2024 INSC 789

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

Writ Petition (C) No 274 of 2009

IN RE : SECTION 6A OF THE CITIZENSHIP ACT 1955

With

Writ Petition (Civil) No. 916 of 2014

With

Writ Petition (Civil) No. 470 of 2018

With

Writ Petition (Civil) No. 1047 of 2018

With

Writ Petition (Civil) No. 68 of 2016

With

Writ Petition (Civil) No. 876 of 2014

With

Writ Petition (Civil) No. 449 of 2015

With

Writ Petition (Civil) No. 450 of 2015

And With

Writ Petition (Civil) No. 562 of 2012

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

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Dr Dhananjaya Y Chandrachud, CJI

1. Section 6A of the Citizenship Act 1955[1] confers citizenship on a specific class of migrants from Bangladesh to Assam. In **Assam Sanmilita Mahasangha** v. **Union of India[2]**, a two-Judge Bench referred the issue of the constitutional validity of Section 6A to a Constitution Bench. The petitioners have assailed the constitutional validity of Section 6A on the ground that it violates Articles 6,7,14, 29 and 355.

2. I have had the benefit of the opinions of my learned brothers, Justice Surya Kant and Justice J B Pardiwala. Having regard to the constitutional importance of the issues raised, I deem it necessary to author my own opinion.

A. Background

3. The judgment of Justice Surya Kant traces the background and the submissions of the counsel with sufficient clarity. To avoid prolixity, I will briefly advert to the background.

4. In 1985, the Citizenship (Amendment) Act 1985 was enacted to include Section 6A to the Citizenship Act[3]. The provision grants citizenship to persons of

[1] "Citizenship Act"
[2] (2015) 3 SCC 1
[3] "6A. Special provisions as to citizenship of persons covered by the Assam Accord.—
(1) For the purposes of this section—
(a) "Assam" means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985);
(b) "detected to be a foreigner" means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunals) Order, 1964 by a Tribunal constituted under the said Order;
(c) "specified territory" means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985);

(d) a person shall be deemed to be Indian origin, if he, or either of his parents or any of his grandparents was born in undivided India;

(e) a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who—

(a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and

(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

(c) has been detected to be a foreigner; shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.

Explanation.—In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this sub-section and if any question arises as to whether such person complies with any other requirement under this subsection, the registering authority shall,—

(i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;

(ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order hang jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.

(4) A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 (15 of 1967) and the obligations connected therewith), but shall not entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.

(5) A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

(6) Without prejudice to the provisions of section 8—

(a) if any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985), a declaration that he does not wish to be a citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;

(b) if any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985(65 of 1985), or from the date on which he has been detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).

Explanation.—Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force to act on his behalf.

(7) Nothing in sub-sections (2) to (6) shall apply in relation to any person—

(a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985 (65 of 1985), is a citizen of India;

Indian origin who migrated to Assam from Bangladesh. The provision classifies the class of migrants into two categories based on when they entered Assam: those who entered Assam before 1 January 1966 and those who came to Assam after 1 January 1966 but before 25 March 1971.

5. Section 6A(2) provides that a person would be deemed to be a citizen of India as on 1 January 1966 if the following conditions are fulfilled:

a. The person must be of Indian origin. A person is deemed to be of Indian origin if they or either of their parents or their grandparents were born in undivided India[4];

b. The person should have come to Assam from a 'specified territory' before 1 January 1966. 'Specified territory' is defined as territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act 1985.[5] All those persons who were included in the Electoral roll used for the purpose of the General Election to the House of People in 1967 must be considered; and

c. The person should have been an ordinary resident in Assam since the date of entry into Assam.

(b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, under the Foreigners Act, 1946 (31 of 1946).

(8) Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force."

[4] Citizenship Act; Section 6A(1)(d)

[5] Citizenship Act; Section 6A(1)(c)

6. Section 6A(3) states that a person must register to secure citizenship in accordance with the rules made by the Central Government under Section 18 if the following conditions are fulfilled:

a. The person must be of Indian origin;

b. The person must have entered Assam on or after 1 January 1966 but before 25 March 1971 from the specified territory, that is, Bangladesh;

c. The person must have been ordinarily resident in Assam since the date of entry into Assam; and

d. The person must be detected as a foreigner in accordance with the provisions of the Foreigners Act 1946[6] and the Foreigners (Tribunals) Order 1964[7].[8]

7. The Explanation to Section 6A(3) stipulates that the opinion of the Tribunal constituted under the Foreigners Tribunals Order declaring a person to be a Foreigner is deemed as sufficient proof for requirement (d). Whether the person satisfies the other requirements must be decided on the basis of the opinion of the Tribunal, if there is a finding in the opinion with respect to that requirement. If the opinion does not have a finding with respect to the other requirement(s), the registering authority must refer the questions to the Tribunal.[9]

[6] "Foreigners Act"
[7] "Foreigners Tribunals Order"
[8] Read with Section 6A(1)(b) of the Citizenship Act 1955
[9] Citizenship Act 1955; Explanation to Section 6A(3)

8. Section 6A(4) states that if the person who has registered under sub-Section (3) is included in the electoral roll for any assembly or parliamentary constituency, their name must be deleted from the roll for a period of ten years from the date of detection as a foreigner. However, a person who has been registered will have the same rights and obligations as a citizen of India except having their name included in the electoral roll for ten years.[10] They will also have the right to obtain passport under the Passport Act 1967. Upon the completion of ten years from the date of detection as a foreigner, a person who has registered would deemed to be a citizen of India.[11]

9. The petitioners[12] initiated proceedings under Article 32 of the Constitution, *inter alia*[13], for challenging the constitutional validity of Section 6A of the Citizenship Act. By an order dated 17 December 2014, a two-Judge Bench of this Court referred the following thirteen issues to a Constitution Bench:

> a. "Whether Articles 10 and 11 of the Constitution of India permit the enactment of Section 6A of the Citizenship Act in as much as Section 6A, in prescribing a cut-off date different from the cut-off date prescribed in Article 35 Page 36 6, can do so without a "variation" of Article 6 itself; regard, in particular, being had to the phraseology of Article 4 (2) read with Article 368 (1);

[10] Citizenship Act 1955; Section 6A(4)
[11] Citizenship Act 1955; Section 6A(5)
[12] WP (C) 562 of 2012; WP (C) 274 of 2009; WP (C) No. 876 of 2014
[13] In WP (C) No. 876 of 2014, the prayer included (a) challenging the constitutional validity of Rule 4A of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003 as ultra vires Section 6A of the Citizenship Act; (b) direction to complete fencing of the entire stretch of the Border with Bangladesh; (c) to step up the process of identification, detection and deportation of foreigners in the State of Assam in accordance with the provisions of the Foreigners Act 1946 and constitute more Tribunals under the Foreigners (Tribunals) Orders 1964; and (d) direction to remove encroachers from protected tribal lands. In WP 562 of 2012, the prayer included a direction that the National Register of Citizens with respect to Assam.

b. Whether Section 6A violates Articles 325 and 326 of the Constitution of India in that it has diluted the political rights of the citizens of the State of Assam;

c. What is the scope of the fundamental right contained in Article 29(1)? Is the fundamental right absolute in its terms? In particular, what is the meaning of the expression "culture" and the expression "conserve"? Whether Section 6A violates Article 29(1);

d. Whether Section 6A violates Article 355? What is the true interpretation of Article 355 of the Constitution? Would an influx of illegal migrants into a State of India constitute "external aggression" and/or "internal disturbance"? Does the expression "State" occurring in this Article refer only to a territorial region or does it also include the people living in the State, which would include their culture and identity;

e. Whether Section 6A violates Article 14 in that, it singles out Assam from other border States (which comprise a distinct class) and discriminates against it. Also whether there is no rational basis for having a separate cut-off date for regularizing illegal migrants who enter Assam as opposed to the rest of the country;

f. Whether Section 6A violates Article 21 in that the lives and personal liberty of the citizens of Assam have been affected adversely by the massive influx of illegal migrants from Bangladesh;

g. Whether delay is a factor that can be taken into account in moulding relief under a petition filed under Article 32 of the Constitution;

h. Whether, after a large number of migrants from East Pakistan have enjoyed rights as Citizens of India for over 40 years, any relief can be given in the petitions filed in the present cases;

i. Whether section 6A violates the basic premise of the Constitution and the Citizenship Act in that it permits Citizens who have allegedly not lost their Citizenship of East Pakistan to become deemed Citizens of India, thereby conferring dual Citizenship to such persons;

j. Whether section 6A violates the fundamental basis of section 5 (1) proviso and section 5 (2) of the Citizenship Act (as it stood in 1985) in that it permits a class of migrants to become deemed Citizens of India

without any reciprocity from Bangladesh and without taking the oath of allegiance to the Indian Constitution;

k. Whether the Immigrants (Expulsion from Assam) Act, 1950 being a special enactment qua immigrants into Assam, alone can apply to migrants from East Pakistan/Bangladesh to the exclusion of the general Foreigners Act and the Foreigners (Tribunals) Order, 1964 made thereunder;

l. Whether Section 6A violates the Rule of Law in that it gives way to political expediency and not to Government according to law; and

m. Whether Section 6A violates fundamental rights in that no mechanism is provided to determine which persons are ordinarily resident in Assam since the dates of their entry into Assam, thus granting deemed citizenship to such persons arbitrarily."

10. On 13 December 2022, the Constitution Bench directed the counsel to jointly formulate issues which arise for the consideration of the Bench. On 10 January 2023, the Constitution Bench framed the following primary issue for determination: "Whether Section 6A of the Citizenship Act suffers from any constitutional infirmity."

11. The issue of the constitutional validity of Section 6A of the Citizenship Act is the only issue which falls for the consideration of this Bench.

B. Issues

12. The challenge to the constitutional validity of Section 6A of the Citizenship Act gives rise to the following issues:

a. Whether the grant of citizenship to migrants from Bangladesh to Assam was within the legislative competence of Parliament under Article 11 of the Constitution;

b. Whether Section 6A of the Citizenship Act adopts unreasonable cut-off dates and singles out the State of Assam thereby violating Article 14 of the Constitution ;

c. Whether Section 6A of the Citizenship Act can be regarded to be violative of Article 355 on the ground that the provision does not curb undocumented immigration which amounts to 'external aggression';

d. Whether Section 6A of the Citizenship Act is violative of Article 29(1) of the Constitution on the ground that the Assamese cultural identity is lost as a direct consequence of granting citizenship to migrants from Bangladesh residing in Assam;

e. Whether Section 6A(3) of the Citizenship Act is unconstitutional on the ground of temporal unreasonableness; and

f. Whether Section 6A(2) of the Citizenship Act is unconstitutional on the ground that it neither provides a method for implementation nor empowers the executive to implement the provisions.

C. Analysis

i. Legislative competence of Parliament to enact Section 6A

13. The petitioners submitted that Parliament did not have the competence to enact Section 6A because: (a) the legislative field with respect to granting citizenship to migrants from Bangladesh to India is occupied by Articles 6 and 7; and (b) any alteration of the cut-off date prescribed by Articles 6 and 7 for migrants from Bangladesh could only be through a constitutional amendment and not by parliamentary legislation. The respondents submitted that even if it is accepted that Section 6A amends Articles 6 and 7, the amendment is permissible in view of Article 11.

a. The scope of the constitutional provisions on Indian citizenship

14. Section 6A confers citizenship to migrants of Indian origin from the specific territory of Bangladesh. The legal regime on citizenship, in particular the provisions governing citizenship status to migrants from East and West Pakistan in the aftermath of the partition of India must be laid bare to understand the context in which Section 6A was inserted in the Citizenship Act.

15. The Constitution of India upon its adoption guaranteed fundamental rights to the **citizens** of India.[14] It is but natural that the provision on who would be citizens of the newly independent nation produced one of the most contentious of discussions in the Constituent Assembly.[15] On 30 May 1947, Mr BN Rau, the

[14] Articles 14, 20, 21, 22,25,27, 28 guarantees rights to persons. Articles 15,16, 19, and 29(2) guarantees rights to citizens.

[15] BR Ambedkar in Constituent Assembly Debates (10 August 1949). “Except one other Article in the Draft Constitution, I do not think that any other article has given the Drafting Committee such a headache as this

Constitutional Advisor prepared the Memorandum on the Union Constitution and Draft Clauses. The Part on Citizenship consisted of three provisions. The first provision prescribed who would be citizens of India on the date of the commencement of the Constitution.[16] The second provision stipulated who would be citizens **after** the commencement of the Constitution.[17] The provision recognised citizenship by birth, citizenship by naturalization and citizenship by descent. The third provision stipulated that **further** provisions governing the acquisition and termination of federal citizenship may be made by Federal law.[18] It was, however, observed in the Note appended to the Memorandum that the second clause was not necessary since (a) it would be impossible to exhaustively define the conditions of nationality, birth or naturalisation in the Constitution; and (b) there may be some difficulty in the interpretation of the provisions of legislation on citizenship if the provisions were entrenched in the Constitution.[19] The ad-hoc Committee on Citizenship slightly altered the first clause[20], agreed to the second

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particular article. I do not know how many drafts were prepared and how many were destroyed as being inadequate to cover all the cases which it was thought necessary and desirable to cover."

[16] B Shiva Rao, The framing of India's Constitution: Select Documents (Part II), 472

"At the date of commencement of this Constitution:-

Every person domiciled in the territories subject to the jurisdiction of the federation-

(a) Who has been ordinarily resident in those territories for not less than five years immediately preceding that date, or

(b) Who, or whose parents, or either of whose parents, was or were born in India,

Shall be a citizen of the Federation.

Provided that any such person being a citizen of any State may, in accordance with Federal law, elect not to accept the citizenship hereby conferred."

[17] B Shiva Rao, The framing of India's Constitution: Select Documents (Part II), 472

"After the commencement of this Constitution-

(a) Every person who is born in the territories subject to the jurisdiction of the federation;

(b) Every person who is naturalized in accordance with Federal law; and

(c) Every person, either of whose parents was, at the time of such person's birth, a citizen of the Federation"

[18] B Shiva Rao, The framing of India's Constitution: Select Documents (Part II), 473

"Further provisions governing the acquisition and termination of Federal citizenship may be made by Federal Law."

[19] See the Constitution of the Irish Free State; Article 3

[20] B Shiva Rao, The framing of India's Constitution: Select Documents (Part II), 683

clause and recommended that in addition to the law making power on acquisition and termination of citizenship, a provision for avoiding dual citizenship may be included in the third clause.[21]

16. The provision on conditions for acquiring citizenship after the commencement of the Constitution, that is, the second clause in the memorandum, was not included in the Draft Constitution of India 1948[22] submitted by the Drafting Committee on 21 February 1948. The Draft Constitution only included provisions on who would be citizens on the date of the commencement of the Constitution,[23] and granted Parliament the power to make provision on acquisition and termination of citizenship and "all other matters relating thereto".[24] Article 5 of the Draft Constitution 1948 included provisions for refugees from East and West Pakistan. Clause (b) of Article 5 provided that every person who or either of whose parents or any of whose grandparents were born in India as defined in the Government of India Act 1935 or in Burma, Ceylon or Malaya and who is domiciled in the territory of India as defined by the Constitution will be a citizen upon the commencement of the Constitution, provided that the person has not acquired the citizenship of any foreign State. The explanation to the provision stated that a person is deemed to be domiciled in the territory of India on depositing a declaration to acquire such

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"At the date of commencement of this Constitution, every person who:
(a) Who or whose parents or either of whose parents, was or were born in the territories of the Federation and subject to its jurisdiction, or
(b) who is domiciled in the territories subject to the jurisdiction of the federation." The clause granting citizenship to those who have been ordinarily resident for five years was removed.

[21] B Shiva Rao, The framing of India's Constitution: Select Documents (Part II), 683

[22] "Draft Constitution"

[23] Draft Constitution of India 1948, Article 5

[24] Draft Constitution of India 1948, Article 6.

domicile after having resided for at least one month in the territory of India.[25] According to the explanation, the declaration had to be deposited before the commencement of the Constitution. Thus, migrants from East or West Pakistan to India could be citizens by virtue of Article 5(b) of the Draft Constitution if they submitted a declaration after having resided in India for a month.

17. Dr Ambedkar, as the Chairperson of the Drafting Committee introduced amendments to draft Articles 5 (corresponding to Article 5 of the Indian Constitution) and 6 (corresponding to Article 11). He further introduced Articles 5-A (corresponding to Article 6), 5-B (corresponding to Article 7) and 5-C (corresponding to Article 10) which provided separate provisions for migrants to acquire citizenship.[26] While introducing these amendments, Dr Ambedkar noted that the object of the above provisions was not to lay down a permanent law of citizenship but to decide who would be citizens as on the date of the commencement of the Constitution.[27] The drafting history of the provisions on citizenship (in particular the deletion of clause 2 of the Memorandum) elucidates that after extensive deliberation in the Constituent Assembly and the Drafting Committee, it was decided that the Constitution would only stipulate who would hold citizenship "on the commencement of the Constitution". This is also clear from

[25] Draft Constitution of India 1948, Explanation to Article 5(b)

[26] BR Ambedkar, Constituent Assembly Debates (10 August 1949)

[27] BR Ambedkar, Constituent Assembly Debates (10 August 1949) "Now, Sir, this article refers to, c**itizenship not in any general sense but to citizenship on the date of the commencement of this Constitution.** It is not the object of this particular article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of article 6 as I have moved the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit."[emphasis supplied]

the language and the substantive portions of the provisions included in Part II of the Constitution, which deals with Citizenship.

18. Article 5 of the Constitution deals with "Citizenship at the commencement of the Constitution". The Article stipulates that every person who has their domicile in the territory of India will be a citizen of India at the commencement of the Constitution, if any of the following criteria is fulfilled:

a. The person was born in the territory of India; or

b. Either of their parents were born in the territory of India; or

c. The person was ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution.

19. Articles 6, 7 and 8 of the Constitution begin with a non-obstante clause, overriding the provisions of Article 5. Articles 6 and 7 recognise the largest migration in human history[28] following the partition of undivided India into India and Pakistan. Article 6 deals with the citizenship of those who migrated from Pakistan to India. The provision states that notwithstanding anything in Article 5, a person who migrated to the territory of India from Pakistan would deemed to be a citizen of India at the commencement of the Constitution if the following two conditions are satisfied[29]:

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[28] UNHRC, The State of the World's Refugees 2000L Fifty Years of Humanitarian Action (Oxford University Press) 59

[29] "6. Rights of citizenship of certain persons who have migrated to India from Pakistan

Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

a. he or his parents or grandparents were born in India as defined in the Government of India Act 1935 (which included the present Pakistan and Bangladesh) [Article 6(a)]; and

b. if (i) he migrated before 19 July 1948, he must have been an ordinary resident since then [Article 6(b)(i)]; or (ii) he migrated on or after 19 July 1948, he must register as a citizen of India on an application made by him before the commencement of the Constitution in the manner prescribed. A person can be registered under this provision only if he has resided in the territory for at least six months before the application. [Article 6(b)(ii)][30].

20. A brief historical background is necessary to understand the objective of this provision and in particular, the division of the migrants into two classes: those who migrated before and after 19 July 1948. The significance of the date 19 July 1948 can be traced to the provisions of the Influx from West Pakistan (Control) Ordinance 1948[31]. The West Pakistan Ordinance which came into force on 19 July 1948 introduced a system by which any person from West Pakistan could enter the territory of India only on the possession of a permit.[32] Thus, while persons who

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(a)he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
(b)(i)in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
(ii)in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:
Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application."

[30] This provision is a modification of Article 5(b) of the Draft Constitution.

[31] "West Pakistan Ordinance"

[32] Pakistan also enacted a similar legislation introducing the permit system for persons to enter into Pakistan from India; See the Pakistan (Control of Entry) Ordinance 1948

entered India before the permit system was introduced could become Indian citizens if they were domiciled in India, those who entered after the cut-off date had to satisfy the following criteria:

a. They must have resided in India for six months since 19 July 1948; and

b. They had to make an application upon the completion of six months but before the commencement of the Constitution.

21. Article 394 provides when different provisions of the Constitution commence. The provision states that Article 394 and Articles 5,6,7,8,8,9,60,324,366,367,379,380,388,391,392 and 392 will come into force “at once” and the remaining provisions will come into force on 26 January 1950. The provision also states that the commencement of the Constitution, where used in the Constitution means 26 January 1950. In terms of Article 394, Article 6 came into force on “at once”, that is, immediately after the Constitution was adopted. The Constitution was adopted on 26 November 1949. Thus, for migrants after 19 July 1948 to secure citizenship in terms of Article 6, the application ought to have been filed before 26 January 1950. Since the application could only be filed if the person had resided in India for at least six months before that, the provision only covered those who migrated to India after 19 July 1948 but before 26 July 1949. The ad-hoc/temporary nature of the provision is evident from the provision itself. In addition to the use of the phrase ‘at the commencement of the Constitution’, the substantive portion also prescribes a temporal limit.

22. Article 6 grants citizenship to all persons who migrated from Pakistan to India till 26 July 1949. Article 7 carves out an exception to Article 6.[33] The provision stipulates that notwithstanding the provisions of Articles 5 and 6, any person who migrated from India to Pakistan after 1 March 1947 shall not deemed to be a citizen. 1 March 1947 signifies the date from when the intense communal violence broke out in India, particularly in Punjab.[34] Article 7 deals with re-migration. That is, the deeming citizenship conferred by Article 6 shall not apply to a person who before migrating from Pakistan to India had earlier migrated from India to Pakistan immediately after partition. The proviso to Article 7 provides an exception to those who remigrated to India under a 'permit for resettlement or permanent return issued by or under the authority of any law'. According to the proviso, irrespective of the date when persons entered the Indian territory, it shall be deemed that they entered after 19 July 1948 for the purposes of Article 6(b). Thus, any person who falls under this category (migration must be completed between 1 March 1947 and before the commencement of the Constitution[35]) would have to register as citizens upon the submission of an application as prescribed by Article 6(b)(ii) of the Constitution.

23. Thus, the following conditions must be fulfilled to secure citizenship in terms of the proviso to Article 7:

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[33] "7. **Rights of citizenship of certain migrants to Pakistan**.- Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:
Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of Article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948."

[34] Yasmin Khan, The Great Partition: The Making of India and Pakistan (Penguin India) 168

[35] See Kulathil v. State of Kerala, AIR 1966 SC 1614 [Justice Shah, 32]

a. The person must have migrated from the Indian territory to the territory of Pakistan after 1 March 1947;

b. The person must have migrated back from the territory of Pakistan to the Indian territory under a permit for resettlement or permanent return issued under the authority of any law; and

c. The person, in terms of Article 6(b)(ii), must apply for citizenship to such officer of the Government before the commencement of the Constitution (that is, 26 January 1950). The person must have resided in India for a minimum of six months before the application. Thus, the proviso covers those who remigrated to India between 1 March 1947 and 26 July 1949.

24. The distinction between Article 6 and Article 7 is that the former provision does not specifically refer to the permit system while the latter does. Though the significance of the date 19 July 1948 is traceable to the permit system, Article 6 does not mandate that citizenship would be granted only if the person entered the Indian territory on a permit. As opposed to this, Article 7 provides citizenship only to those who entered India through a valid permit. Article 7, like Article 6 is temporary in nature because (a) persons covered by the proviso to Article 7 must have registered as a citizen under Article 6(ii)(b) which prescribes a time limit; and (b) the guarantee is dependent on a parliamentary legislation (that is, the permit must be issued under authority of law) which itself indicates that it is not a permanent code.

25. The legislation(s) which introduced the permit system must be referred to understand the scope of the proviso to Article 7. On 26 July 1949, the Governor

General promulgated the Influx from West Pakistan (Control) Ordinance 1948. The Ordinance stipulated that persons can enter India from any place in West Pakistan only if they are in possession of permits. 'Permit' was defined as a permit for the time being in force issued or renewed by the prescribed authority after satisfying the described conditions relating to the class of permits to which it belongs.[36] The Central Government was conferred the power to issue rules, *inter alia,* prescribing the authorities by whom permits may be issued or renewed and the conditions to be satisfied for such permits. It is crucial to note that the Ordinance only applied to the influx from the part of Pakistan which lies to the west of India (that is, the present day Pakistan).[37] It did not apply to migrants from East Pakistan (that is, present day Bangladesh). On 7 September 1948, the Government of India in exercise of its power under the West Pakistan Ordinance issued rules for the implementation of the permit system. The rules introduced three kinds of permits: the permit for temporary visits, the permit for resettlement or permanent return and the permanent permit. The proviso to Article 7 only covers those who remigrated to India under the resettlement or permanent return permit.[38]

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[36] West Pakistan (Control) Ordinance 1948, Section 2(c)
[37] West Pakistan (Control) Ordinance 1948, Section 3(2)

[38] See Speech by Dr BR Ambedkar and Pandit Jawaharlal Nehru in the Constituent Assembly on 12 August 1949: [Nehru]"There are three types of permits, I am told. One is purely a temporary permit for a month or two, and whatever the period may be, a man comes and he has got to go back during that period. This does not come into the picture. The other type is a permit, not permanent but something like a permanent permit, which does not entitle a man to settle here, but entitles him to come here repeatedly on business. He comes and goes and he has a continuing permit. I may say; that, of course, does not come into the picture. The third type of permit is a permit given to a person to come here for permanent stay, that is return to Indian and settle down here."

