



IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2020
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:-

Sachin Yadav

... Petitioner

VERSUS

Union of India & ~~Ans~~

... Respondents

PAPER - BOOK

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I.A.NO. _____ OF 2020

APPLICATION FOR STAY

ADVOCATE FOR THE PETITIONERS : TALHA ABDUL RAHMAN

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ANNEXURE 'X'

PROFORMA FOR FIRST LISTING

SECTION PLC(w)

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

- ☐ Central Act: (Title) CONSTITUTION OF INDIA
- ☐ Section: Art 14, Art 19 and 21
- ☐ Central Rule: (Title) Citizenship Rules
- ☐ Rule No(s) #
- ☐ State Act: (Title) NIL
- ☐ Section: NIL
- ☐ State Rule: (Title) NIL
- ☐ Rule No(s) NIL
- ☐ Impugned Interim Order: (Date) NIL
- ☐ Impugned Final Order/Decree: (Date) NIL
- ☐ High Court: (Name) NIL
- ☐ Names of Judges: NIL
- ☐ Tribunal/Authority: (Name) NIL

1. Nature of matter: ☒ Civil ☐ Criminal

2. (a) Petitioner/appellant No.1: Sachin Yadav
- (b) e-mail ID: NIL
- (c) Mobile phone number: NIL

: 2:

A2

3. (a) Respondent No. 1: Union of Andies & Ans
(b) e-mail ID: NIL
(c) Mobile phone number: NIL
4. (a) Main category classification: _____
(b) Sub classification: _____
5. Not to be listed before: NIL
6. (a) **Similar disposed of matter with citation, if any, & case details:** NIL WPCO
(b) **Similar pending matter with case details:** 1430/2019
- Criminal Matters: NIL
- (a) Whether accused/convict has surrendered: ☒ Yes ☒ No.
(b) FIR No. NIL Date: NIL
(c) Police Station: NIL
(d) Sentence Awarded: NIL
(e) Period of sentence undergone including period of detention/custody undergone: NIL
8. Land Acquisition Matters: NIL
- (a) Date of Section 4 notification: NIL
(b) Date of Section 6 notification: NIL
(c) Date of Section 17 notification: NIL
9. Tax Matters: State the tax effect: NIL
10. Special Category (first petitioner/appellant only): NIL
☒ Senior Citizen > 65 years ☒ SC/ST ☒ Woman/child ☒ Disabled
☒ Legal aid case ☒ ~~IL~~ custody
11. Vehicle Number (in case of Motor Accident Claim matters): NIL

Date: 20/2/2020

AOR for petitioner(s)/appellant(s)
(Name) TALEHA ABDUL RAHMAN
Registration No. CC2463

SYNOPSIS

The Petitioner has filed the instant writ petition under Article 32 of the Constitution of India seeking enforcement of fundamental rights under Article 14 and 21 and seeks to assails the following:

- (1) Validity of Section 14-A of the Citizenship Act, 1955;
- (2) Validity of Section 18(3) of the Citizenship Act, 1955;
- (3) Validity of The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003;
- (4) Validity of Notification S.O.2753(E) dated 31 July, 2019;
- (5) Validity of INSTRUCTION MANUAL FOR UPDATION OF NATIONAL POPULATION REGISTER (NPR) 2020

Challenge to Sections 14-A of the Citizenship Act, 1955

That the Petitioner further prays for the declaration that Section 14-A of the Citizenship Act, 1955 *isultravires* the Constitution, in that the collection of personal data under the NPR in terms of Section 14-A of the Citizenship Act, 1955 is violative of Article 14 and Article 21 to the Constitution of India and it suffers from the vice of excessive delegation in that it does not prescribe to what extent private information of citizens shall be required and leaves it to the discretion of executive. Parliament has surrendered its wisdom to subordinate legislation which is impermissible and arbitrary. By a rule making power the following *draconian* acts have been done in the NRIC Rules 2003:

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- a. Authorised collection of specified personal data for NRIC without any protection regime, even though the data set is very wide.
- b. Authorised collection of data for NPR without specifying which data can be collected, and resultantly by field manual, more heads of data than ever permitted even for NRIC are sought to be collected, without any protection regime.
- c. Empowers executive officers / low-level district/revenue officers to perform quasi judicial and judicial functions in relation to citizenship rights;
- d. Empowers levy of fine for practically any reason
- e. Empowers executive officers / low-level district/revenue officers to doubt citizenship without any guidance;
- f. Enables filing of objections to inclusion in the Citizenship Act, 1955 to all and sundry without any mechanism of redressal
- g. Breaches the rule of *delegatus non potest delegare* because S.14-A(5) limits the delegation of power which are not adhered to.
- h. Instruction manuals, with no legislative or sub-legislative control are being used to regulate specifics which ought to have been regulated by legislative policy.

This Hon'ble Court in *K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1 : 2017 SCC Online SC 996* at page 501 has acknowledged that “*Information is non-rivalrous in the sense that there can be simultaneous users of the good — use of a piece of information by one person does not make it less available to another. Secondly, invasions of data privacy are difficult to detect because they can be invisible. Information can be accessed, stored and disseminated without notice. Its ability to travel at the speed of light enhances the invisibility of access to data, “information collection can be the swiftest theft of all”* [Christina P. Moniodis, “Moving from Nixon to NASA: Privacy’s Second Strand — A Right to Informational Privacy”, *Yale Journal of Law and Technology* (2012), Vol. 15 (1), at p. 153.] . Thirdly, information is

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recombinant in the sense that data output can be used as an input to generate more data output.” Further, “Data mining processes together with knowledge discovery can be combined to create facts about individuals. Metadata and the internet of things have the ability to redefine human existence in ways which are yet fully to be perceived.”

It is stated that NPR is capable of generating metadata and profiling and exclusion of targeted groups is a real possibility. There is a need to provide for protection from such processes and for informational privacy as well within the scope of Article 21 of the Constitution of India.

In *K.S. Puttaswamy (Privacy-91.) v. Union of India*, (2017) 10 SCC 1 : 2017 SCC Online SC 996 at page 504 this Hon'ble Court has held that:

“310. While it intervenes to protect legitimate State interests, the State must nevertheless put into place a robust regime that ensures the fulfilment of a threefold requirement. These three requirements apply to all restraints on privacy (not just informational privacy). They emanate from the procedural and content-based mandate of Article 21. The **first** requirement that there must be a law in existence to justify an encroachment on privacy is an express requirement of Article 21. For, no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement. **Second**, the requirement of a need, in terms of a legitimate State aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary State action. The pursuit of a legitimate State aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgment. Judicial review does not

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reappreciate or second guess the value judgment of the legislature but is for deciding whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness. The **third** requirement ensures that the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law. Hence, the threefold requirement for a valid law arises out of the mutual interdependence between the fundamental guarantees against arbitrariness on the one hand and the protection of life and personal liberty, on the other. The right to privacy, which is an intrinsic part of the right to life and liberty, and the freedoms embodied in Part III is subject to the same restraints which apply to those freedoms."

Thus, it is clear that NPR is (a) not authorised in law; (b) does not protect privacy (c) disproportionate and does not satisfy the three prong test of proportionality.

This Hon'ble Court has held in *KS Puttaswamy* that:

"326. Privacy has both positive and negative content. The negative content restrains the State from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the State to take all necessary measures to protect the privacy of the individual."

Thus, it is impermissible for the State to go ahead with collection of data until the legislature specifies which data can be collected and then ensure a regime for protection of privacy of the individual.

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Further, reliance is also placed on the decision of Kenyan Supreme Court concerning "HudumbaNumba" wherein it held that the state cannot have data protection without a data protection law in place in terms of functionality.

Challenge to Section 18(3) of the Citizenship Act, 1955:

It is submitted that Section 18(3) of the Citizenship Act 1955 suffers from excessive delegation in as much it enables imposition of penalty of Rs. 1000 in any and every situation as defined in the rules, without providing any legislative guidance. Merely because the fine is of Rs. 1000 (One Thousand) does not take away from the fact that the situations when fine can be imposed are not regulated by law. Section 18(3) provides as under:

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

It is submitted that the mere fact that there is laying of the rules before Parliament does not constitute sufficient control on delegated legislation as required under the law. It is peculiar that punishment is provided by the Act and the obligation is created by Rules (rule 17). There is no proper mechanism provided for adjudication of the guilt for violation of any rules and appeals therefrom, and the power is completely arbitrary and in violation of the law.

