

IN THE SUPREME COURT OF INDIA

Civil Original Jurisdiction

Original Suit No. of 2020

In the Matter of:

State of Kerala represented by
the Additional Chief Secretary,
Home and Vigilance Department ... Plaintiff

Versus

Union of India represented by
its Secretary. Ministry of Law and Justice ... Defendant

**ORIGINAL SUIT UNDER ARTICLE 131 OF THE
CONSTITUTION OF INDIA**

**PAPER BOOK
FOR INDEX
(Kindly See Inside)**

Filed on -01-2020

Filed by

G.PRAKASH

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110, New Lawyers' Chambers
Supreme Court of India, New Delhi

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G.PRAKASH
Standing Counsel for State of Kerala

SYNOPSIS AND LIST OF DATES

- I. The Plaintiff is a State of the defendant Union of India. This Original Suit is filed impugning Citizenship Amendment Act, 2019 (Act No. 47 of 2019) (hereinafter referred to as “the Impugned Amendment Act”) (**Annexure –P2**), Passport (Entry to India) Amendment Rules, 2015 (**Annexure –P4**), Foreigners (Amendment) Order, 2015 (**Annexure –P5**), Passport (Entry to India) Amendment Rules, 2016 (**Annexure –P6**) and Foreigners (Amendment) Order, 2016 (**Annexure –P7**) (hereinafter collectively referred to as the “Impugned Passport Rules Amendments” and the “Impugned Foreign Order Amendments”); all promulgated by the defendant Union of India.
- II. Enabled by Articles 11 and 246 (1) read with Entry 17 of List I of the Seventh Schedule to the Constitution of India (hereinafter “the Constitution”), the Citizenship Act, 1955 (hereinafter “the Principal Act”) (pre- amended Principal Act produced as **Annexure –P1**) was enacted by the defendant. Section 5 of the Principal Act provides for citizenship by registration. Section 6 of the same provides for citizenship by naturalisation. As per said Section 6 of the Principal Act read with the Third Schedule thereto, any person of full age and capacity, if qualified in accordance with the said Schedule, can acquire Indian citizenship by naturalisation if, inter alia, he is a person who has resided in India or has worked with the Central Government or partly the one and partly the other for a period of twelve months prior to submission of application for naturalisation (as provided for in Clause (c) of the third schedule) and he is a person who has resided in India or has worked with the Central Government or partly the one and partly the other for a period of eleven years in the fourteen years immediately preceding to the said twelve months (as provided in Clause (d) of the third schedule, as it stood prior to the amendment as per the Impugned Amendment Act).

- III. Illegal migrants were expressly excluded by Sections 5 and 6 of the Principal Act from acquiring citizenship by either registration or naturalisation. “Illegal migrant” has been defined in Section 2 (b) of the Principal Act to mean any foreigner who had entered India without any valid document or authority prescribed by law and also includes any foreigner who has entered India with valid documents and authority, but has stayed beyond the period of permit.
- IV. As per the Impugned Amendment Act, inter alia, a proviso has been inserted to Section 2 (b) of the Principal Act. Going by the said proviso, 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 the Act (Section 2 of the Impugned Amendment Act). Thus, as per Section 2 of the Impugned Amendment Act, persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan have been excluded from the purview of definition of illegal migrant under Section 2 (b) of the Principal Act. Consequently, persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan have been excluded from the bar to illegal migrants for acquisition of citizenship by registration under Sections 5 of the Principal Act or for acquisition of citizenship by naturalisation under Section 6 of the Principal Act.
- V. By virtue of Section 3 of the Impugned Amendment Act, Section 6B has been incorporated into the Principal Act enabling the Central Government or an authority specified by it in this behalf to grant a certificate of registration or certificate of naturalisation, on an

application made in this behalf, to a person referred to in the proviso to clause (b) of sub-section (1) of Section 2 of the Impugned Act subject to such conditions, restrictions and manner as may be prescribed. Further, upon grant of certificate of citizenship by registration or certificate of citizenship by naturalisation to a person, it will be deemed that such a person will be a citizen of India from the date of his entry to India.

- VI. As per Section 6 of the Impugned Amendment Act, a proviso was added to Clause (d) of the Third Schedule to the Act to the effect that for any 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 the clause shall be read as "not less than five years" in place of "not less than eleven years". The reduced period of residence required for Citizenship by naturalization is available only to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan.
- VII. The defendant had earlier promulgated Passport (Entry to India) Amendment Rules, 2015, by which the Passport (Entry into India) Rules, 1950, was amended, and also promulgated Foreigners (Amendment) Order, 2015, by which the Foreigners Order, 1948 was amended, and exempted persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution, who entered into India on or before the 31st December, 2014 without valid documents, from the purview of the same. The defendant also promulgated Passport (Entry to India) Amendment Rules, 2016 and further amended the Passport (Entry into India) Rules, 1950 and also promulgated Foreigners (Amendment) Order, 2016 and further amended the Foreigners Order, 1948 whereby the word "Bangladesh", was substituted with the words "Afghanistan, Bangladesh".