26. On 10 November 1948, the Governor General promulgated the Influx from Pakistan (Control) Ordinance 1948 by which a permit system was introduced for a person from 'any' place in Pakistan to enter India. This Ordinance introduced a permit system for persons entering India from East Pakistan also (that is, present day Bangladesh). The Ordinance also repealed the Influx from West Pakistan (Control) Ordinance 1948. The Pakistan (Control) Ordinance 1948 was repealed and replaced by the Influx from Pakistan (Control) Act 1949 which contained provisions *pari materia* to the Pakistan (Control) Ordinance 1948. Section 4 of the Influx from Pakistan (Control) Act 1949 conferred the Central Government the power to make Rules prescribing, among other things, the conditions to be satisfied by applicants for permits. On 20 May 1949, the Central Government issued Rules in exercise of the power conferred by Section 4. The Rules called the 'Permit System Rules 1949' prescribed elaborate provisions only regarding the permit system introduced between Western Pakistan (that is, current day Pakistan) and India. Though the Influx from Pakistan (Control) Act 1949 applied to the whole of Pakistan (including the current day Bangladesh), the Central Government did not frame any Rules to implement the permit system for the movement from East Pakistan to India.

27. The reason for not implementing the permit system for the migrants from East Pakistan to India was explained by Mr. Gopalaswami Ayyangar while introducing the Undesirable Immigrants (Expulsion from Assam) Bill 1950[39]. The Immigrants (Expulsion from Assam) Bill granted the Central Government, the

[39] The word undesirable was removed from the short title after extensive discussion.

power to expel persons who come into Assam. Mr. Ayyangar stated that the Central Government examined the suggestion to introduce a permit system between East Pakistan and India but decided against it because it would restrict the freedom of movement of a large number of persons who, in their ordinary avocations, had to pass between East Pakistan and either Assam or West Bengal.[40] Thus, the geographical placement of Bangladesh (East Pakistan) prevented the Indian Government from replicating the permit system that was applied for movement in the Western border. The proviso to Article 7 which dealt with persons who remigrated to India did not apply to those who came from East Pakistan because the permit system was not implemented there.

28. On 1 January 1952, the Influx from Pakistan (Control) Act was repealed[41] putting an end to the permit system governing the travel between West Pakistan and India. In October 1952, the India-Pakistan Passport and Visa Scheme regulated the travel between India and Pakistan. The scheme proposed a specific passport system between India and Pakistan.[42]

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[40] Shri Gopalaswami while introducing the Undesirable Immigrants (Expulsion from Assam) Bill, Parliamentary Debates: Official Report (Volume 1, 1950), 313 "The obvious suggestion that was put forward at the beginning was that we should introduce a permit system as between Assam and East Pakistan. The Central Government examined this suggestion and studies its repercussions on other parts of India particularly on West Bengal and the restrictions it would impose on the freedom of movement of a large number of persons who, even in their ordinary avocations, had to pass between East Pakistan and either Assam or West Bengal. If restrictions by way of a permit system had been imposed, it was feared that there would have been difficulties experienced which it would not have been easy to get over, and after further discussions with the Government of Assam, it was settled in consultation with them that instead of introducing a permit system which would control the entry of outsiders into Assam, we might take power to expel from Assam such foreign Nationals who entered that State and whose continuance was likely to cause disturbance to its economy."

[41] See the Influx from Pakistan (Control) Repealing Act 1952; the Statement of Objects and Reasons stated that it was agreed "with the Government of Pakistan that with effect from prescribed date, the permit system should be replaced by a system of passports."

[42] See paper Rights: The emergence of Documentary Identities in Post-Colonial India, 1950-67 (2016), *History Faculty Publications*.129

b. Section 6A of the Citizenship Act 1955 does not conflict with Articles 6 and 7 of the Constitution

29. It is in the above background that the argument of the petitioners that Section 6A is unconstitutional for prescribing a cut-off date different from the date in Articles 6 and 7 has to be decided. Two issues arise for the consideration of this Court: (a) whether Section 6A prescribes a cut-off date different from that prescribed by Articles 6 and 7 for migrants from Bangladesh to Assam; and (b) if (a) is in the affirmative, whether Article 11 of the Constitution confers Parliament with the power to 'alter' the provisions in Part II of the Constitution conferring citizenship.

30. The following position emerges from our discussion of Articles 5, 6 and 7 in the preceding section:

a. The Constitution only prescribes who would be citizens upon the commencement of the Constitution. This is evident from the language of Articles 5 and 6 which uses the phrase 'at the commencement of the Constitution' and the drafting history of the provision;

b. Article 6 covers a limited class of migrants from both Pakistan and Bangladesh to India (including Assam). The provision only covers those who migrated to India till 26 July 1949 (based on the six months residence requirement);

c. The benefit of citizenship to the class covered by the proviso to Article 7 depended on the permit system prescribed by law. The Permit System

Rules 1949 framed in exercise of the power under the Influx from Pakistan (Control) Act 1949 did not cover those who remigrated from East Pakistan (today's Bangladesh) to India. It only covered those who remigrated from West Pakistan (today's Pakistan) to India. Thus, though the proviso to Article 7 does not distinguish between migrants from West Pakistan and East Pakistan, migrants from the latter were unable to secure the benefit of citizenship in the absence of Rules on the implementation of the permit system along the eastern border. Thus, the proviso to Article 7 only covered those who remigrated to India from West Pakistan after 1 March 1947 but before 26 July 1949; and

d. Article 6 and the proviso to Article 7 confer citizenship on a limited class upon the commencement of the Constitution: (i) migrants from West Pakistan and East Pakistan till 26 July 1949; and (ii) persons who re-migrated from West Pakistan to India (who had earlier migrated from India to Pakistan after partition) under the permit system till 26 July 1949.

31. As opposed to Articles 6 and 7, Section 6A confers citizenship on those who migrated from Bangladesh to Assam until 24 March 1971. Article 6 and the proviso to Article 7 confer citizenship on a limited class. Section 6A deals with those who are not covered by the constitutional provisions, that is those who migrated (or re-migrated) after 26 July 1949. The provision also covers those who migrated in the period covered by the constitutional provisions but who were not covered by the substantive stipulations in the provisions. For example, Article 6 does not cover a person who migrated from east Pakistan to Assam after 19 July 1948 but did not

apply to register as a citizen before the commencement of the Constitution. Section 6A confers citizenship on such persons. There is thus, a certain degree of overlap between Section 6A and the constitutional provisions. However, that does not amount to an 'alteration or amendment' of the constitutional provisions. This is for the simple reason that Article 6 and the proviso to Article 7 confer citizenship on the 'commencement of the constitution'. That is, they only deal with who shall be citizens on 26 January 1950. In contrast, Section 6A confers citizenship from 1 January 1966 to those who migrated before that date. Those who migrated between 1 January 1966 and 24 March 1971, are conferred citizenship upon the completion of ten years from the date of detection as a foreigner. Thus, Section 6A confers citizenship on a later date to those who are not covered by Articles 6 and 7. Section 6A could be interpreted to alter or amend Articles 6 and 7 only if it conferred citizenship retrospectively, as at the commencement of the Constitution which is not the case.

c. The scope of Article 11 of the Constitution

32. Article 11 stipulates that the provisions of Part II shall not 'derogate' from the power of Parliament to make any provision with respect to (a) acquisition of citizenship; (b) termination of citizenship; and (c) all other matters relating to citizenship:

> "11. Parliament to regulate the right of citizenship by law.- Nothing in the **foregoing provisions** of this Part shall **derogate** from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."
>
> (emphasis supplied)

33. Article 10 is also related to Parliament's law making power on citizenship. The provision provides that every person who is or is deemed to be a citizen under the provisions of Part II of the Constitution shall continue to be so, subject to the provisions of any law made by Parliament:

> "10. **Continuance of the rights of citizenship.-** Every person who is or is deemed to be a citizen of India under any of the **foregoing provisions** of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen."
>
> (emphasis supplied)

34. Article 246[43] read with Entry 17 of List I of the Seventh Schedule to the Constitution confers Parliament the power to make laws with respect to 'citizenship, naturalisation and aliens'. What then is the purpose and scope of Article 11? The earlier draft of Article 11 read as follows:

> "**Further** provisions governing the acquisition and termination of Union citizenship, and avoidance of double citizenship may be made by Union law."
>
> (emphasis supplied)

When the draft of Article 11 read as above, there was also a provision on who would hold citizenship 'after' the commencement of the Constitution.[44] Thus, in the earlier scheme, the Constitution was to stipulate the conditions for securing citizenship and Parliament was conferred with the power to make 'further' provisions. However, the Draft Constitution of India 1948 did not consist of a

[43] "Subject matter of laws made by Parliament and by the Legislatures of States: (1) Parliament has the exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule.[…]"

[44] B Shiva Rao, The framing of India's Constitution: Select Documents (Part II) 683; See BN Rao, Memorandum on the Union Constitution and Draft Clauses (May 30 1947); Ad-hoc Committee on Citizenship (12 July 1947)

provision on acquisition of citizenship after the commencement of the Constitution. Part II of the Draft Constitution only consisted of provisions on citizenship at the commencement of the Constitution and Parliament's power to make "further" provisions.[45] Dr BR Ambedkar introduced an amendment to draft Article 6 (as Article 11 exists in the current form) when it was taken up for discussion. The phrase "further provision" was used when the Draft dealt with the acquisition of citizenship after the commencement of the Constitution. However, once that was deleted, the language of Article 11 was amended.

35. Article 246 read with the Seventh Schedule delimits the legislative competence of Parliament and the legislature of the States. The inference that can be drawn from the inclusion of Entry 17 in List I of the Seventh Schedule is that Parliament (and not the state legislatures) has the legislative competence to enact laws with respect to citizenship. The legislative subject to enact laws on citizenship is thus, traceable to Entry 17. Provisions of Part II (Articles 10 and 11, in particular) do not confer Parliament the **power** to enact laws relating to citizenship. The provisions operate in a different sphere. The provisions clarify the **scope** of the legislative power.

36. The question is whether Parliament's power under Article 11 is restricted by other provisions in Part II. The provision stipulates that "nothing in the foregoing provisions of this Part", meaning Articles 5-10, shall **derogate** from the power to make any provision with respect to citizenship. The word 'derogate' may have two

[45] Draft Constitution of India, 1948; Article 6 "Parliament may, by law, make further provision regarding acquisition and termination of citizenship and all other matters relating thereto".

meanings: (a) to diminish or reduce; and (b) to diverge or depart.[46] The phrase "derogate" is used in six other instances in the Constitution. In one of the instances (Article 13[47]), the phrase takes the meaning of diverge or depart. In all the other usages,[48] the provision takes the meaning of 'diminish or reduce'.

37. The distinction between a non-obstante clause and the words 'shall not derogate from' lies in the fact that the former is used as an expression providing overriding effect while the latter is used as a clarificatory expression. The non-obstante clause is used when there is a link between two clauses/provisions and the link is sought to be detached by carving out an exception. For example, if the provision states that notwithstanding A, B has the power to do action C, it means that the provision confers power on B to do C, and this is an exception to provision A. In contrast, the phrase 'shall not derogate from' is used to indicate that certain provisions do not reduce the effect or scope of the provision, thereby, de-linking the two provisions. For example, a provision which states that A shall not derogate B's power to do C is used when B's power to do C is conferred elsewhere and it is clarified that the scope of A and the scope of B do not overlap. This is evident on an analysis of the provisions which use the phrase 'shall not derogate'. The usage indicates that (a) the Constitution confers power elsewhere; and (b) another provision does not override or in any manner impact the power. For example:

[46] P Ramanatha Aiyar, Advanced Law Lexicon (6th Edition Volume 2 D-1)1587, (a) Derogate: to lesson in estimation; to invalidate; degenerate; degrade; (b) Derogation: Derogation is the partial repeal or abrogation of a law by a later act that limits its scope or impairs its utility and force.

[47] The heading to Article 13 states "laws inconsistent with or in derogation of the fundamental rights".

[48] See second proviso to Article 200, Article 226(4), Article 239AA(3)(b), Article 241, Article 371-F(m)

a. Clause (4) to Article 226 stipulates that the power conferred upon High Courts to issue certain writs shall not be in derogation of the powers conferred on the Supreme Court by Article 32(2)[49]. It provides that the former shall not have an impact on the later since they operate in separate fields;

b. Article 239-AA(3)(a) provides the Legislative Assembly of the National Capital Territory with legislative competence over certain matters in the State List and the Concurrent list. Article 239-AA(3)(b) states that nothing in sub-clause (a) shall derogate from the powers of Parliament to make laws for the Union territory. This provision must be read in the context of Article 246(4) which provides Parliament the power to enact laws on matters enumerated in all three lists for Union territories. Article 239-AA(3)(b) states that the power conferred in clause (a) shall not impact the law making power of Parliament with respect to Union territories;

c. Article 241(1) stipulates that Parliament may by law constitute a High Court for a Union territory. Clause (4) of Article 241 stipulates that nothing in the Article shall derogate from the power of Parliament to extend or exclude the jurisdiction of a High Court to, or from any Union territory. This provision must be read in the context of Entry 79 of List I which provides Parliament the power to legislate on the "extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory." Clause

[49] "(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."

(4) states that Clause (1) does not impact the legislative competence exercised by Parliament under Article 245 read with Entry 79 of List I; and

d. Article 371F(m) provides that no court would have the jurisdiction to deal with any dispute arising out of an agreement or treaty relating to Sikkim but that nothing in the provision shall be 'construed to derogate from the provisions of Article 143'. Here, the phrase is used to ensure that the provision does not have any impact on the power under Article 143.

38. Thus, the use of the phrases 'notwithstanding' and 'shall not derogate from' produce different effects. Article 11, when interpreted on the basis of the above analysis produces the following meaning:

a. The legislative competence of Parliament to enact laws related to citizenship is traceable to Entry 17 of List I and not Article 11; and

b. The provisions in Part II do not impact or limit the **legislative competence** of Parliament.

39. A non-obstante clause cannot be artificially read into Article 11. In **Izhar Ahmed** v. **Union of India**[50], the constitutional validity of Section 9(2) of the Citizenship Act and Rule 3 in Schedule III of the Citizenship Rules 1956 were challenged. Before dealing with the challenge, Justice Gajendragadkar writing for the Constitution Bench delineated the scope of the provisions in Part II of the Constitution. With respect to Article 11, the learned Judge observed that the provisions of the parliamentary law on citizenship cannot be challenged on the

[50] 1962 SCC OnLine SC 1

ground of a violation of the provisions in Part II. The relevant part of the observations is extracted below:

> "11. That takes us to Article 11 which empowers the Parliament to regulate the right of citizenship by law. It provides that nothing in the foregoing provisions of Part II shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. It would thus be noticed that while making provisions for recognising the right of citizenship in the individuals as indicated by the respective articles, and while guaranteeing the continuance of the said rights of citizenship as specified by Article 10, Article 11 confers and recognises the power of the Parliament to make any provision with respect to not only acquisition but also the termination of citizenship as well as all matters relating to citizenship. Thus, it **would be open to the Parliament to affect the rights of citizenship and the provisions made by the Parliamentary statute in that behalf cannot be impeached on the ground that they are inconsistent with the provisions contained in Articles 5 to 10 of Part II.** In this connection, it is important to bear in mind that Article 11 has been included in Part II in order to make it clear that the sovereign right of the Parliament to deal with citizenship and all questions connected with it is not impaired by the rest of the provisions of the said Part. Therefore, the sovereign legislative competence of the Parliament to deal with the topic of citizenship which is a part of Entry 17 in List I of the Seventh Schedule is very wide and not fettered by the provisions of Articles 5 to 10 of Part II of the Constitution. This aspect of the matter may have relevance in dealing with the contention raised by the petitioners that their rights under Article 19 are affected by the impugned provisions of Section 9(2) of the Act."
>
> (emphasis supplied)

40. By the above observations, the Court did not read in a non-obstante clause in Article 11. This is clear from the observations in the subsequent paragraph where this Court discusses the alleged conflict between Article 9 of the Constitution and Section 9 of the Citizenship Act. Section 9 of the Citizenship Act provides that any person who has acquired citizenship of another country between the

commencement of the Constitution and the commencement of the Act shall cease to be a citizen of India. While dealing with Section 9, this Court observed that Article 9 dealt with the acquisition of citizenship of a foreign State prior to the commencement of the Constitution. As opposed to Article 9, Section 9 dealt with the acquisition of citizenship after the commencement of the Constitution.[51] Thus, the possibility of the provisions of parliamentary law conflicting with Article 9 (and other provisions of the Constitution) would not arise.[52] In **Izhar Ahmed** (supra), the observations that statutory provisions on citizenship cannot be challenged on the ground of violation of provisions in Part II cannot be interpreted as a reading in of a non-obstante clause in Article 11. Provisions of the Parliamentary law on citizenship cannot be challenged on the ground of violation of the provisions of Part II because the constitutional provisions on citizenship are redundant for all purposes after the commencement of the Constitution. Though in the context of Article 11 the use of the non-obstante clause and the phrase 'shall not derogate from' will produce the same result, it is important to clarify the distinct usage of the phrases.

41. Similarly, the reason that Article 11 does not include a clause (similar to Article 4(2)) that the law shall not be deemed to be an amendment of the

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[51] Also see State of UP v. Shah Mohammed, (1969) 1 SCC 771 [5]

[52] "12. […] There is no ambiguity about the effect of this Section. It is clear that the voluntary acquisition by an Indian citizen of the citizenship of another country terminates his citizenship of India, provided the said voluntary acquisition has taken place between 26th January, 1950 and the commencement of the Act or takes place thereafter. **It would thus be seen that whereas Article 9 of the Constitution dealt with the acquisition of citizenship of a foreign State which had taken place prior to the commencement of the Constitution, Section 9 of the Act deals with acquisition of foreign citizenship subsequent to the commencement of the Constitution. There is, therefore, no doubt that the Constitution does not favour plural or dual citizenship and just as in regard to the period prior to the Constitution, Article 9 prevents a person who had voluntarily acquired the citizenship of foreign country from claiming the status of an Indian citizen, so does Section 9(1) make a similar provision in regard to the period subsequent to the commencement of the Constitution.** [Emphasis supplied]

Constitution for the purpose of Article 368 is because there is no possibility of the law amending the constitutional provisions in Part II in view of the temporal limit of all the provisions.

42. In view of the discussion above, I have reached the following conclusions: (a) Section 6A of the Citizenship Act does not have the effect of amending Articles 6 and 7; and (b) Article 11 is not a non-obstante clause. However, since the Constitution confers citizenship only at the commencement of the Constitution, the law enacted in exercise of the power under Article 246 read with Entry 17 of List I and the constitutional provisions on citizenship operate in different fields.

ii. Section 6A is not violative of Article 14 of the Constitution

43. The petitioners submitted that Section 6A is violative of Article 14 on three grounds: (a) Section 6A is under-inclusive because it confers citizenship only to migrants to Assam; (b) there was no justification to single out Assam to the exclusion of other border States that border Bangladesh since they all form a homogenous class; and (c) the provision prescribes a different cut-off date for granting citizenship to migrants who enter Assam as opposed to other States.

44. Thus, while deciding the Article 14 challenge, this Court must decide on the following three issues:

a. Whether Section 6A is underinclusive because it grants citizenship only to migrants from Bangladesh to Assam;

b. Whether all Indian States bordering Bangladesh form a 'homogenous class' for the purposes of the law such that Assam alone could not have been singled out; and

c. Whether the cut-off date of 25 March 1971 is arbitrary.

a. The legal regime under the Citizenship Act 1955 governing migrants

45. In this section, I will discuss the provisions of the Citizenship Act, in particular the provisions relating to migrants of Indian origin. There was a legal limbo on the acquisition of citizenship between the commencement of the Constitution and the enactment of the Citizenship Act in 1955. Parliament enacted the Citizenship Act to provide for the acquisition and determination of Indian citizenship. The Citizenship Act provides the following methods for acquiring citizenship, namely by: (a) birth[53]; (b) descent[54]; (c) registration[55]; (d) naturalisation[56]; and (e) incorporation of territory[57]. Section 5(1) provides a fairly simple and easy method for acquiring citizenship. Citizenship could be acquired through registration if **any** of the following conditions are satisfied:

a. Persons of Indian origin who are ordinarily resident in India and have been so resident for six months immediately before making an application for registration;

[53] Citizenship Act 1955; Section 3
[54] Citizenship Act 1955; Section 4
[55] Citizenship Act 1955; Section 5
[56] Citizenship Act 1955; Section 6
[57] Citizenship Act 1955; Section 7

b. Persons of Indian origin who are ordinarily resident in any country or place outside undivided India;

c. Women who are, or have been, married to citizens of India;

d. Minor children of persons who are citizens of India; and

e. Persons of full age and capacity who are citizens of a country specified in the First Schedule.

According to the provision, a person shall be deemed to be of Indian origin if he, or either of his parents, or of his grand-parents were born in undivided India.[58] Thus, refugees from either West or East Pakistan would undoubtedly be covered within the meaning of the word 'Indian origin'. Section 5(1) creates two classes with respect to persons of Indian origin. Section 5(1)(b) deals with persons of Indian Origin who are ordinarily resident in undivided India. Any person of Indian Origin who is an ordinary resident of any country other than West and East Pakistan can acquire citizenship through registration in terms of Section 5(1)(b). Indian origin migrants from either West or East Pakistan who were ordinarily resident in India for six months could acquire citizenship through registration in terms of Section 5(1)(a). Section 5(1)(e) enables a citizen of any of the countries listed in the First Schedule of the Act to acquire citizenship through registration. Pakistan was one of the countries listed in the Schedule. Section 5(1)(e) read with the First Schedule enabled a migrant who was a citizen of Pakistan to acquire citizenship. Thus,

[58] Citizenship Act 1955; Explanation to Section 5(1)

migrants from Pakistan could acquire citizenship in terms of Section 5(1)(a) and Section 5(1)(e).

46. In exercise of the power conferred by Section 18 of the Citizenship Act, the Central Government notified the Citizenship Rules 1956[59]. The 1956 Rules prescribed a form in which an application for registration as a citizen of India under Section 5(1)(a) would have to be made. The form requested the submission of, *inter alia,* passport and visa details, if any.[60] The form had a separate part (Part II) for migrants from Pakistan. It requested, *inter alia,* the following details: (a) profession or occupation while residing in Pakistan; (b) whether the applicant applied for long term visa for permanent resettlement earlier; (c) whether the applicant was residing in the territory now included in India or Pakistan at the time of partition; and (e) places of residence in India prior to migration. The 1956 Rules (in particular the details required in the Part II of Form I) make it clear that migrants from East and West Pakistan could apply for citizenship under Article 5(1)(a). Even before the 1956 Rules were framed, the Deputy Secretary (Home Affairs) issued 'urgent' instructions to the various state governments directing them to make 'immediate arrangements for registration of 'displaced persons' under Section 5(1)(a) of the Citizenship Act.[61] In 1958, another notification was issued by the Ministry of Home Affairs that it was not necessary to insist on acceptance of surrender of Pakistani passports before registration is made.[62] In a reply issued in

[59] "1956 Rules"

[60] Requests the name of the father, mother, address of ordinary residence, profession, description of immovable property(s) and details of family members who are staying in India.

[61] See the Executive instructions issued in the letter from the Deputy Secretary (Home) dated 14 June 1956. File no. 10/1/56, MHA-IC, NAI. Also see Anupama Roy, Mapping Citizenship in India,

[62] See Express letter dated 11 April 1958 from the government of West Bengal to the Minisitry of Home Affairs, IC Section. File no. 4/65/58, MHA-IC, NAI

1958 to a query, the Ministry of Home Affairs also clarified that authorities can register minorities without Pakistani passports or travel documents.[63] Thus, Section 5(1)(a) along with the 1956 Rules and the various executive notifications facilitated the registration of migrants (including undocumented migrants) from East and West Pakistan as citizens. The 1956 Rules did not prescribe Rules for registration under Section 5(1)(e) of the Citizenship Act. Irrespective of the manner in which Section 5(1)(a) and Section 5(1)(e) of the Citizenship Act were implemented, the provisions enabled the registration of both documented and undocumented migrants to India from East and West Pakistan.

47. In fact, the Citizenship Act was viewed by the members of the Parliament as an enactment that would put an end to the limbo on granting citizenship to migrants from East and West Pakistan. Sentiments that refugees should not even be required to register also prevailed in Parliament. Thakurdas Bhargava noted that "registration is only for those who are not real citizens of India nor are rooted in the land of India not having a domicile in this country, not wanting to return to any other country."[64] HN Mukherjee, a member from north-east Calcutta claimed that

[63] See Note dated 18 July 1958, Ministry of Home Affairs (IC Section) File no. 4/65/58, MHA-IC, NAI
"the persons about whom the present reference has been made belong to the minority community in Pakistan and are stated to have sworn declarations renouncing their Pakistani nationality. It is also stated in the M.E.A.'s letter no. F6(44)/57-PSP, dated 14.4.58 that in most of these cases their permanent settlement in India would eventually be granted. Their present ineligibility for registration under section 5(10(a) of the Citizenship Act is therefore only technical… in cases where the applicants belonging to the minority community in Pakistan are staying on in India swearing affidavits that they have surrendered/lost their Pakistani passports, it was for the authorities to satisfy themselves that the intention was to permit the persons concerned to stay on indefinitely in India or the applicants have severed all connections with Pakistan and intend to settle down permanently in India; and in cases where the authorities are so satisfied, the applicants can be registered under section 5(1)(a)."

