

PRESS RELEASE

NHRC Urged to Exercise Section 12 (d) of the PHRA to Independently Review CAA

New Delhi: December 20, 2019

A petition from Human Rights Defenders' Alert – India (HRDA), Indian Social Action Forum (INSAF) and United Against Hate (UAH), the same supported by the People's Union for Civil Liberties (PUCL) and endorsed by 13,981 individuals and organisations across India, demanding the National Human Rights Commission (NHRC) to review of the Citizenship Amendment Act, 2019, by constituting a team of independent renowned jurists, was submitted to the NHRC today. The NHRC has powers to review any Indian law under Section 12 (d) of the Protection of Human Rights Act (PHRA), parameters based on the Indian Constitution and international human rights law.

The NHRC has in the past reviewed several laws and their implications on human rights and provided its critiques and comments to the government, parliament and courts. The petition argued that the questions and apprehensions raised on CAA are far more serious and challenge the basic fabric of our constitution and democracy. The CAA violates Article 14 of the Indian Constitution. This when coupled with the National Register of Citizenship exercise, which is to be undertaken nationally, violates not only Article 14 but also Articles 15 and 21.

By introducing a 'religion test' in India's citizenship legislation - excluding Muslims and other persecuted minorities in similar circumstance from any protection, while offering it only to the named faith groups - strikes a body blow to the basic fundamentals of the Indian constitution, specifically its secular character; is wholly arbitrary, and violates principles of equality and non-discrimination, besides contravening international law.

Please find below the petition submitted to the NHRC.

Regards

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December 20, 2019

To,
The Chairperson and Members,
National Human Rights Commission,
New Delhi.

Subject – Urging the NHRC to exercise Section 12 (d) of the Protection of Human Rights Act and review the Citizenship Amendment Act 2019

Respected Sirs and Madam,

We, the concerned citizens, write to you today regarding the Citizenship Amendment Act 2019 (CAA), passed by the Indian Parliament on December 11, 2019 and received President's assent on December 12, 2019.

CAA violates Article 14 of the Indian Constitution. This when coupled with the National Register of Citizenship exercise, which is to be undertaken nationally, violates not only Article 14 but also Articles 15 and 21.

The CAA makes illegal migrants in India from Pakistan, Afghanistan and Bangladesh eligible for Indian citizenship by (i) granting Hindus, Sikhs, Jains, Buddhists, Parsis (Zoroastrians) and Christians among them, those that entered India before December 31, 2014, amnesty, thus opening a path to their naturalisation as Indian citizens (Section 2) and (ii) relaxing for them the residence requirement for naturalisation, from 11 years to 5 years. (Section 6). Ostensibly, the law seeks to protect persecuted minorities from the region and offer them shelter in India.

By introducing a 'religion test' in India's citizenship legislation - excluding Muslims and other persecuted minorities in similar circumstance from any protection, while offering it only to the named faith groups - strikes a body blow to the basic fundamentals of the Indian constitution, specifically its secular character; is wholly arbitrary, and violates principles of equality and non-discrimination, besides contravening international law.

By limiting scope of the amendments only to religious minorities from so-called Muslim-majority countries, CAA disregards victims of persecution (in the region) based on religion and ethnicity (Tamils from Sri Lanka, Rohingyas from Myanmar; Baloch from Pakistan, and Hazara from Afghanistan, among others); and language and culture (Urdu-speaker from Bangladesh and Lhotshampas from Bhutan). CAA privileges the persecution of the specified religious minority groups over other faith groups in similar circumstance. For example, Ahmadi and Shia Muslims fleeing religious persecution in Pakistan or Hazara (Shia) Muslims from Afghanistan, who are also persecuted. As would Tibetans and Uighurs from China, suffering years of racial and religious persecution. Also, those persecuted because they profess no religion. Taslima Nasrin from Bangladesh or atheist bloggers from the country would be ineligible, too. CAA also privileges the persecution in the three countries over that in other countries in the region. CAA privileges those already in the country, having entered India before December 31, 2014, against those that came after, or indeed those still in their home countries and who might want to make use of this scheme, as a route to asylum.

CAA is an onslaught on the basic fundamentals of the Indian Constitution. Indian State doesn't have any religion, nor does it can differentiate or discriminate on religion as enshrined in

Articles 14 and 15 of the Constitution. The preamble of the Constitution makes it amply clear. No discrimination for citizenship on the grounds of religion and India to be a secular democratic republic were the core principles discussed and agreed upon during the constitutional assembly debates. The same was upheld by several judgements of the Supreme Court, most importantly in the Kesavananda Bharati vs State of Kerala.

It is important to note that CAA creates a class within the class on the basis of religion. Creation of a class within the class was held unconstitutional and violative of Article 14 of the Indian Constitution by the Supreme Court in 2010 in the State of UP vs Committee of Management.

It is also widely acknowledged in the international law jurisprudence that equality and the right to non-discrimination on the grounds of race, sex, and religion binds all states, irrespective of their ratification of human rights treaties.

We write to you to exercise Section 12 (d) of the Protection of Human Rights Act (PHRA) and undertake a review of the CAA. As set out in this letter, CAA is fundamentally violative of Article 14, 15 and 21 of the Indian Constitution and it is only imperative that the NHRC, an 'A' accredited institution by the Global Alliance of the National Human Rights Institutions (GANHRI) and the apex human rights body in India, undertakes an independent review of the CAA, parameters based on the Indian Constitution and international human rights law.

The NHRC has in the past reviewed several laws and their implications on human rights and provided its critiques and comments to the government, parliament and courts. The questions and apprehensions raised on CAA are far more serious and challenge the basic fabric of our constitution and democracy.

We urge the NHRC to undertake a review of the CAA by a team of independent renowned jurists in a timebound manner, allowing submissions and comments by a diverse set of stakeholders and place its finding and recommendations before the people, Government of India, Parliament and Supreme Court.

We, jointly, appeal this to you.

Sincerely,

Human Rights Defenders' Alert – India (HRDA)
Indian Social Action Forum (INSAF)
United Against Hate (UAH)

Supported by –
People's Union for Civil Liberties (PUCL)

Endorsed by –
13, 981 individuals and organisations