

5.8 *Foreigners who came to Assam on or after March 25, 1971 shall continue to be **detected, deleted and practical steps shall be taken to expel** such foreigners.*

5.9 *The Government will give due consideration to certain difficulties expressed 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 culture, social, linguistic identity and heritage of the Assamese people.*

7. The Government take 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 education and science and technology through establishment of national institutions.

Other Issues

8.1 The Government will arrange for the issue of citizenship certificates in future only by the authorities of the Central Government.

8.2 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.

9.2 Besides the arrangements mentioned above and keeping in view security considerations, a road all along the international border shall be constructed 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 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 relevant 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 Union (AASU) and the all Assam Gana Sangram Parishad (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:

a. 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;

b. frame a scheme for ex-gratia payment to next of kin of those who were killed in the course of the agitation;

c. give sympathetic consideration to proposal for relaxation of upper age limit for employment in public services in Assam, having regard to exceptional situation that prevailed in holding of academic and competitive examinations, etc., in the context of agitation in Assam;

d. 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;

e. 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.

9. That the Section 6A was inserted into the Citizenship Act, 1955, via Act 65 of 1985 with effect from 07.12.1985. The Statement of Objects and Reasons of the Citizenship (Amendment) Act, 1985 states that it was inserted pursuant to the Assam Accord dated 15.08.1985. 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 there from 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.

10. That as per the report submitted by the Governor of Assam, Lt. Gen. (Retd.) S. K. Sinha to the President of India, K.R. Narayanan, in 1998,

“Illegal migration from Bangladesh to Assam has been taking place primarily for economic reasons. Bangladesh is the world's most densely populated country with a population density of 969 per square kilometre. The growth rate of population in that country

is 2.2 per cent and its population is growing at the rate of 2.8 million per year. Each year nearly one third of Bangladesh gets inundated by floods, displacing 19 million people. 70 million people constituting 60 per cent of the population live below the poverty line. The per capita income in Bangladesh is 170 dollars per year, which is much lower than the per capita income in India. The border between India and Bangladesh is very porous. In these circumstances, the continued large scale population movement from Bangladesh to India, is inevitable, unless effective measures are taken to counter it.

Besides the above considerations, there are other contributory factors facilitating infiltration from Bangladesh. Ethnic, linguistic and religious commonality between the illegal migrants and many people on our side of the border, enables them to find shelter. It makes their detection difficult. Some political parties have been encouraging and even helping illegal migration, with a view to building vote banks. These immigrants are hard-working and are prepared to work as cheap labour and domestic for lower remuneration, than the local people. This makes them acceptable. Moreover, with corruption being all pervasive, corrupt officials, are bribed to provide help. Recently, a racket has been busted in Lakhimpur. Four individuals were found to have been providing forged citizenship certificates and other documents to illegal migrants for the last 14 years.

11. That 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.

12. That on 14.07.2004, the then Minister of State, Home Affairs, submitted a statement to the Parliament indicating that 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.
13. That a 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 there under 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.

14. That after the judgment in *Sonowal (I)*, the Central Government promulgated The Foreigners (Tribunal) Amendment Order, 2006, by which the Foreigners Order, 1964 was itself made inapplicable to the state of Assam. The Foreigners (Tribunal) Amendment Order, 2006 was called into

question before this Hon'ble Court in W.P. (Civil) No. 117/2006 and W.P. (Civil) No. 119/2006. In the judgment reported as *Sarbananda Sonowal v. Union of India*, (2007) 1 SCC 174 (hereinafter referred to as, "Sonowal (II)") this Hon'ble Court quashed the Foreigners (Tribunal) Amendment Order 2006.

15. That This Hon'ble Court in its judgment dated 17.12.2014 in *Assam Sanmilita Mahasangha vs. Union of India*, (2015) 3 SCC 1 has 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?

- (xii) Whether Section 6A violates the Rule of Law in that it gives way to political expediency and not to Government according to law?
- (xiii) 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?

16. That this Hon'ble Court in the aforesaid case of Assam Sanmilita Mahasangha, 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.

17. That 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.
18. That 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.

19. That 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 authorization, 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 Mazumadar & 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.

20. 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...”

21. That a writ petition, being W.P. (C) No. 20 of 2019 titled as *Nagarikatwa Aain Songsudhan Birodhi 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 and the same is pending adjudication before this Hon'ble Court.

22. That this Hon'ble Court struck down the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 and as per the directions of this Hon'ble Court, an updated National Register of Citizens (NRC) was being prepared by a team of NRC officials, being led by the State Coordinator, and the same had been continuously monitored by this Hon'ble Court. Be it mentioned herein that the NRC which was now created is an updated version of the previous NRC which was published on 1951. 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 that 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.

C. THE IMPUGNED ACT

23. 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) 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.

A true copy of the Citizenship (Amendment) Act 2019 is annexed herewith as **ANNEXURE P-1 (PAGE TO)**.

D. RELEVANT SUBMISSIONS

24. That the influx of immigrants from East Pakistan, now Bangladesh into the territory of Assam had now only changed the demography of the Assam in last more than hundred years but also had negative impacts in economy and polity of Assam. This had been an admitted proposition even by the Union of India. In the counter affidavit filed by the respondent no.1 in the case of *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665, it was stated as follows:-

“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”*

The petitioners crave leave of this Hon'ble Court to rely and refer to the counter affidavit filed by the respondent no.1 in the case of Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665, at the time of hearing, if need be.

