

# CAA and Federalism

February 5, 2020

**Source:** *The Hindu*

**Manifest pedagogy:** The recent politically divisive issues like CAA have created a rift between the central and state governments too. Some states have moved the courts to challenge the act. In this context the federal rights of States and centers powers over them are under question. This will be an important issue for both preliminary and mains.

**In news:** The Kerala government recently moved the Supreme Court (SC) challenging the Citizenship Amendment Act (CAA) 2019.

**Placing it in syllabus:** Federalism

**Static dimensions:** Can states go against Centre?

**Current dimensions:**

- Why has Kerala filed the suit?
- How is Kerala's suit different from other petitions?
- Previous judgements and implications

**Content:**

Kerala has filed a **suit** in the Supreme Court **seeking to declare the CAA as unconstitutional**. It also challenges the validity of notifications issued under the **Passport (Entry into India) Amendment Rules and the Foreigners (Amendment) Order, in 2015-16**, as being contrary to the Constitution.

It became the **first state to challenge the CAA**, stating that it violates Article 14, Article 21 and Article 25 of the Indian constitution. Punjab has also decided to challenge the CAA in the Supreme Court.

**Can states go against Centre?**

Kerala has invoked **Article 131** which confers **exclusive jurisdiction on the Supreme Court** in **disputes involving**

- Government of India and one or more States
- Government of India and any State or States on one side and one or more other States on the other
- Between two or more States

No other court than SC can entertain such a dispute. The Constitution provides that whenever a State feels that its legal rights are under threat or have been violated, it can take the “dispute” to the Supreme Court under Article 131.

### **Why has Kerala filed the suit?**

The notifications of 2015 had given **exemption to persons belonging to minority communities in Bangladesh and Pakistan** – Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who were compelled to seek shelter in India due to (the fear of ) religious persecution and **entered India on or before December 31, 2014**, without valid documents, from the purview of the laws against illegal entry of foreigners into India.

In **2016**, further notifications were **issued to add those who arrived from Afghanistan too**. These notifications formed the basis for creating the categories of people who were not to be treated as illegal migrants and the **CAA chose the same groups for conferment of citizenship** on a fast-track mode.

Even the **term “religious persecution” is not found in the CAA**, but it mentions that those exempted from the Foreigners’ Act under the 2015 and 2016 notifications will not be treated as “illegal migrants”.

### **How is Kerala’s suit different from other petitions?**

- The **other petitions** filed in the Supreme Court challenging CAA have invoked the court’s **“writ jurisdiction” under Article 32** of the Constitution,

which allows enforcement of fundamental rights.

- **Kerala has filed its petition** challenging the constitutional validity of the CAA act **by invoking Article 131** of the Indian constitution.
- Hence **it is an original suit**.
- The petition invokes the mechanism for the states to challenge the centre.
- Filing of the suit permits more **rigorous examination of documents and witnesses** by the Supreme Court, thus giving it a **greater scope of inquiry** into the issue.

### **Previous judgements and implications:**

In the **State of Madhya Pradesh v. Union of India and Another case (2011)**, the SC said that when the Central laws can be challenged before it and in the State High Courts under Article 32, **no recourse can be permitted to challenge the validity of a Central law under the exclusive original jurisdiction of SC under Article 131.**

In the **State of Jharkhand vs. State of Bihar and Another case (2014)**, the two-judge bench comprising Justices Chelameswar and SA Bobde disagreed with the earlier 2011 judgement and **held that there was no bar on Article 131 being used to hear such matters.** The bench had **referred the case to a larger bench**, which has not been constituted till now.

In this case, though **Kerala, as a state, is constitutionally bound under Article 256 to implement any law passed by Parliament**, the dispute involves both the legal rights of the State and the fundamental rights and other legal rights of its inhabitants.

Hence, the **SC may have to constitute a larger Bench to decide the question** whether the suits challenging central laws are maintainable. If the suits are declared maintainable, the same Bench may also adjudicate the disputes.