- VIII. The Impugned Amendment Act, the Impugned Passport Rules and the Impugned Foreign Order Amendments are class legislations harping, inter alia, on the religious identity of an individual, thereby contravening the principles of secularism, which has been recognised repeatedly by this Honourable Court as a basic structure of the Constitution. The same make religion and the country of origin of the person criteria for grant of citizenship and result in classifications based on religion and based on country, both classifications being apparently and manifestly discriminatory, arbitrary, unreasonable and have no rational nexus with the object sought to be achieved. It is trite and settled law that a legislation discriminating on the basis of an intrinsic and core trait of an individual cannot form a reasonable classification based on an intelligible differentia. The religious classification brought forth violates the twin test of classification under Article 14, the protection of which is not limited or restricted to Citizens alone and extends to all persons.
- IX. Even though the statement of objects and reasons of the Citizenship Amendment Bill (**Annexure – P3**) referred to persecution of the minorities in the three countries of Pakistan, Afghanistan and Bangladesh, the Impugned Amendment Act does not restrict the class of persons to whom the benefit of the amendment has been extended to persons who are in fact persecuted or claim to have been persecuted. In the aforesaid circumstances, the purported classification made in the said legislations is arbitrary and unreasonable and discriminatory, as having no nexus with the objects and purposes of the legislations in question and is, therefore, violative of Article 14 of the Constitution of India.
- X. The Impugned Amendment Act in question is a colourable legislation; in as much as there is a constitutional prohibition to make the said legislation in violation of the secular nature of the Constitution; but despite the same, the Legislature has enacted it. The same is the case

with the Impugned Passport Rules and the “Impugned Foreign Order Amendments.

- XI. There is no rationale in grouping together for the purposes of the Impugned Amendment Act and Rules and Orders the three countries of Pakistan, Afghanistan and Bangladesh. Such grouping is not founded on any rationale principle justifying a separate special treatment for the irrationally chosen class of religious minorities facing persecution on the basis of religion therein. The Impugned Amendment Act and Rules and Orders are bereft of any standard principle or norm in discriminating migrants from other countries such as Sri Lanka, Myanmar and Bhutan, which are sharing international borders with India and to which and from which there has been trans-border migration. There is no rationale in not extending the rights conferred to a class of minorities from Pakistan, Afghanistan and Bangladesh to religious minorities belonging to the said countries of Sri Lanka, Myanmar, Nepal and Bhutan. The arbitrary classification of the aforesaid three countries of Pakistan, Afghanistan and Bangladesh without any rationale or standard principles constitutes manifest arbitrariness and violates Article 14 of the Constitution.
- XII. It is provided for in the statement of objects and reasons of the Citizenship Amendment Bill (**Annexure – P3**) that it is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh; that the constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion and that, as a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries; and that some of them also have fears about such persecution in their day-to-day life where right to practice, profess and propagate their religion has been obstructed and restricted. Apart from Pakistan, Bangladesh

and Afghanistan, Sri Lanka and Bhutan, sharing borders with India and to which and from which there has been trans border migration, have State Religion. The Impugned Amendment Act and Rules and Orders are discriminatory in so far as it covers only three countries out of the neighbouring countries of India, to which and from there has been trans-border migration for centuries, and which have a State Religion.

- XIII. The Impugned Amendment Act and Rules and Orders are discriminatory in so far as it covers only a class of minorities from a class of countries sharing borders with India and to which and from there have been trans-border migration. While the Hindus from Pakistan, Afghanistan and Bangladesh are covered by the Impugned Amendment Act, the defendant did not consider the issues of the Hindus, primarily of Tamil descend, in Sri Lanka and Hindu Madhesis in Terai of Nepal, whose ancestors migrated to Sri Lanka and Nepal respectively in the eighteenth Century from the then British India. Likewise, the Impugned Amendment Act covers Christians of Pakistan, Bangladesh and Afghanistan whereas the defendant did not consider the issues of Christians of Bhutan and Sri Lanka. So also, the Impugned Amendment Act covers Buddhists from Pakistan, Bangladesh and Afghanistan. But the defendant did not consider the issues of Buddhists of Nepal.
- XIV. The Impugned Amendment Act and Rules and Orders cover certain religious minorities of Pakistan, Bangladesh and Afghanistan and overlook other reportedly persecuted religious minorities/ minority sects therein such as Ahmaddiyas, Shias and Hazaras. Ahmaddiyas are reportedly subjected to persecution in Pakistan and Bangladesh. Shias are reportedly subjected to persecution in Pakistan, Afghanistan and Bangladesh. Reportedly, Hazaras are historically the most restrained ethnic minority group in Afghanistan. If the object of the Impugned Amendment Act is to protect the „minorities who faced religious persecution in Afghanistan, Pakistan and Bangladesh“, then,

the Ahmaddiyas and Shias from these countries are also entitled to treatment equal to that being now extended to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities.

- XV. The Impugned Amendment Act and Rules and Orders, though cover the persecuted religious minorities of Pakistan, Afghanistan and Bangladesh, overlooks the issues of Rohingyas in Myanmar and Muslims in Sri Lanka, who are also miniscule minorities in the said countries, which are also sharing international borders with India and which are also countries to which and from which there has been trans- border migrations. Myanmar (erstwhile Burma) was part of British India till 1937, by which time it was re-organised as a separate colony different from British India. The Impugned Amendment Act has resulted in religious based exclusion of Muslims from the benefit of acquiring citizenship through naturalization.
- XVI. The Impugned Amendment Act and Rules and Orders are discriminatory in so far it covers only religious persecution, among persecutions on very many grounds, of an irrationally chosen class of minorities in an unreasonably chosen class of neighbouring countries. All persecutions are not solely based on religious grounds alone and are for varied reasons like ethnicity, linguistics etc. They do not cover the persecutions on the grounds of ethnicity, linguistics etc even in the said class of three countries. They do not cover the ethnic issues of Balochs, Sindhis, Pakthuns and Mohajirs in Pakistan and the Biharis in Bangladesh. The Biharis of Bangladesh and Mohajirs of Pakistan form part of the Millions of citizens of undivided India belonging to various faiths who were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947. They do not cover the Hazaras, reportedly persecuted and repeatedly attempted to be cleansed on the ground of their ethnicity also, in Afghanistan. Further, the Impugned Act does not cover the ethnic and linguistic issues of Tamils in Sri Lanka. The Impugned Amendment Act and Rules and Orders further overlook the issues of ethnic Indians in Malaysia and

Fiji. The Indian Diaspora in Malaysia and Fiji are descendants of those Indians who migrated to there in search of work or brought therein as indentured labourers when those were British colonies.