25. That the people of Assam had been subject to it is difficulties due to the influx of the migrants and now it is next to impossible to make a realistic estimate of the number of illegal immigrants from Bangladesh who are present in the state of Assam. These immigrants 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.

26. That it is well accepted 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 Petitioner 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 student movement. The Assam Accord was a result of years long struggle/agitation against these phenomenon. The Union of India are well aware of these existing phenomenon in the state of Assam and also in the other North Eastern states. The Assam Accord of 1985 led to the introduction of a new Section 6A in the Citizenship Act. The first cut-off was January 1, 1966, whereby those ordinarily resident in Assam from that date got citizenship. Those who entered into Indian Territory of Assam between January 1, 1966 to March 25, 1971 were entitled to citizenship after 10 years. Following this, a special Foreigners Tribunal was created in 2005. Not

only the state of Assam but the entire North East is dealing with two specific threats, i.e. (a) undocumented migrants and (b) threat to its culture and its electoral balance which was acknowledged even by this Hon'ble Court in its previous judgments. 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 notwithstanding the fact that the indigenous people of Assam are being reduced to a minority in their home State. Their cultural survival is in jeopardy, their political control will be weakened and their employment opportunities will be undermined. One also should not forget that influx is the most prime contributory factor behind the outbreak of insurgency in the State of Assam and other northeastern states.

27. That several statutes and instruments, including those mentioned herein below, empower the Central Government to place conditions and give directions/ orders relating to a foreigner's entry, stay and removal from India. The Petitioner submit that the impugned Act has the effect of altering the statutory regime in respect of a class of persons who have entered/ remained in India illegally. Some of the relevant statutes and statutory instruments are as follows:

A. The Passport (Entry into India) Act, 1920 and Rules

made there under provide as follows:

- Section 3 of the Passport (Entry into India) Act, 1920 empowers the Central Government to make rules, inter alia, requiring that any person entering India shall be in possession of a passport.
- By virtue of Section 4, a person who has contravened or is reasonably suspected to have contravened any Rule or Order made under Section 3 is liable to be arrested.
- Under Section 5, the Central Government has the power to make a general or special order directing the removal of any person from India who has entered India without a passport in contravention of the Rules and to enforce such directions.
- Rule 3 of the Passport (Entry into India) Rules 1950, requires any person entering India to be in possession of a valid passport.
- Rule 5 (iv) specifies that the holder of a foreign passport must be in possession of a visa in order to satisfy the conditions of a “valid passport”. Insofar as holders of Pakistani and Bangladeshi passports are concerned, the relevant provisions are in Rule 5(ivA) and Rule 5(iv-C) of the said Rules, respectively.

- Rule 6 of makes contravention of Rule 3 punishable with imprisonment or fine or both.

B. The Registration of Foreigners Act, 1939 and Rules made there under provide as follows:

- Section 3 of the Registration of Foreigners Act, 1939 empowers the Central Government to make Rules requiring foreigners to report their presence and movements to specific authorities.
- It is clear from Section 4 that the burden of proving whether any person is or is not a foreigner is placed upon that person.
- Section 5 of provides for penalty in case of contravention thereof.
- It is provided in Section 8 that the provisions of the said Act shall be in addition to and not in derogation of any other laws.
- The Registration of Foreigners Rules, 1992 have been framed under the said Act of 1939, in supersession of the 1939 Rules. The Central Government has also made the Registration of Foreigners (Bangladesh) Rules, 1973 requiring any citizen of Bangladesh entering India or resident in India to present a “registration report” to the appropriate Registration Officer. (It may be

noted that the proviso to Rule 2 exempts a person who enters India on a valid visa of not more than 180 days and does not wish to remain in India beyond this period.)

C. The Foreigners Act, 1946 and Foreigners Order, 1948 provide as follows:

- Section 3 of the Foreigners Act, 1946 empowers the Central Government to make general or specific orders prohibiting, regulating or restricting the entry and departure of foreigners and their presence in India.
- Under Section 9, the burden of proving whether or not a person is a foreigner lies upon that person.
- Section 11 empowers the concerned authorities to enforce compliance with their directions including by use of reasonable force.
- Sections 14 to 14C provide for penalties for contravention thereof, including for overstaying or violating visa conditions (Section 14) or entering into any area in India without the documents required under any order or direction given under the 1946 Act (Section 14A).
- Section 16 provides that it shall be in addition to and not in derogation of other laws.

- The Foreigners Order, 1946 provides for various restrictions upon foreigners including with regard to their duration of stay, employment, movement and permissible activities.
 - Clause 3 provides specific points of entry for foreigners to enter India and also requires them to obtain leave of the jurisdictional civil authority. Such leave is to be refused, inter alia, if the foreigner is not in possession of a valid passport or visa. In the absence of leave, the foreigner may also be detained.
 - Under Clause 14, when a foreigner is liable to removal from India, his money and property may be applied towards *“the voyage from India and the maintenance until departure of the foreigner and his dependents, if any”*.
- D. Section 2 of the Immigrants (Expulsion from Assam) Act, 1950 provides that the Central Government can order expulsion of persons who have been resident outside India, and are resident in Assam, detrimental to the interest of the general public of India or any section thereof, or of any scheduled tribes in Assam. Such an order can be enforced under Section 4, if necessary, by use of reasonable force. Section 5 also provides for

penalties for contravention of any order made under the Act. (By notification dated 20.03.1950, powers under the aforementioned Act were conferred by the Central Government also upon the Government of Assam and other authorities.)

