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The Unheard Amicus: Revisiting OHCHR's CAA Intervention as India Awaits a Verdict

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INTRODUCTION

With the Supreme Court concluding the final hearings in May 2026¹, as the country awaits the final judgement in one of the most contested legal disputes in contemporary history, it makes this the right moment to revisit an overlooked procedural episode from this case's history.

The *Indian Union Muslim League v. Union of India*² started as a writ petition challenging the constitutionality of the Citizenship (Amendment) Act, 2019, which had been brought in as a measure to accommodate persons, particularly Hindus, Sikhs, Buddhists, Jains, Christians and Parsis, facing religious persecution in the neighbouring States of Pakistan, Bangladesh and Afghanistan.³

In 2020, Ms Michelle Bachelet Jeria, the United Nations High Commissioner for Human Rights, sought to intervene as *amicus curiae* in the matter; the application for which still sits unresolved⁴. This piece aims to focus on the legal standing of this very intervention and the State's response to it, highlighting a huge procedural gap in legal jurisprudence.

THE APPLICATION

When considering the legal applicability of such an intervention; we observe that it was filed under the court's own intervention rules as per Order XVII Rule 3 of the Supreme Court Rules 2013; invoking the High Commissioner's mandate under United Nations General Assembly Resolution 48/141⁵; which, for a UN institution is not a novel case; as observed within the application itself where similar instances have been noted in cases in the European Court of Human Rights, the Inter-American Court of Human Rights and even the United States Supreme Court and final appeal courts of States in Asia and Latin America⁶.

In the European Court of Human Rights' notable case of *Hirsi Jamaa and Others v. Italy*, the OHCHR intervention accompanied a landmark ruling against Italy's summary return of migrants intercepted at sea⁷.

The application itself sets a legal precedent for its validity and admissibility and is presented in cooperation with the domestic jurisprudence of the State when it opens by commending the State's humanitarian efforts and then moves into its concerns⁸.

THE CONCERNS

The procedural question arises when the very reception and response of this application is taken into consideration; wherein we primarily observe only political responses to this call for intervention. The Ministry of External Affairs responded by affirming the sovereign right of India and upholding the belief that "*no foreign party has any locus standi on issues pertaining to India's sovereignty*" along with mentioning the extent of their clarity that the "*CAA is constitutionally valid...*"⁹. A similar response was also reported to be observed by the original petitioner, Deb Mukharji, expressing their discomfort "*with a foreign organisation taking a view in this regard..*"¹⁰.

When evaluating these political concerns, we observe that the Human Rights obligations of a State arise from the ratifications; that create binding commitments; to various international instruments governing human rights, refugee and migrant concerns; as very well noted in the

application itself when it grounded its concerns in treaties such as ICCPR, ICESCR, ICERD, the CRC and CEDAW; arguing that the CAA's religion-based classification among similarly situated persecuted groups raised equality and non-discrimination concerns under each¹¹.

These commitments obligate States to make domestic efforts in order to achieve the given purpose; as per these instruments, as is noted in past judicial precedents¹².

And this is where the standing objection becomes analytically weaker than it first appears. India's own courts have, in the past, treated unincorporated international instruments as judicially operative in the absence of domestic legislation, such as in *Vishakha v. State of Rajasthan*, the Supreme Court read binding guidelines against workplace sexual harassment directly out of CEDAW, precisely because Parliament had not legislated on the subject.¹³ If Indian courts have already accepted that an unincorporated international treaty can shape binding domestic guidelines, treating a UN human rights body's *persuasive* participation- not binding authority, merely amicus status; as an affront to sovereignty is difficult to square with that precedent.

This procedural gap is further intensified by the notable fact that the application, though not accepted, was never formally rejected by the Indian judiciary or a competent judicial organ of the State. This application, even after the final hearing of the case, can be seen as pending in the Supreme Court cause list, indicating the court's reluctance to rule on the application.¹⁴

This is not a minor omission; it leaves untouched a submission that spoke directly to how India's international human rights obligations bear on domestic legislation; obligations the applicant traced back, pointedly, to India's own 1949 advocacy for including "equal protection of the law" in the drafting of the ICCPR, sixty years before the same principle was invoked against India's own statute.¹⁵ Neither accepting nor rejecting the application allows the Court to avoid engaging with that argument altogether, without ever having to justify doing so.

Even as the underlying constitutional challenges proceed to their final stages, the application, which houses a crucial side of this debate, is left untouched; has been attributed no value and is thus rendered as of no substantial significance with such conduct. This blind spot could result in domestic enforcement of policies, where the viability of such policies; that is shaped by both international and domestic jurisprudence, is judged within the house itself and thus creates what we argue is a procedural gap resulting in enforcement inadequacies.

The question here is not which side would the final verdict be tilted to but instead of whether India will procedurally engage with UN human rights body input in their domestic legislation and to what extent would that impact India's human rights standard in the wider global viewpoint and whether India could ever meaningfully incorporate such necessary standards, the lack of which is regularly highlighted and yet are shielded by the sovereign. The Unheard amicus still remains waiting.

FOOTNOTES

1. *Supreme Court Concludes Final Hearing on CAA*, Law Trend (May 2026).
2. Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India).
3. Statement of Objects and Reasons, Citizenship (Amendment) Bill, 2019, ¶
4. Application for Intervention, *Deb Mukharji v. Union of India*, I.A. No. of 2020 in W.P. (Civil) No. 1474 of 2019 (Sup. Ct. India, filed Mar. 2020) [hereinafter "Intervention Application"]; Supreme Court of India, Daily Cause List, Chief Justice's Court (Feb. 19, 2026) (listing I.A. No. 42619/2020 as pending, connected to W.P.(C) No. 1476/2019).
5. Intervention Application, *supra* note 4, ¶¶ 1–2; Supreme Court Rules, 2013, Ord. XVII, r. 3; G.A. Res. 48/141, ¶ 4(f) (Dec. 20, 1993)
6. Intervention Application, *supra* note 4, ¶ 2.
7. *Hirsi Jamaa v. Italy*, App. No. 27765/09, Eur. Ct. H.R. (Grand Chamber, Feb. 23, 2012); OHCHR, *Amicus Briefs*, [ohchr.org/en/taxonomy/term/124](https://www.ohchr.org/en/taxonomy/term/124).

8. Intervention Application, *supra* note 4, ¶¶ 3–4.
9. Ministry of External Affairs, Press Statement (Mar. 3, 2020), *reported in* Sutirtho Patranobis, *UN Human Rights Chief Moves SC Against CAA; India Says No Locus Standi*, The Tribune (Mar. 3, 2020); *UNHCR Approaches SC over CAA, MEA Says Foreign Party Has No Locus Standi*, Business Standard (Mar. 4, 2020).
10. UN human rights chief moves SC over CAA: Petitioner 'not comfortable' with foreign entity's intervention, India Today (Mar. 4, 2020), <https://www.indiatoday.in/india/story/ohchr-moves-sc-over-caa-petitioner-not-comfortable-with-inclusion-of-foreign-entity-1652183-2020-03-04>.
11. Intervention Application, *supra* note 4, ¶ 6 & nn.6–10.
12. *Vishakha v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India)
13. *Vishakha v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).
14. Supreme Court of India, Daily Cause List, *supra* note 4; Supreme Court Observer, *Citizenship Amendment Act* (case tracker, last updated Feb. 19, 2026).
15. Intervention Application, *supra* note 4, ¶ 43 (citing William Schabas, *Nowak's CCPR Commentary* 748 (3d ed. 2019)).