Validity of The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 ("NRIC Rules")

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It may be noted that in Census after 1961, "nationality" has not been recorded and is now sought to be reintroduced in Census and NPR, and merging the two.

It is stated that the NRIC Rules were framed on 10.12.2003 and were still born as being ultra vires the Citizenship Act, 1955 which did not provide for any power to create a national register for citizenship. In other words, the law did not empower any authority to collect personal information and to maintain any database or to decide or doubt any person's Indian citizenship. The 2003 rules are manifestly arbitrary.

The power to prepare National Register of Indian Citizenship was provided by inserting Section 14-A of the Citizenship Act, 1955 by an amendment dated 07.01.2004, with effect from 03.12.2004. Thus, at the time when NRIC Rules were notified there was no enabling statutory power of the same. This Hon'ble Court has held in *General Officer Commanding-in-Chief v. Subhash Chandra Yadav*, (1988) 2 SCC 351, that the rule when enacted must be within the four corners of an existing law, and a subsequent legal provision enabling a rule at a later point of time will not validate a still born rule.

Determination of Citizenship issues

That it is submitted that the Foreigners Act, 1946 read with Foreigners Order 1964 provides for a mechanism for identification, detection and adjudication over non-citizens/foreigners, and as such the power in law is exercisable by a person having judicial experience. It is

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stated that the power to doubt the citizenship of any person, (as experience from Assam shows), is a serious power and can only be exercised by a person who has had judicial training and experience, and cannot be left to the whims and personal opinion of taluk level officers. Further, this certainly cannot be done by the Rule making power. Therefore, Citizenship Rules are bad in law and opposed to the Constitution, i.e. Article 14, 19 and 21 of the Constitution.

By a set of rules, the judicial function cannot be arrogated to low level executive officer and the same is contrary to very fundamentals of the rule of law protected by Article 21 of the Constitution of India. The power to raise doubts or to entertain objections to inclusion of names in citizenship are all judicial functions which require a judicious approach.

That the power to inquire into a citizenship status of a person is at least a quasi judicial process or at its best is a judicial process which cannot be left at the mercy of administrative officers at block or taluk level or district level as has been done by the impugned Rules . An executive officer cannot be empowered by rules to perform quasi judicial or judicial functions having implications on civil rights of a person and rendering him or her stateless. This Hon'ble Court has held in *P. Surendran v. State*, (2019) 9 SCC 154 : (2019) 3 SCC (Cr) 702 : 2019 SCC

Online SC 507 at page 156

9. *The nature of judicial function is well settled under our legal system. Judicial function is the duty to act judicially, which invests with that character. The distinguishing factor*

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which separates administrative and judicial function is the duty and authority to act judicially. Judicial function may thus be defined as the process of considering the proposal, opposition and then arriving at a decision upon the same on consideration of facts and circumstances according to the rules of reason and justice.

That the power under Rule 4 which provides for formation of an opinion, opportunity of being heard and then a determination is a judicial function. The same must only be performed by judicially trained persons who are trained and qualified. The arrogation of such power to persons who are not equipped to do the same amounts to violation of Article 14 and 19 of the Constitution.

Rule 4(6)(a) of the Citizenship Rules, enables any person to file objections against the inclusion of any person in the Local register of citizens thus allowing the entire exercise to be manipulated by any individual and / or vested interests. The rule is manifestly arbitrary and is a recipe for exclusion.

Challenge to NPR and specific NRIC Rules

Statutory Backing: That sub-rule (4) of rule 3 of the Citizenship Rules, 2003 provides for the preparation of National Population Register or NPR from the date which shall be specified by the Central Government by collecting information relating to all persons who are usually residing within the jurisdiction of Local Registrar. It is relevant that NPR does not find a mention in the Citizenship Act, 1955 but is introduced by way of Rules which can be framed to give effect to the purpose of the Act. It is

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stated that given the level of intrusion and violation of fundamental rights under Articles 14 and Article 21, the sanction for creation of NPR, if at all, has to be by way of legislation and not by Rules.

NPR as camouflage:

That, the addition of the question on Father/Mother's birthplace and birthdate in NPR 2020, which was not there in NPR 2010, actually shows how arbitrary the 2003 Rules are, which enables the Government of the day to add or modify the NPR questions, whimsically.

That the process of NPR being clubbed with the census enumeration exercise is a camouflage, and an unnecessary and unwarranted because census enumeration exercise is done to count the number of residents residing in an area and not collect their personal information which can be forced out from the people and if not forced out then will the citizens, who are not able to give information due to some reason or don't want to give personal information voluntarily, get counted in the population.

That there can be no secrecy and confidentiality of the personal information of the people if such database of Indian citizens is made which is gross violation of Art. 21 of the Constitution as the Citizenship Rules, 2003 do not prescribe to what extent private information of citizens shall be required and leaves it to the discretion of executive

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That the preparation of NPR is being done with Census Enumeration exercise and Section 15 of the Census Act, 1948, expressly makes the information that is recorded pursuant to the Census Act, 1948 "**not open to inspection nor admissible in evidence**", as such there is no such protection provided under the Citizenship Act, 1955, making each and every detail of the NPR available to inspection. In fact, the amendment of the Citizenship Act, 1955 providing for National Population Register, without providing for a concomitant bar on access to such information is violation of Articles 14 and 21 of the Constitution of India. *The purpose of Census and the purpose of NRIC are different, and the two exercises cannot be clubbed.*

That since there are no legislative guidelines prescribed on the manner of collection of information and the same is left to a field manual, the residents are left to the mercy of the person preparing the field manual, without there being any protection arising from any statute which is violation of the fundamental rights of the citizens.

Discrimination: That there is no procedure specified by the government in the rules as to how the information will be collected for NPR because a person having a domicile in one state might have migrated to another state in search of living and if such migration is hindered with then it will be a gross violation of Article 19. This disproportionality affects migrant workers and does not preserve public interest.

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No legislative control on NPR process:

That there is absence of regulation as to how the process of NPR will be regulated and administered and will it be done by government officials or private contractors because giving the contract of collecting personal information to a private body is a threat to the national security of India and its people. It is stated that mere collection of forms is not enough, but thereafter a database would be created. It is relevant this Hon'ble Court even in Assam NRC case has prohibited release of the lists with State and Central Government unless a regime similar to aadhaar is enacted (See 2019 (19) SCC 70, para 16)).

That, it is submitted that the Citizenship Act, 1955 is meant for laying conditions for eligibility for and acquisition of citizenship and not for creation of a "register" and as such the process of NPR is itself incongruous with the Scheme of the 1955 Act, and is manifestly arbitrary;

Jurisdictional condition of NPR: It is stated that Rule 4(3), begins by using the phrase "For the purposes of preparation and inclusion in the Local Register of Indian Citizens", and therefore the decision to prepare a register of citizens is a precondition for operation of Rule 4 of the Citizenship Rules that (unlawfully) enable NPR. It is stated that "for the purposes" would mean for "the lawful and duly authorized purpose of".

That it is submitted that in Section 14-A the power to prescribed procedure is only for NRIC and not for NPR. Therefore, unless there is a statutory mandate for NPR, the same is illegal and without jurisdiction and must be enjoined immediately.

That undeniably, NRIC would be started and that NPR is only the first step towards the same. However, the jurisdictional conditions for the exercise of power under S.14-A have not been made because there is no formal decision today to prepare NRIC. It is stated that until a formal decision to prepare and proceed with NRIC has been taken (after considering intelligible material) under Section 14A(1) of the Citizenship Act, 1955, the exercise of NPR cannot be commenced.

The creation of a National Population Register (NPR) as the same is being conducted without any valid legal sanction as there is no provision in any statutory law for the same, and such an exercise constraining the rights of residents cannot be done by resolving to rule making power. Neither the Citizenship Rules nor the Citizenship Act, provide for any guideline for creation of the NPR and more importantly for collection of data and how such data shall be stored, assimilated and utilised and the purpose that it would serve. The fact that an illegal exercise had been done in the past would not save an illegal action if it fails the test of Article 14, 19 and 21.