28. That on 13.09.2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter “UNDRIP”), with India voting in its favour. UNDRIP inter alia provided for the following right for the indigenous peoples:

“Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which

has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 15

Article 29

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding

and good relations among indigenous peoples and all other segments of society

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure

that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect

the exercise of these rights.”

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 UNDRIP.

The Petitioners crave leave of this Hon’ble Court to rely and refer to the United Nations Declaration on the Rights of Indigenous Peoples, 2007 at the time of hearing, if need be.

29. The Petitioner states and submit that several petitions relating to issues concerning illegal migration in the State of Assam are at present pending before this Hon’ble Court, including, inter alia, the following:
 - a. Writ Petition (Civil) No. 274 of 2009 (*Assam Public Works v. Union of India & Ors.*) was preferred before this Hon’ble Court for deleting the names of illegal voters from the voting list, regularising the pre - 25.03.1971 immigrants as Indian citizens and upgrading of the National Register of Citizens for the State of Assam, containing village-wise information of each and every person enumerated therein, which was prepared during the census of 1951 under a directive of the Ministry of Home Affairs.
 - b. W.P. (Civil) No. 562 of 2012 (*Assam Sanmilita Mahasangha v. Union of India & Ors.*) was filed before this

Hon'ble Court to challenge the constitutional validity of Section 6A of the Citizenship Act, 1955 as being in violation of Articles 5 and 6, 14, 21 and 29 of the Constitution of India.

c. W.P. (C) No. 876 of 2014 (*All Assam Ahom Association & Ors. v. Union of India & Ors.*) was filed thereafter, challenging constitutional validity of Section 6A of the Citizenship Act, 1955 and Rule 4A of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003. It further prayed for directions to the State of Assam to complete border fencing, identify and deport foreigners in accordance with the Foreigners Act, 1946 and constitute adequate number of tribunals under the Foreigners (Tribunals) Orders, 1964.

d. A copy of the order dated 18.12.2019 passed by this Hon'ble court in Writ Petition (Civil) No. 1470 of 2019 is annexed herewith and marked as **ANNEXURE P-2 (At Page ___to___)**. This Hon'ble Court on 22.01.2020 was pleased to direct the Registry to segregate the matters into two categories, viz. matters pertaining to Assam and Tripura and other matters. A copy of the order dated 22.01.2020 passed by this Hon'ble court in Writ Petition (Civil) No. 1470 of 2019 is annexed herewith and marked as **ANNEXURE P-3 (At Page ___to___)**.

30. That under such facts and circumstances as mentioned herein above, the Union of India had passed the aforesaid legislation, namely Citizenship (Amendment) Act 2019. This Act had been criticized and after passing of the said Act, there had been protests all over the Country. In lot of places, the protests had turned violent. The very first protest against the said passing of Citizenship (Amendment) Act 2019 happened in the entire state of Assam and was carried out by the Assamese people and the civil society. The Act of 2019 had been implemented from 10.01.2020 in the state of Assam amidst protests all over the state of Assam. The Government of Assam, i.e. the respondent no.4 has now declared that it shall publish the Rules in terms of the Citizenship (Amendment) Act 2019. The Act in itself is unacceptable for the Assamese people as it is inconsistent with the Assam Accord and as such the question of enacting Rules and forcefully implementing the Act of 2019 against the wishes of the people of Assam is in itself a violation of the Fundamental Rights of the People of Assam. The powers of the Union of India in making laws at different point of time is unchallengeable but the laws made are to be consistent with the treaties and Memorandum of Settlements executed by the Union of India and various state government. It is 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:

31. GROUND

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

- a. For that the insertion of the proviso in Section 2(1)(b) by the impugned amendment Act is in direct contradiction to the Assam Accord of 1985 and Section 6A of the Citizenship Act, 1955 which was inserted as per the agreement and undertaking executed by the Union of India and the State of Assam known as the Assam Accord, 1985 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 and a specific assurance that illegal migrants entering the state of Assam after 25.03.1971 would be deported back to Bangladesh. The impugned amendment is made disregarding the agreement executed by the Union Government with the people of Assam in concurrence with the Government of Assam and its assurance

to the people of Assam by insertion of Section 6A in the Citizenship Act 1955, i.e. (Citizenship Amendment Act, 1985) and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

- b. For that insertion of Section 6B(1) and Section 6B(2) by the impugned amendment Act is inconsistent with Section 6A and Section 5 or the qualifications of naturalization under the provisions of the third schedule. Interestingly both the Section 6B(1) and Section 6B(2) are in fact inconsistent with each other in as much as the process of naturalization ceases to exist to such persons as encompassed by the proviso of Section 2(1)(b) and as such and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.
- c. For that the insertion of Section 6B(3) and its proviso had rendered the purpose of insertion of Section 6A of the Citizenship Act and the Assam Accord of 1985 meaningless and thereby frustrated the entire systematic process of detection and deportation of illegal immigrants from the territory of Assam. Be it mentioned herein that the process of detection of illegal immigrants were started by the Union Government itself in the year 1955 by enacting *Immigration (Expulsion from Assam) Act, 1950* and later started a project

by the name of “*Project PIP (prevention of Infiltration into Assam of Pak Nationals)*” which was approved by the Ministry of Home Affairs, government of India in June 1962 to deal with the problems of Illegal Immigration from East Pakistan into Assam. The project was watered down in 1969 only to deport those caught only at the border and those who re-entered after previous expulsion. Execution of Assam Accord 1985 was the first move by the Union of India against illegal immigrants after Easy Pakistan was liberated and Bangladesh was formed. However, by insertion of Section 6B(3) by which illegal immigrants would be declared Indian citizen, the entire systematic process of illegal immigrants has been diluted in spite of the fact that the Union Government is esstopped by doing it according to its own agreement/undertaking and cause of actions all throughout the 72 years of creation of present day India and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