- XVII. It is trite and settled law that any International Conventions and laws, not inconsistent with fundamental rights and in harmony with its spirit, must be read into provisions of Municipal Law. The Impugned Amendment Act and Rules and Orders violate India's international obligations under Articles 14 (which provides that that everyone has the right to seek and enjoy in other countries asylum from persecution) and 15 (which provides that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality) of the Universal Declaration of Human Rights and Article 26 (which provides that all persons are equal before the law, that all persons are entitled without any discrimination to the equal protection of the law and that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) of the International Covenant on Civil and Political Rights.
- XVIII. On 31.12.2019, the Kerala Legislative Assembly unanimously requested the defendant to abrogate the Impugned Amendment Act (**Annexure –P8**).
- XIX. In accordance with the mandate of Article 256 of the Constitution, the Plaintiff State will be compelled to ensure compliance of Impugned Amendment Act and the Rules and Orders, which are manifestly arbitrary, unreasonable, irrational and violative of fundamental rights. Thus, there exists a dispute, involving questions of law and fact, between the Plaintiff State of Kerala and the defendant Union of India, regarding the enforcement of legal rights as a State and as well for the enforcement of the fundamental, statutory constitutional and

other legal rights of the inhabitants of the State of Kerala. Hence, this Original Suit under Article 131 of the Constitution is being preferred.

XX. A suit in terms of Article 131 of the Constitution of India impugning the vires of a Central Legislation at the instance of a constituent State of the Union is maintainable in view of the law laid down by this Honourable Court in State of Jharkhand v. State of Bihar and Another (2015 (2) SCC 431).

LIST OF DATES AND EVENTS

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|------------|--|
| 30.12.1955 | The Citizenship Act, 1955 was enacted. (<u>Annexure – P1</u>). |
| 07.09.2015 | The Passport (Entry to India) Amendment Rules, 2015 was published as per Notification No. G.S.R.685 (E). (<u>Annexure –P4</u>). |
| 07.09.2015 | The Foreigners (Amendment) Order, 2015 was published as per Notification No. G.S.R.685 (E). (<u>Annexure –P5</u>). |
| 18.07.2016 | The Passport (Entry to India) Amendment Rules, 2016 was published as per Notification No. G.S.R.702 (E) (<u>Annexure –P6</u>). |
| 18.07.2016 | The Foreigners (Amendment) Order, 2016 was published as per Notification No. G.S.R.702 (E) (<u>Annexure –P7</u>). |
| 12.12.2019 | The Citizenship Amendment Act, 2019 (Act No. 47 of 2019) received the assent of the Honourable President and was published (<u>Annexure –P3</u>). |
| 31.12.2019 | The Kerala Legislative Assembly unanimously resolved to request the defendant to abrogate the Impugned Amendment Act (<u>Annexure –P8</u>). |

Plaintiff above named

MOST RESPECTFULLY SHOWETH:

1. The Plaintiff is a State of the defendant Union of India, as provided for under Article 1 read with the First Schedule to the Constitution of India (hereinafter referred to as “the Constitution”). This Original Suit under Art 131 of the Constitution is being filed impugning Citizenship Amendment Act, 2019 (Act No. 47 of 2019) (hereinafter referred to as “the Impugned Amendment Act”), Passport (Entry to India) Amendment Rules, 2015, Passport (Entry to India) Amendment Rules, 2016, Foreigners (Amendment) Order, 2015 and Foreigners (Amendment) Order, 2016; all promulgated by the defendant Union of India. The aforementioned Passport (Entry to India) Amendment Rules, 2015 and 2016 are hereinafter collectively referred to as the “Impugned Passport Rules Amendments” and the aforementioned Foreigners (Amendment) Orders, 2015 and 2016 are hereinafter collectively referred to as the “Impugned Foreign Order Amendments”.
2. The Impugned Amendment Act and the Impugned Passport Rules Amendments as well as the Impugned Foreign Order Amendments are violative of Articles 14, 21 and 25 of the Constitution. The manner in which they are violative of Articles 14, 21 and 25 of the Constitution are detailed below in this plaint. In so far as they take away the fundamental rights guaranteed under Articles 14, 21 and 25 of the Constitution, the same are void, as mandated under Article 13 of the Constitution. The Impugned Amendment Act, the Impugned Passport Rules Amendments and the Impugned Foreign Order Amendments, being class legislations harping,

interalia, on the religious identity of an individual, also contravenes the principles of secularism, which has been recognised repeatedly by this Honourable Court as a basic structure of the Constitution.