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It is pertinent to highlight that a population census is already periodically conducted by the government and that the NPR has no correlation to either the census (for collecting anonymised data about population) nor Aadhaar which again is a database of residents of India for purported delivery of social welfare schemes. In such circumstance, no purpose or objective is served by the NPR, which is sought to be implemented fraudulently, by way of excessive delegation.

The preparation of NPR is an arbitrary process both substantively and procedurally. That the preparation of NPR is an arbitrary process both substantively and procedurally because the nature of information and the documents being collected for the preparation of NPR has not been specified in the Citizenship Rules, 2003 whilst the same is specified for the preparation of National Register of Indian Citizen (NRIC). It is further submitted that the Citizenship Rules, 2003 only provide detailed provisions for the preparation of NRIC and not for NPR.

Further, National Population Register discriminates indirectly, in that, it affects the poor and migrant the most whose name may not be included in the "population register" for failure to produce documents, and are left at the whims of a collection agent who is guided by "extra-legal" document which is a manual prepared for field officers- for which again there is no basis in law.

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Instruction/Field Manual

It is submitted that the power of collecting the above specified documents/details for NRC and unspecified documents/details has been delegated to RGI and other officers, is being exercised through Gazette Notifications and executive instructions which amounts to excessive delegation and such power is not regulated and controlled by any conditions prescribed by law. It is stated that *delegatus non potest delegare* is applicable, and the instruction manual is completely illegal and ultra vires the law.

Challenge to Notification S.O.2753(E) dated 31 July, 2019:

That the Petitioner's challenge to Notification S.O.2753(E) dated 31 July, 2019 issued by the Ministry of Home Affairs for preparation of National Population Register by collection of information relating to persons usually residing within the jurisdiction of the Local Registrar and the corresponding Instruction Manual for Updation of National Population Register is on the ground that the same has been issued without any application of mind; is without sufficient legal basis, and is bereft of any lawful control of the legislature as the same is a consequence of excessive delegation; and further that it invades guaranteed fundamental right to privacy. The Petitioner prays for a writ of prohibition or orders in the nature of a writ of prohibition from giving effect to and/or implementing Notification S.O.2753(E) dated 31 July, 2019.

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This Hon'ble Court may kindly call upon the deliberation prior to issuance of the Gazette Notification dated 31.07.2019 to examine whether there is any application of mind and consideration of relevant criteria

That it is stated that the decision taken by Respondent No.1 and 2 to proceed with NPR prior to issuance of Gazette Notification dated 31.07.2019 cannot be arbitrary and reasons must be recorded as to why it is needed. It is relevant that data was collected in 2011 and also in 2015, and so where is the occasion to collect (intrusive) data in 2019, within such a short while. The decision to proceed with or not to proceed with NPR exercise is not at the sweet will of the Respondents. It has to be backed by cogent reasons and the same must be recorded in writing. Any decision involving public expense must be taken after due deliberation and for good reasons. In fact, a large number of persons can be excluded from the NPR system but there is no protection against indiscriminate exclusion or abuse of power that can happen. There is no law that can address discrimination against various class of persons and it is important that the whole exercise is stayed until a proper system of data protection and protection from abuse & discrimination is put in place.

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LIST OF DATES

10.12.2003 (Impugned)	<p>The Ministry of Home Affairs, in purported exercise of the powers conferred by sub-sections (1) and (3) of Section 18 of the Citizenship Act, 1955 (57 of 1955), issued the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 (hereinafter referred as the Citizenship Rules, 2003) vide Gazette Notification (bearing no. G.S.R.937€) for the preparation of National Register of Indian Citizens (hereinafter referred as NRIC).</p> <p>Note that at this point in time there is no statutory power of the same. This Hon'ble Court has held in General Officer Commanding-in-Chief v. Subhash Chandra Yadav, (1988) 2 SCC 351, that the rule when enacted must be within the four corners of an existing law, and a subsequent legal provision enabling a rule at a later point of time will not validate a still born rule.</p>
07.01.2004 & 03.12.2004	<p>Section 14-A of the Citizenship Act, 1955 inserted into the Citizenship Act 1955 by Citizenship Amendment Act, 2003 dated 07.01.2004, w.e.f from 03.12.2004.</p>
2011	NPR data was collected

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01.07.2015	Registrar-General of India vide letter dated 01.07.2015 [bearing No. 9/41/2015-CRD(NPR)] issues a circular titled UPDATING OF NPR- CIRCULAR- No. 1 for the updation of the National Population Register (NPR) and seeding the Aadhaar number in the Aadhaar database.
17.07.2015	Registrar-General of India vide letter dated 17.07.2015 [bearing No. 9/41/2015-CRD(NPR)] issues a circular titled UPDATING OF NPR- CIRCULAR- No. 2 directing all Chief Secretaries/Administrators and all State and Union Territory Coordinators for NPR to finalise the period for house-to-house enumeration and publish the same in the State/Union Territory gazette
29.07.2015	Registrar-General of India vide circular dated 29.07.2015 [bearing No. 9/41/2015-CRD (NPR)], issues a circular titled UPDATING OF NPR- CIRCULAR- No. 3 accompanying a detailed methodology for fieldwork for the enumeration of NPR and seeding Aadhaar in the NPR database.
08.09.2015	Registrar-General of India vide circular dated 08.09.2015 [bearing No. 9/41/2015-CRD (NPR)] issues a circular titled UPDATING OF NPR- CIRCULAR- No.

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	4, for the appointment of designated officers for the updation of the National Population Register
16.09.2015	Registrar-General of India vide circular dated 16.09.2015 [bearing No. 9/41/2015-CRD (NPR) issues a circular titled UPDATING OF NPR- CIRCULAR- No. 5 for the printing of NPR booklets and other materials
31.07.2019 (Impugned)	That subsequently purportedly in terms of sub-rule (4) of rule 3 of the Citizenship Rules, 2003 the Ministry of Home Affairs issued Gazette Notification (bearing no. S.O. 2753(E)) dated 31.07.2019 notifying that the field work for house to house enumeration for the preparation and updating of NPR by collecting information relating to all persons who are usually residing within the jurisdiction of Local Registrar shall be undertaken between the 1st day of April, 2020 to 30th September, 2020.
09.09.2019	Additional Director (NPR) vide letter dated 09.09.2019 (bearing no. F.No. 9/4/2017-CRD (NPR) Vol. II) clarified that the updating exercise of NPR will be conducted through house-to-house visit of each and every usual resident of the country irrespective of religion along with the Houselisting phase of Census

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	2021. Further, he also clarified that during the updating of NPR, no document is required but Aadhar Number, PAN, Passport, Voter ID and Driving License Number may be collected
21.09.2019	The Registrar General issued a notification virtually merging the exercise of Census and of NPR.
09.10.2019	Additional Director (NPR) vide letter dated 09.10.2019 (bearing no. F. No. 9/4/2017-CRD(NPR) Vol. II) again clarified the distinction between NPR and NRIC and stated that NPR was created along with Census of India, 2011 and was first updated during 2015
Nov 2019	Respondent No.2 issued <i>Instruction Manuals on National Population Register</i> in the year 2011, which is without any basis in law. The instruction manual is called "MANUAL OF INSTRUCTIONS FOR FILLING UP OF THE NPR HOUSEHOLD SCHEDULE". That while the information that is proposed to be collected is personal and private, there is no statutory basis for collection of such detailed data which goes beyond the requirement of mere census
Dec 2019	The Petitioner has ^{not any} filed Writ Petition before the

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	<p><i>any</i> High Court However, as this Hon'ble Court has issued notice in a matter concerning NPR / NRC, the <i>all</i> High Courts is <i>are</i> disabled from hearing the matter in view of norms of propriety. Further, by an order passed by this Hon'ble Court on 22.01.2020, the Hon'ble High Court cannot now adjudicate the Writ Petition</p>
	<p>Hence this Writ Petition.</p>

IN THE MATTER OF:

1. SACHIN YADAV, SON OF

The diagram illustrates the experimental design sequence. It starts with a subject in a car (1), followed by a car crash (2), a car on fire (3), and a car being towed away (4). The sequence is labeled with numbers 1 through 5.

VERSUS

...