- d. For that the influx problems are old and had been troubling the assamese people since the inception of India in 1947. But after coming of the Assam Accord, a sense of security was mandated by the respective state and central government. In the Clause 6 of the “Assam Accord” specifically mandates the Union Government and also the State of Assam to protect the Constitutional, legislative and administrative safeguards the

Assamese people and shall also provide protection, preservation and promotion of the culture, social, linguistic identity and heritage of the Assamese people. As such under no circumstances, the Union Government could have come up with the Impugned “Citizenship (Amendment) Act, 2019” which dilutes the constitutional, legislative and administrative safeguards the Assamese people and pose hindrance in protection, preservation and promotion of the culture, social, linguistic identity and heritage of the Assamese people. In view of the same, the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

- e. For that 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 petitioner 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.

- f. For that the Union Government does not distinguish that the Assam Accord is made/executed not in contradiction with the Citizenship Act and there is wide spread implementation of Section 6A of the Act and as such the amendment made contrary to Section 6 A of the Act is wholly inconsistent and the Impugned "Citizenship (Amendment) Act, 2019" is liable to be set aside and quashed.

- g. For that under the Bengal Eastern Frontier Regulation Act, the British, in a bid to protect the commercial interests (as stated earlier that the British annexed Assam for Business purpose only), framed regulations restricting the entry and regulating the stay of outsiders in designated areas. The Act was brought in to prevent "British subjects" (Indians) from trading within these regions. However, after partition, the Indian government replaced "British subjects" with "Citizen of India" and retained the ILP to protect the interests of the indigenous tribal communities of the Northeast. The entire territory of Assam does not fall under the ILP area whereas the other states of the North East India has already implemented ILP. Newly inserted Section 6B(4) vide which

exclusion of the tribal area of Assam which are at imminent risk from illegal immigrants just as the non tribal areas of Assam shall not serve any purpose and especially when the impugned amendment Act had sought to grant citizenship to illegal immigrants which are present even in such tribal areas of Assam. The ILP which restricts commercial interests of non residents may be helpful but the same is not applicable in the state of Assam and as such the amendment which is done shall only frustrate the citizens irrespective of being tribal or non tribal and as such insertion of Section 6B (4) is a futile exercise.

- h. For that Sections 3, 5 and 6 of the impugned Act is inconsistent of Section 6A of the Citizenship Act, 1955. Section 6A was inserted into the 1955 Act, by the Citizenship (Amendment) Act 1985, as a result of the 1985 Assam Accord. Sections 2, 3, 5 and 6 of the impugned Act are completely contrary to Section 6A of the 1955 Act, since it legitimizes 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 and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.
- i. For that the amendment defeats the purpose of the Assam Accord and whereas seeks to consume in as citizens, the

illegal immigrants and encroachers of the land and people of Assam and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

- j. For that the NRC which was implemented by the Union of India is nullified the “Citizenship (Amendment) Act, 2019” especially when the NRC was completed in the year 2019 keeping the benchmark date of citizenship as 24.03.1971. That being so, the Union of India cannot change its stand now that the NRC is complete and the Assam Accord is being implemented with regard to Article 5.8 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 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 and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

- k. For that the date till which the citizenship is sought to be granted to “*any person*” (as mentioned in the Act of 2019) is arbitrary and there is not viable justification as to why such an timeline is set and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

- l. For that the Section 6 A of the Citizenship Act, 1955 and Section 6B of the Citizenship Act, 1955 are inconsistent with each other and 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.

- m. For that the illegal immigrants had based themselves in the territory of Assam since long and the Assam Agitation which lasted from 1979 to 1985 was the result of the growing

demographic invasion of the Assamese people and the fact of the same was recognized by the Union Government since a long time and the Union Government especially executed an agreement by the name of Assam Accord in 1985 with the people of Assam along with the State of Assam which promised protection against demographic invasion and protection of the Assamese indigenous people and due to which a long process of detection and deportation had been continuing. But the Union Government in clear contravention to its promises had come up with the impugned amendment act which nullified all the attempts to detect and deport illegal immigrants which had already based themselves within the territory of Assam as and when they get opportunity and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

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

- n. That the “Citizenship (Amendment) Act, 2019” seeks to include as citizens, 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, subject to they be 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. This inclusion of “*any person*” (as mentioned in the Act of 2019) violates Article 21 of the people of Assam in as much as the lives and liberty of the Citizens of Assam will be adversely affected and the socio-economic condition of the State of Assam shall take a plunge due to inclusion of “*any person*” (as mentioned in the Act of 2019) which otherwise was not entitled to especially when the citizens of Assam are already living in the tragedy of illegal immigration since last 100 years and the same has seriously threatened the internal security and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