3. In accordance with the mandate of Article 256 of the Constitution, the Plaintiff State will be compelled to ensure compliance of the provisions of the Impugned Amendment Act, the Impugned Passport Rules Amendments and the Impugned Foreign Order Amendments, which are manifestly arbitrary, unreasonable, irrational and violative of fundamental rights under Articles 14, 21 and 25. Thus, there exists a dispute, involving questions of law and fact, between the Plaintiff State of Kerala and the defendant Union of India, regarding the enforcement of legal rights as a State and as well for the enforcement of the fundamental, statutory, constitutional and other legal rights of the inhabitants of the State of Kerala. Hence, this Original Suit under Article 131 of the Constitution is being filed.
4. Enabled by Articles 11 and 246 (1) read with Entry 17 of List I of the Seventh Schedule to the Constitution, the Citizenship Act, 1955 (hereinafter referred to as “the Principal Act”) was enacted by the defendant. A true photocopy of the Citizenship Act, 1955, as it stood prior to the legislation of the Impugned Amendment Act [that is the Citizenship Amendment Act, 2019 (Act No. 47 of 2019)], is produced herewith and marked as **Annexure -P1.**
5. Sections 3 to 7 of the Principal Act provides for acquisition of citizenship. Section 5 of the Principal Act provides for citizenship by registration. Section 6 of the Principal Act provides for citizenship by naturalisation. As

per Section 6 of the Principal Act read with the Third Schedule thereto, any person of full age and capacity, if qualified in accordance with the said Schedule, can acquire Indian citizenship by naturalisation if, inter alia, he is a person who has resided in India or has worked with the Central Government or partly the one and partly the other for a period of twelve months prior to submission of application for naturalisation (as provided for in Clause (c) of the third schedule) and he is a person who has resided in India or has worked with the Central Government or partly the one and partly the other for a period of eleven years in the fourteen years immediately preceding to the said twelve months (as provided in Clause (d) of the third schedule, as it stood prior to the amendment as per the Impugned Amendment Act).

6. Illegal migrants were expressly excluded by Sections 5 and 6 of the Principal Act from acquiring citizenship by either registration or naturalisation. "Illegal migrant" has been defined in Section 2 (b) of the Principal Act to mean any foreigner who had entered India without any valid document or authority prescribed by law and also includes any foreigner who has entered India with valid documents and authority, but has stayed beyond the period of permit.
7. As per the Impugned Amendment Act, inter alia, a proviso has been inserted to Section 2 (b) of the Principal Act. Going by the said proviso, 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 the Act (Section 2 of the Impugned Amendment Act). Thus, as per Section 2 of the Impugned Amendment Act, persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan have been excluded from the purview of definition of illegal migrant under Section 2 (b) of the Principal Act. Consequently, persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community in Afghanistan, Bangladesh or Pakistan have been excluded from the bar to illegal migrants for acquisition of citizenship by registration under Sections 5 of the Principal Act or for acquisition of citizenship by naturalisation under Section 6 of the Principal Act.

8. By virtue of Section 3 of the Impugned Amendment Act, Section 6B has been incorporated into the Principal Act enabling the Central Government or an authority specified by it in this behalf to grant a certificate of registration or certificate of naturalisation, on an application made in this behalf, to a person referred to in the proviso to clause (b) of sub-section (1) of Section 2 of the Impugned Act subject to such conditions, restrictions and manner as may be prescribed. Further, upon grant of certificate of citizenship by registration or certificate of citizenship by naturalisation to a person, it will be deemed that such a person will be a citizen of India from the date of his entry to India. Thus, the Impugned Amendment Act makes religion and the country of origin of the person criteria for grant of citizenship. It is trite and

settled law that where a legislation discriminates on the basis of an intrinsic and core trait of an individual like religion, it cannot form a reasonable classification based on an intelligible differentia.

9. As per Section 6 of the Impugned Amendment Act, a proviso was added to Clause (d) of the Third Schedule to the Act to the effect that for any 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 the clause shall be read as "not less than five years" in place of "not less than eleven years". The reduced period of residence required for Citizenship by naturalization is available only to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan. A true photocopy of Act 47 of 2019 (Impugned Amendment Act) is produced herewith as **Annexure –P2**.
10. The Impugned Amendment Act received the assent of the Honourable President of India on 12.12.2019 and was, then, published on the very same day. The Impugned Amendment Act is violative of Articles 14, 21 and 25 of the Constitution of India.
11. Section 2 read with Sections 3 and 6 of the Impugned Amendment Act results in classifications based on religion and based on country, both classifications being apparently and manifestly discriminatory, arbitrary, unreasonable and have no rational nexus with the object sought to be achieved. There is no rationale in grouping together for the purposes of the Impugned Amendment Act the three countries of Pakistan, Afghanistan and Bangladesh. Such grouping of Pakistan, Afghanistan and Bangladesh is not

founded on any rationale principle justifying a separate special treatment for the irrationally chosen class of religious minorities facing persecution on the basis of religion therein. The arbitrary classification of the aforesaid three countries without any rationale or standard principles constitutes manifest arbitrariness and violates Article 14 of the Constitution. The religious classification brought forth by the Impugned Amendment Act is neither a reasonable classification based on intelligible differentia nor has a rational nexus with the objective sought to be achieved and thereby violates the twin test of classification under Article 14. Article 14 of the Constitution, envisaging equality before law and equal protection of law is not limited or restricted to Citizens alone and extends to all persons.