PETITIONER

1. UNION OF INDIA,
THROUGH SECRETARY,
MINISTRY OF HOME AFFAIRS
NORTH BLOCK
NEW DELHI - 110 001

2. OFFICE OF THE REGISTRAR GENERAL
& CENSUS COMMISSIONER
NDCC-II BLDG, JAI SINGH ROAD,
NEW DELHI-110001.

...RESPONDENTS

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

TO,

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

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner is a Law Graduate from [REDACTED] and involved in various social work for the betterment of the society. He has also been providing free legal aid to downtrodden section of the society. The Petitioner has no private interest in this present litigation and does not seek to personally gain from the outcome of the present case. In fact, your petitioner is acting as 'probonopublico'.

1A. The Petitioner has not moved any representation concerning the reliefs sought in this Writ Petition. The Petitioner's PAN NO..

[REDACTED] F The Petitioner's AADHAAR No. [REDACTED]

The Petitioner's Last Annual Income is NIL. The Petitioner's email

ID is [REDACTED]. The Petitioner's Phone number is

[REDACTED]. That the present petition is being filed for issuing a writ, order or direction challenging the constitutional validity of Sections 14-A and Section 18(3) of the Citizenship Act, 1955 and the *Citizenship* (Registration of Citizens and issue of National

Identity Cards) *Rules*, 2003 . The Petitioner has also challenged the preparation of the National Population Register and the National Register of Citizens itself.

2. It is further submitted that the National Population Register (hereinafter "**NPR**") being prepared and maintained by the Central Government (Respondent No.1 and Respondent No.2 herein) under the *Citizenship* (Registration of Citizens and issue of National Identity Cards) *Rules*, 2003 ("**NRIC Rules**" or "**CitizenshipRules2003**" or the "**CitizenshipRules**") is illegal and unlawful both substantively and procedurally and is liable to be struck down as it is in gross violation of Article 14 and 21 of the Constitution of India.

3. That the Petitioner is aggrieved by the undertaking of the exercise of creating a National Population Register, distinct from and under the garb of a census, without any basis in law by way of delegated legislation, exceeding the powers conferred by the statute and specifically the ground stated in the Writ Petition.

BRIEF FACTS

The facts giving rise to filing the present writ petition are as under:-

4. That on 10.12.2003, the Ministry of Home Affairs, in purported exercise of the powers conferred by sub-sections (1) and (3) of

Section 18 of the Citizenship Act, 1955 (57 of 1955), issued the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 (hereinafter referred as the **Citizenship Rules, 2003**) vide Gazette Notification (bearing no. **G.S.R.937(E)**) for the preparation of National Register of Indian Citizens (hereinafter referred as **NRIC**). At this point in time Section 14-A of the Citizenship Act, 1955 was neither enacted nor notified.

5. That Section 18 of the 1955 Act is extracted below for ease of reference:

“**18. Power to make rules**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Every rule made under this section shall be laid, as soon as may be after it is made before each

House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.].....”

It is submitted that Section 18(3) of the Citizenship Act 1955 suffers from excessive delegation in as much it enables imposition of penalty of Rs. 1000 in any and every situation as defined in the rules, without providing any legislative guidance. A true copy of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 is annexed as Annexure P- 1 (PgNo 46 to 54).

6. That the Central Government further amended the Citizenship Act, 1955 by Citizenship Amendment Act, 2003 (Act 6 of 2004) with effect from 03.12.2004 and provided for Section 14-A for the issuance of National Identity Cards. Section 14-A of the Citizenship Act, 1955 provides as under:

“.....14-A. Issue of national identity cards.—

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

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

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

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

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

Thus in this case, it is apparent that the Rules came earlier than the amendment in the law.

7. That sub-rule (4) of rule 3 of the Citizenship Rules, 2003 provides for the preparation of National Population Register or NPR from the date which shall be specified by the Central Government by collecting information relating to all persons who are usually residing within the jurisdiction of Local Registrar. It is relevant that NPR does not find a mention in the Citizenship Act, 1955 but is introduced by way of Rules which can be framed to give effect to the purpose of the Act. It is stated that given the level of intrusion and violation of fundamental rights under Articles 14 and Article 21, the sanction for creation of NPR, if at all, has to be by way of legislation and not by Rules.

8. Section 14-A(5) provides that *the procedure to be followed in compulsory registration of the citizens of India shall be such as may be prescribed*. Thus, while it is claimed that NPR is the first step of NRC, still no details of the procedure to be followed for NPR has been prescribed and the same has been left to the sweet will of the executive, which also amounts to arbitrariness and abuse of delegated power. Further, a delegated power cannot be further sub-delegated to any other authority (*delegatus non potest delegare*).

9. That the Respondent No.1 and Respondent No.2 claim to have prepared NPR in the year 2010-2011. However, the detail of such NPR is not available with the Petitioner. It is stated that NPR is distinct from Census, and in the name of Census, the Respondent No.1 and Respondent No.2 have been preparing NPR. In fact, the Petitioner has reliably learnt that at the time of enrollment for Aadhaar, Respondent No.1 and Respondent No.2 in cahoots with Election Commission of India were also updating NPR. Apparently, another exercise for collection of data was done in the year 2015.

10. That it is stated that Respondent No.2 issued *Instruction Manuals on National Population Register* in the year 2011, which is without any basis in law. The instruction manual is called "MANUAL OF INSTRUCTIONS FOR FILLING UP OF THE NPR

HOUSEHOLD SCHEDULE". That while the information that is proposed to be collected is personal and private, there is no statutory basis for collection of such detailed data which goes beyond the requirement of mere census.

11. That the Registrar-General of India vide letter dated 01.07.2015 [bearing No. 9/41/2015-CRD(NPR)] issues a circular titled **UPDATING OF NPR- CIRCULAR- No. 1** for the updation of the National Population Register (NPR) and seeding the Aadhaar number in the Aadhaar database. A true copy of Circular dated 01.07.2015, for updation of NPR and seeding of Aadhaar with NPR database is annexed as **Annexure P-2** (pg.....~~55~~.....)

12. That the Registrar-General of India vide letter dated 17.07.2015 [bearing No. 9/41/2015-CRD(NPR)] issues a circular titled **UPDATING OF NPR- CIRCULAR- No. 2** directing all Chief Secretaries/Administrators and all State and Union Territory Coordinators for NPR to finalise the period for house-to-house enumeration and publish the same in the State/Union Territory gazette. A true copy of circular dated 17.07.2015 regarding period of field-work for updation of NPR is annexed as Annexure P.3 (pg.....~~56-57~~.....)

13. That Registrar-General of India vide circular dated 29.07.2015 [bearing No. 9/41/2015-CRD (NPR)], issues a circular titled **UPDATING OF NPR- CIRCULAR- No. 3** accompanying a detailed methodology for fieldwork for the enumeration of NPR and seeding Aadhaar in the NPR database. A true copy of circular dated 29.07.2015 regarding methodology for updation of NPR is annexed as **Annexure P4** (pg...**58-59**.....)
14. That Registrar-General of India vide circular dated 08.09.2015 [bearing No. 9/41/2015-CRD (NPR)] issues a circular titled **UPDATING OF NPR- CIRCULAR- No. 4**, for the appointment of designated officers for the updation of the National Population Register. A true copy of circular dated 08.09.2015 regarding appointment of designated officers for updation of NPR is annexed as **Annexure P5** (pg...**62-63**.....)
15. That Registrar-General of India vide circular dated 16.09.2015 [bearing No. 9/41/2015-CRD (NPR)] issues a circular titled **UPDATING OF NPR- CIRCULAR- No. 5** for the printing of NPR booklets and other materials. A true copy of circular dated 16.09.2015 regarding printing of NPR booklets and other materials is annexed as **Annexure P 6** (pg...**64-65**.....)
16. That the aforesaid developments clearly show that the distinction between benign census exercise and national population register has been virtually done away with. The strict

protection regime that applies to Census does not apply to NPR which is a creature of rules.