- o. That inclusion of “*any person*” (as mentioned in the Act of 2019) which otherwise was not entitled to shall destroy the autonomy of indigenous persons across North Eastern States is essentially and destroy the right (social and political) of the indigenous people of Assam to fully enjoy their right to life, liberty and dignity under Article 21 of the Constitution and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.
- p. That inclusion of “*any person*” (as mentioned in the Act of 2019) is like upholding the encroachment and the invasion of “*such*

group of persons” into the resources and rights of the citizens of India and Assam which is embedded with human dignity. The 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 and inclusion of “any person” (as mentioned in the Act of 2019) shall further worsen the situation and thereby resulting in a direct infringement of Article 21 of the Constitution of India of the people of the Assam and the North East India which is already a victim of terrorism and insurgencies and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

- q. That each and 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 petitioner 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 and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

**VIOLATION OF ARTICLE 14 OF THE PEOPLE OF ASSAM
GUARANTEED UNDER THE CONSTITUTION OF INDIA:**

- r. For that the Section 3 of the “Citizenship (Amendment) Act, 2019” inserted section 6 B (4) of the Citizenship Act 1955 to constitutionally protect indigenous people in North Eastern states except Assam. The classification of Assam into tribal and non-tribal areas for the purpose of application of the impugned Act bears no rational nexus with the object sought to be achieved as the objective of protecting indigenous people who are dispersed across the entire state including its non-tribal areas. Therefore, Section 3(4) therefore violates Article 14 of the Constitution of India and as such the Impugned “Citizenship Amendment Act, 2019” is liable to be set aside and quashed.
- s. For that 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 and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

- t. For that the classification made by the impugned Act has no rational nexus with the object it is said to achieve. There are persecuted communities from the neighboring 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 as such the Impugned "Citizenship (Amendment) Act, 2019" is liable to be set aside and quashed.
- u. For that 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*.

- v. For that 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 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 and as such the Impugned "Citizenship (Amendment) Act, 2019" is liable to be set aside and quashed.
- w. For that this Hon'ble Court has held religion to be a facet of personal autonomy and any classification based on religion is an impermissible classification in terms of Article 14 of the Constitution. Further, classification on the basis of place of birth is also an impermissible classification and contrary to Part III of the Constitution. It is submitted that Sections 2, 3, 5 and

6 of the impugned Act, thus, make impermissible classification of people and are liable to be struck down on that ground itself.

- x. For the respondents while espousing a humanitarian approach to accept refugees cannot discriminate on the basis of religion. The acceptance of refugees on basis of religion cannot stand opposed to very idea of existence of indigenous people of Assam especially when there is a standing Memorandum of Settlement, i.e. the Assam accord of 1985 whose legal validity is unquestionable.

- y. For that the Central Government while passing the Impugned “Citizenship (Amendment) Act, 2019” could not appreciate the fact that as per the Oxford Dictionary, “*indigenous*” means native and the indigenous people of an area or state are not limited to the sixth schedule area or tribal areas. Indigenous is “place” specific and not “tribe or ethnic group” specific and as such exclusion of the rest of Assamese people except those in the tribal areas vide section 6B (3) of the impugned Act of 2019 is violative of Article 14 of the Constitution of India and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

**VIOLATION OF ARTICLE 29 OF THE PEOPLE OF ASSAM
GUARANTEED UNDER THE CONSTITUTION OF INDIA:**

z. For that Article 29 of the Constitution of India provides that any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. The Assamese citizens had been in the middle of the influx problems from the migrants from neighbouring Bangladesh and erstwhile East Pakistan since long, i.e. since the inception of India in 1947. But after coming of the Assam Accord, a sense of security was mandated by the respective State and central government. In the Clause 6 of the “Assam Accord” specifically mandates the Union Government and also the State of Assam to protect the Constitutional, legislative and administrative safeguards the Assamese people and shall also provide protection, preservation and promotion of the culture, social, linguistic identity and heritage of the Assamese people. As such under no circumstances, the Union Government could have come up with the Impugned “Citizenship (Amendment) Act, 2019” which dilutes the constitutional, legislative and administrative safeguards the Assamese people and pose hindrance in protection, preservation and promotion of the culture, social, linguistic identity and heritage of the Assamese people. In view of the same, the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

aa. For that the illegal influx has serious implications for internal security notwithstanding the fact that the indigenous people of Assam are being reduced to a minority in their home State. Their cultural survival is in jeopardy, their political control will be weakened and their employment opportunities will be undermined. One also should not forget that influx is the most prime contributory factor behind the outbreak of insurgency in the State of Assam and other northeastern states. As per the oxford dictionary, "*indigenous*" is an adjective meaning originating or occurring naturally in a particular place or native. After coming of the Impugned "Citizenship (Amendment) Act, 2019", the indigenous or the native people of Assam are facing imminent threat from the non-citizens and illegal immigrants which are sought to be given citizenship on the basis of their religion who is residing in the territory of Assam illegally till 31.12.2014. This shall defeat the purpose of "Assam Accord" and rights of the Assamese people to protect its own interests as stipulated in Article 29 of the Constitution of India and as such the Impugned "Citizenship (Amendment) Act, 2019" being ultra virus is liable to be set aside and quashed.

bb. For that the Central Government could not appreciate the fact that "*indigenous*" means native and the indigenous people of Assam are not limited to the sixth schedule area or tribal areas and through any legislation, the rights of any indigenous

community under Article 29 of the Constitution of India cannot be taken away, as is been done by deviating from the Assam Accord and enacting the Impugned “Citizenship (Amendment) Act, 2019” and as such the same is liable to be set aside and quashed.