[64] Citizenship Bill, Parliamentary Debates, New Delhi, 3 December 1955, p.1176.

registration would involve substantial cost and travel which would create difficulties for refugees.[65]

48. In **National Human Rights Commission** v. **State of Arunachal Pradesh**[66], proceedings under Article 32 were initiated, *inter alia,* claiming that the citizenship applications under Article 5(1)(a) of persons belonging to the Chakma group were not being processed. The people belonging to the Chakmas were migrants from Bangladesh. The Union Government had conveyed its decision to confer citizenship to persons belonging to the Chakma group under Section 5(1)(a) of the Citizenship Act. A three-Judge Bench observed that they can seek citizenship under Article 5(1)(a) and directed that the applications must be forwarded by the Collector to the Registering Authority. In **Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh** v. **State of Arunachal Pradesh**[67], proceedings under Article 32 were instituted requiring the State to comply with the earlier directions on grant of citizenship to Chakma and Hajong refugees who migrated from Assam to Arunachal Pradesh. The petition was allowed directing the Government of India and the State of Arunachal Pradesh to finalise the conferment of citizenship rights to persons of the Chakmas and Hajong groups.[68]

49. This was the position of law until the enactment of the Citizenship (Amendment) Act 2003[69] which was notified on 7 January 2004. The 2003

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[65] Ibid, p. 1089; See Haimanti Roy, Partitioned Lives: Migrants, Refugees, Citizens in India and Pakistan, 1947-1965 Pg. 134-135

[66] (1996) 1 SCC 742

[67] (2016) 15 SCC 540

[68] Also see the decision of the Gauhati High Court in Shah Muhammad Anwar Ali v. State of Assam, 2014 SCC OnLine Gau 103. The High Court held that Section 5(1)(a) of the Citizenship Act permitted the registration of the undocumented migrants of Indian Origin until the amendment in 2003.

[69] "2003 Amendment Act"

Citizenship Amendment Act amended Section 2(1)(b) to define the term illegal migrant[70]. An illegal migrant was defined to mean a foreigner who entered India (a) without a valid passport or other travel documents prescribed by law; or (b) with a valid passport and travel documents but has overstayed. The 2003 Amendment Act also amended Sections 5 and 6 of the Act to exclude illegal immigrants from acquiring citizenship by naturalisation and registration. Sections 5 and 6 of the Citizenship Act, after the amendments introduced by the 2003 Amendment Act now expressly bar illegal migrants from acquiring citizenship by registration or naturalisation.[71] In addition to the amendments excluding illegal immigrants, the enactment also deleted Section 5(1)(e) which permitted the registration by citizens of countries specified in the First Schedule.

50. It is clear from the above discussion that undocumented migrants could be registered as Indian citizens under the Citizenship Act until the enactment of the 2003 Amendment Act which came into force on 3 December 2004 by which the class of 'illegal immigrants' was excluded from acquiring citizenship.

b. The legal regime governing migrants from East and West Pakistan to Assam

51. The legal regime on citizenship must be read alongside other laws that deal with migrants. On 23 November 1946, the Foreigners Act 1946[72] was enacted to

[70] "illegal migrant means a foreigner who has entered into India- (i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or (ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time."
[71] Citizenship Act 1955; Section 5: "Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant […]"; Section 6" Where an application is made in the prescribed manner by any person of full age and capacity not being an illegal migrant […]"
[72] "Foreigners Act"

confer upon the Central Government certain powers in respect of foreigners. A 'foreigner' was defined as a person who is not a natural born British subject as defined in Sub-sections (1) and (2) of Section 1 of the British Nationality and Status of Aliens Act of 1914 or who was not granted a certificate of naturalization as a British subject under Indian law.[73] Section 3 conferred the Central Government the power to make provisions for prohibiting, regulating or restricting the entry of foreigners to India.[74] In exercise of the power under Section 3, the Central government notified the Foreigners Order 1948[75]. In terms of the Foreigners Order, foreigners can enter India only at such port or other place of entry on the borders of India as the registration officer having jurisdiction at that port or place may

[73] The Foreigners Act 1946, Section 2(a)

[74] Section 3(2): In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—
(a) shall not enter [India] or shall enter [India] only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;
(b) shall not depart from [India], or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;
(c) shall not remain in [India] or in any prescribed areas therein;
[(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;]
(d) shall remove himself to, and remain in, such area in [India] as may be prescribed;
(e) shall comply with such conditions as may be prescribed or specified— (i) requiring him to reside in a particular place; (ii) imposing any restrictions on his movements; (iii) requiring him to furnish such proof of his identity and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified; (iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified; (v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified; (vi) prohibiting him from association with persons of a prescribed or specified description; (vii) prohibiting him from engaging in activities of a prescribed or specified description; (viii) prohibiting him from using or possessing prescribed or specified articles; (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;
(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or all prescribed or specified restrictions or conditions;
[(g) shall be arrested and detained or confined;] and may make provision [for any matter which is to be or may be prescribed and] for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act. 4 [(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under clause (e) 5 [or clause (f)] of sub-section (2).]

[75] "Foreigners Order"

appoint.[76] The Order also provides that a foreigner can enter only with the leave of the civil authority having jurisdiction[77] and leave will be refused if the foreigner is not in possession of a valid passport or visa[78]. Thus, every migrant without a valid visa, irrespective of the country from which they migrated and the Indian State to which they have migrated, was refused permission to enter India.

52. However, the Foreigners Act when it was enacted did not apply to migrants from West and East Pakistan since they were also British subjects. The definition of 'Foreigner' in the Act was amended by Act 11 of 1957 to mean a person who is not a citizen of India. This amendment came into force from 19 January 1957.[79] Thus, until 1957, the Foreigners Act which provided the Central Government with the power to remove a migrant without legal documentation from the soil of India did not apply to migrants from West and East Pakistan. However, even before the immigrants from West and East Pakistan were considered 'foreigners' for the purpose of the Foreigners Act, Parliament enacted the Immigrants (Expulsion from Assam) Act 1950. The Statement of Objects and Reasons states that the Immigrants (Expulsion from Assam) Act 1950 was enacted to deal with the large scale immigration of migrants from East Bengal to Assam:

> "During the last few months a serious situation had arisen from the immigration of a large number of East Bengal residents into Assam. Such large migration is disturbing the economy of the Province, besides giving rise to a serious law and order problem. The Bill seeks to confer necessary powers on the Central Government to deal with the situation."

[76] Foreigners Order 1948; Paragraph 3 (1)(a)
[77] Foreigners Order 1948; Paragraph 3 (1)(b)
[78] Foreigners Order 1948; Paragraph 3(2)(a)
[79] Act 11 of 1957, Section 2

53. The enactment granted the Central Government the power to remove any person or class of persons who came into Assam and whose stay is detrimental to the interests of Assam[80]. The enactment carved out an exception with respect to any person who was displaced from any area in Pakistan (which includes the present day Pakistan and Bangladesh) on account of civil disturbances or the fear of it.[81] It is crucial to note that this Act only applied to immigrants in Assam and not the rest of India. Shri Gopalaswami, while introducing the Bill, explained the objective for singling out Assam as follows:

> "The Bill itself is a simple one. In the State of Assam, particularly after the Partition, the influx of persons from outside Assam into that State has been assuming proportions which have caused apprehensions to the Government and the people of Assam as to the disturbance that such an influx would cause to their economy. The Assam Government brought this fact to the notice of the Central government in 1949, and since then, the matter has been under examination; a number of conferences and discussions have been held, some with Pakistan, others between central Government and the State Government. Various suggestions were considered. […] it was finally settled in consultation with them that instead of introducing a permit system which would control the entry of outsiders into Assam, we might take power to expel from Assam such foreign nationals who entered that State and whose continuance was likely to cause disturbance to its economy."

54. The earlier draft of the Bill did not include an exception for 'refugees' from East and West Pakistan. However, members of Parliament felt that the enactment must only cover those who migrate for "economical" reasons and not refugees who migrate because of civil disturbance caused due to the political instability in the

[80] The Immigrants (Expulsion from Assam) Act 1950; Section 2
[81] The Immigrants (Expulsion from Assam) Act 1950; proviso to Section 2

aftermath of the partition.[82] The Parliamentary debates on the Bill elucidate that: (a) there were more migrants from Bangladesh because of the absence of a permit system for travel between East Pakistan and India; and (b) the influx was most profound in the Indian State of Assam compared to the other bordering states. It is crucial to note that the Immigrants (Expulsion from Assam) Act 1950 was enacted because the Foreigners Act did not include immigrants from Pakistan.[83]

55. The provisions of the Foreigners Act before the amendment in 1957 and the Immigrants (Expulsion from Assam) Act 1950 indicate the lenient policy of India towards the refugees of West and East Pakistan in the aftermath of the partition of India. This must be read along with the legal regime governing citizenship in India upon the enactment of the Citizenship Act 1955 that permitted the registration of migrants from East and West Pakistan as citizens.

56. However, the huge influx of migrants from East Pakistan to Assam was not receding. On 25 December 1983, the Illegal Migrants (Determination by Tribunals) Act 1983[84] came into force. The preamble to the Act stated that the Act provided for the establishment of Tribunals to determine illegal immigrants. The Act was deemed to have come into force in Assam on 15 October 1983 and in any other State on such date as may be notified by Central Government.[85] Thus, unlike the

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[82] Shri RK Choudhuri (Assam), Parliamentary Debates: Official Report (Volume 1, 1950), 318

[83] See the response of Shri Gopalaswami to the question from Dr Deshmukh, Parliamentary Debates: Official Report (Volume 1, 1950), 336

[84] "IMDT Act"

[85] The Illegal Migrants (Determination by Tribunals) Act 1983; Section 1(3): "It shall be deemed to have come into force in the State of Assam on the 15th day of October, 1983 and in any other State on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States and references in this Act to the commencement of this Act shall be construed in relation to any State as reference to the date of commencement of this Act in such State."

Immigrants (Expulsion from Assam) Act 1950, the IMDT Act applied to the whole of India. Section 3(c) of the IMDT Act defined an illegal migrant as a person who has satisfied each of the following criteria (a) entered India on or after 25 March 1971; (b) is a foreigner; and (c) entered India without being in possession of a valid passport or other travel document or any other lawful authority. The date on which a person becomes an illegal immigrant according to the IMDT Act, that is 25 March 1971 is the same as the date prescribed in Section 6A of the Citizenship Act for acquiring citizenship. Section 4 gave the IMDT Act overriding effect notwithstanding anything in the Passport (Entry into India) Act 1920, the Foreigners Act 1946, the Immigrants (Expulsion from Assam) Act 1950 or the Passports Act 1967. In terms of Section 1, the Act applies to the whole of India. The Central Government in exercise of the power under Section 1 of the Act, however, did not enforce the Act in any other Indian State. The special provisions in the form of the Immigrants (Expulsion from Assam) Act 1950 and the IMDT Act clearly elucidate that the huge influx of migrants from Bangladesh to Assam has always been a 'cause for concern' and Parliament has taken steps to address the issue previously.

57. The above discussion of the provisions governing migrants, and in particular, migrants from Bangladesh elucidates the balance that Parliament has sought to draw between its humanitarian view towards migrants of Indian origin from Bangladesh and the impact of the huge influx on the economic and cultural resources of Indian States. With this background, I proceed to determine the constitutional validity of Section 6A on the anvil of Article 14.

c. The scope of judicial review under Article 14

58. Before I proceed to deal with the issues, it is necessary that I summarise the scope of judicial review under Article 14. Courts have traditionally tested laws and executive actions for violation of Article 14 on the grounds of unreasonable classification[86] and arbitrariness[87]. Courts have adopted the two-prong test for unreasonable classification[88] and the manifest arbitrariness standard[89]. In **Association for Democratic Reforms** v. **Union of India**[90], writing for three other Judges of the Constitution Bench, I explained that the test of manifest arbitrariness includes the following two applications:[91]

a. The determination of whether the provision lacks an "adequate determining principle" or if the adequate determining principle is not in consonance with constitutional values; and

b. If the provision does **not** make a classification by identifying the degrees of harm.

These two applications have in the past also been subsumed in the traditional two-prong Article 14 analysis. In **State of West Bengal** v. **Anwar Ali Sarkar**[92], Justice S R Das observed that there must be a yardstick to differentiate those included in

[86] See Shri Ram Krishna Dalmia v. Shri SR Tandolkar 1958 SCC OnLine SC 6; Moorthy Match Works v. CCE, (1974) 4 SCC 428; State of West Bengal v. Anwar Ali Sarkar (1952) 1 SCC 1
[87] EP Royappa v. State of Tamil Nadu, (1974) 4 SCC 3; Ajay Hasia v. Khalid Mujib Seheravardi, (1981) 1 SCC 722; State of Andhra Pradesh v. McDowell, (1996) 3 SCC 709
[88] Anwali Ali Sarkar (supra)
[89] Shayara Bano v. Union of India, (2017) 9 SCC 1; Navtej Singh Johar v. Union of India, (2018) 10 SCC 1
[90] 2024 INSC 113
[91] 2024 INSC 113 [194-195]
[92] (1952) 1 SCC 1

and excluded from the class.[93] Since then, in addition to inquiring if there is a yardstick, this Court has also adopted a more intensive analysis of the yardstick adopted in the backdrop of constitutional values and provisions. For example, in the context of determining the backward class for the purpose of Article 15(4), this Court has held that a yardstick which measures social backwardness must be adopted.[94] The degree of scrutiny of the yardstick used hinges on the nature of the right alleged to be violated. For example, the legislature has a greater latitude to choose the yardstick for classification in fiscal matters.[95] However, the Court has adopted a stringent standard in determining the 'rationality' of the yardstick in matters which deal with constitutional rights.[96] The standard of review to be adopted by courts must thus depend on the nature of the right which is alleged to be infringed.

59. A classification is constitutionally permissible if the following two prong test is satisfied: First, there must be an intelligible differentia between those forming a group and those left out. Second, the differentia must have a reasonable nexus with the object sought to be achieved. The Court now, within the traditional two-prong test has advocated for a more substantial inquiry that subsumes the following prongs:

a. Objective: The Courts test the (i) genuineness of the objective by making a distinction between the ostensible objective and the real objective[97].

[93] Anwali Ali Sarkar (supra) [66]
[94] State of Punjab v. Davinder Singh, 2024 INSC 562
[95] Kerala Hotel and Restaurant Association v. State of Kerala, (1990) 2 SCC 502
[96] Navtej Singh Johar (supra), See opinion of Justice Indu Malhotra [14.9]
[97] Joseph Shine v. Union of India, (2019) 3 SCC 39

The ostensible purpose is the purpose which is claimed by the State and the real purpose is the purpose identified by Courts based on the surrounding circumstances[98]; and (ii) unreasonableness of the objective by determining if it is discriminatory.[99]

b. Means: The Courts undertake the following analysis while identifying the means: (i) whether there is a yardstick (that is, the basis) to differentiate those included and others excluded from the group[100]; (ii) whether the yardstick is in compliance with constitutional provisions and values[101]; (iii) whether all those similarly situated based on the yardstick have been grouped together[102]; and (iv) whether the yardstick has a rational nexus with the objective[103].

d. The scope of judicial review of under-inclusive provisions

60. To determine if Section 6A is violative of Article 14 on the ground of under-inclusiveness, the scope of judicial review on the ground of under-inclusion first needs to be set out.

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[98] See Association for Democratic Reforms v. Union of India, 2024 INSC 113 [194]; Also see the opinions of Justice Chandrachud, Justice Malhotra and Justice Nariman in Navtej Singh Johar (supra) and Justice Chandrachud and Nariman in Joseph Shine (supra).

[99] See Nagpur Improvement Trust v. Vithal Rao, 1973 1 SCC 500 "26. […] The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved."

[100] Anwar Ali Sarkar (supra) (1952) 1 SCC 1, [Das J, 66].

[101] See State of Punjab v. Davinder Singh, 2024 INSC 562; Opinion of Justice Malhotra in Navtej Singh Johar (supra)

[102] See Arun Kumar v. Union of India, (2007) 1 SCC 732; G Sadasivan Nair v. Cochin University of Science and Technology, (2022) 4 SCC 404

[103] Anwar Ali Sarkar (supra)

61. A provision is under-inclusive if it fails to regulate all those who are part of the problem that the legislature seeks to address and is over-inclusive if it regulates somebody/something that is not a part of the problem.[104] That is, under-inclusiveness and over-inclusiveness depends on whether those who are similarly situated have not been included or those who are not similarly situated have been included. In **State of Gujarat** v. **Ambica Mills**[105], this Court dealt with the argument of under-inclusiveness for the first time. In this case, the definition of the phrase 'establishment' in the Bombay Labour Welfare Fund Act 1953 was challenged on the ground of under-inclusiveness. The enactment defined an 'establishment' to mean (a) a factory; (b) a tramway or motor omnibus service; and (c) any establishment including a society or a trust which employs more than fifty persons but not to include an establishment (not being a factory) of the Central or State Government. The enactment provided for the constitution of a Fund to finance activities to promote labour welfare. The definition of 'establishment' was challenged for being under-inclusive since it excluded places that employed less than fifty persons.

62. Justice K K Mathew, writing for the Constitution bench observed that to identify if a provision is under-inclusive or over-inclusive, the Court must determine

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[104] See State of Tamil Nadu v. National South Indian River Inter-linking,(2021) 15 SCC 534 [32] ; State of Gujarat v. Ambica Mills, (1974) 4 SCC 656 [55] "A classification is under-inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under-inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated. A classification is over-inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. In other words, this type of classification imposes a burden upon a wider range of individuals than are included in the class of those attended with mischief at which the law aims."

[105] (1974) 4 SCC 656

if all persons similarly situated for the purpose of law have been grouped.[106] This Court observed that while dealing with a challenge on the ground of under-inclusiveness, the administrative convenience of the State must be taken into consideration. The learned Judge referred to the observations of Justice Oliver Wendell Holmes in **Missouri Kansas & Texas Railway** v. **May**[107] that the Courts must be deferential to under-inclusive legislation.

63. On the facts of the case, Justice Mathew observed that the justification of the State for under-inclusion, that unpaid accumulations will be less in establishments which employ less than fifty persons and it would not be sufficient to meet administrative costs, was fair and reasonable.[108] In **Ambica Mills** (supra), this Court tested whether the under-inclusiveness was **justified**.

64. The reference to **Missouri Kansas & Texas Railway** (supra) must not be read detached from the context.[109] In multiple places in the judgment, this Court observed that a deferential approach must be adopted in challenges to laws dealing with economic activity.[110] This is also evident from the manner in which this Court dealt with the argument of over-inclusion. It was contended that the definition of 'establishment' was over-inclusive because it included tramways and omnibuses The Court rejected the argument on the ground that judicial deference must be

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[106] (1974) 4 SCC 656 [55]
[107] 194 US 297, 269
[108] (1974) 4 SCC 656 [69]
[109] (1974) 4 SCC 656 [56] […] "Mr Justice Holmes, in urging tolerance of under-inclusive classifications, stated that such legislation should not be disturbed by the Court unless it can clearly see that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched."
[110] (1974) 4 SCC 656 [64-67]; "64. Laws regulating economic activity would be viewed differently from laws which touch and concern freedom of speech and religion, voting, procreation, rights with respect to criminal procedure, etc."

shown in challenges dealing with economic policy.[111] Thus, the observations of this Court in **Ambica Mills** (supra) on judicial deference to under-inclusive provisions must be read in light of the established position of this Court that it must defer in matters relating to economic policy[112].

65. In **Missouri Kansas & Texas Rly** (supra), the constitutional validity of a Texas Statute[113] imposing penalty on railroad companies for permitting the spread of Johnson grass and Russian thistle was challenged. The law was challenged on the ground that it was under-inclusive since it only penalised railroad companies to the exclusion of others. Justice Holmes writing for the majority of the US Supreme Court observed that Court should interfere only when there is no fair reason for the under-inclusion. The Court then identified numerous reasons for why the Railway Company may be singled out when compared to owners of farms who have an element of self-interest.[114] Thus, **Missouri Kansas & Texas Rly** (supra) is also not an authority for the proposition that the scope of judicial review for under-inclusive law is limited.

66. The degree of judicial deference to any provision, including under-inclusive provisions depends on the subject matter of the case. In **Joseph Shine** v. **Union of India**[115], the constitutional validity of Section 497 of the Indian Penal Code 1860

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[111] (1974) 4 SCC 656 [72]; Also see John Sebastian, Underinclusive Laws and Constitutional Remedies- An Exploration of the Citizenship (Amendment) Act 2019, *Indian Law Review* [Volume 7 Issue 3 (2023)]

[112] Ugad Sugar Works Limited v. Delhi Administration, (2001) 3 SCC 635; State of Tamil Nadu v. National South Indian River Inter-linking,(2021) 15 SCC 534

[113] Fourteenth Amendment of chapter 117 of the Laws of Texas of 1901

[114] "But it may have been found […] that the seed is dropped in such quantities as to cause special trouble. It may be that the neglected strips occupied by railroads afford a ground where noxious strips occupied by railroads afford a ground where noxious weeds flourish, and that whereas self-interest leads to the owners of farms to keep down pests, the railroad companies have done nothing in a matter which concerns their neighbors only."

[115] (2019) 3 SCC 39

was challenged on the ground of violation of Articles 14 and 15. Section 497 defined the offence of adultery as when a person has sexual intercourse with a woman, whom he knows or has reason to believe to be the wife of another man, without the consent of that man. One of the contentions was that the provision was under-inclusive since it only dealt with a situation where a man had sexual intercourse with a married woman without the consent of the husband but not the other way around, that is a woman having sexual intercourse with a married man without the consent of his wife. The Constitution Bench tested the provision by applying a high standard of review. This Court held that there was no rational yardstick for the classification[116] and that the yardstick was steeped in gender stereotypes where a woman is considered to not have any agency[117]. In my concurring opinion, I noted that the problem with Section 497 was not just its 'under inclusion' but the impact of the under-inclusion of subjugating a woman to a position of inferiority.[118] A high standard of scrutiny was applied to test the validity of an under-inclusive provision.

67. In **Basheer** v. **State of Kerala**[119], the constitutional validity of the proviso to sub-Section (1) of Section 41 of the Narcotic Drugs and Psychotropic Substances (Amendment) Act 2001[120] was under challenge. By the 2001 Amendment, the sentence for offences under the NDPS Act was altered. Section 41, included by the 2001 Amendment, provided that the amended provisions shall apply to all pending cases before the court as on 2 October 2001 and all cases under

[116] See (2019) 3 SCC 39 [Chief Justice Misra, writing for himself and Justice Khanwilkar [23]]
[117] (2019) 3 SCC 39 [Justice DY Chandrachud [35]]
[118] (2019) 3 SCC 39 [Justice DY Chandrachud [11]
[119] 2004 3 SCC 609
[120] "2001 Amendment"

investigation. The proviso to the provision excluded cases pending in appeal. The exclusion of the category of cases in the proviso was challenged on the ground of under-inclusiveness. Justice B N Srikrishna, writing for the two-Judge Bench observed that the classification could not be held to be unreasonable due to 'marginal over-inclusiveness or under-inclusiveness'.[121] This principle flows from the established judicial position that Article 14 does not require classifications with 'mathematical precision'.[122] This observation does not lead to the conclusion that under-inclusive provisions must be met with judicial deference. In **Basheer** (supra), this Court observed that the guiding principle of the provision was the conclusion of the trial since the application of the amended provision to pending appeals would reopen concluded trials.[123] In this case, the court determined the yardstick of classification based on the reading of the provision(s) and observed that the yardstick was reasonable. Based on the yardstick, it was concluded that there was no case for under-inclusion.