12. Even though the statement of objects and reasons of the Citizenship Amendment Bill referred to persecution of the minorities in the three countries of Pakistan, Afghanistan and Bangladesh, the Impugned Amendment Act does not restrict the class of persons to whom the benefit of the amendment has been extended to persons who are in fact persecuted or claim to have been persecuted. In the aforesaid circumstances, the purported classification made in the said legislations is arbitrary and unreasonable and discriminatory, as having no nexus with the objects and purposes of the legislations in question and is, therefore, violative of Article 14 of the Constitution of India. A true photocopy of Citizenship (Amendment) Bill, 2019 (Bill No. 470 of 2019), as introduced in the Lok Sabha is produced herewith as **Annexure –P3**.

13. The Impugned Amendment Act in question is a colourable legislation; in as much as there is a constitutional prohibition to making the said legislation in violation of the secular nature of the Constitution; but despite the same, the Legislature has enacted it.
14. The Impugned Amendment Act is bereft of any standard principle or norm in discriminating migrants from other countries such as Sri Lanka, Myanmar and Bhutan, which are sharing international borders with India and to which and from which there has been trans-border migration. There is no rationale in not extending the rights conferred to a class of minorities from Pakistan, Afghanistan and Bangladesh to religious minorities belonging to the said countries of Sri Lanka, Myanmar, Nepal and Bhutan.
15. It is provided for in the statement of objects and reasons of the Citizenship Amendment Bill that it is a historical fact that trans-border migration of population has been happening continuously between the territories of India and the areas presently comprised in Pakistan, Afghanistan and Bangladesh; that the constitutions of Pakistan, Afghanistan and Bangladesh provide for a specific state religion and that, as a result, many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religion in those countries; and that some of them also have fears about such persecution in their day-to-day life where right to practice, profess and propagate their religion has been obstructed and restricted.
16. The Impugned Amendment Act is discriminatory in so far as it covers only three countries out of the neighbouring countries of India, to which and from

there has been trans-border migration for centuries, and which have a State Religion. It is submitted that apart from Pakistan, Bangladesh and Afghanistan, Sri Lanka and Bhutan, sharing borders with India and to which and from which there has been trans border migration, have State Religion.

17. As per Article 9 of the Constitution of Sri Lanka, the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana. The minority religions of Sri Lanka are Hinduism, Christianity and Islam.
18. As per Article 3 of the Constitution of Bhutan, Buddhism is the spiritual heritage of Bhutan, which promotes the principles and values of peace, non-violence, compassion and tolerance and it shall be the responsibility of religious institutions and personalities to promote the spiritual heritage of the country while also ensuring that religion remains separate from politics in Bhutan.. The minority religions of Bhutan are Hinduism, Christianity and Islam.
19. The Impugned Amendment Act is discriminatory in so far as it covers only a class of minorities from a class of countries sharing borders with India and to which and from there have been trans-border migration. While the Hindus from Pakistan, Afghanistan and Bangladesh are covered by the Impugned Amendment Act, the defendant did not consider the issues of the Hindus, primarily of Tamil descend, in Sri Lanka and Hindu Madhesis in Terai of Nepal, whose ancestors migrated to Sri Lanka and Nepal respectively in the eighteenth Century from the then British India.

20. Likewise, the Impugned Amendment Act covers Christians of Pakistan, Bangladesh and Afghanistan whereas the defendant did not consider the issues of Christians of Bhutan and Sri Lanka. So also, the Impugned Amendment Act covers Buddhists from Pakistan, Bangladesh and Afghanistan. But the defendant did not consider the issues of Buddhists of Nepal.
21. The Impugned Amendment Act covers certain religious minorities of Pakistan, Bangladesh and Afghanistan and overlooks other persecuted religious minorities/ minority sects therein such as Ahmaddiyas, Shias and Hazaras. Ahmaddiyas are reportedly subjected to persecution in Pakistan and Bangladesh. Shias are reportedly subjected to persecution in Pakistan, Afghanistan and Bangladesh. Hazaras are primarily from the central highland region of Hazarajat in Afghanistan. Reportedly, Hazaras are historically the most restrained ethnic minority group in Afghanistan. The Hazara community in Quetta, Pakistan, has reportedly been the target of persecution and violence. If the object of the Impugned Amendment Act is to protect the „minorities who faced religious persecution in Afghanistan, Pakistan and Bangladesh“, then, the Ahmaddiyyas and Shias from these countries are also entitled to treatment equal to that being now extended to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities.
22. The Impugned Amendment Act, though covers the persecuted religious minorities of Pakistan, Afghanistan and Bangladesh, overlooks the issues of Rohingyas in Myanmar and Muslims in Sri Lanka, who are also miniscule minorities in the said countries, which are also sharing international borders

with India and which are also countries to which and from which there has been trans- border migrations. Myanmar (erstwhile Burma) was part of British India until 1937, when it was organised as a separate British colony. The Impugned Amendment Act has resulted in religious based exclusion of Muslims from the benefit of acquiring citizenship through naturalization.

23. The Impugned Amendment Act is discriminatory in so far it covers only religious persecution, among persecutions on very many grounds, of an irrationally chosen class of minorities in an unreasonably chosen class of neighbouring countries. All persecutions are not solely based on religious grounds alone and are for varied reasons like ethnicity, linguistics etc. The Impugned Amendment Act does not cover the persecutions on the grounds of ethnicity, linguistics etc even in the said class of three countries. The Impugned Act does not cover the ethnic issues of Balochs, Sindhis, Pakthuns and Mohajirs in Pakistan and the Biharis in Bangladesh. The Biharis of Bangladesh and Mohajirs of Pakistan form part of the Millions of citizens of undivided India belonging to various faiths were staying in the said areas of Pakistan and Bangladesh when India was partitioned in 1947. The Impugned Act does not cover the Hazaras, reportedly persecuted and repeatedly attempted to be cleansed on the ground of their ethnicity also, in Afghanistan. Further, the Impugned Act does not cover the ethnic and linguistic issues of Tamils in Sri Lanka. The Act further overlooks the issues of ethnic Indians in Malaysia and Fiji. The Indian Diaspora in Malaysia and Fiji are descendant of those Indians who migrated to there in search of work or brought therein as indentured labourers when those were British colonies.