**VIOLATION OF ARTICLE 355 OF STATE OF ASSAM
GUARANTEED UNDER THE CONSTITUTION OF INDIA**

cc. For that 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 neighboring states of North East for the purposes of obtaining citizenship of India and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

dd. For that in Sarabananda Sonowal’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 and as such the Impugned "Citizenship (Amendment) Act, 2019" is liable to be set aside and quashed.

ee. 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 figures of census report of Assam and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

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

ff. For that 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 as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

OTHER GROUNDS

gg. For that the impugned Act has been passed as a result of extraneous political considerations. Sections 2, 3, 5 and 6 of the impugned Act are in violation of the non-religious and secular fabric of the Constitution of India which is contained in the Preamble to the Constitution, as well as in Articles 15 and 25 to

27 of the Constitution of India. It is further submitted that a discrimination based on religion is not permissible. The impugned Act attempts to grant blanket exemptions from the provisions of law governing grant of citizenship to a certain class of foreigners in India, who have entered and/or staying in India without valid documents and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

hh. For that this Hon’ble Court has held religion to be a facet of personal autonomy and any classification based on religion is an impermissible classification in terms of Article 14 of the Constitution. Further, classification on the basis of place of birth is also an impermissible classification and contrary to Part III of the Constitution. It is submitted that Sections 2, 3, 5 and 6 of the impugned Act, thus, make impermissible classification of people and are liable to be struck down on that ground itself.

It is further submitted that Sections 2, 3, 5 and 6 of the impugned Act are in violation of the judgment of this Hon’ble Court in *All Assam Sanmilitia Mahasangha 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.

INCONSISTENT WITH THE IMMIGRANTS (EXPULSION FROM ASSAM) ACT, 1950

- ii. 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.

INCONSISTENT WITH THE ACTIONS, STEPS AND POLICIES OF THE UNION GOVERNMENT AND THE STATE OF ASSAM

- jj. For that the illegal immigrants had based themselves in the territory of Assam since long and the Assam Agitation which lasted from 1979 to 1985 was the result of the growing demographic invasion of the assamese people and the fact of

the same was recognized by the Union Government since a long time and the Union Government especially executed an agreement by the name of Assam Accord in 1985 with the people of Assam along with the State of Assam which promised protection against demographic invasion and protection of the Assamese indigenous people and due to which a long process of detection and deportation had been continuing. The Union Government had started a project by the name of "*Project PIP (prevention of Infiltration into Assam of Pak Nationals)*" which was approved by the Ministry of Home Affairs, government of India in June 1962 to deal with the problems of Illegal Immigration from East Pakistan into Assam. The Foreigner's Tribunal are set up and is running efficiently and the NRC updates was carried out by the Union Government and the State Government of Assam to deal with the illegal immigrants issues of the state of Assam. In spite of this, the people of the state of Assam are still facing the problem of illegal immigrants and are still suffering from the huge influx which had deep social and economic impact within the people of Assam. The steps taken by the State Government and the Union Government are not enough to solve the issues. Under such a situation, Union Government in clear contravention to its promises had come up with the impugned amendment act which nullified all the attempts to

detect and deport illegal immigrants which had already based themselves in the territory of Assam as and when they get opportunity and as such the Impugned “Citizenship (Amendment) Act, 2019” is liable to be set aside and quashed.

ABSURDITY AND UNREASONABLENESS WITH RESPECT TO APPLICABILITY OF THE ACT:

- kk. For that 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.

- ll. For that “Religious Persecution” which is the basis on which the impugned Act grants citizenship is absolutely vague and there are no procedure prescribed in determining such “Religious Persecution”. Moreover, with regard to any migrants which had been living in India, more particularly Assam illegally since a long time, there are no procedure prescribed

as adjudicate such illegal stay and the tenure of the illegal stay in India, more particularly in Assam.

mm. For that the impugned Act is arbitrary, illegal, null and void.

nn. For that the impugned Act is otherwise bad in law.

32. That the Petitioners state that in spite of these grounds that renders the "Citizenship (Amendment) Act, 2019", bad and liable to be struck down. The respondent no.4 has its own department for "Implementation of Assam Accord" but the respondent no.4 has already implemented the Citizenship (Amendment) Act, 2019 and is in verge of making the Rules for the "Citizenship (Amendment) Act, 2019". In such a situation, if the respondent no.4 is directed not to implement the said provisions of the "Citizenship (Amendment) Act, 2019" until disposal of the case, especially when the respondent no.4 is to implement the Assam Accord through its special department for "Implementation of Assam Accord", the Petitioners and the people of Assam shall suffer irreparable loss and injury.