17. That subsequently purportedly in terms of sub-rule (4) of rule 3 of the Citizenship Rules, 2003 the Ministry of Home Affairs issued Gazette Notification (bearing no. **S.O. 2753(E)**) dated 31.07.2019 notifying that the field work for house to house enumeration for the preparation and updating of NPR by collecting information relating to all persons who are usually residing within the jurisdiction of Local Registrar shall be undertaken between the 1st day of April, 2020 to 30th September, 2020. The Notification (bearing no. **S.O. 2753(E)**) dated 31.07.2019 is arbitrary and has been issued without application of mind and without satisfying jurisdictional conditions under Section 14-A of the 1955 Act. A copy of Gazette Notification (bearing no. S.O. 2753(E)) dated 31.07.2019 is annexed as **Annexure P-7** (PgNo 66 to 67)

18. That it may relevant to state that Rule 3 of the Citizenship Rules 2003 does not empower the collection of data of the nature contemplated; and anyway, such an empowerment cannot flow from rules and must emanate from the legislation itself for it to pass the muster of Article 21.

19. That it is stated that the decision taken by Respondent No.1 and 2 to proceed with NPR prior to issuance of Gazette

Notification dated 31.07.2019 cannot be arbitrary and reasons must be recorded as to why it is needed. It is relevant that data was collected in 2011 and also in 2015, and so where is the occasion to collect (intrusive) data in 2019, within such a short while. The decision to proceed with or not to proceed with NPR exercise is not at the sweet will of the Respondents. It has to be backed by cogent reasons and the same must be recorded in writing. Any decision involving public expense must be taken after due deliberation and for good reasons.

20. That the issuance of MANUAL OF INSTRUCTIONS FOR FILLING UP OF THE NPR HOUSEHOLD SCHEDULE is also ultra vires the Citizenship Act, 1955 and the Citizenship Rules 2003, and is also not permissible under the Census Act.

21. That for the just and proper disposal of the present writ petition in the interest of justice and equity the petitioner is urging the following contentions to be considered:-

I. The preparation of NPR is an arbitrary process both substantively and procedurally.

22. That the preparation of NPR is an arbitrary process both substantively and procedurally because the nature of information and the documents being collected for the preparation of NPR has not been specified in the Citizenship Rules, 2003 whilst the same

is specified for the preparation of National Register of Indian Citizen (NRIC). It is further submitted that the Citizenship Rules, 2003 only provide detailed provisions for the preparation of NRIC and not for NPR.

23. That only sub-rule (4) of rule 3 of the Citizenship Rules, 2003 provides for the preparation of NPR and as such no other provision is mandated for the preparation of NPR in any statute and the same is left to a field/instruction manual and such power is arbitrary in nature because there is no sanction to such power under any statute. Since the rights, including the right to privacy is affected by collection of personal information proposed to be collected under NPR, it is submitted that the same can only be regulated or abridged by a statute and not by rules. It is stated that "law" under Article 21 of the Constitution of India means "law enacted" by Parliament and not instruction manuals or even rules.

24. That the Petitioner further prays for the declaration that Section 14-A of the Citizenship Act, 1955 *isultravires* the Constitution, in that the collection of personal data under the NPR in terms of Section 14-A of the Citizenship Act, 1955 is violative of Article 14 and Article 21 to the Constitution of India and it suffers from the vice of excessive delegation in that it does not prescribe to what extent private information of citizens shall be required and leaves it to the discretion of executive. Parliament has

surrendered its wisdom to subordinate legislation which is impermissible and arbitrary.

25. That it was held by the Hon'ble Supreme Court in **Hamdard Dawakhana (Wakf) vs Union of India AIR 1960 SC 554** that the legislature cannot delegate unrestrained uncanalised and unqualified legislative power on an administrative body. It is further submitted that the legislature must declare the policy of the law, lay down legal principles and provide standards for the guidance of the delegate to promulgate delegated legislation, otherwise the law will be bad on account of excessive legislation. Relevant portion of the judgment is being reproduced hereunder for kind consideration of this Hon'ble Court.

"34. We are of the opinion therefore that the words "or any other disease or condition which may be specified in the Rules made under this Act" confer uncanalised and uncontrolled power to the executive and are therefore *ultra vires*."

26. That it is submitted that in Section 14-A the power to prescribe procedure is only for NRIIC and not for NPR. Therefore, unless there is a statutory mandate for NPR, the same is illegal and without jurisdiction and must stop immediately.

- II. The clubbing of preparation of NPR with the Census Enumeration Exercise 2021 is unnecessary and unwarranted and without any sanction of law, and is disproportionate.

27. That the Additional Director (NPR) vide letter dated 09.09.2019 (bearing no. **F.No. 9/4/2017-CRD (NPR) Vol. II**) clarified that the updating exercise of NPR will be conducted through house-to-house visit of each and every usual resident of the country irrespective of religion along with the Houselisting phase of Census 2021. Further, he also clarified that during the updating of NPR, no document is required but Aadhar Number, PAN, Passport, Voter ID and Driving License Number may be collected. Thereafter, by a notification dated 21.09.2019, the Census Officers were also appointed as officers for the NPR. A true copy of letter dated 09.09.2019 (bearing no. **F.No. 9/4/2017-CRD (NPR) Vol. II**) is annexed as **Annexure P-8** (PgNo 68 to _____)

A true copy of the Circular dated 21.09.2019 issued by Registrar General, India is annexed as **Annexure P-9** (pg.....69 - 75.....)

28. That the entire exercise has been done by the Government using Assam as an example. It is relevant that in a population of over 1.3 billion people, there are no authentic estimates of illegal immigration. Thus, the time, effort and money spent in detection of Bangladeshis (through a crippled legal system) is wholly arbitrary. This Hon'ble Court may kindly call upon the deliberation prior to issuance of the Gazette Notification dated 31.07.2019 to examine

whether there is any application of mind and consideration of relevant criteria.

29. That it is submitted that the power of collecting the above stated documents, which has been delegated to RGI and other officers under the rules, is being exercised through Gazette Notifications and executive instructions which amounts to excessive delegation and such power is not regulated and controlled by any conditions prescribed by law. It is stated that delegatus non potestdelegare is applicable.

30. That the Additional Director (NPR) vide letter dated 09.10.2019 (bearing no. F. No. 9/4/2017-CRD(NPR) Vol. II) again clarified the distinction between NPR and NRIC and stated that NPR was created along with Census of India, 2011 and was first updated during 2015. A true copy of letter dated 09.10.2019 (bearing no. F. No. 9/4/2017-CRD (NPR) Vol. II) is annexed **Annexure P-10** (PgNo 76 to _____)

31. That the Registrar General, India and Census Commissioner of India are engaged in the creation of the NPR and issuance of Multi-purpose National Identity Cards to citizens of India. The Registrar General is appointed under Section 3(1) of the Registration of Births and Deaths Act, 1969, and who is empowered by Section 14-A of the Citizenship Act, 1955 to

compulsorily register citizens should the Central Government so decide. It is submitted that the power under S.14-A under the Citizenship Act, 1955 is exercisable after the government so decides (by use of the phrase "may compulsorily register"), and thus, contemplates application of mind based on cogent and intelligible material. It is stated that in the present case, the Government of India's minister have publicly claimed that pan India NRIC would be started and that NPR is only the first step towards the same. However, the jurisdictional conditions for the exercise of power under S.14-A have not been made because there is no formal decision today to prepare NRIC. It is stated that until a formal decision to prepare and proceed with NRIC has been taken (after considering intelligible material) under Section 14A(1) of the Citizenship Act, 1955, the exercise of NPR cannot be commenced. The fact that some exercise has been done in the past is no ground to perpetuate an illegality.

32. Further, Section 14A(5) requires procedure to be prescribed for NRIC, but till today no procedure has been prescribed. It is stated that as proclaimed since NPR is part of NRIC process, the same cannot be commenced unless all jurisdictional conditions of S.14A are satisfied. It is submitted that even though Section 14-A of the Citizenship Act, 1955 refers to National Register of Indian Citizen (NRIC), it has metamorphosed into National Population Register

(NPR). In fact, the creation of NPR is the first step towards preparation of the NRIC, and admittedly NPR is not NRIC. The NPR, therefore, even though being undertaken under Section 14-A of the Citizenship Act, 1955, does not fulfill the conditions of Section 14-A of the Citizenship Act and consequently there is no statutory sanction for throwing away a category of people. It is stated that Section 14-A of the Citizenship Act, Rule 3(5) and Rule 4 of the Citizenship Rules 2003 have to be viewed as a code, and before proceedings with Rule 4, conditions of Section 14-A must be satisfied.