24. It is trite and settled law that secularism is a basic structure of the Indian Constitution. The Impugned Amendment Act, in so far as it discriminates persons applying for Indian citizenship on the ground of religion and in effect bars a person practicing Islam from acquiring Indian citizenship either by registration or naturalisation, violates secularism, the basic structure of the Constitution of India.
25. A person seeking asylum/ refuge in India, on account of the religion centric criterion of the Impugned Amendment Act for citizenship by naturalisation, will be put to a situation wherein he will have to choose either the State or his religion. This will amount to violation of fundamental rights guaranteed under Articles 21 and 25 of the Constitution. The said legislation also discriminate against persons who do not profess or practice any religions or any faith, but is yet subjected to persecution in any of countries which have been referred to in the said legislation.
26. It is trite and settled that any International Conventions and laws, not inconsistent with fundamental rights and in harmony with its spirit, must be read into provisions of Municipal Law. Article 51 of the Constitution also mandates that the State shall endeavour to foster respect for international law and treaty obligations. It has been laid down by this Honourable Court that India is a responsible member of the international community and that the Courts must adopt an interpretation which abides by the international commitments made by the country particularly where it's constitutional and statutory mandates indicate no deviation. The Impugned Amendment Act violates India's international obligations under Articles 14 and 15 of the

Universal Declaration of Human Rights and Article 26 of the International Covenant on Civil and Political Rights. Article 14 of the Universal Declaration of Human Rights provides that that everyone has the right to seek and enjoy in other countries asylum from persecution whereas Article 15 provides that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. Article 26 of the International Covenant on Civil and Political Rights provides that all persons are equal before the law, that all persons are entitled without any discrimination to the equal protection of the law and that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

27. The defendant had earlier promulgated Passport (Entry to India) Amendment Rules, 2015, by which the Passport (Entry into India) Rules, 1950 was amended and also promulgated Foreigners (Amendment) Order, 2015, by which Foreigners Order, 1948 was amended and exempted persons belonging to minority communities in Bangladesh and Pakistan, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to religious persecution or fear of religious persecution, who entered into India on or before the 31st December, 2014 without valid documents from the purview of operation of the same. The defendant also promulgated Passport (Entry to India) Amendment Rules, 2016 and further amended the Passport (Entry into India) Rules, 1950 and

also promulgated Foreigners (Amendment) Order, 2016 and further amended the Foreigners Order, 1948 whereby the word “Bangladesh”, was substituted with the words “Afghanistan, Bangladesh”. A true photocopy of the Passport (Entry to India) Amendment Rules, 2015 is produced herewith as **Annexure –P4**. A true photocopy of the Foreigners (Amendment) Order, 2015, is produced herewith as **Annexure –P5**. A true photocopy of the Passport (Entry to India) Amendment Rules, 2016 is produced herewith as **Annexure –P6**. A true photocopy of the Foreigners (Amendment) Order, 2016, is produced herewith as **Annexure –P7**. The aforementioned Passport (Entry to India) Amendment Rules, 2015 and 2016 are hereinafter collectively referred to as the “Impugned Passport Rules Amendments” and the aforementioned Foreigners (Amendment) Orders, 2015 and 2016 are hereinafter collectively referred to as the “Impugned Foreign Order Amendments”.

28. The Impugned Passport Rules Amendments and the Impugned Foreign Order Amendments results in classifications based on religion, the said classification being apparently and manifestly discriminatory, arbitrary, unreasonable and having no rational nexus with the object sought to be achieved. The same thereby violates Article 14 of the Constitution. The same are discriminatory in so far as it covers only a class of minorities from a class of countries sharing borders with India and to which and from there have been trans-border migration. There is no rationale in not extending the rights conferred to a class of minorities from Pakistan, Afghanistan and Bangladesh to religious minorities belonging to the countries of Sri Lanka,

Myanmar, Nepal and Bhutan. Further, the exclusion of Ahmaddiyas, Shias and Hazaras, who face persecution in Pakistan, Afghanistan and Bangladesh, amounts to hostile discrimination. The Impugned Passport Rules Amendments and the Impugned Foreign Order Amendments, though benefits the persecuted religious minorities of Pakistan, Afghanistan and Bangladesh, overlooks the issues of Rohingyas in Myanmar and Muslims in Sri Lanka, who are also miniscule minorities in the said countries, which are also sharing international borders with India and which are also countries to which and from which there has been trans- border migrations. The same are discriminatory in so far it covers only religious persecution, among persecutions on very many grounds, of an irrationally chosen class of minorities in an unreasonably chosen class of neighbouring countries. All persecutions are not solely based on religious grounds and are for varied reasons like ethnicity, linguistics etc. The Impugned Passport Rules Amendments and the Impugned Foreign Order Amendments does not cover the persecutions on the grounds of ethnicity, linguistics etc even in the said class of three countries.