33. That the petitioner states that the Union Government had implemented the Citizenship (Amendment) Act, 2019 on 10.01.2020 in the entire country. The State of Assam has a special place and cannot be equated with any other states of the country especially due to the existence of the Assam

Accord. The fact remains that the Union Government had accepted the Assam Accord and the State of Assam had been following the Memorandum of Settlement. The Union Home Ministry was made the nodal agency for the purpose of implementation of the Assam Accord and the respondent no.4 has its own department for "Implementation of Assam Accord". Both the Union Government and the State Government of Assam has its common duties and responsibilities towards the people of Assam and the Assam Accord. Assuming but not admitting, there is no virus in the "Citizenship (Amendment) Act, 2019", even then, the responsibility cast upon the State of Assam and the Union Government to implement the Assam Accord. It is very imperative for both the Union Government and the State Government of Assam to act as per the Assam Accord, with or without the Citizenship (Amendment) Act, 2019. As such the question so arises as to what are the steps taken by the Union Government and the State Government to implement the Assam Accord post 10.01.2020 when the Union Government implemented the "Citizenship (Amendment) Act, 2019". Till date there are no state specific rules and bye laws or central rules and bye laws which supplement the implementation of the Citizenship (Amendment) Act, 2019. The State of Assam being a party to the Assam Accord, is

legally bound to implement the “Citizenship (Amendment) Act, 2019” as per the Assam Accord and the State of Assam already has a separate department dealing in “Implementation of Assam Accord”. If at all the provisions of the “Citizenship (Amendment) Act, 2019” are in contravention to the Assam Accord, the State of Assam being bound by Assam Accord cannot implement the said Central Act in spite of the fact that the same is enacted by the Parliament. Under such circumstances, Part XI of the Constitution of India cannot come in way for the state government, i.e. the Government of Assam to see proper implementation of the Assam Accord. But as on date, neither the Union Government nor the State of Assam had taken any step for implementation of Assam Accord post 10.01.2020, i.e. when the “Citizenship (Amendment) Act, 2019” was given effect to all over the country.

34. That the Petitioners have no other efficacious remedy but to approach this Hon’ble Court by means of the present Writ Petition.
35. That the present Petition is filed bonafide and in the interest of justice.
36. 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 and illegal and consequently setting aside the impugned Act as ultra-vires the Constitution of India;
- b. Issue a writ in the nature of Mandamus or any other appropriate a writ/ order or direction to the Respondent no 1 to take effective steps for implementation of Assam Accord in general and for conservation and preservation of the distinct culture, heritage and traditions of the people of Assam in furtherance to Clause 6 of the Assam Accord, in particular;
- c. Issue a writ in the nature of Mandamus or any other appropriate a writ/ order or direction to the Respondent no 4 to take effective steps for implementation of Assam Accord irrespective of the clauses of the Citizenship (Amendment) Act, 2019 and also in general;
- d. Issue Rule Nisi in terms of prayers (a), (b) and (c) above;
and/or

- e. 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.

FILED BY

(ABHINAV AGRAWAL)
ADVOCATE FOR THE PETITIONER

NEW DELHI
DRAWN ON: 11.02.2020
FILED ON: 18.02.2020

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO. _____ OF 2020

IN

WRIT PETITION (CIVIL) NO. _____ OF 2020

(Under Article 32 of the Constitution of India)

IN THE MATTER OF: -

Muslim Students Federation (Assam) & Anr ...Petitioners

Versus

Union of India & Ors. ...Respondents

APPLICATION FOR AD-INTERIM EX-PARTE STAY

TO,

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

THE HUMBLE PETITION OF THE PETITIONER
ABOVENTIONED:

MOST RESPECTFULLY SHEWETH:

1. That vide the accompanying Writ Petition, the Petitioners are invoking the writ jurisdiction of this Hon'ble Court under Article 32 of the Constitution of India. The present Petition is preferred by the Petitioners as mentioned herein above in their personal as well as representative capacity of the populous of the state of Assam who have suffered immense 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, 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 thereof, as discriminatory, arbitrary, illegal and against the basic structure of the Constitution of India.

2. At the outset, it is submitted that the Section 2, 3, 5 and 6 by the impugned amendment Act is in direct contradiction to the Assam Accord of 1985 and Section 6A of the Citizenship Act, 1955 which was inserted as per the agreement and undertaking executed by the Union of India and the State of Assam known as the Assam Accord, 1985 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 and a specific assurance that illegal migrants entering the state of Assam after 25.03.1971 would be deported back to Bangladesh. The impugned amendment is made disregarding the agreement executed by the Union Government with the people of Assam in concurrence with the Government of Assam and its assurance to the people of Assam by insertion of Section 6A in the

Citizenship Act 1955, i.e. (Citizenship Amendment Act, 1985) and as such the Impugned “Citizenship Amendment Act, 2019” is liable to be set aside and quashed.

3. That for the sake of brevity, the Petitioners are not repeating the facts and grounds provided in the accompanying writ petition, but the Petitioners crave leave of this Hon'ble Court to refer to the accompanying writ petition as and when required.
4. That the Petitioner is aggrieved by the various amendments carried out by the Citizenship (Amendment) Act, 2019, which are in patent violation of Article 14, 15, 19, 21, 25, 29, 325, 326 and 355 of the Constitution and against the basic structure of the Constitution of India for discriminating among persons / illegal migrants on the basis of their religion and also the same being in direct contradiction to the Assam Accord of 1985 and Section 6A of the Citizenship Act, 1955 which was inserted as per the agreement and undertaking executed by the Union of India and the State of Assam known as the Assam Accord, 1985 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 and a specific assurance that illegal migrants entering the state of Assam after 25.03.1971 would be deported back to Bangladesh.