33. It is stated that Rule 4(3), begins by using the phrase "For the purposes of preparation and inclusion in the Local Register of Indian Citizens", and therefore the decision to prepare a register of citizens is a precondition for operation of Rule 4 of the Citizenship Rules that (unlawfully) enable NPR. It is stated that "for the purposes" would mean for "the lawful and duly authorized purpose of".

34. That it is submitted that the Foreigners Act, 1946 read with Foreigners Order 1964 provides for a mechanism for identification, detection and adjudication over non-citizens/foreigners, and as such the power in law is exercisable by a person having judicial experience. It is stated that the power to doubt the citizenship of any person, (as experience from Assam

shows), is a serious power and can only be exercised by a person who has had judicial experience, and cannot be left to the whims and personal opinion of taluk level officers as has been done by Rule 8 of the NRIC Rules 2993. Further, and in any event, this kind of empowerment cannot be done by the Rule making power which is prohibited by Article 14 and 21 of the Constitution of India. Therefore, Citizenship Rules are bad in law and opposed to the Constitution, i.e. Article 14, 19 and 21 of the Constitution.

35. That the power to inquire into a citizenship status of a person is at least a quasi judicial process or at its best is a judicial process which cannot be left at the mercy of administrative officers at block or taluk level or district level. An executive officer cannot be empowered by rules to perform quasi judicial or judicial functions having implications on civil rights of a person and rendering him or her stateless.

36. That the process of NPR being clubbed with the census enumeration exercise is a camouflage, and an unnecessary and unwarranted because census enumeration exercise is done to count the number of residents residing in an area and not collect their personal information which can be forced out from the people and if not forced out then will the citizens, who are not able to give information due to some reason or don't want to give personal information voluntarily, get counted in the population.

37. That it is further submitted that the preparation of NPR is being done under the Citizenship Rules, 2003 and not under the Census Act, 1948. The clubbing of both the exercise is itself farcical and the entire exercise is nothing but colossal waste of public money and exposes India's vulnerabilities if such a database of personal information of people is created.

III. The rules and regulations relating to data protection, regulation and guidance of the process of NPR have not been specified by the Government.

38. That there can be no secrecy and confidentiality of the personal information of the people if such database of Indian citizens is made which is gross violation of Art. 21 of the Constitution as the Citizenship Rules, 2003 do not prescribe to what extent private information of citizens shall be required and leaves it to the discretion of executive. That there is *firstly*, no authorization regime (in that it is not specified in law as to which information can be collected) and secondly, there is no protection regime in that NPR data is neither protected by secrecy nor confidentiality and hence violates Article 21.

39. That the preparation of NPR is being done with Census Enumeration exercise and Section 15 of the Census Act, 1948, expressly makes the information that is recorded pursuant to the

Census Act, 1948 “not open to inspection nor admissible in evidence”, as such there is no such protection provided under the Citizenship Act, 1955, making each and every detail of the NPR available to inspection. In fact, the amendment of the Citizenship Act, 1955 providing for National Population Register, without providing for a concomitant bar on access to such information is violation of Articles 14 and 21 of the Constitution of India.

40. That the Census Act, 1948 enables the collection of information so as to enable the State to have profile of the population; and due to Section 15 therein, the possibility of usage/dissemination of the said information for ‘profiling’ and other purposes not provided by law is eliminated and penalized. It is further submitted that the absence of such protection and guidance as to what will be nature of information being collected and how will it be used and not providing for a concomitant bar on access to such information is violation of Articles 14 and 21 of the Constitution of India. Moreover, the same Census Officers who are being appointed under the Census Act 1948 are also being appointed as officers under the NPR, merging the two functions – one under the Census Act, and other than the NRIC Rules.
41. That the Hon’ble Supreme Court in JUSTICE K S PUTTASWAMY (RETD) & ANR vs. UNION OF INDIA & ORS 2018 SCC Online SC 1642 has held that the right to privacy inheres in every

individual as a natural right. It is inalienable and attaches to every individual as a precondition for being able to exercise their freedom. Privacy is an indispensable element of the right to life and personal liberty under Article 21 and as a constitutional value which is embodied in the fundamental freedoms embedded in Part III of the Constitution. Relevant portion of the judgment is being reproduced hereunder for the kind consideration of this Hon'ble Court.

(with which Justice Sanjay Kishankaul concurred) held :

"42. Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality."

"319. Life and personal liberty are not creations of the Constitution. These rights are recognised by the Constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within."

In his concurring opinion, S A Bobde, J. (as he then was) opined:

"392...Privacy, with which we are here concerned, eminently qualifies as an inalienable natural right, intimately connected to two values whose protection is a matter of universal moral agreement: the innate dignity and autonomy of man."

Similarly, in his concurring opinion, Nariman, J. opined:

"532...It was, therefore, argued before us that given the international conventions referred to hereinabove and the fact that this right inheres in every individual by virtue of his

being a human being, such right is not conferred by the Constitution but is only recognized and given the status of being fundamental. There is no doubt that the petitioners are correct in this submission."

In his concurring opinion, Abhay Manohar Sapre, J. opined:

"557. In my considered opinion, "right to privacy of any individual" is essentially a natural right, which inheres in every human being by birth..It is indeed inseparable and inalienable from human being."

"103. The right to privacy has been traced in the decisions which have been rendered over more than four decades to the guarantee of life and personal liberty in Article 21 and the freedoms set out in Article 19."

"320. Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the Constitution..."

In a similar vein, Chelameswar J. while concurring with the view of four judges held:

"375. The right to privacy is certainly one of the core freedoms which is to be defended. It is part of liberty within the meaning of that expression in Article 21."

42. That the Petitioner further submits that privacy reflects the right of the individual to exercise control over his or her personality. This makes privacy the heart of human dignity and liberty. Liberty and dignity are complementary constitutional entities. Hence, privacy is integral to liberty. Privacy facilitates the realization of constitutional freedoms. Relevant portion of *Puttaswamy* Judgment is again being reproduced hereunder for kind consideration of this Hon'ble Court.

"119. To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasising, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy with its attendant values assures dignity to the individual and it is only when life can be enjoyed with dignity can liberty be of true substance. Privacy ensures the fulfillment of dignity and is a core value which the protection of life and liberty is intended to achieve."

127...The right to privacy is an element of human dignity. The sanctity of privacy lies in its functional relationship with dignity. Privacy ensures that a human being can lead a life of dignity by securing the inner recesses of the human personality from unwanted intrusion. Privacy recognises the autonomy of the individual and the right of every person to make essential choices which affect the course of life. In doing so privacy recognises that living a life of dignity is essential for a human being to fulfill the liberties and freedoms which are the cornerstone of the Constitution."

43. That since there are no guidelines prescribed on the manner of collection of information and the same is left to a field manual, the residents are left to the mercy of the person preparing the field manual, without there being any protection arising from any statute which is violation of the fundamental rights of the citizens.

44. That it is further submitted that it the duty of the government to not adhere to such policies as to infringe any right of an individual provided in Part III of the Constitution and by collecting information without any guidelines is gross violation of the Constitution.

45. That there is no procedure specified by the government as to how the information will be collected for NPR because a person having a domicile in one state might have migrated to another state in search of living and if such migration is hindered with then it will be a gross violation of Article 19. This disproportionality affects migrant workers and does not preserve public interest.
46. That there is absence of regulation as to how the process of NPR will be regulated and administered and will it be done by government officials or private contractors because giving the contract of collecting personal information to a private body is a threat to the national security of India and its people. Further, the protection under the Citizenship Act, 1955 and Citizenship Rules, 2003 has been provided for NRIC where it is specified that only government officers would perform the task, but no such clause exists for NPR and is left at the discretion of Registrar General, India.
47. That there is no provision available when people don't want to give the information and what will be the consequences of not giving the information apart from fine of Rs. 1,000/- and as such it creates a fear of being stateless in the minds of the people and infringes the right to privacy of citizens. The law does not provide power for compulsion and all the acts affecting rights and liberties of an individual are to be necessarily backed by law enacted by

Parliament. It is submitted that right to privacy, being guaranteed under Article 21 of the Constitution of India, cannot be infringed except by law and only to the extent necessary. Justice Nariman in Puttaswamy case held that informational privacy "deals with a person's mind, and therefore recognizes that an individual may have control over the dissemination of material that is personal to him". Any unauthorised use of such information may therefore lead to infringement of the right to privacy. In his concurring judgment, Justice Kaul held that informational privacy provides the right to an individual "to disseminate certain personal information for limited purposes alone". The relevant portion of Puttaswamy judgment is again being reproduced hereunder for kind consideration by this Hon'ble Court.