68. The following principles emerge from the discussions above:

a. There is no general principle that the constitutional validity of under-inclusive provisions must be assessed with judicial deference;

b. The degree of judicial scrutiny of an under-inclusive provision depends on the subject matter. The Courts must adopt a higher degree of judicial

[121] 2004 3 SCC 609 [20]
[122] Gauri Shanker v. Union of India, (1994) 6 349; Anant Mills v. State of Gujarat, (1975) 2 SCC 175
[123] 2004 3 SCC 609 [23].

scrutiny if the law deals with core rights of individuals or groups (as opposed to economic policy); and

c. The determination of the yardstick for classification will help in the assessment of whether a provision is under-inclusive or over-inclusive. The yardstick must have a nexus with the object and must be in consonance with constitutional principles. If the yardstick satisfies the test, then the State must determine if all persons/situations similarly situated based on the yardstick have been included. The State must on the submission of cogent reason justify if those who are similarly situated have not been included (under-inclusiveness) or those who are not similarly situated have been included (over-inclusiveness). The degree of justification that the State is required to discharge depends on the subject-matter of the law, that is whether the matter deals with economic policy or fiscal matters, whether it is a beneficial provision such as a labour provision or whether it deals with the core or innate traits of individuals. The degree of justification is the least for economic policy, higher for a beneficial provision and the highest if it infringes upon the core or innate trait of individuals.

e. The legislative objective of Section 6A of the Citizenship Act

69. The preamble to the Citizenship (Amendment) Act 1985 by which Section 6A was included states that the amendment was made for the "purpose of giving effect to certain provisions of the Memorandum of Settlement relating to the foreigners issue in Assam (Assam Accord) which was laid before the Houses of

Parliament on the 16th day of August 1985." The Assam Accord was entered into in the backdrop of numerous agitations led by All Assam Students Union[124] and All Assam Gana Sangram Parishad[125] against the migration from Bangladesh to Assam. The movement saw foreigners as a threat to Assamese political power and as contenders of the scarce economic opportunities.[126] In January 1980, the student leaders met Ms Indira Gandhi, the then Prime Minister of India for negotiation talks and demanded the detection and deportation of foreigners who had come to live in Assam since 1951.[127] On 15 August 1985, the Union Government and the leaders of the movement signed the Assam Accord.[128]

70. The preamble to the Accord stipulates that the settlement was reached "keeping all aspects of the problem including constitutional and legal provisions, international agreements, **national commitments** and **humanitarian consideration**". On the foreigners issue, the following settlement was arrived at:

> "5.1 For purposes of detection and deletion of foreigners, 1.1.1966 shall be the base date and year.
>
> 5.2 All persons who came to Assam prior to 1.1.1966, including those amongst them whose names appeared on the electoral rolls used in 1967 elections, shall be regularised.
>
> 5.3 Foreigners who came to Assam after 1.1.1966 (inclusive) and upto 24th March, 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order 1964.
>
> 5.4 Names of foreigners so detected will be deleted from the electoral rolls in force. Such persons will be required to register themselves before the Registration

[124] "AASU"
[125] "AAGSP"
[126] Arupjyoti Saikia, The Quest for Modern Assam, (Penguin and Allen Lane) 455
[127] Ibid, 449
[128] Ibid, 489

> officers of the respective districts in accordance with the provisions of the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939.
>
> 5.5 For this purpose, Government of India will undertake suitable strengthening of the governmental machinery.
>
> 5.6 On the expiry of a period of ten year following the date of detection, the names of all such persons which have been deleted from the electoral rolls shall be restored.
>
> 5.7 All persons who were expelled, earlier, but have since re-entered illegally into Assam, shall be expelled.
>
> 5.8 Foreigners who came to Assam on or after March 25, 1971 shall continue to be detected, deleted and expelled in accordance with law. Immediate and practical steps shall be taken to expel such foreigners.
>
> 5.9 The Government will give due consideration to certain difficulties expressed by the AASU/AAGSP regarding the implementation of the Illegal Migrants (Determination by Tribunals) Act, 1983."

71. The provisions of Section 6A of the Citizenship Act are traceable to the Assam Accord. The Assam Accord, as explained above, was a political settlement between the Union of India ('the executive') and students groups in Assam. In an Article 14 challenge to a legislative provision, the court must identify the 'legislative' objective. The objective, against which this Court must test the validity of the law must be identified based on the circumstances surrounding the Assam Accord and the enactment of the legislation. Section 6A was included with the objective of reducing the influx of migrants to India and dealing with those who had already migrated. The Assam Accord was a political solution to the issue of growing migration and Section 6A was a legislative solution. Section 6A must not be read detached from the previous legislation enacted by Parliament to deal with the problem of influx of migrants of Indian Origin that I have traced in the preceding

sections. Section 6A is one more statutory intervention in the long list of legislation that balances the humanitarian needs of migrants of Indian Origin and the impact of such migration on economic and cultural needs of Indian States.

f. Section 6A is not violative of Article 14

72. Section 6A confers citizenship to migrants from Bangladesh to Assam before 25 March 1971. Two yardsticks are discernible from Section 6A: (a) migrants must have entered Assam; and (b) the entry of migrants must be before the cut-off date of 25 March 1971. It first needs to be determined if the above two yardsticks are reasonable, have a nexus with the object and are in compliance with constitutional principles.

73. Parliament, even before the enactment of the Citizenship (Amendment) Act 1995 has treated migration to the State of Assam as a cause of concern. Previous sections of this judgment trace the enactment of the Immigrants (Expulsion from Assam) Act 1950 and the IMDT Act which dealt with the specific problem of undocumented migration to Assam. The Central Government could have extended the application of the IMDT Act to any other State by a notification. However, no such notification was issued indicating that the immigration to Assam presented the Union with a unique problem in terms of magnitude and impact. Though other states such as West Bengal (2216.7 km), Meghalaya (443 km), Tripura (856 km) and Mizoram (318 km) share a larger border with Bangladesh as compared to Assam (263 km), the magnitude of influx to Assam and its impact on the cultural and political rights of the Assamese and Tribal populations is higher. The data submitted by the petitioners indicates that the total number of immigrants in Assam

is approximately forty Lakhs, fifty seven Lakhs in West Bengal, thirty thousand in Meghalaya and three Lakh and twenty five thousand in Tripura.[129] The impact of forty lakh migrants in Assam may conceivably be greater than the impact of fifty seven lakh migrants in West Bengal because of Assam's lesser population and land area compared to West Bengal.

74. Similarly, the cut-off date of 25 March 1971 is also rational. Even before the enactment of Section 6A, the IMDT Act defined an 'illegal immigrant' as a person who entered India on or after 25 March 1971 without travel documents. As noted above, the IMDT Act was not specific in its application to Assam. The enactment defined the phrase illegal immigrant for all States though the Central Government did not extend the provisions of the Act to other States. On 25 March 1971, the Pakistani Army launched Operation Search Light to curb the Bengali nationalist movement in East Pakistan.[130] The migrants before the operation were considered to be migrants of partition towards which India had a liberal policy. Migrants from Bangladesh after the said date were considered to be migrants of war and not partition. Thus, the cut-off date of 25 March 1971 is reasonable.

75. Having held that both the cut-off date and the singling out of Assam is based on rational considerations, the next question is whether the yardsticks have a rational nexus with the object of the provision. The answer is in the affirmative. Since the migration from East Pakistan to Assam was in great numbers after the partition of undivided India and since the migration from East Pakistan after

[129] See Report of Governor of Assam Lt. Col S.K Sinha dated 8.11.1998 and Statement of Indrajeet Gupta, Union Home Minister in the Parliament dated 14.07.2004

[130] M Rafiqul Islam, A Tale of Millions: Bangladesh Liberation War, 1971 (Bangladesh Books International)

Operation Search-Light would increase, the yardstick has nexus with the objects of reducing migration and conferring citizenship to migrants of Indian origin. Section 6A would be under-inclusive only when all those who are similarly situated with respect to the object and on the application of the rational yardstick are not included. Similarly, the provision would be over-inclusive only when those who are not similarly situated with respect to these two parameters are included. That not being the case, Section 6A is neither under-inclusive nor over-inclusive.

76. Over-inclusiveness and under-inclusiveness must be determined based on whether there are similarly situated persons/situations who or which have not been included or have been included based on the yardstick identified. The determination cannot be made with reference to the objective without a reference to the yardstick. Doing so would limit the ability of the Legislature to identify the degrees of harm. The yardstick can be challenged where another yardstick affects or is related to the objective in a comparable manner.[131]

77. The last question which is required to be considered is whether granting 'citizenship' has any relevance to the problem identified, that is, migration crisis. It was submitted that if Assam is facing a migration crisis, the State must focus on removing the migrants instead of conferring them citizenship. To elucidate this point, the petitioners submitted that undocumented migrants in other States will not receive the benefit of citizenship and this would lead to a situation where migrants in other states would also move to Assam to secure the benefit of citizenship. This, it has been argued would not satisfy the object of the provision.

[131] See Williums-Yulee v. The Florida Bar, 575 US (2015) [opinion of Roberts J]

78. In the preceding section of this judgment, I have held that the Citizenship Act and the notifications issued by the Ministry of Home Affairs allowed the acquisition of citizenship by undocumented citizens through registration under Section 5(1)(a). This was the position until Section 5(1) was amended by the 2003 Amendment Act to exclude applications from 'illegal immigrants'. Thus, the claim that undocumented migrants to other Indian States were not able to secure citizenship is erroneous. Section 6A carves out an exception in that regime for the State of Assam for the reasons discussed above. Even otherwise, conferring citizenship has a nexus since the legislative object of introducing Section 6A was not just to deal with the migration from Assam but to balance it with humanitarian considerations (including conferment of citizenship) for partition refugees.

iii. The challenge under Article 355

79. The petitioners urged that Section 6A violates Article 355 of the Constitution because: (a) Article 355 casts a duty on the Union to prevent external aggression; (b) the expression "external aggression" has been construed by a three-Judge Bench in **Sarbananda Sonowal** v. **Union of India**[132] to include aggression caused due to external migration; and (c) instead of preventing external migration, Section 6A induces more migration into Assam. The judgment in **Sarbananda Sonowal** (supra) was cited to support the submission that the constitutional validity of a provision can be challenged for violation of Article 355.

80. Article 355 provides that it is the duty of the Union to protect States against external aggression and internal disturbance and ensure that the Government of

[132] (2005) 5 SCC 665

every State is carried on in accordance with the provisions of the Constitution.[133] In **Sarbananda Sonowal** (supra), proceedings were initiated under Article 32 to challenge the constitutional validity of the IMDT Act and the Illegal Migrants (Determination by Tribunals) Rules 1984[134]. Their validity was challenged on the ground that the enactment and Rules which dealt with the detection of undocumented migrants in Assam were not as effective as the Foreigners Act which applied to the rest of India. A three-Judge Bench of this Court allowed the writ petition and struck down the provisions of the IMDT Act and the IMDT Rules.

81. This Court observed that the Union has a constitutional obligation (or 'duty') to protect states from external aggression in view of Article 355. The three-Judge Bench held that the expression 'aggression' in Article 355 is of wide import and includes actions other than war, such as the inflow of a large number of persons from a neighbouring country[135]. Referring to the Report of Lt. Colonel SK Sinha, the Bench observed that migration from Bangladesh to Assam has led to an alteration of the demographic pattern of the State, thereby reducing the Assamese into a minority in their own State. The Bench noted that since the State of Assam is facing "external aggression and internal disturbance" due to large-scale illegal migration of Bangladesh nationals, the Court must determine if the Union had "taken any measures for that purpose" in view of the constitutional mandate under

[133] "355. Duty of the Union to protect States against external aggression and internal disturbance.- It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution."
[134] "IMDT Rules"
[135] Referred to the Statement of Dr Nagendra Singh, India's representative in the Sixth Committee of the General Assembly on the Definition of Aggression; (2005) 5 SCC 665 [52-60]

Article 355.[136] This Court then held that the IMDT Act and IMDT Rules are unconstitutional for violating Article 355:

> "67. The above discussion leads to irresistible conclusion that the provisions of the IMDT Act and the Rules made thereunder clearly negate the constitutional mandate contained in Article 355 of the Constitution, where a duty has been cast upon the Union of India to protect every State against external aggression and internal disturbance. The IMDT Act which contravenes Article 355 of the Constitutional, is therefore, wholly unconstitutional and must be struck down."

82. The IMDT Act and Rules were held to be unconstitutional on the following grounds:

a. The procedure under the Foreigners Act and the Foreigners (Tribunals) Order 1964 is more effective for the identification and deportation of foreigners than the procedure prescribed by the IMDT Act and the Rules[137]. In particular, Section 9 of the Foreigners Act places the burden of proof of being an Indian citizen on the person concerned. The provisions of the IMDT Act and Rules are silent on the onus of proof;

b. In Assam, where the IMDT Act is applicable, only 10,015 persons were declared illegal migrants until 30 April 2000 though 3,10,759 inquiries were initiated. However, in West Bengal where the Foreigners Act is applicable, 4,89,046 persons were deported between 1983 and November 1998. Thus, the numbers indicated that the implementation of the IMDT Act and Rules in

[136] (2005) 5 SCC 665 [63] "Having regard to this constitutional mandate, the question arises whether the Union of India has taken any measures for that purpose."
[137] (2005) 5 SCC 665 [64]

Assam has made the identification and deportation of illegal migrants more difficult;[138] and

c. The IMDT Act superseded the Immigrants (Expulsion from Assam) Act 1950 and the Passport (Entry into India) Act 1920 which granted the Central Government the power to remove any person who entered Assam and who was detrimental to the interests of the State, and those who entered without a valid passport, respectively.[139]

83. In addition to the violation of Article 355, this Court also found the IMDT Act and Rules to be violative of Article 14 on the ground that if the purpose was to control the influx of Bangladeshi migrants to Assam, provisions which are more stringent would have to be made. This Court noted that, the provisions of the IMDT Act and Rules were more lenient than the Foreigners Act which applied to the rest of India, where the problem was not as grave as in Assam.[140] Thus, this Court held that there was no nexus between the object sought to be achieved and the means adopted by the enactment and Rules.

84. In **Naga People's Movement of Human Rights** v. **Union of India**[141], the constitutional validity of the Armed Forces (Special Powers) Act 1958[142] and the Assam Disturbed Areas Act 1955 was under challenge. ASFPA was enacted to confer special powers upon the members of the armed forces in the disturbed

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[138] ibid
[139] (2005) 5 SCC 665 [65]
[140] "70. […] "In such circumstances, if Parliament had enacted a legislation exclusively for the State of Assam which was more stringent than the Foreigners Act, which is applicable to rest of India […] such a legislation would have passed the test of Article 14 as the differentiation so made would have had rational nexus with the avowed policy and objective of the Act."
[141] (1998) 2 SCC 109
[142] "AFSPA"

areas in Assam and Manipur. In terms of the Act, the Governor of the State had the power to issue a notification declaring the whole or any part of the State to which the Act applies as a disturbed area.[143] The Act was amended by Act 7 of 1972 by which the power to issue a notification was also conferred on the Central Government. The Statement of Objects and Reasons of the amendment Bill stated that it was important that the power to issue notifications is extended to the Central Government (in addition to the Governor) in view of the duty cast on the Union by Article 355.[144] One of the contentions of the petitioners for challenging the constitutional validity of the enactment was that Parliament had the competence to enact laws with respect to 'armed rebellion' only in exercise of emergency powers under Articles 352 and 356[145]. The Constitution Bench rejected this argument. Justice Agarwal, writing for the Bench observed that AFSPA was enacted to enable the Central Government to discharge its obligation under Article 355. The learned Judge observed that a proclamation under Article 356 had grave consequences and thus, it was open to Parliament to deal with external aggression and internal disturbances through legislation before the Governor exercises powers under Article 356.[146] Further, this Court also observed that the power of the Central Government to issue a notification under AFSPA does not violate the federal structure in view of Article 355.[147]

85. In **Naga People's Movement of Human Rights** (supra) and **Sarbananda Sonawal** (supra), this Court referred to Article 355 for the purpose of emphasising

[143] AFSPA; Section 3
[144] (1998) 2 SCC 109 [14]
[145] (1998) 2 SCC 109 [28]
[146] (1998) 2 SCC 109 [32]
[147] (1998) 2 SCC 109 [41]

that one of the duties that is cast upon the Union is to protect States against external aggression and internal disturbance. In **Naga People's Movement of Human Rights** (supra), the legislative object of the 1972 amendment to ASFPA was traced to Article 355. Similarly, in **Sarbananda Sonawal** (supra), the legislative object of the IMDT Act and the IMDT Rules was traced to Article 355. Though the three-Judge Bench in paragraph 67 of the judgment held that the IMDT Act and Rules were unconstitutional for violation of Article 355 of the Constitution, the scrutiny of the legislation and Rules was on Article 14 grounds. The reasons summarised in paragraph 82 of this judgment elucidate that the framework of analysis was limited to a comparison of the provisions of the IMDT Act and Rules (applicable to Assam) and the Foreigners Act (applicable to the rest of India). On a comparison of the provisions, it was found that the provisions of the Foreigners Act were more effective for achieving the object (that is, the detection of migrants). The Court held the IMDT Act and the IMDT Rules unconstitutional on the ground that: (a) Undocumented immigrations impacted Assam on a much larger scale as compared to the other States in India; (b) Since the State of Assam faces a graver problem, the provisions of the IMDT Act and the IMDT Rules ought to be more stringent than the Foreigners Act which applies to the rest of the States in India; and (c) The provisions of the IMDT Act and IMDT Rules were less effective compared to the provisions of the Foreigners Act. Thus, the classification effected by the IMDT Act and the IMDT Rules between the State of Assam and the other States in India was held not to have a nexus with the object.

86. Both in **Sarbananda Sonawal** (supra) and in **Naga People's Movement of Human Rights** (supra), this Court referred to Article 355 to test the validity of the

means adopted to achieve the legislative object under Article 14 of the Constitution. The test of 'legitimate objective' is one of the prongs used by the Courts in its rights framework analysis. The first test that the Courts adopt to determine if the violation of fundamental rights is justified based on the proportionality standard, is to assess if the law was enacted in pursuance of a 'legitimate object'.[148] The Constitution Bench in **Naga People's Movement of Human Rights** (supra) and the three-Judge Bench in **Sarbananda Sonawal** (supra), relied on Article 355 for this purpose, that is, to test the constitutional legitimacy of the object of the amendment and the enactment, respectively.

87. Article 355, couched in Part XVIII of the Constitution which deals with emergency powers stipulates that it is the **duty** of the 'Union' to (a) protect every State against external aggression and internal disturbance; and (b) ensure that the government of every State is carried on in accordance with the provisions of the Constitution. It is established jurisprudentially that the correlative of a duty is a right.[149] The question is, however, whether the duty vested in the Union in Article 355 confers a correlative right that a legislation can be challenged for violation of the constitutional provision.

88. Article 355 was absent in the Draft Constitution of 1948. Dr BR Ambedkar introduced the provision as a justification for the Union's interference in the administration of States in exercise of the emergency powers conferred by the

[148] The first prong of the proportionality test. See Madhyamam Broadcasting Limited v. Union of India, (2023) SCC OnLine SC 366

[149] W.N Hohfeld, Fundamental Legal Conceptions as applied in Judicial Reasoning and other legal essays, (W.W. Cook ed., Yale University Press, 1919).

Constitution.[150] Dr Ambedkar explained that in a federal Constitution such as the Indian Constitution where the States are sovereign since they also have legislative power in their own field, the Centre can interfere with the administration of States only when there is 'some obligation which the Constitution imposes upon the Centre'.[151] In **SR Bommai** v. **Union of India**[152], Justice Sawant (writing for himself and Justice Singh) referring to the debates in the Constituent Assembly observed that Article 355 is not an independent source of power for interfering with the functioning of the State Government but is a **justification** for the measures adopted in Articles 356 and 357.[153]

89. The question is whether a legislative enactment can be challenged for contravention of Article 355 of the Constitution. For more than one reason, I think that such an interpretation would lead to disastrous consequences. Article 355 casts a duty on the Union to (a) protect every State against "external aggression"; (b) protect every State against "internal disturbance"; and (c) ensure that the "government of every State is carried out in accordance with the provisions of the Constitution". All these three phrases (internal disturbance, external aggression and government of the State to be carried out in accordance with the provisions of the Constitution) feature in Part XVIII of the Constitution which deals with emergency powers. If the duty of the Union to safeguard States against external aggression is justiciable in view of Article 355, then petitions could be filed claiming that the Union has not appropriately dealt with **'any'** of the situations referred to in

[150] See Constitution of India, Articles 352 and 356
[151] Dr BR Ambedkar, Constituent Assembly Debates (Volume 9, 3 August 1949)
[152] (1994) 3 SCC 1
[153] (1994) 3 SCC 1 [57]

Article 355. It could also be contended that emergency powers ought to have been invoked by the Union to deal with the situations appropriately. Reading the duty in Article 355 into a right would effectively place the emergency powers with citizens and courts. Such a consequence would be catastrophic for the federal structure of the Indian Constitution and would subjugate the constitutional status of States. Article 355 cannot be elevated as an independent ground of judicial review in view of the purpose of the provision (as a justification clause) and the impact of such a reading on the federal framework of the Constitution.

90. The validity of the exercise of the Presidential power under Part XVIII (such as Article 352 and Article 356) has been held to be amenable to judicial review.[154] Proclamations under Articles 352 and 356 are amenable to review on the ground that the exercise of power is beyond the limits of the power prescribed by the constitutional provision. The petitioners in this case, however, seek to challenge the constitutional validity of a legislative provision (Section 6A) on the ground of Article 355. In doing so they seek to elevate Article 355 to an independent ground for judicial review of legislative action. This is beyond the scope of the provision. Besides a lack of legislative competence and a violation of Part III, legislation may be challenged for breach of a substantive limitation on legislative power, created by a constitutional provision. Article 355 is not however such a provision.

iv. <u>Section 6A does not violate Article 29(1) of the Constitution</u>

91. Article 29(1) of the Constitution provides that ‘any section of citizens’ residing in the territory of India or any part thereof and having a distinct language, script, or

[154] SR Bommai v. Union of India, 1994 3 SCC 1; In Re Article 370 of the Constitution, 2023 INSC 1058

culture of their own shall have the right to conserve the same'. The claim of the petitioners is that Section 6A is violative of Article 29 because it permits people from Bangladesh who have a distinct culture to be ordinarily resident in Assam and secure citizenship which infringes upon their right to conserve Assamese culture.

92. The heading to Article 29(1) reads 'protection of interests of minorities'. However, the text of the provision is not limited to minorities. It confers the right to any 'section of citizens' having a distinct language, script or culture. Thus, Article 29 applies to non-minorities as much as it applies to minorities, provided that (a) the section is of citizens; and (b) that section has a distinct language, script or culture.[155] The right that is granted to this beneficiary class is the right to 'conserve' their language, script or culture. The people of Assam (the Assamese) are a section of citizens who have a distinct language, script of culture which they are entitled to conserve in terms of Article 29(1).

93. Two prominent points must be noted at the outset. First, Article 29(1) confers the right to 'conserve' culture, that is, the operation of the law must not interfere with the ability of the section to take steps to protect the culture from harm or destruction. Second, the provision must be read in light of the multi-cultural and plural nation that India is.

94. This Court has not had the opportunity to deal with the scope of Article 29(1) elaborately in the past. The provision has been considered in a limited manner when this Court had to determine the issue of whether the right guaranteed by

[155] See Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717, (9J) [Chief Justice Ray writing for himself and Justice Palekar [5,6], Justice Khanna [73], Justice Mathew writing for himself and Justice YV Chandrachud [125, 126]; Rev. Father W Proost v. State of Bihar [5J] (1969) 2 SCR 73 [8,9]

Article 30 to establish minority educational institutions must be limited to the purpose of conserving language, script or culture.[156] This Court held that a minority educational institution can be established for the purpose of conserving the language, culture and script but it is not necessary that it must be limited to that purpose.[157] This Court in the context of the scope of the right to establish and administer minority educational institutions under Article 30(1) also observed that the right would include the choice of the medium of instruction. The imposition of the medium of instruction by the State would be violative of the right of minority educational institutions under Article 30(1) read with Article 29(1).[158]

95. In **Jagdev Singh Sidhanti** v. **Pratap Singh Daulta**[159], the question before the Constitution Bench was whether appeals made to the electorate to vote or refrain from voting on account of language constitute a corrupt practice under Section 123(3) of the Representation of the People Act 1951[160]. The Constitution Bench held that the issue of whether any person was guilty of the corrupt practice under Section 123(3) must be determined in the backdrop of Article 29(1) of the Constitution. In this context, Justice JC Shah writing for the Bench observed that the right to conserve language includes the right to agitate for the protection of

[156] Rev. Father W. Proost v. The State of Bihar, (1969) 2 SCR 73; Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717

[157] ibid

[158] See DAV College, Bhatinda v. State of Punjab, AIR 1969 SC 465; and State of Karnataka v. Associated Management of English Medium Primary and Secondary Schools, (2014) 9 SCC 485 where the Constitution Bench held that imposing mother tongue as the medium of instruction in students infringes upon Article 30(1) read with Article 29(1)

[159] (1964) 6 SCR 750

[160] "The appeal by a candidate […] to vote or refrain from voting for any person on the ground of religion, race, caste, community or language […]"

language and that political agitation for that purpose cannot be regarded as a corrupt practice.

96. Article 29(1) confers the right to take steps (through positive action) for the preservation of culture, language and script. The phrase 'conserve' in the provision denotes positive action taken towards a specific end.[161] The provision protects those steps that have a nexus with the end of preservation of culture. There is sound reason to provide a constitutional guarantee to conserve culture, language or script. It is a constitutional recognition of the fact that culture, language and script die a natural death if positive steps are not taken to promote and protect them.[162] This is particularly true in a multi-cultural and multi-linguistic country such as India.

97. The second principle is that a law or an executive action is unconstitutional to the extent that it prevents a section from taking steps to preserve their culture. At this juncture, it must be noted that it is now settled that the fundamental rights include both negative and positive rights. The negative right flowing from Article 29(1) prevents the State from interfering with the right of the section of citizens to conserve their culture. The Courts must adopt the well-established effects standard to test if the action of the State is violative of Article 29(1). The positive right flowing from Article 29(1) casts a duty on the State to create conditions for the exercise of the right to conserve culture.[163]

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[161] Oxford Dictionary defines the phrase as "to protect something and prevent it from being changed or destroyed".