29. The Impugned Passport Rules Amendments and the Impugned Foreign Order Amendments do not restrict the class of persons to whom the benefit of the same have been extended to persons who are in fact persecuted or claim to have been persecuted. Therefore, the purported classification made is arbitrary and unreasonable and discriminatory, as having no nexus with the objects and purposes of the legislations in question and is, therefore, violative of Article 14 of the Constitution of India. In as much as there is a

constitutional prohibition to make legislations in violation of the secular nature of the Constitution, the Impugned Passport Rules Amendments and the Impugned Foreign Order Amendments are colourable legislations. The Impugned Amendment Act confers benefits on the beneficiaries of the Impugned Passport Rules Amendments and the Impugned Foreign Order Amendments. Therefore, the constitutional vires of the same are also to be examined by this Honourable Court while deciding the issue of constitutional vires of the Impugned Amendment Act.

30. On 31.12.2019, the Kerala Legislative Assembly unanimously resolved to request the defendant to abrogate the Impugned Amendment Act. A true English Translation of the resolution dated 31.12.2019 adopted by the Kerala Legislative Assembly is produced herewith as **Annexure –P8**.
31. The cause of action for filing this suit has arisen on 12.12.2019, the date of publication of the Impugned Citizenship Amendment Act, 2019 (Act 47 of 2019) and on 31.12.2019, the date on which the Kerala Legislative Assembly unanimously resolved to request the defendant to abrogate the Impugned Amendment Act.
32. In State of Madhya Pradesh v. Union of India and Another (AIR 2012 SC 2518: 2011 (12) SCC 268), a Two Judge Bench of this Honourable Court held thus: *“Normally, for questions relating to validity of Central or other laws, the appropriate forum is the extraordinary writ jurisdiction under Art.32 and Art.226 of the Constitution of India in a writ petition and not an original suit filed under Art.131 which vests exclusive jurisdiction of this Court as regards the dispute enumerated therein. It is relevant to point out that Art.131A*

of the Constitution inserted by (42nd Amendment) Act 1976, provides for exclusive jurisdiction to this Court in regard to questions as to constitutionality of Central laws. The said Art.131A viewed as substantially curtailing the power of judicial review of the writ Courts, that is, High Courts under Art.226 and this Court under Art.32 was omitted vide Constitution (43rd Amendment) Act, 1977. It follows that when the Central laws can be challenged in the State High Courts as well and also before this Court under Art.32, normally, no recourse can be permitted to challenge the validity of a Central law under the exclusive original jurisdiction of this Court provided under Art.131.” In State of Jharkhand v. State of Bihar and Another (2015 (2) SCC 431), a co – equivocal bench of this Honourable Court held thus: “When the matter was taken up, a preliminary objection was raised by the State of Bihar to the maintainability of the suit, relying on a decision of this Court in State of M. P. v. Union of India, 2011 (12) SCC 268 : 2012 (2) SCC (Civ) 478. According to the State of Bihar, the suit on hand which in substance seeks an examination of the constitutionality of certain provisions of Act 30 of 2000 is not maintainable for the reason that a question of vires of an enactment cannot be examined in an original suit under Art.131, but could only be examined in the proceeding under Art.226 or Art.32 of the Constitution of India.....

State of W. B. v. Union of India, AIR 1963 SC 1241 : 1964 (1) SCR 371, is a case wherein an original suit under Art.131 filed by the State of West Bengal challenging the Union of India the constitutionality of the Coal Bearing Areas (Acquisition and Development) Act, 1957, [“1. This is a suit by the State of West Bengal against the Union of India for a declaration that Parliament is not competent to make a law authorising the Union Government to acquire land

and rights in or over land, which are vested in a State, and that the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) which hereinafter will be referred to as 'the Act' enacted by Parliament, and particularly S.4 and S.7 thereof, were ultra vires the legislative competence of Parliament, as also for an injunction restraining the defendant from proceeding under the provisions of those sections of the Act in respect of the coal bearing lands vested in the plaintiff." (AIR p. 1245, para 1)] and the Court held the Act to be constitutionally valid. The question whether in an original suit under Art.131, the constitutional validity of an enactment could be examined was not one of the issues examined by this Court in the said judgment. Perhaps nobody thought it fit to raise such an objection! Therefore, the said judgment is not an authority for the proposition that this Court could examine the constitutional validity of an enactment in a suit under Art.131 of the Constitution of India.....We regret our inability to agree with the conclusion recorded in State of M. P. v. Union of India, 2011 (12) SCC 268 : 2012 (2) SCC (Civ) 478, that in an original suit under Art.131, the constitutionality of an enactment cannot be examined. Since the above decision is rendered by a coordinate Bench of two Judges, judicial discipline demands that we should not only refer the matter for examination of the said question by a larger Bench of this Court, but are also obliged to record broadly the reasons which compel us to disagree with the abovementioned decision..... The Constitution of India invests this Court with jurisdiction, both original and appellate, under various provisions of Part V, Chapter V of the Constitution. Such jurisdiction of this Court is in addition to the jurisdiction created under Art.32 of the Constitution of India for the enforcement of fundamental rights

guaranteed under Part III of the Constitution. Art.131 deals with the exclusive original jurisdiction of this Court..... If the question of constitutionality of a statute (either of Parliament or the State Legislature) were to be raised by a party other than the persons specified under Art.131, both this Court as well as the High Courts are competent to examine. This proposition is too well settled in our jurisprudence for the period of last sixty years. What is more significant is that if Parliament chooses to repeal the proviso to S.113 of the Code of Civil Procedure, even an ordinary civil court functioning in accordance with the procedure prescribed under the Code of Civil Procedure would be competent to examine such a question..... We are unable to agree with the proposition that this Court cannot examine the constitutionality of a statute in exercise of its exclusive original jurisdiction under Art.131. We, therefore, deem it appropriate that the question is required to be examined by a larger Bench of this Court. We direct the Registry to place the matter before the Hon'ble the Chief Justice of India for appropriate orders in this regard.” In the said circumstances, the challenge against the vires of Legislations can be raised by the Plaintiff State in an Original Suit under Articles 131 of the Constitution and consequently this Original Suit is maintainable in law. In exercise of Article 131 of the Constitution, this Honourable Court is having jurisdiction to entertain this original suit.