5. In view of the Foreigner Amendment (Order) 2015, Passport (Entry Into Rules), Amendment Rules, 2015 already promulgated by the Respondents, that the Petitioner seriously apprehends that the Respondents attempts to open the registration and naturalization process of the illegal migrants on the basis of the religion.
6. Since, there are serious questions related to the constitutional validity of "Citizenship Amendment Act, 2019" being in violation of Part III and basic structure of the Constitution. The Respondents had already implemented the impugned act from 10.01.2020 it was enabled the registration and naturalization of the illegal migrants under the "Citizenship Amendment Act, 2019" would result in the violation of Fundamental Rights guaranteed under the Part III of the Constitution of India.
7. Furthermore, the present writ petition would become infructuous by refusing to grant interim stay against the respondents' action in implementing the impugned act from 10.01.2020 which enabled the registration and naturalization of the illegal migrants under the "Citizenship Amendment Act, 2019".
8. That the petitioner states that the Union Government had implemented the "Citizenship Amendment Act, 2019" on 10.01.2020 in the entire country. The State of Assam has a

special place and cannot be equated with the other states of the country especially due to the existence of the Assam Accord. The fact remains that the Union Government had accepted the Assam Accord and the State of Assam had been following the Memorandum of Settlement. The Union Home Ministry was made the nodal agency for the purpose of implementation of the Assam Accord and the respondent no.4 has its own department for “Implementation of Assam Accord”. Both the Union Government and the State Government of Assam has its common duties and responsibilities towards the people of Assam and the Assam Accord. Assuming but not admitting, there is no virus in the “Citizenship (Amendment) Act, 2019”, even then, the responsibility cast upon the State of Assam and the Union Government to implement the Assam Accord. It is very imperative for both the Union Government and the State Government of Assam to act as per the Assam Accord, with or without the Citizenship (Amendment) Act, 2019. As such the question so arises as to what are the steps taken by the Union Government and the State Government to implement the Assam Accord post 10.01.2020 when the Union Government implemented the “Citizenship (Amendment) Act, 2019”. Till date there are no state specific rules and bye laws or central rules and bye laws which supplement the implementation of the Citizenship (Amendment) Act, 2019.

The State of Assam being a party to the Assam Accord, is legally bound to implement the “Citizenship (Amendment) Act, 2019” as per the Assam Accord and the State of Assam already has a separate department dealing in “Implementation of Assam Accord”. If at all the provisions of the “Citizenship (Amendment) Act, 2019” are in contravention to the Assam Accord, the State of Assam being bound by Assam Accord cannot implement the said Central Act in spite of the fact that the same is enacted by the Parliament. Under such circumstances, Part XI of the Constitution of India cannot come in way for the state government, i.e. the Government of Assam to see proper implementation of the Assam Accord. But as on date, neither the Union Government nor the State of Assam had taken any step for implementation of Assam Accord post 10.01.2020, i.e. when the “Citizenship (Amendment) Act, 2019” was given effect to all over the country.

9. The failure to grant ex-parte/interim stay of the “Citizenship (Amendment) Act, 2019” will cause irreparable injury and also violate the fundamental rights of the Petitioners.
10. Therefore, it is absolutely necessary for the Respondents’ executive actions in pursuant to the implementation of the “Citizenship (Amendment) Act, 2019” after 10.01.2020 to be

stayed forthwith, so as to prevent further change in demography of the State of Assam in spite of the fact that the State of Assam is already dug deep into the problems of illegal influx, which otherwise would result in the present petition becoming infructuous.

11. That, no prejudice would be caused to the Respondents, if the interim/ad interim relief as prayed for is granted. On other hand, grave and irreparable harm and prejudice would be suffered by the Petitioner in the event the present Application is not allowed.
12. That the balance of convenience lies in favor of the present application being allowed.
13. That the present Application is being made bona fide in the interests of justice.

PRAYER

Therefore in light of the above, the Petitioners herein Most Humbly submits that this Hon'ble Court may be pleased to:

- a) Pass orders and directions granting ex-parte stay of the operation of the Citizenship (Amendment) Act, 2019 in so far as the State of Assam is concerned, during the pendency of this writ petition.
- b) Pass an order or direction granting ex-parte stay of any actions, operations, orders, notifications and/or instructions

arising out of/or pursuant to the implementation of the Citizenship (Amendment) Act 2019 on 10.01.2020.

- c) Pass an order or direction specifically to the State of Assam being a signatory of the Assam Accord of 1985 to implement the Assam Accord of 1985 irrespective of the Citizenship (Amendment) Act, 2019.
- d) Pass an order or direction specifically to the State of Assam and its subordinate executives not to frame Rules/Byelaws or office memorandums which dilutes/violates the provisions of the Assam Accord of 1985 irrespective of the existence of the Citizenship (Amendment) Act, 2019.
- e) Pass an order or direction to the Union of India and the State of Assam being a signatory of the Assam Accord of 1985 not to implement the Citizenship (Amendment) Act, 2019 in contravention to the Assam Accord of 1985 whereby illegal migrants who have entered the State of Assam from Bangladesh after 24.03.1971 would be deported back to Bangladesh following the Memorandum of Settlement of 1985 irrespective of implementation of the Citizenship (Amendment) Act 2019 since 10.01.2020.
- f) Pass an order or direction to the Union of India and the State of Assam being a signatory of the Assam Accord of 1985 to provide Constitutional, legislative and administrative safeguard to protect, preserve and promote the culture, social,

linguistic identity and heritage of the Assamese people irrespective of implementation of the Citizenship (Amendment) Act, 2019 since 10.01.2020.

- g) Pass any other orders or directions as this Hon'ble court may deem fit and proper in the facts and circumstances of the case and in the interests of justice.

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

FILED BY

(ABHINAV AGRAWAL)
ADVOCATE FOR THE PETITIONER

FILED ON: 18.02.2020
NEW DELHI