

RIGHTS OR WRONG?: THE HINDU EDITORIAL ON U.N. RIGHTS BODY MOVING SUPREME COURT AGAINST CAA

Relevant for: International Relations | Topic: UNO and its various Agencies

The application on behalf of the Office of the High Commissioner for Human Rights, [seeking to be heard](#) as *amicus curiae* in the pending litigation in the Supreme Court against the [Citizenship \(Amendment\) Act](#), 2019, is undoubtedly an unusual step. As expected, the [government sees it as unwarranted interference](#). It does appear that the move is unnecessary as the global human rights perspective that High Commissioner Michelle Bachelet Jeria hopes to present is most likely to be raised by some of the petitioners themselves. After all, most of the [140-odd petitions](#) argue that the CAA fails to extend the equal protection of law to all immigrants in the country. But, to be fair, the High Commissioner is not seeking to be a petitioner. On the contrary, she is offering the undoubted expertise that the premier U.N. body possesses in aid of the Court. She has appreciated the amendment's positive side, noting its potential to redress the "irregular" condition of some migrants through a quicker citizenship process. It must be noted that the Court has relied on principles contained in international legal instruments in some of its judgments. The moot question is whether the U.N. High Commissioner ought to be given an opportunity to assist the Court in the matter, or whether, even without such assistance, the Court will countenance arguments based on the salutary provisions of international conventions that India is a party to. Needless to say, the *amicus* brief may not be necessary in the latter situation.

The Modi government may be unhappy with the U.N. rights body's "overreach", but it will have to be underscored that the CAA's flawed structure and the aggressive manner in which it was initially linked with a post-implementation exercise to purge the country of illegal immigrants have contributed to the present situation. The political Opposition, sections of the legal fraternity, academicians and commentators have made a strong case that making religion a factor to include certain categories for a fast-tracked naturalisation process is violative of secular principles. The government's stout defence of the CAA is that no current Indian citizen would be affected, and that it was meant to help persecuted minorities in countries where Islam was the state religion. In addition to having to discharge the burden of proving that the CAA does not contravene the Constitution, the government would have to demonstrate that it is not in violation of provisions of the International Covenant on Civil and Political Rights. Ms. Bachelet's application marshalls significant aspects of global humanitarian law to buttress her point. The Court may probably not take her assistance, but there is little doubt that the Centre cannot evade its obligation to enact non-discriminatory legislation, grant all migrants equal protection and abide by the non-derogable principle of non-refoulement.

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