"620... The boundaries that people establish from others in society are not only physical but also informational. There are different kinds of boundaries in respect to different relations. Privacy assists in preventing awkward social situations and reducing social frictions. Most of the information about individuals can fall under the phrase "none of your business". An individual has the right to control one's life while submitting personal data for various facilities and services. It is but essential that the individual knows as to what the data is being used for with the ability to correct and amend it. The hallmark of freedom in a democracy is having the autonomy and control over our lives which becomes impossible, if important decisions are made in secret without our awareness or participation."

48. That identification project that involves the collection of the biometric and demographic information of 1.3 billion people, creating the largest biometric identity project in the world, must be

scrutinized carefully to assess its compliance with human rights. It is stated that the Rule 18(3) is to be tested on the anvil of newly re-established fundamental right to privacy.

49. That, it is submitted that the Citizenship Act, 1955 is meant for laying conditions for eligibility for and acquisition of citizenship and not for creation of a "register" and as such the process of NPR is itself incongruous with the Scheme of the 1955 Act.

50. That, there is no law for the data protection of NPR and all acts affecting rights and liberties of an individual have to be necessarily backed by law because if not then it gives uncharted power to the government over the people and it is violation of fundamental rights of the citizens of India.

51. That as far as citizen-state relations are concerned, the Constitution was framed to balance the rights of the individual against legitimate State interests. Being transformative, it has to be interpreted to meet the needs of a changing society. As the interpreter of the Constitution, it is the duty of this Court to be vigilant against State action that threatens to upset the fine balance between the power of the state and rights of citizens and to safeguard the liberties that inhere in our citizens.

52. That regardless of whether the database is created based on a *de-novo* collection of individual data or is based on already

existing data such as the voter list, there is a crucial and imperative need to identify and establish an institutional mechanism that will "own" the database and will be responsible and accountable for its protection, maintenance and updating on an ongoing basis post its creation. It is submitted that the database, being a property, having details of people of India, can be owned and vested only in the President of India, and not in any "authority".

53. That the Petitioner is deeply concerned with the acts and conduct of the Respondents in this writ petition, which not only pose real and present danger and threat to the security of the Nation and to its people. Further, India is a signatory to the International Covenant on Civil and Political Rights, 1966 and Article 17 of the covenant is reproduced hereunder for kind consideration by this Hon'ble Court:

- a. *No one shall be subject to arbitrary or unlawful interference with his privacy, family, human or correspondences, nor to lawful attacks on his honour and reputation;*
- b. *Everyone has the right to the protection of the law against such interference or attacks.*

54. That the project of NPR is gross violation of the Constitution and interference of this Hon'ble Court is utmost required because a substantial public interest is involved and if the present petition is not considered then it would result in grave public harm and public injury affecting the rights and liberties of an individual.

55. That in the aforesaid facts and circumstances, interference of this Hon'ble High Court is utmost required for the purpose to issue direction to the Government to quash this process until a detailed law is drafted in this regard.

56. That a "MANUAL OF INSTRUCTIONS FOR FILLING UP OF THE NPR HOUSEHOLD SCHEDULE" has also been issued for NPR 2020, which is a pre-cursor for nationwide NRC. A true copy of INSTRUCTIONS FOR FILLING UP OF THE NPR HOUSEHOLD SCHEDULE 2020 dated Nov 2020 is annexed as Annexure P-11 (PgNo 77 to 115)

57. That the Petitioner is alleging violation of Article 14 and Articles 21 which are both fundamental rights for whose violation this Hon'ble Court can be approached. The Petitioner has not filed any writ petition before any High Court

Further, this Hon'ble Court has issued notice in a matter concerning NPR / NRC, any High Court is disabled from hearing the matter in view of norms of propriety. Further, by an order passed by this Hon'ble Court on 22.01.2020 this court has directed all of the High Courts not to take up any Writ Petitions involving same issues. A true copy of the order dated 22.01.2020 passed by this Hon'ble Court in Writ Petition No. 1470 of 2019 is annexed as **Annexure P -12 (pg 116 to)**

58. Sample NPR form used in Gujarat in 2011. A sample NPR form from Gujarat is annexed as **Annexure P -13(pg. 139 to 140)**A true copy of the sample Census 2021 Form is annexed as **Annexure P 14 (pg141 to 142.)**

59. That this Hon'ble Court may also take notice of the following chronology in which collection of information in the annexed table which shows that "Citizenship" has not been a question in census after 1961. A true copy of the chart is annexed as **Annexure P 15 (pg 143 to 152.)**

60. That there is no personal interest of the Petitioner involved in the Present Writ Petition.
61. That there is not civil or criminal or revenue litigation, involving the Petitioner which has or could have a legal nexus with the issues involved in this PIL.
62. That no government authority was moved for relief sought under this Petition

63. That the Petitioner has no other alternative and equally efficacious remedy; and the instant Writ Petition has been filed, inter alia, on the following grounds:

G R O U N D S

- A. BECAUSE, the interference of this Hon'ble Court is utmost required for the purpose to issue direction to the Government to quash the process of preparation of NPR until a detailed law is drafted in this regard;
- B. BECAUSE, the Respondent sought declaration that Section 14-A of the Citizenship Act, 1955 *isultravires* the Constitution, in that the collection of personal data under the NPR in terms of Section 14-A of the Citizenship Act, 1955 is violative of Article 14 and Article 21 to the Constitution of India and it suffers from the vice of excessive delegation in that it does not prescribe to what extent private information of citizens shall be required and leaves it to the discretion of executive;
- C. BECAUSE, the process of preparation of National Population Register is arbitrary and illegal both substantively and procedurally as it violates Article 14, 19, 21 of the Constitution of India;
- D. BECAUSE, the clubbing of process of preparation of NPR with Census Enumeration Exercise is unnecessary and is itself farcical

and the entire exercise is nothing but colossal waste of public money;

E. BECAUSE, there are no expressed provisions available for the guidance, regulation, administration and protection of the data of NPR;

F. BECAUSE, the decision by Respondent No.1&2 to proceed with NPR cannot be arbitrary and reasons must be recorded for why it is needed. It is relevant that data was collected in 2011 and also in 2015, and so where is the occasion to (intrusive) data in 2019, in such a short while;

G. BECAUSE, it is submitted that Section 18(3) of the Citizenship Act 1955 suffers from excessive delegation in as much it enables imposition of penalty of Rs. 1000 in any and every situation as defined in the rules, without providing any legislative guidance;

H. BECAUSE, a substantial question of public interest is involved which needs to be answered urgently by this Hon'ble Court;

I. BECAUSE, the decision to proceed with or not to proceed with NPR exercise is not at the sweet will of the Respondents. It has to be backed by cogent reasons and the same must be recorded in writing;

J. BECAUSE, in the aforesaid facts and circumstances, interference of this Hon'ble High Court is utmost required otherwise it will result in grave public harm and public injury;

K. BECAUSE ,no procedure is specified by the government as to how the information will be collected for NPR because a person having a domicile in one state might have migrated to another state in search of living and if such migration is hindered with then it will be a gross violation of Article 19;

L. BECAUSE, Section 18(3) of the Citizenship Act 1955 suffers from excessive delegation in as much it enables imposition of penalty of Rs. 1000 in any and every situation as defined in the rules, without providing any legislative guidance;

M. BECAUSE, the level of intrusion and violation of fundamental rights under Articles 14 and Article 21, the sanction for creation of NPR, if at all, has to be by a legislation and not by rules;

N. BECAUSE , while the information that is proposed to be collected is personal and private, there is no statutory basis for collection of such detailed data which goes beyond the requirement of mere census;

O. BECAUSE , the rights, including the right to privacy is affected by collection of personal information proposed to be collected under NPR, it is submitted that the same can only be regulated or abridged by a statute and not by rules;

P. BECAUSE, the Notification (bearing no. S.O. 2753(E)) dated 31.07.2019 is arbitrary and has been issued without application of mind and without satisfying jurisdictional conditions under Section 14-A of the 1955 Act;