PRAYER

33. In view of the above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- i) Pass a judgment and decree declaring that the Citizenship Amendment Act, 2019 (Act 47 of 2019) is violative of Articles 14, 21 and 25 of

the Constitution of India as well as violative of the basic structure principle of secularism enshrined therein.

- ii) Pass a judgment and decree declaring the Citizenship Amendment Act, 2019 (Act 47 of 2019) to be ultra vires the Constitution of India and to be void.
- iii) Pass a judgment and decree declaring that the Passport (Entry to India) Amendment Rules, 2015 and Foreigners (Amendment) Order, 2015 are violative of Articles 14, 21 and 25 of the Constitution of India as well as violative of the basic structure principle of secularism enshrined therein.
- iv) Pass a judgment and decree declaring the Passport (Entry to India) Amendment Rules, 2015 and Foreigners (Amendment) Order, 2015 to be ultra vires the Constitution of India and to be void.
- v) Pass a judgment and decree declaring that the Passport (Entry to India) Amendment Rules, 2016 and Foreigners (Amendment) Order, 2016 are violative of Articles 14, 21 and 25 of the Constitution of India as well as violative of the basic structure principle of secularism enshrined therein.
- vi) Pass a judgment and decree declaring the Passport (Entry to India) Amendment Rules, 2015 and Foreigners (Amendment) Order, 2015 to be ultra vires the Constitution of India and to be void.
- vii) Pass a judgment and decree granting such other and further reliefs that are deemed fit in the facts and circumstances of the case.

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

Drawn by:

Adv. G.Prakash

Settled By

Jaideep Gupta,

Senior Advocate

Plaintiff State of Kerala

Through

G.PRAKASH
Standing Counsel for
State of Kerala

VERIFICATION

I, Dr. Vishwas Mehta, S/o. _____, aged _____ years,
Additional Chief Secretary to the Government of Kerala, Home and
Vigilance Department do hereby verify that the facts stated in paragraphs
Nos. 4 to 10 and 27 of the above plaint are true and correct to my knowledge
and belief based on the records relating to this case available in my office
and contents of paragraphs 1 to 3 and 11 to 16 and 28 to 32 are true and
based on the advice received by me and believed by me to be true. Paragraph
No.33 is a prayer to this Hon'ble Court.

Verified at Thiruvananthapuram on this the _____ day of January 2020.

Dr. Vishwas Mehta
Additional Chief Secretary
Government of Kerala
Home and Vigilance Department

IN THE SUPREME COURT OF INDIA

Civil Original Jurisdiction

Original Suit No. of 2020

In the Matter of:

State of Kerala represented by
the Additional Chief Secretary,
Home and Vigilance Department ... Plaintiff

Versus

Union of India ... Defendant

AFFIDAVIT

I, Dr. Vishwas Mehta, S/o. , aged years,
residing at Thiruvananthapuram, do hereby solemnly affirm and state as
under.

1. I am the Additional Chief Secretary to the Government of Kerala, Home and Vigilance Department and as such I am familiar with the facts of this case. I have been authorized to swear this affidavit on behalf of the State of Kerala and as such competent to swear this affidavit.
2. I have gone through the accompanying Plaintiff. I affirm that all the facts stated in paragraphs No. 4 to 10 and 27 of the above plaintiff are true and correct to my knowledge and belief and are based on the records relating to this case available in my office and contents of paragraphs 1 to 3 and 11 to 26 and 28 to 32 are true and correct and based on the advice received by me and believed by me to be true. Paragraph No. 33 is a prayer to this Hon'ble Court.

3. That all the documents filed along with the plaint are true copies of its respective originals.

Deponent

VERIFICATION

I, the above deponent do hereby verify that the contents of my above affidavit are true and correct to my knowledge and belief. No part of it is false and nothing material has been concealed there from.

Verified at Thiruvananthapuram on this the day of January, 2020.

DEPONENT

Solemnly affirmed and signed before me by the deponent on this the
day of January, 2019 at the Government Secretariat, Thiruvananthapuram,
Kerala.

IN THE SUPREME COURT OF INDIA

Civil Original Jurisdiction

Original Suit No. of 2020

In the Matter of:

State of Kerala represented by
the Additional Chief Secretary,
Home and Vigilance Department

... Plaintiff

Versus

Union of India

... Defendant

LIST OF DOCUMENTS RELIED UPON BY THE PLAINTIFF

INDEX

| Sl. No. | Description |
|---------|-------------|
| 1. | |
| | |

The originals of Document No. are with the Plaintiff and the same will be produced at the time of leading evidence.

The originals of all other documents mentioned in the list are with the defendant.

Filed on

Filed by

G.PRAKASH

Standing Counsel for State of Kerala