[162] AIR 1950 SC 27

[163] For a detailed exposition on the positive and negative facets of a fundamental right, see Supriyo @ Supriyo Chakraborty v. Union of India, 2023 INSC 920 [Chief Justice DY Chandrachud, 156-158]

98. In **Jagdev Singh Sidhanti** (supra), this Court also observed that the right guaranteed by Article 29(1) is absolute.[164] It is true that Article 29(1), unlike Article 19 of the Constitution, does not prescribe grounds for the reasonable restrictions of the right. It must be noted that the decision in **Jagdev Singh Sindhanti** (supra) was rendered in 1964 when the opinion of this Court in **AK Gopalan** v. **State of Madras**[165] held the field on the interpretation of fundamental rights. In **AK Gopalan** (supra), the majority of this Court observed that the fundamental rights operate in mutually exclusive silos. In 1970, the decision in **Rustom Cavasjee Cooper** v. **Union of India**[166], rejected this interpretation of Part III holding that fundamental rights are not water-tight compartments. Once this Court has held that fundamental rights are not water- tight compartments, rights which are not expressly subject to reasonable restrictions can be restricted to give effect to other fundamental rights.[167] For example, Article 30 which guarantees the right to establish and administer educational institutions, similar to Article 29, is not subject to an express restrictions clause. This Court in numerous decisions has held that the absence of a subjection clause does not mean that a minority educational institution cannot be regulated.[168] Thus, the observation in **Jagdev Singh Sidhanti** (supra) that the right guaranteed by Article 29 is absolute is no more good law is view of the subsequent developments on the interpretation of Part III of the Constitution.

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[164] "25 […] Unlike Article 19(1), Article 29(1) is not subject to any reasonable restrictions. The right conferred upon the Section of the citizens residing in the territory of India or any thereof to conserve their language, script or culture is made by the Constitution absolute"

[165] AIR 1950 SC 27

[166] (1970) 1 SCC 248; Also see Maneka Gandhi v. Union of India, (1978) 1 SCC 248

[167] See Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1 [217]

[168] See State of Kerala v. Very Rev. Mother Provincial, (1970) 2 SCC 417; Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717; TMA Pai Foundation v. State of Karnataka, (2002) 8 SCC 481

99. It is in this backdrop that the issue of whether Section 6A is violative of Article 29(1) of the Constitution must be decided. The petitioners' contention that Section 6A is violative of Article 29 is based on the following premises: (a) conferring citizenship to migrants from Bangladesh to Assam will increase Bengali population in Assam; and (b) the increase in Bengali population affects the culture of the Assamese population. The premise of the petitioners argument is not that the effect of the provision is that the people of Assam are **prevented** from taking steps to conserve their culture neither is it that the State is not taking effective steps to create conditions to enable groups to take steps to conserve culture. The argument of the petitioners is that the culture of Assam is infringed by the large influx of Bangladeshi immigrants who are conferred citizenship and Section 6A to the extent that it allows the influx is unconstitutional.

100. I am unable to accept this argument. First, as a matter of constitutional principle, the mere presence of different ethnic groups in a State is not sufficient to infringe the right guaranteed by Article 29(1). As explained above, Article 29(1) confers the right to 'conserve' which means the right to take positive steps to protect culture and language. The petitioners ought to prove that the necessary effect of the law that promotes the presence of various ethnic groups in a State is that another ethnic group is unable to take **steps** to protect their culture or language. The petitioner also ought to prove that the inability to take steps to conserve culture or language is attributable to the mere presence of different groups.

101. Second, various constitutional and legislative provisions protect Assamese cultural heritage. The Constitution provides certain special provisions for the administration of Tribal Areas in Assam. The Constitution (Twenty-second Amendment) Act 1969 included Article 244A of the Constitution. Article 244A stipulates that notwithstanding anything in the Indian Constitution, Parliament may by law form an autonomous State within Assam comprising wholly or in part of all or any of the tribal areas. Parliament may by law also create a body to function as a Legislature for the autonomous State. Article 330 provides that seats must be reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam. By the Constitution (Twenty-second Amendment) Act 1969, Article 371B was included in the Constitution which provides a special provision with respect to the State of Assam. According to the provision, the President may by an order provide for the constitution and functions of a committee of the Legislative Assembly of the State consisting of the members of the Assembly elected from the tribal areas and such number of other members of the Assembly. The Sixth Schedule to the Constitution consists of provisions regarding the administration of tribal areas in the State of Assam, among other States.

102. Article 345 of the Constitution provides that the State Legislature may by law adopt any one or more language as the language to be used for official purposes in the State. In exercise of the power under Article 345, the Legislature of the State of Assam enacted the Assam Official Language Act 1960[169]. The enactment adopts Assamese as the language for all official purposes of the State of Assam.[170] The

[169] "The Assam Official language Act"
[170] The Assam Official Language Act 1960, Section 3

enactment further safeguards the use of languages on the basis of usage within the geographical limits. Section 4 provides that only languages which were in use immediately before the commencement of the Assam Official Language Act shall continue to be used for administrative and other official purposes up to and including the level of the Autonomous Region or the Autonomous District.[171] The Assam Official Language Act also provides that the Bengali language would be used for administrative and other official purposes upto and including the "district of Cachar until the Mohkuma Parishads and Municipal Boards of the district."[172] In addition to the above, the State Government also has the power to direct the use of the language in such parts of the State of Assam through notification.[173] The cultural and linguistic interests of the citizens of Assam are protected by constitutional and statutory provisions. Thus, Section 6A of the Citizenship Act does not violate Article 29(1) of the Constitution for the above reasons.

v. Section 6A(3) is constitutional

103. Justice Pardiwala in his opinion has concluded that Section 6A(3) is unconstitutional for the following reasons:

a. The low detection of immigrants who entered Assam between 1966-71 is attributable to the manifest arbitrariness of the mechanism prescribed by Section 6A(3);

[171] The Assam Official Language Act 1960, Section 4. The adoption of any other language for the administrative or official purposes of the region must be by a majority of not less than two-thirds of the members present and voting.
[172] The Assam Official Language Act 1960, "Section 5. The adoption of any other language for the administrative or official purposes of the region must be by a majority of not less than two-thirds of the members present and voting"
[173] The Assam Official Language Act 1960, Section 7.

b. Section 6A(3) mandates that for migrants to register as citizens, they must be detected as foreigners. However, the mechanism does not provide for self-declaration or voluntary detection as a foreigner. The process of detection can only be set in motion by the State[174]. This is a clear departure from the scheme of the Citizenship Act and Articles 6 and 7 of the Constitution which allows acquiring citizenship through registration[175]; and

c. Section 6A(3) does not prescribe an outer time limit for the detection of an immigrant to Assam as a foreigner. This militates against the purpose of the provision and is arbitrary for the following reasons:

   i. The name of a person who is detected as a foreigner today would be deleted from the electoral rolls for ten years from the date of detection. This consequence is not in consonance with the object of the provision which was early detection, deportation and conferment of citizenship[176];

   ii. Placing the onus on the State to detect a foreigner coupled with the absence of temporal limit allows immigrants to continue to be on the electoral rolls and enjoy being de-facto citizens[177]; and

   iii. Section 6A(3) incentivizes undocumented immigrants from Bangladesh to stay in Assam indefinitely until they are detected as

[174] Paragraphs 121-123 of the judgment of Justice Pardiwala
[175] Ibid, 128
[176] Ibid, 159 "Thus, an immigrant whose name figures in the electoral roll, despite being a foreigner continues to be eligible to vote in the elections till that person is detected as a foreigner and the name of that person is struck off the electoral roll. There being no temporal limit to the applicability of Section 6A, this situation would continue in the years to come till the detection exercise is completed."
[177] Ibid, 162

Foreigners since they will be able to acquire citizenship only if they are 'ordinarily resident' in Assam[178].

104. To recall, Section 6A(2) deems all persons of Indian origin who came to Assam from Bangladesh before 1 January 1966 to be citizens of India. Section 6A(3) prescribes a procedure for persons of Indian origin who migrated from Bangladesh to Assam between 1 January 1966 to 24 March 1971 to acquire citizenship. The person must have been:

a. An ordinary resident of Assam since the date of entry; and

b. Detected to be a foreigner, for which the opinion of the Tribunal constituted under the Foreigners Tribunals Order will be deemed as sufficient proof.

The person who satisfies the above conditions must register in accordance with the Rules framed by the Central Government in exercise of the power under Section 18.

a. The interplay of NRC and the citizenship regime

105. The Central Government prepared the National Register of Citizens[179] in Assam in 1951 which consisted of information on all the citizens in Assam.[180] In exercise of the power under Section 18(1) and (3), the Central Government notified the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules

[178] Ibid, 163
[179] "NRC"
[180] See Anil Roychoudhury, National Register of Citizens 1951, (Vol 16, Issue no. 8, 21 Feb 1981); Home and Political Department (Government of Assam), White Paper on Foreigners Issue (October 20 2012).

2003[181].[182] Rule 3 of the Citizenship Rules 2003 provides that the Registrar General of Citizen Registration must establish and maintain the National Register of Indian Citizens. The register must contain, *inter alia,* the following particulars with respect to every citizen: name, sex, date of birth, place of birth and national identity number. Rule 4 deals with the preparation of the National Register of Indian Citizens. To prepare the National Register of Indian Citizens, the Central Government must carry a house to house enumeration for the collection of specific particulars relating to each individual, including the citizenship status.[183] The particulars collected are then required to be verified by the Local Registrar.[184] During the verification process if the citizenship of any person is doubtful, the Local Registrar must enter their details with appropriate remarks in the population registrar for further enquiry. The individual must be immediately informed of the doubtful citizenship.[185] Every person whose citizenship is doubtful would be given an opportunity of being heard before a final decision is taken to include or exclude their particulars in the National Register of Indian Citizens.[186] The Draft NRC must be published by the Sub-district or the Taluk Registrar for inviting objections or for corrections.[187] The Sub-district or the Taluk Registrar must consider the objections within a period of ninety days. The Rules also provide for an opportunity to appeal against the order to the District Registrar of Citizen Registration.[188]

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[181] " The Citizenship Rules 2003"
[182] Vide G.S.R. 937 (E), dated 10th December, 2003, published in the Gazette of India, Extra., Pt. II, Sec.3 (ii), dated 10th December, 2003
[183] The Citizenship Rules 2003; Rule 4
[184] The Citizenship Rules 2003, Rule 4(3)
[185] The Citizenship Rules 2003, Rule 4(4)
[186] The Citizenship Rules 2003, Rule 4(5)(a)
[187] The Citizenship Rules 2003, Rule 4(6)(a)
[188] The Citizenship Rules 2003, Rule 4(6) and Rule 4(7)

106. On 9 November 2009, the Central Government notified the Citizenship (Registration of Citizens and Issue of National Identity Cards) Amendment Rules 2009[189] including Rule 4A to the Citizenship Rules 2003.[190] Rule 4A is a special provision for the preparation of NRC in the State of Assam.[191] By virtue of the provision, the procedure prescribed in Rule 4 does not apply for the preparation of NRC in the State of Assam. Rule 4A(2) provides that the Central Government for the purpose of preparing NRC in Assam must invite **applications** from all residents including information on the citizenship status based on National Register of Citizens 1951 and the electoral rolls up to the midnight of 24 March 1971. The 2009 Amendment Rules included a Schedule to the Citizenship Rules 2003 prescribing the manner of preparation of the NRC in the State of Assam. The Schedule prescribes a different procedure for the preparation of the NRC in the State of Assam. For preparing the NRC for the rest of India under Rule 4, information on the citizenship status must be collected by the Central Government on door-to-

[189] "2009 Amendment Rules"

[190] By G.S.R. 803(E) dated 9 November 2009

[191] "4A. Special provisions as to National Register of Indian Citizens in the State of Assam—
(1) Nothing in rule 4 shall, on and after the commencement of the Citizenship (Registration of Citizenship and Issue of National Identity Cards) Amendment Rules, 2009, apply to the State of Assam.
(2) The Central Government shall, for the purpose, of the National Register of Indian Citizens in the State . of Assam, cause to carry out throughout the State of Assam for preparation of the National Register of Indian Citizens in the State of Assam by inviting applications from all the residents, for collection of specified particulars relating to each family and individual, residing in a local area in the State including the citizenship status based on the National Register of Citizens 1951, and the [electoral rolls up to the midnight of the 24th day of March, 1971.
(3) The Registrar General of Citizens Registration . shall notify the period and duration of the enumeration in the Official Gazette.
(4) The manner of preparation of the National Register of Indian Citizens in the State of Assam shall be such as specified in the Schedule appended to these rules."

door inspection.[192] However, in the case of Assam, an application must be made by the residents of Assam.[193]

107. According to the Schedule to the Citizenship Rules 2003, the procedure for the preparation of NRC in Assam is as follows:

a. The District Magistrate must publish the copies of NRC 1951 and electoral rolls up to the midnight of the 24 March 1971;[194]

b. All residents of Assam must file applications to the Local Registrar of Citizen Registration[195];

c. The Local Registrar of Citizen Registration must scrutinize all the applications and prepare a consolidated list which must contain the names of (i) persons who appear in electoral rolls prior to the year 1971 or NCR 1951, and (ii) their descendants[196]; and

d. The name of a person who has been declared as an illegal migrant or a foreigner must not be included in the consolidated list[197].

108. The NRC consolidates together the names of all citizens in relation to the State of Assam. At the same time, it is a process for the detection of foreigners. The Citizenship Act and the Rules framed thereunder and the Foreigners Act form a scheme on Indian citizenship which must be read as a whole.

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[192] The Citizenship Rules 2003; Rule 4(1)
[193] The Citizenship Rules 2003; Paragraph 2(2) of the Schedule and Rule 4A(2)
[194] The Citizenship Rules 2003; Rule 2(1) of the Schedule
[195] The Citizenship Rules 2003; Rule 2(3) of the Schedule
[196] The Citizenship Rules 2003; Rule 2(3) of the Schedule
[197] The Citizenship Rules 2003; Rule 3(2) of the Schedule

109. The Central Government notified the Citizenship Rules 2009 in exercise of the powers conferred by section 18 of the Citizenship Act 1955. Part IV of the Rules deals with the provisions for the citizenship of persons covered by Assam Accord. Rule 19(1) stipulates that the Central Government may for the purposes of Section 6A(3) appoint an officer not below the rank of Additional District Magistrate as the registering authority. Rule 19(2) states that an application must be made in Form XVIII[198] annexed to the Rules, thirty days from the date of receipt of the order from

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[198] The Citizenship Rules 2009

Sch. 1, Form XVIII

This Form when completed should be forwarded in triplicate to the Chief Secretary to the Government of the State in which the applicant is resident.

Note. – Serial No. in this register should correspond with the number I the registration certificate.

FORM XVIII
[See rule 19(2)]

THE CITIZENSHIP RULES, 2009

(To be filed in quadruplicate)

APPLICATION FOR REGISTRATION UNDER SECTION 6A OF THE CITIZENSHIP ACT, 1955

1. Name in full of applicant
   (Block Capitals, surname first)……...
2. Father's/ Husband's Name……....
3. Date and Place of birth……..…….
4. Sex, Height, Colour of eyes……
5. Whether of Indian origin-If so, how……..
6. Present Nationality……
7. Occupation or profession…….…….
8. Date and place of arrival in Assam from Bangladesh……..……..……..

the Foreigners Tribunal declaring the person as a Foreigner. The period may be extended to sixty days by the registering authority after recording reasons.[199] Rule 19(2A) was included by a notification dated 16 July 2013.[200] Rule 19(2A) provides that a person who has been declared as a foreigner prior to 16 July 2013 and has not registered either because of the non-receipt of the order of the Foreigners Tribunal or the refusal of the registering authority to register such person as a Foreigner due to delay should make an application (in Form XVIII) within thirty days from the receipt of the order or from the date of publication of the notification. Form XVIII which is required to be filed by a person who is eligible to acquire citizenship under Section 6A(3) in terms of Rule 4 requires the submission of details relating to the order declaring such person as a foreigner.[201]

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9. First address in Assam after arrival……..……..

10. Present address in Assam……..

11. Date from which ordinarily resident in Assam……..……..

12. Date and place of detection as a foreigner……...

13. Name and address of the Tribunal declaring him
as a foreigner; case number and date of order……

14. Name of husband/wife and children……

15. Physical identification marks of applicant……..……..

(1)
(2)

16. Signature or thumb impression of applicant…….……...……

TO BE FILLED IN BY THE OFFICER OF THE REGISTERING AUTHORITY

1. Registered at……on……..20…….....

[199] The Citizenship Rules 2009, Proviso to Rule 19(2)
[200] G.S.R 488(E)
[201] "[…]
11. Date from which ordinarily resident in Assam
12. Date and place of detection as a foreigner

110. As explained above, the object of Section 6A is not limited to conferring citizenship but also extends to excluding a class of migrants from securing citizenship. Section 6A is one of the provisions in the larger citizenship project. The legal regimes on detecting foreigners and the citizenship law overlap at more than one point. Section 6A is one pea in the pod of a long-time redressal of issues. The effectiveness (or the impact) of Section 6A must be viewed from this holistic perspective.

b. Section 6A(3) is not unconstitutional on the ground of temporal unreasonableness

111. The opinion of Justice Pardiwala refers to the doctrine of temporal unreasonableness to hold that even if Section 6A(3) was constitutional at the time of its enactment in 1985, it has **acquired** unconstitutionality by the efflux of time because the provision has not been effective enough to redress the problem.

112. One of the settled principles of judicial review is that an enactment which was reasonable and valid at the time of enactment, may become arbitrary over time. In **Motor General Traders** v. **State of Andhra Pradesh**[202], the constitutional validity of Section 32(b) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act 1960 which exempted all buildings built on or after 26 August 1957 from the purview of the Act was challenged. The petitioners challenged the provision on the ground that it had become unreasonable over the course of time. This argument was accepted by a two-Judge Bench of this Court. Justice ES

13. Name and address of the Tribunal declaring him as a foreigner; case number and date of order."

[202] (1984) 1 SCC 222

Venkataramiah (as the learned Chief Justice then was), writing for the Bench observed that a non-discriminatory provision may in the course of time become discriminatory and violative of Article 14.[203] The learned Judge noted that legislation may become arbitrary over the course of time if the classification does not share a nexus with the object anymore:

> "23. […] The long period that has elapsed after the passage of the Act itself serves as a crucial factor in deciding the question whether the impugned law has become discriminatory or not because the ground on which the classification of buildings into two categories is made is not a historical or geographical one but is an economic one. Exemption was granted by way of an incentive to encourage building activity and in the circumstances such exemption cannot be allowed to last for ever.
>
> 30. After giving our anxious consideration to the learned arguments addressed before us, we are of the view that clause (b) of Section 32 of the Act should be declared as violative of Article 14 of the Constitution because the **continuance of that provision on the statute book will imply the creation of a privileged class of landlords without any rational basis as the incentive to build which provided a nexus for a reasonable classification of such class of landlords no longer exists by lapse of time in the case of the majority of such landlords.** There is no reason why after all these years they should not be brought at par with other landlords who are subject to the restrictions imposed by the Act in the matter of eviction of tenants and control of rents.
>
> (emphasis supplied)

113. In **Rattan Arya** v. **State of Tamil Nadu**[204], the issue for the consideration of a three-Judge Bench of this Court was whether Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 is constitutionally valid. Section 30(ii)

[203] (1984) 1 SCC 222 [22]
[204] (1986) 3 SCC 385

exempted the application of the Act to any residential building occupied by any tenant if the monthly rent was higher than Rupees Four Hundred. Relying on **Motor General Traders** (supra), this Court held that the provision was unconstitutional because the justification for imposing a ceiling of Rupees Four Hundred in 1973 had become unreal upon the passage of time because of the multi-fold increase in residential rents.[205] The premise of the principle of temporal unreasonableness is that a classification which was reasonable when the law was enacted could become unreasonable over the course of time. Due to the change in circumstances with time, the classification may no longer have a reasonable nexus with the object sought to be achieved. In such a situation, the law attracts unconstitutionality.

114. As identified above, the purpose of Section 6A was to deal with the influx of undocumented immigrants from East Pakistan to Assam. Section 6A provides that only undocumented immigrants who entered Assam before the cut-off date of 25 March 1971 shall be given citizenship. The beneficiary class of migrants is further divided into two sections: those who entered before 1 January 1966 and those who entered after 1 January 1966 but before 25 March 1971. The difference between Section 6A(2) and Section 6A(3) is that in the case of the former, the migrants are deemed to be citizens while in the case of the latter, they acquire citizenship after ten years from the date of detection. In the interim period (ten years since the detection), they lose their electoral rights. The consequence of being detected to be a foreigner who entered between 1966 to 1971 is that they lose their right to political franchise for ten years. Upon their detection, they will have the same rights

[205] Also see Malpe Vishwanath Acharya v. State of Maharashtra**,** (1998) 2 SCC 1

and obligations as a citizen of India including the right to obtain a passport under the Passports Act 1967. Thus, undocumented migrants who fall in this category will be citizens of India upon detection for all purposes except the exercise of electoral franchise. The legislature in its good wisdom has proceeded on the basis that a consequence of such a great magnitude must only ensue upon detection as a foreigner through a quasi-judicial proceeding.

115. In exercise of the powers conferred by Section 3 of the Foreigners Act, the Central Government notified the Foreigners Tribunals Order. Once the question of whether a person is a foreigner is referred to the Foreigners Tribunal[206], the reference is decided based on the following procedure:

a. Upon receiving the reference from the Central Government or any competent authority, the Tribunal must serve a show-cause notice on the person to whom the question relates[207] within ten days from the receipt of the reference[208];

b. The notice must be served in English and the official language of the State. The notice must indicate that the burden is on the person proceeded against to prove that they are not foreigners[209];

c. The individual is given ten days to reply to the show-cause notice and an additional ten days to produce evidence to support their case;[210]

[206] The Foreigners (Tribunals) Order 1964; Paragraph 2
[207] The Foreigners (Tribunals) Order 1964, Paragraph 3(2)
[208] The Foreigners (Tribunals) Order 1964, Paragraph 3(3)
[209] The Foreigners (Tribunals) Order 1964, Paragraph 3(4)
[210] The Foreigners (Tribunals) Order 1964; Paragraph 3(8)

d. The individual must be given a reasonable opportunity to make a representation and produce evidence to support their case[211]; and

e. The Tribunal must submit its opinion after hearing such persons who desire to be heard and after considering the evidence produced[212]. The case must be disposed of within a period of sixty days from the date of receipt of the reference[213].

116. In addition to the above, the Tribunals Order also prescribes detailed provisions regarding the service of notice indicating that the core tenets of natural justice must be provided to the person suspected to be a foreigner.[214] The Tribunals have the powers of a civil court while trying a suit under the Code of Civil Procedure 1908 and the powers of a Judicial Magistrate First Class under the Code of Criminal Procedure 1973[215]. The order of the Foreigners Tribunal, being an order of a quasi-judicial body is subject to judicial review before the High Court and then this Court.

117. Clause 5.4 of the Assam Accord states that the foreigners who were detected to have entered between 1966 to 1971 were required to register before the Registration Officers in accordance with the provisions of the Registration of Foreigners Act 1939 and the Registration of Foreigners Rules 1939. The Assam Accord devised a model in which upon detection as a foreigner, they would have to register in the existing mechanism.

