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Kerala Challenges Constitutionality of CAA

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Why in News

Kerala has become the **first state to move the Supreme Court challenging the Citizenship (Amendment) Act, 2019** - CAA, 2019.

The Citizenship (Amendment) Act, 2019 seeks to provide citizenship to illegal migrants from Buddhist, Hindu, Sikhs, Jain, Parsi and Christian faiths, who have come to India from the neighbouring countries of Afghanistan, Pakistan and Bangladesh, on or before 31st December, 2014.

Key Points

- The suit has been filed under **Article 131 of the Constitution**.
 - Under Article 131, the **Supreme Court has “original” jurisdiction** in disputes between States or the Centre and State(s). The Article allows the court to directly take cognisance of such a dispute.
 - Kerala has said in its suit that it would be compelled under **Article 256** to comply with the CAA, which it considers manifestly arbitrary, unreasonable, irrational and violative of fundamental rights.

Article 256 of the Constitution states that the executive power of every State shall be so exercised as to ensure **compliance with the laws made by Parliament**.
 - Thus, there **exists a dispute, involving questions of law and fact**, between the State of Kerala and the Union of India, regarding the enforcement of legal rights as a State and as well for the enforcement of the fundamental, constitutional and other legal rights of the inhabitants of the State of Kerala.

- The Kerala Government has asked for the law to be declared unconstitutional and in violation of:
 - **Article 14** (equality before law),
 - **Article 21** (protection of life and personal liberty) and
 - **Article 25** (freedom of conscience and free profession, practice, and propagation of religion).
- It has also sought directions to declare the **Passport (Entry into India) Amendment Rules, 2015, and Foreigners (Amendment) Order, 2015**, to be “**ultra vires the Constitution of India and to be void**”.
- As per the petition, the amendments also **violate India’s international obligations under**:
 - **Article 14 of the Universal Declaration of Human Rights** (which provides that everyone has the right to seek and enjoy in other countries asylum from persecution).
 - **Article 15 of the Universal Declaration of Human Rights** (which provides that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality) and
 - **Article 26 of the International Covenant on Civil and Political Rights** (which provides that all persons are equal before the law, that all persons are entitled without any discrimination to the equal protection of the law and that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status).

Article 131 of the Constitution (Original Jurisdiction of the Supreme Court)

- The Supreme Court has **original jurisdiction** in any dispute:
 - between the Government of India and one or more States; or
 - between the Government of India and any State or States on one side and one or more other States on the other; or
 - between two or more States.
- **Notable Points**
 - The dispute **must involve a question (whether of law or fact)** on which the existence or extent of a legal right depends.
 - Any suit brought before the Supreme Court by a **private citizen** against the Centre or a state **cannot be entertained under this**.
- The **original jurisdiction** of a court means the power to hear a case for the first time, as **opposed to appellate jurisdiction**, in which the court reviews the decision of a lower court.

- **Different from Article 32**

Unlike the original jurisdiction under Article 32 (which gives the Supreme Court the power to issue writs, etc.), the jurisdiction in Article 131 is exclusive, meaning it is **only the Supreme Court which has this authority**. Under Article 226, the High Courts too have the power to issue writs, directions etc.

- **Supreme Court's Stand on Article 131**

- There have been **two conflicting judgments** from the Supreme Court on whether a State can file an original suit under Article 131 to challenge the constitutionality of a central law.
- The **first judgment reported in 2012** - State of Madhya Pradesh vs Union of India - held that States cannot challenge a central law under Article 131.
- The **second judgment - State of Jharkhand Vs State of Bihar - took the opposite view in 2015** and referred the question of law to a larger Bench of the Supreme Court for final determination. Kerala's plaint relies on the 2015 verdict.

Source: TH