

## MOOT PROPOSITION

1. On 23.11.1946, The Central Legislative Assembly of British India enacted Foreigner Act, 1946 in order to confer certain power to Central Government in respect of dealing with foreigners in India.

Section 2 (a) of the Foreigner Act, 1946 defines a foreigner as follows: *“foreigner” means a person who is not a citizen of India.*

2. In view of the powers granted under Article 11 of the Indian Constitution, the Indian Parliament enacted the Citizenship Act, 1955 to provide a substantive and procedural framework with respect to acquisition and determination of the Indian Citizenship.
3. Section 2 (1) (b) of the Citizenship Act, 1955 clearly provides the definition of illegal migrant and it is defined as follows:

*2(1) (b) illegal migrant means’ a foreigner who has entered into India-*

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

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

4. Between 1948 and 1971, there were large scale migrations from East Pakistan to Assam. As is well known, West Pakistan commenced hostilities against East Pakistan on 25th March 1971 culminating in the war which dismembered the two parts of Pakistan and in which a new nation, Bangladesh, was born. Illegal migration into Assam was the core issue behind the Assam student movement. It was also the prime contributory factor behind the outbreak of insurgency in the State. In view of large-scale agitations in the State of Assam, an accord was signed known as the “Assam Accord 1985”, a Memorandum of Settlement. The Accord received widespread acceptance. It was in pursuance of this accord that Section 6A was inserted in the Citizenship Act in 1985.
5. The Governor of Assam in his report dated 8th November 1998 sent to the President of India has clearly said that unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the

Assamese people to a minority in their own State. It is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of Assam but has more dangerous dimensions of greatly undermining our national security. The report also says that this can lead to the severing of the entire landmass of the north-east with all its resources from the rest of the country which will have disastrous strategic and economic consequences.

6. On 10.12.2003, the Indian Government in the exercise of power conferred under Section 18 of the Citizenship Amendment Act, 1955 have promulgated the “Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003”.
7. The Rule 3 and 4 of the Citizenship Rules, 2003 provides outline for the maintenance and preparation of National Register of Citizens throughout the country. It is pertinent to note that the persons Rule 4(4) of the Citizenship Rules, prescribes as follows:

*During the verification process, particulars of such individuals, whose Citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over.*

8. The persons excluded from the National Register of Citizens in pursuant to Rule 4 of the Citizenship Rules, 2003, must finally represent the proceedings before the Foreigner Tribunal in order to establish citizenship of the person. A person declared as Foreigner by the Tribunal shall result in detention at the detention centre.
9. On 07.09.2015, The Ministry Home Affairs, vide Notification dated 08.09.2015 bearing number GSR 685(E) and GSR 686(E) made an amendment in the Passport (Entry into India) Rules, 1950 and Foreigners Order, 1948 and allowed entry to 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.
10. The Government of Assam along with Union of India updated the National Register of Citizens (NRC) for the residents in the State of Assam. The Final list of NRC for the

resident of Assam was published on 31.08.2019. There were applications of 3.3 crore people in NRC list and final list have included 3.11 crore people and excluded 19.06 lakh people. It is yet unclear exact number of how many people belonging to Hindu religion and Islam religion are being excluded by virtue of the process of National Register of Citizens in the State of Assam.

11. On 9.12.2019 the Citizenship Amendment Bill, 2019 was introduced in Lok Sabha and after a heated debate the same was passed with a majority of 311 to 80. On 11.12.2019 The Citizenship Amendment Bill, 2019 was introduced in Rajya Sabha and after a heated debate the same was passed with a majority of 125 to 105.

12. On 12.12.2019, The President assented to the Citizenship (Amendment) Act, 2019, wherein it amended the Section 2(1)(b) and amended clause is as follows:

*“Provided that persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who have 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 order made thereunder, shall not be treated as illegal migrants for the purposes of that Act.”*

13. The amendment makes two classification (1) classification based on religion by excluding Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the ambit of illegal migrants (2) classification based on the country, wherein the benefit of restricting the benefit of naturalization is extended to religious minorities only from Afghanistan, Pakistan and Bangladesh.

14. However, the CA, Act 2019 excluded such benefit to a similarly situated class of persons Muslim illegal migrants/ Hindu illegal migrants from Sri Lanka and other neighbouring countries.

15. The present writ petition under Article 32 is preferred by the Indian Union Muslim League herein since the Petitioner is aggrieved by the enactment of Citizenship Amendment Act, 2019, which is paving the way for admitting illegal migrants in the country on the basis of their religion. The same is also clearly violative of Article 14 of the Indian Constitution and thereby the Petitioners are seeking the issuance of a writ of certiorari or any other

appropriate writ to declare the Citizenship (Amendment) Act, 2019, particularly the proviso to Section 2(1)(b) as void, for being in violation of Article 14 of the Constitution on inter-alia the following grounds: -

1. The Citizenship Amendment Act 2019 violates the core principle of secularism and thereby violates basic structure of the Indian Constitution.
2. The Citizenship Amendment Act 2019 violates Article 14 of the Indian Constitution.

Note: The parties are allowed to raise and plead the additional issues incidental to the facts of the moot proposition.