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[211] The Foreigners (Tribunals) Order 1964; Paragraph 3(1)
[212] ibid
[213] The Foreigners (Tribunals) Order 1964; Paragraph 3(14)
[214] The Foreigners (Tribunals) Order 1964; Paragraph 3(5) (a) to (j)
[215] The Foreigners (Tribunals) Order 1964; Paragraph 4

118. However, Section 6A deviated from the Assam Accord in this regard. Section 6A(3) stipulates that upon detection, the person must register themselves in accordance with the rules "made by the Central Government in this behalf under Section 18". The Citizenship Rules were amended by a notification dated 15 January 1987[216] including Rules 16D, 16E and 16F. These Rules implement the substantive provisions of Section 6A(3). Rule 16D provides that a fresh reference must be made to the Foreigners Tribunal if the question of whether a person satisfies the condition under Section 6A arises. Rule 16E deals with the jurisdiction of Tribunals constituted under the Foreigners (Tribunals) Order 1964 to deal with references under Section 6A(3). Rule 16F provides for the registering authority and procedure for registration for the purpose of Section 6A(3).[217]

119. The legislature by adopting Section 6A(3) in the current form required the State to make rules for its implementation. As explained above, the detection as a foreigner is an elaborate process that required the State to build manpower and infrastructure for its implementation. The Legislature conferred the State with the duty to implement the provision after it had built sufficient infrastructure for the

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[216] See Notification No. GSR 25 (E), dt. 15.1.1987

[217] "16F. The registering authority for the purpose of section 6A(3) and form of application foe registration:
(1) The registering authority, for the purpose of sub-section (3) of section 6A of the Act shall be such officer as maybe appointed by each district of Assam by the Central Government.
(2) An application for registration under sub-section (3) of section 6A of the Act shall be filed in Form XXIII by the person with the registering authority for the district in which he is ordinarily resident-
    a. Whithin thirty days from the date ofhis detection as a foreigner, where such detection takes place after the commencement of the Citizenship(Amendment) Rules 1986; or
    b. Within thirty days of the appointment of the registering authority for the district concerned where such detection has taken place before the coomencement of the Citizenship (Amendment) Rules 1986
(3) The registering authority shall, after entering the particulars of the application in a register in Form XXIV, return a copy of the application under his seals to the applicant.
(4) One copy of every application received during a quarter shall be sent by the registering authority to the Central Government and the State Government of Assam along with a quarterly return in Form XXV.
(5) The period referred to in sub-rule (2) may be extended for a period not exceeding sixty days by the registering authority for reasons to be recorded in writing.

same. The purpose of Section 6A(3) was to provide a long term solution to the issue of the large influx of migrants from Bangladesh to Assam. It is true that one of the causes of concern which led to the Assam Students' Movement (and culminated with the Assam Accord) was the dilution of the electoral right of those native to Assam because of the inflow of migrants. However, the purpose of Section 6A(3) cannot be limited to it. The objective behind the enactment of the Citizenship (Amendment) Act 1985 was to deal with the larger problem of whether Bangladesh migrants of Indian Origin could secure citizenship in India. The objective of the provision must be understood in the backdrop of the Indian policy on post-partition migration and the Assam movement. The provision strives to bring about a balance between both the objectives. Having said that, the concerns of the petitioners regarding the burden on the resources of the State and on its demographic identity due the influx of illegal migrants in large numbers is not lost to the Court and is a matter of serious concern. The State must effectively create adequate state capacity to deal with undocumented migrants who migrated after the cut-off date prescribed by Section 6A as well as those who have migrated before the cut-off date but who do not fulfill the conditions for the grant of citizenship under the provision.

120. In view of the above discussion, I am unable, with respect, to agree with the observation of my learned brother, Justice Pardiwala that the purpose of Section 6A(3) is merely the speedy and effective identification of foreigners of the 1966-71 stream. The principle of temporal unreasonableness cannot be applied to a situation where the classification is still relevant to the objective of the provision. The process of detection and conferring citizenship in Assam is a long-drawn out

process spanning many decades. To strike it down due to lapse of time is to ignore the context and object of the provision.

vi. Section 6A(2) cannot be held unconstitutional for not prescribing a procedure for registration

121. The petitioners submitted that Section 6A(2) is unconstitutional because the provision does not prescribe a procedure for conferring citizenship to those who migrated before 1 January 1966, unlike Section 6A(3) which prescribes a procedure for conferring citizenship to those who migrated between 1966-1971.

122. Section 6A is a substantive provision conferring citizenship on persons who migrated from Bangladesh to Assam. The provision provides that persons who migrated from Bangladesh to Assam before 1 January 1966 shall **deemed** to be citizens of India from 1 January 1966. The import of the use of the legal fiction is that the law assumes a fact that does not exist.[218]

123. The provisions of the Citizenship Act do not require every person to register to acquire citizenship. Sections 5 and 6 of the Citizenship Act provide for acquiring citizenship through registration and naturalisation. These two provisions require the applicant to follow a process of application.

124. However, Sections 3 and 4 of the Act do not require registration for acquiring citizenship. Section 3 deals with citizenship by birth. Section 4 deals with Citizenship by descent. The law does not mandate that persons who are covered

[218] See Justice GP Singh, Principles of Statutory Interpretation (15th edition, Lexis Nexis), 294; JK Cotton Spinning & Weaving Mills Ltd. V. Union of India, AIR 1988 SC 191

in the categories prescribed by Sections 3 and 4 must register to acquire citizenship. Thus, registration is not the de-facto model of securing citizenship in India. The use of the deeming fiction obviates the need for registration. Any person : (a) of Indian origin who migrated from Bangladesh to Assam before 1 January 1966; and (b) who has ordinarily been a resident in Assam since their date of entry is **deemed** to be a citizen of India. The provision does not contemplate a registration regime for persons who fall under this category, similar to Sections 3 and 4 of the Citizenship Act. Section 6A(2) cannot be held unconstitutional for the only reason that it does not prescribe a process of registration.

D. Conclusion

125. In view of the discussion above, the following are the conclusions:

a. Articles 6 and 7 of the Constitution prescribe a cut-off date for conferring citizenship for migrants from East and West Pakistan at the "commencement of the Constitution", that is 26 January 1950. Section 6A of the Citizenship Act confers citizenship from 1 January 1966 for those who migrated before that date. Those who migrated between 1 January 1966 and 24 March 1971, are conferred citizenship upon the completion of ten years from the date of detection as a foreigner. Section 6A confers citizenship from a later date to those who are not covered by Articles 6 and 7 of the Constitution. Thus, Section 6A is not violative of Articles 6 and 7 of the Constitution;

b. Section 6A satisfies the two-pronged reasonable classification test:

   i. The legislative objective of Section 6A was to balance the humanitarian needs of migrants of Indian Origin and the impact of the migration on the economic and cultural needs of Indian States; and

   ii. The two yardsticks employed in Section 6A, that is migration to Assam and the cut-off date of 24 March 1971 are reasonable. Though other states share a longer border with Bangladesh, the impact of migration in Assam in terms of numbers and resources is greater. Thus, the yardstick of migration to Assam is reasonable. The cut-off date of 25 March 1971 is reasonable because the Pakistani Army launched Operation Search light to curb the Bangladeshi nationalist movement in East Pakistan on 26 March 1971. Migrants before the operation were considered migrants of the Indian partition; and

   iii. Both the above yardsticks have a rational nexus with the object of Section 6A.

c. Undocumented migrants could be registered as citizens under Section 5(1)(a) of the Citizenship Act before it was amended by the Citizenship (Amendment) Act 2003 to exclude ‘illegal immigrants’. Thus, the claim of the petitioner that Section 6A is unconstitutional because instead of preventing migration to Assam, it incentivizes

migrants in other states to come to Assam to secure citizenship through Section 6A is erroneous.

d. The constitutional validity of a legislation cannot be tested for violation of Article 355. Article 355 was included in the Constitution as a justification for the exercise of emergency powers by the Union over States;

e. Section 6A does not violate Article 29(1) of the Constitution. Article 29(1) guarantees the right to take steps to protect the culture, language and script of a section of citizens. The petitioners have been unable to prove that the ability of the Assamese people to take steps to protect their culture is violated by the provisions of Section 6A;

f. Section 6A(3) cannot be held unconstitutional on the ground of temporal unreasonableness; and

g. Section 6A(2) cannot be held unconstitutional for not prescribing a procedure for registration.

126. The reference is answered in the above terms.

127. The Registry is directed to obtain administrative instructions from the Chief Justice for placing the matters before an appropriate Bench.

.....CJI
[Dr Dhananjaya Y Chandrachud]

New Delhi;
October 17, 2024

REPORTABLE

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 274 OF 2009

IN RE: SECTION 6A OF THE CITIZENSHIP ACT 1955

WITH

WRIT PETITION (CIVIL) NO. 916 OF 2014

WRIT PETITION (CIVIL) NO. 470 OF 2018

WRIT PETITION (CIVIL) NO. 1047 OF 2018

WRIT PETITION (CIVIL) NO. 68 OF 2016

WRIT PETITION (CIVIL) NO. 876 OF 2014

WRIT PETITION (CIVIL) NO. 449 OF 2015

WRIT PETITION (CIVIL) NO. 450 OF 2015

AND

WRIT PETITION (CIVIL) NO. 562 OF 2012

JUDGEMENT

SURYA KANT, J. (on behalf of himself, M.M. Sundresh J. and Manoj Misra, J.)

Table of Contents

1. The present batch of matters involve the constitutional validity of Section 6A of the Citizenship Act, 1955 (**Section 6A**). This provision was incorporated in 1985 to establish a framework and to delineate criteria for granting Indian citizenship to migrants who entered Assam before 25.03.1971. Briefly put, the provision created categories for the conferment of citizenship to immigrants who entered Assam – *(i)* deemed citizenship to immigrants who entered prior to 01.01.1966; and *(ii)* the process of registration for immigrants who entered between the period of 01.01.1966 and 25.03.1971. However, by omission, no protection was granted to those entering Assam after 25.03.1971, thereby rendering their presence in India illegal and liable for deportation under other existing legislation. Expressing their anxiety over the problems that have been posed by the influx of immigration from Bangladesh into Assam, which the Petitioners contend have been compounded and legitimized by Section 6A, the present action has been brought before this Court.

2. Citizenship and its penumbral dimension are at the core of the present challenge. Thus, before analyzing the challenges regarding the constitutionality and the scheme of citizenship under the Constitution of India and the Citizenship Act, 1955, (Citizenship Act) we shall endeavour to explore the jurisprudential scheme and framework of citizenship globally as well as in India.

A. BACKGROUND

Meaning of citizenship

3. Jurisprudentially, the term 'citizenship' is an abstract concept which has carried various interpretations that have evolved over

time.[1] In ancient Greek society, philosophers like Aristotle distinguished citizens from other members of society – such as residents, children, slaves, and the elderly. According to Aristotle, citizens were individuals who held judicial or legislative authority within a state.[2] Hence, society was divided into citizens and mere subjects, where being a citizen was a matter of privilege. Called the 'republican model', this was also seconded by other philosophers such as Tacitus, Cicero, Machiavelli, Harrington and Rousseau.[3] With the growth of the Roman empire, the notion of 'citizen' was broadened to encompass individuals in conquered territories. This eventually transformed the meaning of citizenship, where instead of granting access to political office, the term 'citizen' meant acquiring legal status of being part of a community and receiving protection under law.

4. Over time, the term citizenship thus moved from the 'republican model' to a 'liberal model', which diluted the status of citizenship from a political privilege to a more egalitarian right based upon the similarity of legal status shared by a common populace.[4]

The meaning of citizenship in India

5. In the domestic context, citizenship was ascertained by a 9-Judge Bench of this Court in ***State Trading Corpn. of India Ltd. v. CTO***,[5] as the 'right to have rights'.[6] It was held that citizenship is

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[1] CITIZENSHIP, Stanford Encyclopedia of Philosophy, https://plato.stanford.edu/entries/citizenship/.
[2] ARISTOTLE, *Politics, Book III,* Benjamin Jowett (trans.), Batoche Books, 1999, 53.
[3] CITIZENSHIP, *supra* note 1; ROUSSEAU, J.J., 1762, *On the Social Contract with Geneva Manuscript and Political Economy*, R. D. Masters (ed.), J. R. Masters (trans.), New York: St. Martin's Press, 1978, Chapter 15.
[4] ULRICH PREUSS, *The Ambiguous Meaning of Citizenship*, University of Chicago Law School (2003).
[5] 1963 SCC OnLine SC 3, para 13.
[6] STEPHANIE DEGOOYER ET AL, *The Right to Have Rights*,Verso Books, 2018, 7; ROMILA THAPAR ET. AL., *On Citizenship*, Aleph Book Company, 2021, 35.

the pre-requisite that leads to gaining legal status and other socio-political rights in a country. However, although there is broad consensus on the fundamental concept of citizenship,[7] the specific rights and privileges associated with citizenship vary from one jurisdiction to another. Additionally, countries differ in the mechanisms and criteria for acquiring citizenship. These variations reflect the unique historical, cultural, and legal contexts of each nation.

6. In India, various rights are exclusively conferred upon citizens. These include the right to vote, the right to move freely, the right to form unions, the right to hold public office, the freedom of speech and expression, equality in public employment, etc. However, there are certain rights that are also made available to non-citizens, including the right to equality before the law, the prohibition of forced labour, etc. Additionally, the category of Overseas Citizen of India (**OCI**) represents a unique position within the spectrum of citizenship and non-citizenship since they have more rights than non-citizens (such as a lifelong visa for visiting India) but have fewer rights in comparison to citizens (such as the absence of the right to vote).

7. The bundle of rights accompanying 'citizenship' differs in other countries. For instance, in the United Kingdom, the British Nationality Act, 1981 creates six different classes of people: British Citizen, British Overseas Territories Citizen, British Overseas Citizen, British Subject, British National (Overseas), and British Protected Person. These classes are based on varying levels of association with the United Kingdom and its overseas territories, former colonies, and protectorates; and they carry different sets of

[7] Perez v. Bromwell, [1958] 356 US 44, 46.

rights. For instance, while British citizenship bestows the right to vote, it is also available to some Commonwealth citizens.[8]

8. Similarly, Mexico establishes two distinct categories of "national" and "citizen".[9] A citizen is defined as a national who is 18 years of age and has an "honest way of life".[10] Once a national becomes a citizen, they get the right to vote, the right to assembly, the right to join the army, etc.[11] Hence, while nationals and citizens can live in Mexico, only citizens get the extra right to vote. The situation is also similar in the United States of America (**USA**). Here, the residents of certain territories like American Samoa are only granted nationality and not citizenship of the USA. Like Mexico, such nationals can reside freely in the USA but cannot vote or hold certain elected offices.[12] Further, while the residents of some other territories, like Puerto Rico, are granted citizenship, they still do not get the right to vote.[13]

9. The trans-national comparison examined above aids us by providing three definite conclusions. *First*, globally, citizenship can be conceptualized as the right to be a member of a society. In that sense, citizenship is essential to one's identity since it determines whether that person would be perceived as an alien or as 'one of us'. This is particularly true given the historical context of the partition and subsequent relations among the nations and people in our subcontinent. In addition to such identification by fellow members of society, citizenship is also a key determinant in

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[8] Representation of the People Act, 1983 (c. 2), Acts of Parliament, 1983 (United Kingdom), Section 4; Immigration Act, Acts of Parliament, 1971 (UK), Section 2.
[9] Constitution of Mexico of 1917, First Title, Chapter II & IV.
[10] *Id*, Article 34.
[11] *Id*, Article 35.
[12] AMERICAN SAMOA, U.S. Department of the Interior, https://www.doi.gov/oia/islands/american-samoa.
[13] Igartua De La Rosa v. United States [2000], 80 F.3d 29, (1st Cir. 2000).

enabling an individual to achieve their aims and objectives; since citizenship grants access to certain exclusive rights in society. Additionally, citizenship provides a sense of belongingness and esteem, apart from furthering the self-actualization needs of individuals. Collectively, citizenship provides an 'identity' to individuals, which has a significant impact on the quality of their lives and their individual psyche.

10. *Second*, beyond the conceptual understanding that citizenship grants an assemblage of certain rights in a community, the rights that may be conferred depend on the municipal policies of that country. While some countries like India reserve the right to vote exclusively for citizens, countries like the United Kingdom also extend it to Commonwealth citizens. Further, countries such as the USA do not bestow the right to vote even to some citizens.

11. *Third*, most nations have multiple classes of citizenship or nationality instead of a rigid dichotomy of citizens and non-citizens. In addition to this division, countries also have categories such as overseas citizens, nationals, subjects, etc. However, while the basket of rights differs *inter-se* such categories, citizenship is generally the highest basket a person can be classified under. Hence, though citizenship is one sub-set among many possible ways of being a member of a polity, it is the most significant one. Nonetheless, reality is often more nuanced, with numerous exceptions, caveats, entrenched inequalities and discriminatory legal regimes.

12. The conditions to acquire citizenship also vary across jurisdictions. Given that the Petitioners are challenging a specific mode of conferment of citizenship, it would be helpful to understand the manner in which citizenship is conferred both across the world and

under our constitutional scheme. This will help us trace whether Section 6A is merely an aberration that does not fit into our domestic conceptualization of conferring citizenship or if it is another piece of a much more complicated puzzle.

Modes of acquiring citizenship

13. Broadly, there are three approaches for granting citizenship: (*i*) *jus soli,* i.e., on the basis of birth within that particular country; (*ii*) *jus sanguinis*, i.e., citizenship by blood/descent; and (*iii*) through special recognition by law, such as citizenship by registration, naturalization, incorporation of a foreign territory, etc. Globally, countries have adopted different models for constructing their citizenship regimes. While most countries in North America follow a *jus soli* regime, a majority of European nations follow a *jus sanguinis* regime. In contrast, Australia and the African nations follow a mixed regime.[14]

14. There are varied academic perspectives deliberating as to the reasons why a country chooses one mode of conferring citizenship over another. As per one perspective, countries that wish to grant citizenship to immigrants who do not have familial links in the country choose the *jus soli* model.[15] However, from another perspective, the choice of mode is often based on the significance of ethnicity for the citizen's identity resulting in adoption of a *jus sanguinis* model. Hence, if a nation emphasizes ethnic continuity through descent and lineage, it tends to choose the *jus sanguinis* model over the *jus soli* model. However, where the cultural identity

[14] KANGNI KPODAR, *Citizenship and Growth*, IMF eLibrary, https://www.elibrary.imf.org/view/journals/022/0056/001/article-A014-en.xml.
[15] *Id.*

is tied to the territory of the nation, the *jus soli* model is preferred.[16] Beyond these considerations, citizenship models can also be justified on the basis of inter-state relations (by which citizenship is granted based on historical links or treaties between nations),[17] or on economic considerations (which are instantiated by countries that allow citizenship by investment).[18]

15. While providing an exhaustive account of all academic perspectives is neither feasible nor necessary for the current discussion, it is evident that various policy reasons inform the selection of one citizenship pattern over another. There is no single policy that universally dictates the framing of citizenship laws; rather, diverse considerations, including historical, cultural, economic, and political factors, influence the formulation of citizenship regimes.[19] Even though a uniform citizenship policy across the world could eliminate statelessness and multiple citizenships, the varying basis of granting citizenship is unavoidable because each country has its own unique policy considerations and political milieu. Since there is no single universally suitable model, no mode of granting citizenship can be called an aberration or an anomaly. Citizenship is purely a creation of law, which, in turn, is an instrument of policy based on different prevailing circumstances of each country. While some nations insist on connections in terms of descent and

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[16] JAMES BROWN SCOTT, *Nationality: Jus Soli or Jus Sanguinis*, American Journal of International Law, 1930, 24(1), 60.

[17] This is particularly demonstrated by European states like the United Kingdom as discussed earlier, which, due to its historical ties extends citizenship to some individuals from Commonwealth countries.

[18] ACQUISITION OF CITIZENSHIP - AĠENZIJA KOMUNITÀ MALTA, https://komunita.gov.mt/en/services/acquisition-of-citizenship/.

[19] DAVID FITZGERALD, *Nationality and Migration in Modern Mexico*, Journal of Ethnic and Migration Studies, 2005, 31(1), 172.

territory, some even grant citizenship for purely economic reasons.[20]

16. Further, since the policy reasons underlying a citizenship regime are bound to remain in flux, constitutions around the globe are wary of setting citizenship norms in stone. For instance, a country's demographic pattern might change, it might want to effect inter-state arrangements, it might be engaged in a war, there could be international treaties granting rights to certain classes of people, etc. Therefore, rather than imposing rigid norms on citizenship, it is desirable for constitutions to grant the government the flexibility to determine laws regarding membership in the country's community. For this, either the constitutions such as the Australian Constitution, remain silent on the conditions of acquiring citizenship, or they prescribe the overarching norms for the time being and give the power to make and change specific conditions to the Parliament.[21]

Citizenship under the Constitution of India

17. In India, the approach of prescribing wide-ranging norms for citizenship was adopted at the commencement of the Constitution. Since the country was required to have norms for determining who could be a member of its community, the Constitution prescribed certain transitional conditions within Part II and made them subject to any laws that Parliament may make later.[22] Prescribing such norms in the Constitution was all the more critical because the country had undergone two significant changes: *first*, there had

[20] CITIZENSHIP BY INVESTMENT COUNTRIES & PROGRAMS LIST IN 2024, Global Residence Index, https://globalresidenceindex.com/citizenship-by-investment/.
[21] Constituição da República Federativa do Brasil, Article 22; Grundgesetz für die Bundesrepublik, Article 18; Constitution of Kenya, Article 18.
[22] Constitution of India, Article 11.

been a complete metamorphosis from a ruled territory to an independent nation; and *second*, there was the partition of the country, and some of its territories that were hitherto a part of it were declared a separate nation. After the creation of an independent India and the demarcation of its territory being complete, the next logical question of who an Indian was, emerged. Since the Parliament itself was nascent, the Constituent Assembly chose to incorporate transitionary norms of citizenship in the Constitution itself, instead of keeping the question of who an Indian was unsettled till later.

18. In this context, the Constitution came to incorporate the provisions now enshrined in Part II of the Constitution. Articles 5 to 10 prescribed the overarching norms of citizenship at the time of the commencement of the Constitution, while Article 11 granted Parliament the power to make any law regarding citizenship.

19. Hence, the scheme of citizenship provided under the Constitution comprises broadly of the following provisions:

> *"**5. Citizenship at the commencement of the Constitution** —*
> *At the commencement of this Constitution, every person who has his domicile in the territory of India and—*
> *(a) who was born in the territory of India; or*
> *(b) either of whose parents was born in the territory of India; or*
> *(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India."*
>
> *"**6. Rights of citizenship of certain persons who have migrated to India from Pakistan** —*
> *Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now*

included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—
(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
(b)(i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application."

*"**7. Rights of citizenship of certain migrants to Pakistan** —*

Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:
Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948."

*"**8. Rights of citizenship of certain persons of Indian origin residing outside India** —*
Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or

consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India."

"9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens *—*
No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State."

"10. Continuance of the rights of citizenship *—*
Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen."

"11. Parliament to regulate the right of citizenship by law *—*
Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

Legislative scheme on citizenship

20. Exercising the power granted by Article 11 of the Constitution, the Parliament enacted the Citizenship Act, which expanded on the conditions prescribed by the aforementioned provisions of the Constitution. The key provisions that provided the conditions for citizenship under the Act are set out below:

"***3. Citizenship by birth*** *—*
(1) Except as provided in sub-section (2), every person born in India—
(a) on or after the 26th day of January, 1950, but before the 1st day of July, 1987;
(b) on or after the 1st day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 (6 of

2004) and either of whose parents is a citizen of India at the time of his birth;
(c) on or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), where—
(i) both of his parents are citizens of India; or
(ii) one of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, shall be a citizen of India by birth.
(2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—
(a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or
(b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy."

*"**4. Citizenship by descent** —*
(1) A person born outside India shall be a citizen of India by descent, —
(a) on or after the 26th day of January, 1950, but before the 10th day of December, 1992, if his father is a citizen of India at the time of his birth; or
(b) on or after the 10th day of December, 1992, if either of his parents is a citizen of India at the time of his birth:
Provided that if the father of a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless—
(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or
(b) his father is, at the time of his birth, in service under a Government in India:
Provided further that if either of the parents of a person referred to in clause (b) was a citizen of India
by descent only, that person shall not be a citizen of India by virtue of this section, unless—
(a) his birth is registered at an Indian consulate within one year of its occurrence or on or after the 10th day of December, 1992, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth, in service under a Government in India:
Provided also that on or after the commencement of the Citizenship (Amendment) Act, 2003 (6 of 2004), a person shall not be a citizen of India by virtue of this section, unless his birth is registered at an Indian consulate in such form and in such manner, as may be prescribed, —
(i) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003(6 of 2004), whichever is later; or
(ii) with the permission of the Central Government, after the expiry of the said period:
Provided also that no such birth shall be registered unless the parents of such person declare, in such form and in such manner as may be prescribed, that the minor does not hold the passport of another country.
(1A) A minor who is a citizen of India by virtue of this section and is also a citizen of any other country shall cease to be a citizen of India if he does not renounce the citizenship or nationality of another country within six months of attaining full age.
(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.
(3) For the purposes of the proviso to sub-section (1), any person born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only."

*"**5. Citizenship by registration** —*
(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or of any other provision of this Act if he belongs to any of the following categories, namely: —
(a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;
(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and is ordinarily resident in India for twelve months immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an Overseas Citizen of India Cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.

Explanation 1.—For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if—

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or in such other territory which became part of India after the 15th day of August, 1947.

(1A) The Central Government, if it is satisfied that special circumstances exist, may after recording the circumstances in writing, relax the period of twelve months, specified in clauses (f) and (g) and clause (i) of Explanation 1 of sub-section (1), up to a maximum of thirty days which may be in different breaks.

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption."

*"**6. Citizenship by naturalization** —*

(1) Where an application is made in the prescribed manner by any person of full age and capacity 3[not being an illegal migrant] for the grant of a certificate of naturalisation to him, the Central Government may, if satisfied that the applicant is qualified for naturalisation under the provisions of the Third Schedule, grant to him a certificate of naturalisation:

Provided that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the Third Schedule.

(2) The person to whom a certificate of naturalisation is granted under sub-section (1) shall, on taking the oath of allegiance in the form specified in the Second Schedule, be a citizen of India by naturalisation as from the date on which that certificate is granted."