Q. BECAUSE, Rule 3 does not empower the collection of data of the nature contemplated; and anyway, such an empowerment cannot flow from rules and must emanate from the legislation itself for it to pass the muster of Article 21;

R. BECAUSE, Section 14-A of the Citizenship Act, 1955 is ultravires the Constitution, in that the collection of personal data under the NPR in terms of Section 14-A of the Citizenship Act, 1955 is violative of Article 14 and Article 21 to the Constitution of India and it suffers from the vice of excessive delegation in that it does not prescribe to what extent private information of citizens shall be required and leaves it to the discretion of executive, i.e. Respondent No.2;

S. BECAUSE, Parliament has surrendered its wisdom to subordinate legislation which is impermissible and arbitrary;

T. BECAUSE, Section 14-A the power to prescribed procedure is only for NRIC and not for NPR. Therefore, unless there is a statutory mandate for NPR, the same is illegal and without jurisdiction and must stop immediately;

U. BECAUSE, power of collecting the above stated documents, which has been delegated to RGI and other officers under the rules, is being exercised through Gazette Notifications and executive instructions which amounts to excessive delegation and such power is not regulated and controlled by any conditions prescribed by law;

V. BECAUSE, the power under S.14-A under the Citizenship Act, 1955 is exercisable after the government so decides (by use of the phrase "may compulsorily register"), and thus, contemplates application of mind based on cogent and intelligible material;

W. BECAUSE, the jurisdictional conditions for the exercise of power under S.14-A have not been made because there is no formal decision today to prepare NRIC;

X. BECAUSE, Section 14A(5) requires procedure to be prescribed for NRIC, but till today no procedure has been prescribed for NPR being first step of NRIC. It is stated that as proclaimed since NPR is part of NRIC process, the same cannot be commenced unless all jurisdictional conditions of S.14A are satisfied;

Y. BECAUSE, Section 14-A of the Citizenship Act, Rule 3(5) and Rule 4 of the Citizenship Rules 2003 have to be viewed as a code, and before proceedings with Rule 4, conditions of Section 14-A must be satisfied;

Z. BECAUSE, Rule 4(3), begins by using the phrase "For the purposes of preparation and inclusion in the Local Register of Indian Citizens", and therefore the decision to prepare a register of citizens is a precondition for operation of Rule 4 of the Citizenship Rules;

AA. BECAUSE, Foreigners Act, 1946 read with Foreigners Order 1964 provides for a mechanism for identification, detection and adjudication over non-citizens/foreigners, and as such the

power in law is exercisable by a person having judicial experience;

BB. BECAUSE, low level executive officers cannot be empowered to perform judicial or quasi judicial functions;

CC. BECAUSE ,the power to doubt the citizenship of any person, (as experience from Assam shows), is a serious power and can only be exercised by a person who has had judicial training and experience, and cannot be left to the whims and personal opinion of taluk level officers. Further, this certainly cannot be done by the Rule making power;

DD. BECAUSE, the amendment of the Citizenship Act, 1955 providing for National Population Register, without providing for a concomitant bar on access to such information is violation of Articles 14 and 21 of the Constitution of India;

EE. BECAUSE, the possibility of usage/dissemination of the said information for 'profiling' and other purposes not provided by law is eliminated and penalized;

FF. BECAUSE, to make privacy the heart of human dignity and liberty which are complementary constitutional entities, hence, privacy is an integral part of liberty;

GG. BECAUSE , no guidelines prescribed on the manner of collection of information and the same is left to a field manual, the residents are left to the mercy of the person preparing the field manual; the field manual is illegal.

HH. BECAUSE, there is no procedure specified by the government as to how the information will be collected for NPR because a person having a domicile in one state might have migrated to another state in search of living and if such migration is hindered with then it will be a gross violation of Article 19. This disproportionality affects migrant workers and does not preserve public interest;

II. BECAUSE, verification/identification project that involves the collection of the biometric and demographic information of 1.3 billion people, creating the largest biometric identity project in the world, must be scrutinized carefully to assess its compliance with human rights;

JJ. BECAUSE, the Citizenship Act, 1955 is meant for laying conditions for eligibility for and acquisition of citizenship and not for creation of a "register" and as such the process of NPR is itself incongruous with the Scheme of the 1955 Act;

KK. BECAUSE, in respect of NPR, no guidelines prescribed on the manner of collection of information and the same is left to a field manual, the residents are left to the mercy of the person preparing the field manual where as Section 14-A requires "manner" to be prescribed by rules and not by a field manual;

LL. BECAUSE, there is no provision for legal aid at the stage of preparing for NPR itself, and even at NRIC stage;

MM. BECAUSE, in NPR, the possibility of usage/dissemination of the said information for 'profiling' and other purposes not provided by law is eliminated and penalized; and the same protection that is available to aadhaar database by law is not available to the NPR database;

NN. BECAUSE what could not be achieved by (sinister) aadhaar database, cannot be achieved by NPR database.

OO. BECAUSE, if the government was indeed keen to recognize the rights of so-called persecuted migrants, the same could be achieved by granting a refugee status;

PP. BECAUSE, there is no purpose served by the NPR as the population data collection has already been carried out by Aadhaar as well as Census;

QQ. BECAUSE, the purported objective of targeting social welfare schemes under NPR is already being served by Aadhaar and therefore is a redundant exercise;

RR. BECAUSE, the NPR data, in addition to being without legal basis, also seeks data points in excess of that which is prescribed under the Citizenship Rules and therefore is unconstitutional;

SS. BECAUSE, NPR exercise has been carried out in the past in 2010 as well as 2015, and no information on the outcome of these exercises have been provided till date;

TT. BECAUSE, the CAA and NPR-NRC if implemented would result in utter chaos with foreign nations already stating that they would not accept anyone identified as an illegal migrant by India, rendering such Individuals, stateless and without any rights that come bundled with citizenship and at worst case, be treated as criminals , foreigners;

UU. BECAUSE, Rule 4(6)(a) of the Citizenship Rules, enables any person to file objections against the inclusion of any person in the Local register of citizens thus allowing the entire exercise to be manipulated by any individual and / or vested interests;

VV. BECAUSE, until and unless NRC is notified, NPR being first step of the process cannot be rolled out; in other words, notification of NRC is jurisdictional condition for notifying NPR;

WW. BECAUSE, the exercise of NPR and NRIC have to be viewed in the context of CAA and exclusion;

PRAAYER

For the facts and reasons aforestated, this Hon'ble Court may graciously be pleased to:

- A. Declare that Sections 14-A of the Citizenship Act, 1955 is *ultravires* the Constitution and violative of Articles 14, 19 and 21 of the Constitution, and manifestly arbitrary;
- B. Declare Section 18(3) of the Citizenship Ac, 1955 is *ultravires* the Constitution and violative of Articles 14, 19 and 21 of the Constitution, and manifestly arbitrary;
- C. Pass an order, direction or writ in the nature of certiorari, quashing the Gazette Notification No. S.O.2753(E) dated 31 July, 2019 (Annexure P /) mandating NPR from April 1, 2020 across the country as being manifestly arbitrary and violative of Article 14, 19 and 21 of the Constitution of India;

- D. Issue a writ, order or direction in the nature of *prohibition* commanding the government to stop the proposed process of preparing National Population Register;
- E. Declare the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 as manifestly arbitrary, illegal, arbitrary and whimsical and violative of the Constitution of India; and *consequently* to quash the same for the grounds enumerated above;
- F. Issue a writ in the nature of certiorari quashing the INSTRUCTION MANUAL FOR UPDATION OF NATIONAL POPULATION REGISTER (NPR), 2020 as illegal and ultra vires the rules and the Citizenship Act, 1955, and hold that NRIC/NPR and Census Exercise cannot be clubbed together in the interest of fairness;
- G. Any other writ, order or direction which this Hon'ble Court may deem fit and proper may also be passed under the circumstances of the case in favour of the petitioner.
- H. Such other orders as may be necessary may also be passed;

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL EVER
REMAIN DUTY BOUND AND PRAY:

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Drawn By

TALHA ABDUL RAHMAN
MOHD SHAZ KHAN
SHIVANSHU GOSWAMI

FILED BY:

TALHA ABDUL RAHMAN
ADVOCATE FOR PETITIONER

Drawn on : .02.2020
Filed on:.. .02.2020
New Delhi