

Why a UN body intends to intervene in a Supreme Court case against CAA

This article is related to General Studies-Paper-II
(Governance & International Relations)

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"The application questions the reasonableness and objectivity of the criterion of extending the benefits of the CAA to Buddhists, Sikhs, Hindus, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan alone."

The United Nations High Commissioner for Human Rights "intends to file" an Intervention Application in the Supreme Court of India, "seeking to intervene in Writ Petition (Civil) No. 1474 of 2019 and praying that she be allowed to make submissions... as per Order XVII, Rule 3 of the Supreme Court Rules, 2013". The case is 'Deb Mukharji & Ors vs Union of India & Ors', and relates to a challenge to the Citizenship (Amendment) Act (CAA), 2019.

On what grounds is a UN body seeking to intervene in a case regarding a domestic Indian law?

The Office of the High Commissioner for Human Rights (UN Human Rights) is the leading UN entity on human rights. "The General Assembly entrusted both the High Commissioner and her Office with a unique mandate to promote and protect all human rights for all people," the Rights body says on its website.

"As the principal United Nations office mandated to promote and protect human rights for all, OHCHR leads global human rights efforts speaks out objectively in the face of human rights violations worldwide," it says.

In a "Statement of Interest" that is part of her application seeking to "intervene as amicus curiae (third party)", High Commissioner Michelle Bachelet Jeria has invoked her "mandate to inter alia protect and promote all human rights and to conduct necessary advocacy in that regard, established pursuant to the United Nations General Assembly resolution 48/141".

This resolution, adopted by the UNGA in 1994, created the post of the UN High Commissioner for Human Rights.

In the intervention application, the High Commissioner has underlined that she is "the principal human rights official of the United Nations", whose "role is to promote adherence to international human rights law and, with this purpose in mind, to support domestic courts, with their constitutional or judicial function, in ensuring the implementation of international legal obligations".

The application says that successive High Commissioners "have filed amicus curiae briefs on issues of particular public importance within proceedings before a diverse range of international and national jurisdictions, including at the international level, the European Court of Human Rights, the Inter-American Court of Human Rights, the International Criminal Court, and at the national level, the United States Supreme Court and final appeal courts of States in Asia and Latin America".

What exactly does the intervention application say?

The OHCHR has welcomed as “commendable” the CAA’s stated purpose, “namely the protection of some persons from persecution on religious grounds, simplifying procedures and requirements and facilitating the granting of citizenship to such persons, including migrants in an irregular situation, as well as refugees, from certain neighbouring countries”.

It also “acknowledges the history of openness and welcome that India has exhibited to persons seeking to find a safer, more dignified life within its borders”. However, “the examination of the CAA... raises important issues with respect to international human rights law and its application to migrants, including refugees”.

The “examination by the Honourable Court of the CAA is of substantial interest to the High Commissioner”, the intervention application says, “considering its potential implications for the application and interpretation of India’s international human rights obligations, including the right to equality before the law and the prohibition of discrimination as well as the CAA’s impact on the protection of human rights of migrants, including refugees in India”.

The CAA, it says, raises “important human rights issues, including its compatibility in relation to the right to equality before the law and nondiscrimination on nationality grounds under India’s human rights obligations”.

The application acknowledges that “the issue of nondiscrimination on nationality grounds falls outside the scope of this intervention”, but insists that “this in no way implies that there are not human rights concerns in this respect”.

The application questions the reasonableness and objectivity of the criterion of extending the benefits of the CAA to Buddhists, Sikhs, Hindus, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan alone.

It points out that while the Indian government has suggested that persons of Muslim faith, regardless of denomination or ethnicity, are protected in Afghanistan, Bangladesh and Pakistan, “recent reports by UN human rights treaty bodies, special procedures and other mechanisms... [show that]... Ahmadi, Hazara and Shia Muslims [in these countries]... warrant protection on the same basis as that provided in the preferential treatment proposed by the CAA”.

Is there a specific basis on which the High Commissioner has faulted the CAA?

The application flags some central principles of international human rights law: the impact of the CAA on some migrants; the enjoyment of human rights by all migrants and the rights of all migrants (non-citizens) to equality before the law; and the principle of non-refoulement, which prohibits the forcible return of refugees and asylum seekers to a country where they are likely to be persecuted.

The application mentions that all migrants “regardless of their race, ethnicity, religion, nationality and/or immigration status enjoy human rights and are entitled to protection”.

It cites international human rights instruments to urge the inclusion of non-discrimination, equality before the law, and equal protection before the law into the foundation of a rule of law.

International human rights law, the application says, does not distinguish between citizens and non-citizens or different groups of non-citizens for the purposes of providing them protection from discrimination, “including in respect of their migration status”.

International human rights law “requires the granting of citizenship under law to conform to the right of all persons to equality before the law and to be free from prohibited discrimination”, the application says.

It notes that while “in the Nottebohm case, the International Court of Justice stated that “international law leaves it to each State to lay down the rules governing the grant of its own nationality”, such rules “shall be recognized by other States in so far as it is consistent with... international custom, and the principles of law generally recognized with regard to nationality”.”

How has India reacted to this move by UN Human Rights?

In a press note issued on Tuesday (March 3), the Ministry of External Affairs (MEA) said: “Our Permanent Mission in Geneva was informed yesterday evening by the UN High Commissioner for Human Rights that her Office had filed an Intervention Application in the Supreme Court of India in respect to the 2019 Citizenship Amendment Act (CAA).

“The Citizenship Amendment Act is an internal matter of India and concerns the sovereign right of the Indian Parliament to make laws. We strongly believe that no foreign party has any locus standi on issues pertaining to India’s sovereignty.”

The MEA spokesperson said that India was clear that the CAA is “constitutionally valid and complies with all requirements of (India’s) constitutional values”, and “is reflective of our long-standing national commitment in respect of human rights issues arising from the tragedy of the Partition of India”.

Expected Questions (Prelims Exams)

Q. Recently the UN Human Rights has filed an Intervention Application. in Supreme Court regarding to CAA Consider the following statements related to UN Human Rights Council:

1. The United Nations High Commissioner for Human Rights is an apex United Nations unit on human rights.
2. It was established in 2005 under the United Nations by including 47 countries.
3. It meets three times a year to discuss issues related to global human rights.

Which of the above statements is / are correct?

- (a) 1 and 2 (b) Only 2
(c) 1 and 3 (d) Only 3

Note: Answer of Prelims Expected Question given on 03 March., is 1 (b)

Expected Questions (Mains Exams)

Is petitioning by the United Nations Human Rights High Commissioner to the Supreme Court on the issue of citizenship a violation of India's sovereignty? Also indicate the provisions relating to filing this petition. (250 words)

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.