*"**7. Citizenship by incorporation of territory** —If any territory becomes a part of India, the Central Government may, by order notified in the Official Gazette, specify the persons who shall be citizens of India by reason of their connection with that territory; and those persons shall be citizens of India as from the date to be specified in the order."*

21. To understand the interplay of the norms prescribed by Part II of the Constitution and the provisions of the Citizenship Act, a brief overview of the different conditions is set out in the table below:

Condition on birth	Condition on residence	Condition on descent	Condition of registration	Other conditions	Ref.
Citizenship by Birth (*Jus Soli*)					
▪ Born before 26.01.1950. ▪ Born in India.	Had domicile in India at the commencement of the Constitution.	-	-	Is not barred by Article 7.[23]	Article 5(a)
▪ Born on/after 26.01.1950 but before 01.07.1987. ▪ Born in India.	-	Parents must not be covered by Section 3(2).[24]	-	-	Section 3(1)(a)
▪ Born on/after 01.07.1987 but before 03.12.2004.[25] ▪ Born in India.	-	▪ Either parent is a citizen of India at the time of birth. ▪ Parents must not be covered by Section 3(2).	-	-	Section 3(1)(b)
▪ Born on/after 03.12.2004. ▪ Born in India.	-	▪ Both parents are citizens of India,	-	-	Section 3(1)(c)

[23] Article 7 bars citizenship if a person has re-migrated to India from Pakistan without permit for resettlement or permanent return.

[24] Section 3(2) applies if either parent possesses immunity like foreign envoy and is not a citizen of India/Either parent is an enemy alien and person was born at enemy territory.

[25] The condition is before commencement of Citizenship (Amendment) Act, 2003, which came into force on 03.12.2004, https://egazette.gov.in/WriteReadData/2004/E_1031_2011_005.pdf.

		or one parent was a citizen of India, and the other was not an illegal immigrant at the time of birth. ▪ Parents must not be covered by Section 3(2).			
Citizenship by descent (*Jus Sanguinis*)					
▪ Born before 26.01.1950. ▪ Born outside India.	Had domicile in India at the commencement of the Constitution.	Either parent was born in India.	-	Is not barred by Article 7.	Article 5(b)
▪ Born on/after 26.01.1950 but before 10.12.1992. ▪ Born outside India.	-	Father was a citizen of India at the time of birth.	Registration with the Indian consulate is required if the father is a citizen of India by descent only and was not in service of the government of India.	-	Section 4(a)
▪ Born on/after 10.12.1992	-	Either parent was a citizen of India at the	Registration with the Indian consulate is	-	Section 4(b)

but before 03.12.2004. ▪ Born outside India.		time of birth.	required if either parent is a citizen of India by descent only and was not in service of the government of India.		
▪ Born on/after 03.12.2004. ▪ Born outside India.	-	Either parent was a citizen of India at the time of birth.	Compulsory registration is required with the Indian consulate.	The parents shall declare that the minor does not possess a passport of another country.	Section 4(b)
Citizenship by registration					
-	Is ordinarily residing outside India (India as defined in Govt. of India Act, 1935, hereinafter "Undivided India")	Person/Either parent/Any grandparent was born in Undivided India.	Compulsory registration with diplomatic/consular representative of India.	-	Article 8 and Section 5(5)
-	Ordinary resident[26] in India for seven years before making the application for registration.	Person/Either her parent was born in Undivided India or territories that became part of	Must be compulsorily registered.	▪ Person who is not a minor must take the oath of allegiance. ▪ Person must not be an	Section 5(1)(a) and Section 5(2)

[26] Here specifically, ordinary resident means a person who:
(i) has resided in India throughout the period of twelve months immediately before making an application for registration; and
(ii) has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

		India after independence.		illegal immigrant	
-		-	Must be compulsorily registered.	▪ Spouse must be a citizen of India. ▪ Person who is not a minor must take the oath of allegiance. ▪ Person must not be an illegal immigrant	Section 5(1)(c) and Section 5(2)
-	Ordinary residents outside Undivided India or territories that became part of India after independence.	Person/Either parent was born in Undivided India or territories that became part of India after independence.	Must be compulsorily registered.	▪ Person who is not a minor must take the oath of allegiance. ▪ Person must not be an illegal immigrant.	Section 5(1)(b) and Section 5(2)
-	-	Parents are citizens of India.	Must be compulsorily registered.	▪ Person must be a minor child. ▪ Person must not be an illegal immigrant	Section 5(1)(d)
-	-	Parents are registered under S. 5(1)(a) or naturalised under S. 6	Must be compulsorily registered.	▪ Person must be of full age and capacity[27] ▪ Person must take the	Section 5(1)(e) and Section 5(2)

[27] As per Section 2(4): "*a person shall be deemed to be of full age if he is not a minor and of full capacity if he is not of unsound mind.*"

		as citizens of India.		oath of allegiance ▪ Person must not be an illegal immigrant	
-	Ordinary resident in India for 12 months before making an application for registration.	Person/either of the parents was earlier a citizen of independent India.	Must be compulsorily registered.	▪ Person must be of full age and capacity. ▪ Person must take the oath of allegiance. ▪ Person must not be an illegal immigrant	Section 5(1)(f) and Section 5(2)
-		-	Must be compulsorily registered.	▪ Person must be registered as an Overseas Citizen of India Cardholder for five years. ▪ Person must be of full age and capacity ▪ Person must take the oath of allegiance ▪ Person must not be an illegal immigrant	Section 5(1)(g) and Section 5(2)
Citizenship by naturalization					
-	▪ Had domicile in the territory of India at the commenceme	-	-	Is not barred by Article 7.	Article 5(c)

	nt of the Constitution. ▪ Was ordinarily residing in India for at least five years before the commencement of the Constitution.				
-	▪ Was residing in India/was in service of the government of India/both for twelve months before making the application. ▪ During the 14 years preceding the 12 months mentioned above, the person has resided in India/has been in the service of the government for an aggregate of 11 years. ▪ After getting citizenship, intends to reside in India/work with the government of India or an	-	Must apply to the govt. for getting the certificate of naturalisation	▪ Is of full age and capacity ▪ Is not an illegal immigrant ▪ Takes oath of allegiance ▪ Is of a good character and adequately knows languages specified in the Eighth Schedule ▪ Is not a subject/citizen of a country where Indian citizens are barred from becoming subjects/citizens ▪ Person undertakes to renounce previous citizenship if Indian	Section 6(1) and Third Schedule

	international organization of which India is a member or a society/company/body of persons established in India.			citizenship is granted.	
Citizenship by incorporation of territory					
-	-	-	-	▪ The person must be connected to the territory that is incorporated in India and is extended Indian citizenship by the Government of India. ▪ The person must fulfil the conditions prescribed by the governmental order granting citizenship.	Section 7

22. Apart from these general norms, the Constitution also prescribed citizenship norms for immigrants to and from Pakistan. For this, Article 6 provided citizenship to people who migrated from Pakistan if: (*i*) such person/either of their parents/ grand-parents were born in undivided India; (*ii*) if such person was an ordinary resident since

the date of their migration; and (*iii*) such person was registered as a citizen of India if such migration was after 19.07.1948. As a corollary, Article 7 prohibited citizenship to people who migrated from India to Pakistan after 01.03.1947 and then sought citizenship after re-migrating to India, unless they came back under a permit for resettlement or permanent return. Similar to these provisions is Section 6A, which provides a framework addressing the conferment of citizenship to migrants entering the State of Assam based on their date of entry.[28]

23. Section 6A, which is presently under challenge, was inserted into the Citizenship Act, *via* Act 65 of 1985 and came into force with effect from 07.12.1985. This provision created special conditions for the citizenship of migrants who entered into Assam in accordance with certain cut-off dates. As per the provision, *first*, those who entered Assam from Bangladesh prior to 01.01.1966 were deemed to be Indian citizens, and *second*, those who entered into Assam between the period of 01.01.1966 and 25.03.1971 were conferred citizenship based on the fulfilment of specific procedures and conditions. Those who entered Assam after 25.03.1971 have been denied citizenship by implication.

24. To analyze this provision comprehensively, it is imperative to go through Section 6A and the language it employs. Section 6A, as it was added in 1985 to the Citizenship Act reads as follows:

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[28] We are also apprised of the fact that Parliament has promulgated the Citizenship (Amendment) Act, 2019, and more recently on 11.03.2024 the Government of India has notified the Citizenship (Amendment) Rules, 2024. However, we are not dealing with these provisions given that neither of the parties relied upon these provisions over the course of the proceedings before us. Additionally, some of these provisions had not yet been notified as of the date of reserving these judgments. In any case, these provisions are not germane to the controversy at hand, and a challenge to these amendments is already sub-judice before another bench of this Court.

*"**6A. Special provisions as to citizenship of persons covered by the Assam Accord** –*

(1) For the purposes of this section
(a) "Assam" means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985;
(b) "detected to be a foreigner" means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunals) Order, 1964 by a Tribunal constituted under the said Order;
(c) "specified territory" means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985;
(d) a person shall be deemed to be Indian origin, if he, or either of his parents or any of his grandparents was born in undivided India;
(e) a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the lst day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who—

(a) came to Assam on or after the lst day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and
(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and
(c) has been detected to be a foreigner;
shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such

authority (hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.

Explanation — In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this sub-section and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall, —

(i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;

(ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order hang jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.

(4) A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 and the obligations connected therewith), but shall not entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.

(5) A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

(6) Without prejudice to the provisions of section 8—

(a) if any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, a declaration that he does not wish to be a citizen of India, such person shall not be

deemed to have become a citizen of India under that sub-section;

(b) if any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, or from the date on which he has been detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).

Explanation. — Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force to act on his behalf.

(7) Nothing in sub-sections (2) to (6) shall apply in relation to any person—

(a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985, is a citizen of India;

(b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, under the Foreigners Act, 1946.

(8) Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force."

25. A preliminary perusal of this provision and its associated rules contained in the Citizenship Rules, 2009, indicate various timelines and effects, resulting in the conferment of differing degrees of rights and obligations to immigrants entering into the State of Assam. These aspects are delineated below in a tabular format for greater ease of understanding. This tabular presentation aims to provide a structured overview of the different elements pertaining to immigrant entry into Assam, thereby aiding comprehension of the nuances involved.

Right granted	Conditions	Procedure established
Immigrants before 01.01.1966		
Sub-section (2) grants deemed citizenship. Such immigrants are considered citizens from 01.01.1966	**Condition of birth or descent** ▪ As per sub-section (2), the deemed citizens are those persons who came to Assam before 01.01.1966, along with those who were included in the electoral rolls in 1967 and had to have been persons of 'Indian origin.' ▪ The term 'persons of Indian origin' has been defined under sub-section (1) (d) to mean that *(i)* the individual himself; or *(ii)* either of his parents; or *(iii)* any of his grandparents were born in undivided India. **Condition of residence** ▪ Sub-section (2) requires these individuals to have been ordinarily resident in the State of Assam.	Since sub-section (2) grants deemed citizenship, it does not provide for a procedure for registration.
Immigrants between 01.01.1966 to 25.03.1971		
Right granted Sub-section (3) grants citizenship by registration (*the process is summarized in the last column*)	**Condition of birth or descent** ▪ In similar parlance with sub-section (2), persons must be of 'Indian origin'.	**Procedure for citizenship by registration** **STEP 1: DECLARATION AS A FOREIGNER** ▪ The very first step under sub-section (3) is that the individual in question should have

▪ For the first ten years after registration, persons will have the same rights and obligations as citizens of India except for inclusion in any electoral rolls[29] (*This also includes the right to obtain a passport*). ▪ Upon the expiry of these 10 years from the date of detection, these individuals will be deemed to be Indian citizens.	**Condition of residence** ▪ Sub-section (3) also stipulates that the persons who entered into Assam between 01.01.1966 and 25.03.1971 must have been ordinarily resident in Assam. **Condition of detection** ▪ These individuals should be detected as foreigners under sub-section (3). ▪ The term 'detected to be a foreigner' has been defined to be read in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 through a Tribunal constituted under the said Order. **Condition of registration** ▪ After being detected to be a foreigner, such persons should also register themselves (*procedure summarized in the next column*)	been detected to be a foreigner. ▪ The opinion of a Tribunal constituted under the Foreigners (Tribunals) Order, 1964, would be sufficient proof to establish detection as a foreigner. **STEP 2: REGISTRATION** ▪ Thereafter, persons can register themselves through Form XVIII in Schedule I to the Citizenship Rules, 2009, with the registering authority of the concerned district within 30 days from the date of detection or 30 days from the appointment of such registering authority. ▪ The registering authority may also, for reasons recorded in writing, extend the period of 30 days up to 60 days.[30] ▪ Additionally, a person who has been declared as a foreigner by the Foreigners Tribunal prior to 16.07.2013 and who has not yet registered due to non-receipt of the order of the Foreigners Tribunal or on account of refusal by the registering authority may within

[29] Citizenship Act, 1955, Section 6A(4).
[30] Rule 19, Citizenship Rules, 2009.

		thirty days from the date of receipt of such order or, from the date of publication of the notification dated 16.07.2013, make an application for registration *vide* Form XVIII to the registering authority of the concerned district.[31]
Immigrants on or after 25.03.1971		
Section 6A does not prescribe the start date for the conferment of citizenship to these individuals beyond the date of 25.03.1971.	Section 6A does not prescribe any conditions in this regard. By implication, the provision declares the entry of an immigrant after 25.03.1971 as illegal.	Concomitantly, Section 6A does not prescribe any procedure as it intends to deny citizenship to those immigrants who entered after 25.03.1971.

(i) Sub-section (6) allows immigrants to opt-out of being conferred Indian citizenship. Under sub-section (6)(a), deemed citizens are granted the option of declaring that they do not wish to be a citizen of India. If they choose to declare so, they will thereafter not be deemed to be Indian citizens under sub-section (6)(a). Further, under sub-section 6(b), individuals detected as foreigners can choose not to register themselves in accordance with the procedure laid down in sub-section (3). Consequently, these individuals will not be conferred citizenship. The persons who choose to renunciate their citizenship under sub-section (6) must declare the same *vide* Form XXI to the concerned District Magistrate of the area where such a person is ordinarily resident.[32] This Form XXI is provided in Schedule I of the Citizenship Rules, 2009.

[31] Rule 2A, Citizenship (Amendment) Rules, 2013.
[32] Rule 22, Citizenship Rules, 2009.

(ii) Sub-section (7) provides that Section 6A would not apply to persons who were Indian citizens prior to the commencement of the Citizenship (Amendment) Act, 1985 or, on the contrary, to persons who were expelled from India prior to the commencement of the Citizenship (Amendment) Act, 1985 under the Foreigners Act, 1946.

(iii) Lastly, sub-section (8) is the non-obstante clause in this provision, which states that this section would have effect irrespective of anything contained in any other law for the time being in force.

27. Having understood the interplay between the modes of citizenship, as conferred by the Indian Constitution, the Citizenship Act and the provision of Section 6A itself, we will now examine the genesis of this controversy, the contentions put forth by the parties and the key issues that demand scrutiny.

B. TERMS OF REFERENCE

28. The first writ petition before this court in the present matter was filed in 2009 by Assam Public Works, an NGO, seeking the deletion of illegal migrants from electoral rolls in Assam and the updation of the National Register of Citizens (**NRC**), 1951. Thereafter, in 2012, the Assam Sanmilita Mahasangha and other organisations challenged the constitutionality of Section 6A on the grounds that it was discriminatory, arbitrary, and illegal. Following this, a 2-judge bench of this court started monitoring the NRC updation process. This Court, *vide* judgement dated 17.12.2014 in ***Assam Sanmilita Mahasangha v. Union of India***,[33] framed 13 questions regarding the constitutionality of Section 6A as arising from the

[33] Assam Sanmilita Mahasangha v. Union of India, (2015) 3 SCC 1, para 33.

abovementioned writ petitions and referred them for adjudication by a Constitution Bench. For reference, the questions as they were framed are put forth hereinbelow:

"i. Whether Articles 10 and 11 of the Constitution of India permit the enactment of Section 6A of the Citizenship Act in as much as Section 6A, in prescribing a cut-off date different from the cut-off date prescribed in Article 6, can do so without a "variation" of Article 6 itself; regard, in particular, being had to the phraseology of Article 4 (2) read with Article 368 (1)?

ii. Whether Section 6A violates Articles 325 and 326 of the Constitution of India in that it has diluted the political rights of the citizens of the State of Assam;

iii. What is the scope of the fundamental right contained in Article 29(1)? Is the fundamental right absolute in its terms? In particular, what is the meaning of the expression "culture" and the expression "conserve"? Whether Section 6A violates Article 29(1)?

iv. Whether Section 6A violates Article 355? What is the true interpretation of Article 355 of the Constitution? Would an influx of illegal migrants into a State of India constitute "external aggression" and/or "internal disturbance"? Does the expression "State" occurring in this Article refer only to a territorial region or does it also include the people living in the State, which would include their culture and identity?

v. Whether Section 6A violates Article 14 in that, it singles out Assam from other border States (which comprise a distinct class) and discriminates against it. Also, whether there is no rational basis for having a separate cut-off date for regularizing illegal migrants who enter Assam as opposed to the rest of the country; and

vi. Whether Section 6A violates Article 21 in that the lives and personal liberty of the citizens of Assam have been affected adversely by the massive influx of illegal migrants from Bangladesh.

vii. Whether delay is a factor that can be taken into account in moulding relief under a petition filed under Article 32 of the Constitution?

viii. Whether, after a large number of migrants from East Pakistan have enjoyed rights as Citizens of India for over

40 years, any relief can be given in the petitions filed in the present cases?

ix. *Whether Section 6A violates the basic premise of the Constitution and the Citizenship Act in that it permits Citizens who have allegedly not lost their Citizenship of East Pakistan to become deemed Citizens of India, thereby conferring dual Citizenship to such persons?*

x. *Whether Section 6A violates the fundamental basis of Section 5 (1) proviso and Section 5 (2) of the Citizenship Act (as it stood in 1985) in that it permits a class of migrants to become deemed Citizens of India without any reciprocity from Bangladesh and without taking the oath of allegiance to the Indian Constitution?*

xi. *Whether the Immigrants (Expulsion from Assam) Act, 1950 being a special enactment qua immigrants into Assam, alone can apply to migrants from East Pakistan/Bangladesh to the exclusion of the general Foreigners Act and the Foreigners (Tribunals) Order, 1964 made thereunder?*

xii. *Whether Section 6A violates the Rule of Law in that it gives way to political expediency and not to Government according to law?*

xiii. *Whether Section 6A violates fundamental rights in that no mechanism is provided to determine which persons are ordinarily resident in Assam since the dates of their entry into Assam, thus granting deemed citizenship to such persons arbitrarily?"*

29. An application was then moved seeking this Court's directions regarding the children who had been excluded from the final NRC list despite their parents having been included. *Vide* order dated 06.01.2020, this Court noted the then Attorney General's assurance that such children would not be separated from their parents and would not be sent to detention centers in Assam.[34] In this context, it is also relevant to note that the final draft of the NRC list was published on 30.07.2018, *whereby* over 40 lakh persons out of 3.29 crore applicants stood excluded. The final NRC list was

[34] Re: Section 6A of the Citizenship Act 1955, W.P (C) No. 274/2009.

published on 13.08.2019, *whereby* over 19 lakh persons out of 3.29 crore applicants stood excluded.

30. This Court, *vide* order dated 10.01.2023, viewed that the one main issue that arises for consideration is - "*Whether Section 6A of the Citizenship Act, 1955 suffers from any constitutional infirmity.*" Subsequently, *vide* order dated 20.09.2023, the present matter was titled **'In Re: Section 6A of the Citizenship Act 1955'.**

31. We now turn to the submissions made by the parties in support of their respective stance on the matter.

C. CONTENTIONS OF THE PARTIES

Petitioners' submissions

32. Mr. Shyam Divan, Mr. Vijay Hansaria and Mr. K.N. Choudhury, Learned Senior Advocates, appeared for the Petitioners. Their contentions are detailed hereinbelow:

i. The Petitioners argued that the operation of Section 6A violates the preambular values enshrined in the Constitution. They urged that the Constitution upholds national fraternity, not global fraternity and that the presence of Bangladeshi immigrants in Assam poses a threat to the unity and integrity of the country.

ii. They contended that Section 6A, which grants citizenship to immigrants, contradicts Articles 6 and 7 of the Constitution, which prescribe a different regime for granting citizenship to people who migrated to Pakistan or who migrated to India from Pakistan. Instead, they argued that the Parliament ought to have passed a constitutional amendment in this regard. The Petitioners also claimed that while Article 11 and Entry 17 of

List I grant the Parliament the authority to alter these constitutional provisions, it does not include the power to override other provisions of Part II.

iii. The Petitioners further contended that Section 6A violates Article 9 of the Constitution and Section 9 of the Citizenship Act, as it allows dual nationality by not requiring immigrants to renounce their previous citizenship.

iv. They contended that Section 6A contradicts Section 5(2) of the Citizenship Act, which mandates every citizen to take the oath of allegiance.

v. The Petitioners argued that Section 6A violates Article 14, treating equals unequally by applying the provision only to Assam without any intelligible differentia. They asserted that this geographical basis lacks justification. The Petitioners further urged that Section 6A goes against the principles of democracy, federalism, and the rule of law, being susceptible to being struck down on grounds of 'manifest arbitrariness.' They also highlighted the lack of rationale in the cut-off dates and the absence of a mechanism to determine 'ordinary residence.'

vi. The Petitioners claimed that Section 6A infringes on Article 21 by impinging upon the rights of the indigenous Assamese community and violating their right to self-governance under Article 1 of the International Covenant on Civil and Political Rights (**ICCPR**). They contended that the inclusion of an unidentified migrant population burdens the country's natural resources, which goes against sustainable development mandated under Article 21.

vii. The Petitioners further urged that the demographic shift due to the influx of migrants from East Pakistan threatens Assamese culture and breaches Article 29(1).

viii. They asserted that Section 6A violates the voting rights of the Assamese people under Article 326 and has led to the marginalisation of their political rights.

ix. The Petitioners contended the violation of Article 355 on the ground that the continued presence of millions of Bangladeshi immigrants has precipitated violent ethnic clashes amounting to 'external aggression' and resulting in 'internal disturbance'. They argued that, consequently, it becomes the duty of the Union to undertake necessary measures to protect the state of Assam.

x. The Petitioners also argued that the Immigrants (Expulsion from Assam) Act, 1950 applies exclusively to the immigrants in Assam.

xi. The Petitioners finally asserted that the writ petitions remain maintainable and should not be dismissed on the basis of delay. They contended that Section 6A can still be invoked and, therefore, constitutes a continuous wrong, providing a fresh cause of action. They argued against the application of the doctrine of laches, emphasizing that substantial questions of law are at the core of this case.

Respondents' submissions

33. Mr. R. Venkataramani, learned Attorney General, Mr. Tushar Mehta, Learned Solicitor General, Mr. Kapil Sibal, Ms. Indira Jaising, Mr. Sanjay Hegde, Ms. Malvika Trivedi, Mr. P.V.

Surendranath Learned Senior Counsel, Mr. Shadan Farasat, Dr. Vivek Sharma, Mr. Mehmood Pracha and Mr. Syed Shahi Rizvi appeared for the Respondents. Their contentions have also been summarized hereinbelow:

i. At the very outset, it is the Respondents' assertion that this Court should refrain from delving any further into the matter on account of the issues raised in the context of foreign policy. They contend that foreign policy is traditionally excluded from the purview of judicial review.

ii. The Respondents countered the Petitioners' claims, emphasizing that Section 6A, introduced in 1985, has faced challenge after a considerable delay of 27 years, invoking the doctrine of laches to argue against the removal of rights established during this period. They further urged that even if the damage may be construed to be continuing, it does not give a fresh cause of action to file the petition after an inordinate delay.

iii. Regarding the term fraternity, the Respondents argued that it encompasses equal regard among individuals, preventing societal division into distinct groups. The Respondents further asserted that Section 6A reinforces the idea of fraternity, in the absence of which society would be broken into a division between 'others' and 'us'.

iv. Addressing concerns about Articles 6 and 7, the Respondents argued that the cut-off dates align with the permit system and are not violative of the Constitution. They asserted that Article 11, in conjunction with Entry 17 of List I of the Seventh Schedule, grants Parliament the power to legislate on

citizenship, superseding other provisions in Part II of the Constitution.

v. The Respondents contended that Section 5(2)'s provision for the oath of allegiance is immaterial to Section 6A and is inconsequential.

vi. Article 14, according to the Respondents, can only be invoked by those seeking benefits for similarly situated individuals, which the Petitioners do not claim. The Respondents argued that a statute cannot be struck down as violative of Article 14 merely because it does not include all relevant classes, as the Parliament can decide the degrees of harm it wants to legislate. They further asserted that there is an underlying rationale for the cut-off dates and that the objective behind Section 6A and the Assam Accord reflects the constitutional tradition of accommodating differences through asymmetric federal arrangements.

vii. The Respondents maintained that Article 21 protects the Assamese community and the rights of foreigners affected by Section 6A. They argued that the provision is not violative of Article 21 as it is a lawfully established procedure.

viii. Dismissing claims of cultural change, the Respondents argued that demographic shifts attributed to Section 6A are unrelated, emphasizing Article 29(1)'s endeavour to promote multiculturalism rather than cultural exclusivity. They also strived to underscore that accepting the Petitioner's arguments would lead to cultural exclusivity, which is not constitutionally permissible.

ix. Regarding the right to vote, the Respondents countered the Petitioners, stating that Section 6A confers citizenship upon the immigrants. Therefore, citizenship rights, including voting, would naturally flow.

x. They further distinguished the decision of ***Sarbananda Sonowal v. Union of India***,[35] asserting that its ratio was based on classification under Article 14, and not Article 355. They contended that fulfilling the duty under Article 355 justified enacting Section 6A to address 'internal disturbance'.

xi. The Respondents lastly argued for harmonizing domestic law with international norms, asserting that the prohibition of statelessness is a recognized international norm and rendering Section 6A unconstitutional would risk statelessness for the immigrants, justifying the provision's validity.

D. ISSUES

34. Although the reference to this Court is simple, being one of the factors in determining the constitutional validity of Section 6A of the Citizenship Act, this issue can be broken down into several constituent questions for this Court's determination.

I. Prefatory issues

a. Does the power of judicial review extend to analysing the constitutionality of Section 6A?
b. Whether the present petitions are barred by delay and laches?

[35] Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665.

II. Challenges regarding constitutionality

c. Does Section 6A offend preambular values like fraternity?

d. Is Section 6A *ultra vires* Part II of the Constitution?

e. Does Section 6A create an unreasonable classification which violates Article 14?

f. Does Section 6A suffer from manifest arbitrariness?

g. Does Section 6A violate the rights provided to 'indigenous' communities under Article 29?

h. Is Section 6A *ultra vires* Article 21 of the Constitution?

i. Does Section 6A violate the political rights of Indian citizens in Assam under Article 326?

j. Does the operation of Section 6A cause 'external aggression' and 'internal disturbance', culminating in the invocation of Article 355?

k. Does the Citizenship Act conflict with provisions of the Immigrants (Expulsion from Assam Act), 1950? If so, how can the two legislations be harmoniously interpreted?

l. Does Section 6A violate international laws?

E. ANALYSIS

35. Before examining the contentions of the parties on the merits of the core issue challenging the constitutional validity of Section 6A, it is incumbent first to address the prefatory issues arising from the Respondents' contentions on the maintainability of the present petition.

PREFATORY CHALLENGES

i. Judicial review

36. At the very outset, the Respondents asserted that this Court should refrain from delving further into the matter, as the petition raises issues hovering around foreign policy, a domain traditionally excluded from the purview of substantive judicial review. Consequently, they argued that the Petitioners are barred from challenging Section 6A.

37. The Petitioners, on the other hand, contended that Section 6A merely being a provision of the statute, it does not fall beyond the purview of judicial review. It is, thus, important for us to discuss and demarcate the principles and scope of judicial review in the instant case.

(a) Concept of judicial review

38. The principle of judicial review finds its roots in common law. It can effectively be traced back to Chief Justice Coke's ruling in ***Thomas Bonham v. College of Physicians***,[36] wherein it was asserted that common law had the authority to oversee Acts of Parliament and empowered the courts to invalidate an enactment conflicting with common right and reason. This principle entails subjecting all laws to scrutiny against a higher law, typically embodied in a constitution.

39. This principle originated in the Supreme Court of the United States during the landmark case of ***Marbury v. Madison.***[37] In that decision, the Court asserted its authority by deeming the concerned

[36] Thomas Bonham v. College of Physicians [1610], 8 Co. Rep. 107 77 Eng. Rep. 638.
[37] Marbury v. Madison [1803], 5 U.S. 137 (1803).

legislation unconstitutional, thereby constraining the powers of Congress. The Court therein held that:

> *"Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a* ***law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.****"*
>
> [Emphasis supplied]

40. The essence of our constitutional system is rooted in the concepts of constitutionalism and judicial review, which comprise three essential elements: *first*, the presence of a written Constitution establishing and constraining government organs; *second,* the Constitution serving as a superior law or standard by which the conduct of all organs is assessed; and *third,* the provision for sanctions to prevent, restrain, and if necessary, annul any violation of superior law. The third element, which seeks to safeguard superior law, is through judicial review. Despite the expansive powers granted to legislatures, they operate within the confines set by the Constitution. In a democratic nation governed by a written constitution, supremacy and sovereignty reside in the Constitution. However, the duty of protecting the rights given under the Constitution falls to courts through judicial review, making them, in the process, the ultimate arbiter of constitutional interpretation.[38]

41. Constitutional courts, equipped with the powers of judicial review, function as custodians of justice, ensuring effective safeguard of citizens' rights. Embedded in Article 13 of our Constitution, judicial review is recognized as a basic feature of our constitutional

[38] State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501.

framework.[39] It gives the Court the authority to scrutinize any violation of constitutional mandates by state organs. As articulated by Lord Steyn, the justification for judicial review arises from a combination of principles, such as the separation of powers, the rule of law, and the principle of constitutionality.[40]

42. The power of judicial review does not undermine the doctrine of separation of powers. Instead, it fosters it by ensuring a system of checks and balances to prevent constitutional transgression by any organ of the state. Separation of powers should be seen as a connection or link, rather than as a limitation or impediment; allowing the Court to ensure that the constitutional order prevails.[41]

43. In the present case, the Respondents urged that the matter entails policy considerations, and hence, the Court should not step into it.

44. It is pertinent to iterate the language under Article 13(2) of the Constitution, which states that:

> *"(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void." The word "law" in Article 13 includes within its ambit, "any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law".*

45. Upon a perusal of the above, it becomes clear that though the term 'policy' is not expressly mentioned in Article 13, it becomes

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[39] L. Chandra Kumar v. Union of India, (1997) 3 SCC 261: 1997 SCC (L&S) 577.
[40] STEYN, *The Constitutionalisation of Public Law,* 1999, 4, 6, 13-14.
[41] A. W. BRADLEY & K. D. EWING, *Constitutional and Administrative Law*, Pearson Longman, 2007; H. BARNETT, *Constitution and Administrative Law*, Cavendish, 2006; LAURENCE H. TRIBE, *American Constitutional Law*, Foundation Press, 2000.

justiciable if it takes the shape of a law.[42] In the event such a law is deemed void due to a violation of any fundamental rights outlined in Part III of the Constitution, it cannot be protected merely for being legislative policy. This view has been elucidated in ***A.L. Kalra v. Project & Equipment Corporation***,[43] wherein objections were raised on the grounds that the Court could not review the statute, as it entailed policy considerations. However, this Court, having taken these contentions into consideration, held that a legislative policy taking the concrete shape of a statute could be tested on the anvil of violation of fundamental rights.

46. It is, therefore, abundantly clear that courts possess the authority to scrutinize whether legislative or executive actions contravene the Constitution, and the designation of a decision as a policy choice does not serve as a fetter to the exercise of this judicial power. This aligns with the principle of separation of powers, which bestows upon the judiciary the authority to serve as a guardian against the actions of the legislature and executive, intervening to safeguard the interests of citizens when necessary.

(b) Limits to judicial review

47. However, concurrently, it is imperative to acknowledge and respect the domain of the legislature and executive within the framework of the separation of powers. While the courts are entrusted with the authority to maintain checks and balances on the other branches concerning the constitution and other legal provisions, they are not empowered to supplant the legislature by delving into additional facets of policy decisions and governing citizens in its stead. This

[42] Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788.
[43] A. L. Kalra v. Project and Equipment Corporation, (1984) 3 SCC 316.

sentiment resonated in ***Hindi Hitrakshak Samiti v. Union of India,*** wherein it was held that:

> *"8. It is well settled that judicial review, in order to enforce a fundamental right, is permissible of administrative, legislative and governmental action or non-action, and that the rights of the citizens of this country are to be judged by the judiciary and judicial forums and not by the administrators or executives.* ***But it is equally true that citizens of India are not to be governed by the judges or judiciary. If the governance is illegal or violative of rights and obligations, other questions may arise but whether, as mentioned hereinbefore, it has to be a policy decision by the government or the authority and thereafter enforcement of that policy, the court should not be, and we hope would not be an appropriate forum for decision****."*[44]
>
> [Emphasis supplied]

48. Similar views were echoed in ***Fertilizer Corporation Kamgar Union v. Union of India***,[45] where a 5-judge bench of this Court affirmed that, in accordance with the principle of separation of powers, the authority of the Court is confined to assessing whether legislative or executive actions comply with the law, without delving into judgments on their wisdom. Consequently, while the Court possesses the jurisdiction to interpret the law and scrutinize the legality of policy decisions, it is not empowered to substitute its discretion for that of the legislature or executive, nor to speculate on the appropriateness of such decisions.[46] The courts do not operate as advisors to the executive in matters of policy formulation, a prerogative rightfully within the executive's domain.

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[44] Hindi Hitrakshak Samiti v. Union of India, (1990) 2 SCC 352, para 8.
[45] Fertilizer Corporation Kamgar Union v. Union of India, (1981) 1 SCC 568, para 35.
[46] A. K. Roy v. Union of India, (1982) 1 SCC 271, para 51

49. Similarly, it is imperative to emphasize that courts also lack the authority to intervene in policy matters when based on the premise of policy errors or the availability of ostensibly superior, fairer, or wiser alternatives. The Court cannot do a comparative analysis of policy to determine which would have been better. As summarized by this Court in ***Directorate of Film Festivals v. Gaurav Ashwin Jain***:[47]

> *"16. […] the scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary.* ***Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review****".*
>
> [Emphasis supplied]

50. This is particularly true for complex areas requiring empirical knowledge, data inputs, and technical expertise,[48] such as matters involving economic policy,[49] scientific policy,[50] or international relations.[51] Complex social, economic, or commercial issues require a trial and error approach, the weighing of different competing aspects, and often intricate factual studies.[52] Such matters raise complicated multi-disciplinary questions that do not fall within the

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[47] Directorate of Film Festivals v. Gaurav Ashwin Jain, (2007) 4 SCC 737, para 16.
[48] Union of India v. S. L. Dutta, (1991) 1 SCC 505, para 18.
[49] State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566, para 34.
[50] Jacob Puliyel v. Union of India, 2022 SCC OnLine SC 533, paras 91 and 93.
[51] Gaurav Kumar Bansal v. Union of India, (2015) 2 SCC 130, para 9.
[52] Shri Sitaram Sugar Co. Ltd. v. Union of India, (1990) 3 SCC 223, para 56.

legal domain, are irreducible to one answer, and require adjustment of priorities amongst different stakeholders.[53]

51. Since courts are not equipped to evaluate such factual aspects, they cannot be allowed to formulate policy. In contrast, the legislature has the correct institutional mechanism to deliberate on various considerations, as it facilitates decision-making by democratically elected representatives who possess diverse tools and skill sets to balance social, economic, and political factors.[54] Such policy matters thus ought to be entrusted to the legislature. This principle is succinctly encapsulated by ***Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.***,[55] in which a 5-judge bench of this Court held that:

> *"Scales of justice are just not designed to weigh competing social and economic factors. In such matters legislative wisdom must prevail and judicial review must abstain."*

52. Furthermore, the Courts are not tasked with assessing the efficacy of policies. A policy may successfully achieve the objectives outlined in legislation, or it may possess limitations hindering the full realization of its aims. Regardless, the Court cannot sit in judgment over policy to determine whether revisions may be necessary for its enhancement. This has also been authoritatively elucidated by an 11-judge bench of this Court in the case of ***Rustom Cavasjee Cooper (Banks Nationalisation) v. Union of India***:[56]

> *"63.* ***This Court is not the forum in which these conflicting claims may be debated.*** *[…] The Parliament has under Entry 45, List I the power to legislate in respect of*

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[53] Santosh Singh v. Union of India, (2016) 8 SCC 253, paras 23 and 24.
[54] Ashwani Kumar v. Union of India, (2020) 13 SCC 585, paras 25 and 26.
[55] Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd., (1983) 1 SCC 147, para 20.
[56] Rustom Cavasjee Cooper (Banks Nationalisation) v. Union of India, (1970) 1 SCC 248, para 63.

banking and other commercial activities of the named banks necessarily incidental thereto: it has the power to legislate for acquiring the undertaking of the named banks under Entry 42, List III. ***Whether by the exercise of the power vested in the Reserve Bank under the pre-existing laws, results could be achieved which it is the object of the Act to achieve, is, in our judgment, not relevant in considering whether the Act amounts to abuse of legislative power. This Court has the power to strike down a law on the ground of want of authority, but the Court will not sit in appeal over the policy of the Parliament in enacting a law****. […]"*

[Emphasis supplied]

53. In summary, the judicial review of government policies encapsulates determining whether they infringe upon the fundamental rights of citizens, contravene constitutional provisions, violate statutory regulations, or display manifest arbitrariness, capriciousness, or *mala fides*.[57] The focus of judicial scrutiny is limited to the legality of the policy, excluding any evaluation of its wisdom or soundness. The Court cannot compel the government to formulate a policy, evaluate alternatives or assess the effectiveness of existing policies. This constraint stems from the principle of separation of powers, where the Court lacks the democratic mandate and institutional expertise to delve into such matters. Thus, while the Court can invalidate a policy, it lacks the authority to create one.

54. However, to reiterate, while the Court cannot look into the aforementioned aspects, the Court can check the constitutional validity of a policy, particularly so when it is elevated as an act of the Legislature.

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[57] Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27.

55. The present challenge concerns checking the validity of Section 6A, a statutory provision. We are, therefore, of the firm view that the Respondents' plea regarding foreclosing the Petitioners' challenge at the threshold, on the grounds of judicial review, cannot be accepted.

ii. Delay and maintainability of the writ petitions

56. In addition to the grounds of non-justiciability, the Respondents also protested against the maintainability of the writ petitions on account of inordinate delay and laches. They argued that while the subject provision was introduced in 1985, the writ petitions challenging the same have been filed after a long period of 27 years. Applying the doctrine of laches, the Respondents argued that the writ petitions must be held to be non-maintainable since the rights created during these 27 years cannot now be taken away. In support of their contentions, the Respondents have cited, *inter alia*, a 5-judge bench decision of this Court in ***Tilokchand Motichand v. H. B. Munshi***,[58] and urged that even if it is assumed that Section 6A violates the fundamental rights of the Petitioners, it cannot be declared unconstitutional at this belated juncture.

57. *Per contra*, the Petitioners argued that *inter partes*, the question regarding maintainability has already been decided by this Court in ***Assam Sanmilita Mahasangha v. Union of India (supra)***. Hence, they contended that the writ petitions cannot be considered to have been filed after a delay. Alternatively, they urged that delay, *per se,* would not be fatal to their claim because the doctrine of laches is not applicable when substantial questions of law are

[58] Tilokchand Motichand v. H. B. Munshi, (1969) 1 SCC 110.

involved. In the instant case, since the dispute involves questions like the security of the state, the rights of Assamese people under Article 29, the discrimination against the State of Assam, etc., the petitions should not be barred at the threshold on the grounds of delay.

58. The primary issue to be determined, therefore, is whether the current writ petitions should be dismissed outright due to delay without delving into the merits of the Petitioners' claims.

(a) Limitation period for writs

59. In India, the Limitation Act, 1963 sets out the maximum period within which suits, appeals, and applications must be filed before the court. Cases brought after this prescribed period are typically barred due to delay unless the court decides to condone the delay. However, it is important to note that the Limitation Act, 1963 does not apply to writ proceedings and, therefore, does not specify a particular time limit within which a writ needs to be filed.[59] Similarly, though the Supreme Court Rules, 2013 specify the time limit for certain petitions that the Limitation Act, 1963 does not cover (such as Special Leave Petitions),[60] these Rules too do not specify the limitation period for filing a writ petition under Article 32 of the Constitution.

60. However, while such a period is not prescribed by the Limitation Act, 1963, or the Supreme Court Rules, 2013, a writ petition filed belatedly after a considerable delay is barred by the operation of the doctrine of laches.[61] The said doctrine of laches is a common

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[59] Tilokchand & Motichand v. HB Munshi, (1969) 1 SCC 110, para 9.
[60] Supreme Court Rules, 2013, Order XXI Rule 1.
[61] Aflatoon v. Lt. Governor of Delhi, (1975) 4 SCC 285, para 11; Narayani Debi Khaitan v. State of Bihar, 1964 SCC OnLine SC 1, paras 8 and 13.

law principle disallowing a claim because it has been brought to the court after an unreasonable lapse of time. It is based on the maxim '*vigilantibus non dormientibus jura subveniunt*', which means that the law assists those who are vigilant with their rights and not those that sleep thereupon. Hence, even in the absence of the prescription of a statutory time limit for its filing, a claim that has been filed after a significant delay can be rejected at the threshold by invoking this doctrine.

61. Indeed, the laches principle bears similarities to the Limitation Act, 1963, as both are founded on similar policy considerations. A claim brought after considerable delay may not be entertained because third-party rights may have been established during this time-lapse, and it would be unjust to prejudice innocent parties due to the tardiness of the claimant.[62] Additionally, considering a delayed claim could be unfair to the opposing party, as they may have lost access to crucial evidence needed to defend against the claim. Reopening the case after a significant delay could thus place the opposing party at a disadvantage, potentially resulting in an unjust or inaccurate outcome. Moreover, it is essential to put a time limit on proceedings to provide certainty and prevent confusion from cases being in perpetual flux. It is also important to deny a delayed claim to encourage parties to be more diligent when enforcing their rights.

62. While the doctrine of laches serves similar underlying purposes as the Limitation Act, 1963, it is less rigid in its application. Unlike the aforementioned Act, which prescribes specific time periods for filing claims, there is no fixed timeframe under the doctrine of

[62] Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489, para 35.

laches. Instead, each case is evaluated based on its unique facts and circumstances. In the context of writ petitions, Hidayatullah, C.J., in ***Tilokchand Motichand (supra)***, held that while there is no upper or lower time limit for entertaining writ petitions, the Court shall consider whether the delay was avoidable and whether such delay affects the merits of the case. Similarly, in ***Shri Vallabh Glass Works Ltd. v. Union of India***,[63] it was held that the Court must consider the conduct of the parties, the change in circumstances, and the prejudice that would be caused to the other party or the general public.

63. Hence, it is settled law that the doctrine of laches is not an inviolable legal rule but a rule of practice that must be supplemented with sound exercise of judicial discretion. While Courts must ordinarily apply this doctrine in light of the policy reasons discussed before, the doctrine allows the Court to conduct an individualized analysis of each case and entertain claims in the competing interests of justice, even when the claim may be delayed and third-party rights may have been created.[64]

64. We may, however, hasten to clarify that the doctrine of delay and laches is not to be *ipso facto* excluded where a breach of fundamental rights is alleged. The 5-judge benches of this Court in ***Narayani Debi Khaitan v. State of Bihar***,[65] ***Daryao v. State of U.P.***,[66] and ***Tilokchand Motichand (supra)***, and a 3-judge bench in ***Amrit Lal Berry v. CCE***,[67] have reiterated that even in such like cases the court must see the effect of laches. However, that being said, there may be instances where considerations of justice

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[63] Shri Vallabh Glass Works Ltd. v. Union of India, (1984) 3 SCC 362, para 9.
[64] State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566, para 24.
[65] 1964 SCC OnLine SC 1, para 8.
[66] Daryao v. State of U.P., 1961 SCC OnLine SC 21, para 23.
[67] Amrit Lal Berry v. CCE, (1975) 4 SCC 714, paras 16 and 23.

demand that the court adjudicate on the merits of a case rather than summarily dismissing it based solely on procedural grounds such as delay.[68]

65. One such factual circumstance is when the claim affects the public at large. In ***Kashinath G. Jalmi (Dr) v. The Speaker***,[69] this Court analyzed several precedents (including ***Tilokchand & Motichand (supra)***) and differentiated them by holding that the doctrine of laches cannot be used to expel a claim that is made on behalf of the public. Judicial discretion, while applying this doctrine, must always be governed by the objective of promoting the larger public interest; and if a claim affects the public at large, the Court should go into the merits of the case.[70] Where it is found that denial of consideration on merits is likely to affect society in general and can have a cascading effect on millions of citizens, the Court will carve out an exception and proceed to decide the *lis* on merits.

66. Another vital circumstance where the doctrine of delay and laches would not be applicable strictly is in matters where the *vires* of a statute are challenged *vis-à-vis* the Constitution. This Court has, in the due course of time, accepted the idea of transformative constitutionalism, which conceptualizes the Constitution not as a still document cast in stone at the day of its formation but as a living and dynamic body of law, capable of constant updation and evolution as per changing societal mores. Should this Court deny a constitutional challenge solely based on delay, it would effectively establish an arbitrary cut-off beyond which laws could no longer be re-examined in light of changing circumstances. Such a rigid

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[68] Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353, paras 12 - 15; Vidya Devi v. State of Himachal Pradesh, (2020) 2 SCC 569, para 12.12.
[69] Kashinath G. Jalmi (Dr) v. The Speaker, (1993) 2 SCC 703, paras 28 and 30.
[70] *Id*, paras 34 and 35.

approach cannot be countenanced as changing societal circumstances sometimes necessitate a reconsideration of the *status quo*—even when the challenge is brought after a considerable lapse of time.

67. To instantiate, a Constitution Bench of this Court in ***Navtej Singh Johar v. Union of India***,[71] held Section 377 of the Indian Penal Code, 1860 to be *ultra vires* of the Constitution, regardless of the fact that the provision was a part of the statute for over a century. The Court took note of the norms of contemporary society and declared them to be unconstitutional. If the doctrine of laches were to be applied strictly, time would run in favour of a constitutionally invalid statute, which cannot be allowed in the larger interests of justice and the transformative nature of the Constitution.

(b) Applicability of doctrine of laches to the present case

68. Adverting to the facts of the case, it seems that the two mitigating circumstances mentioned above are directly attracted.

69. *First*, the Petitioners have raised various substantial questions that affect the public at large, including the erosion of the culture of indigenous communities, discrimination against the State of Assam, and the larger perceived threat to the security of the country from immigration. Therefore, instead of being an *in personam* dispute between two individuals, the questions raised by the Petitioners directly or indirectly affect a large citizenry.

70. The question regarding the constitutionality of Section 6A raises significant public policy issues that involve ramifications for the original inhabitants of Assam, the rights of immigrants, and the

[71] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

security of the country. Hence, foreclosing such questions at the threshold on the grounds of technicality of delay would lead to an unjust outcome. Instead, considering it has been a long-standing issue and because any resolution will affect millions of individuals, a compelling policy rationale exists to adjudicate the matter on its merits and settle the issue conclusively.

71. *Second*, since the controversy pertains to the constitutionality of a statutory provision, the doctrine of laches ought not to be applied strictly to bar the claim at the very threshold. As discussed in paragraph 66, such constitutional adjudication cannot be made subject to any straitjacket rule of limitation. Challenges regarding the constitutionality of a statute require the Court to take a liberal approach and permit a certain amount of flexibility. A contrary approach would set a wrong precedent and act as a bar against challenging anachronistic laws that might no longer align with the ideals of constitutionalism. This would constitute an unsound legal principle since oppressive laws should not persist solely because they have been tolerated by society for a certain period.

72. Since the challenge in these cases relates to the constitutional validity of Section 6A, its consideration on merits ought not to be precluded on the grounds of delay. We reiterate that the doctrine of laches cannot be applied strictly. Whatever may be the ultimate view on the claims of the Petitioners, they are able to persuade us to examine the perceived harms, such as cultural erosion, the threat to the state's security, damage to natural resources, etc., which cannot be strictly limited to a particular time-frame and could have occurred even after a lapse of time from the enactment of the impugned provision. In other words, even if Section 6A may not have been constitutionally invalid from the beginning, it might

have incurred such invalidity subsequently. Hence, instead of closing the present challenge at the threshold, we shall proceed to analyse the merits of these claims to find out whether Section 6A has become *ultra vires* the Constitution with the passage of time and due to systematic failure of the legislative vision.

73. The Petitioners, however, may not be correct in contending that the issue of delay between the same parties was previously settled by the reference order dated 17.12.2014.[72] At the outset, we must note that the claim *inter se* the parties must not be construed strictly in constitutional adjudication such as the present one, since much larger questions of public importance are under consideration. Furthermore, it is imperative to note that a reference order does not represent a conclusive decision. Hence, the aforementioned contention of the Petitioners otherwise suffers from a factual error as the reference order cannot be construed as a final expression of views by this Court on any of the issues.

74. That apart, and as has been noted previously, instead of conclusively deciding the question of delay, this Court framed one of the specific questions as to whether delay should be considered for moulding appropriate relief. Thus, while the Court discussed the principle of delay in challenging the *vires* of Section 6A, it left the question open to be dealt with by a larger bench.

75. To conclude, while there has undoubtedly been a considerable delay in filing the instant writ petitions, the doctrine of laches cannot be applied strictly to disbar the claims at the threshold. This is so because the present proceedings raise substantial questions that affect the public at large and the constitutional validity of a

[72] Assam Sanmilita Mahasangha, *supra* note 33.

statutory provision. If we were to decide otherwise, we would be, in essence, creating an artificial deadline for important constitutional issues. This would give rise to an unfair principle of law in the realm of constitutional adjudication.

76. We thus conclude that the Petitioners' claim overcomes the preliminary hurdles, and cannot be dismissed at the threshold on the grounds of lack of judicial review or doctrine of laches.

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CHALLENGES REGARDING CONSTITUTIONALITY

77. Prior to examining the contentions articulated by the parties on the constitutionality of the provision and engaging in a discussion on the various legal issues involved, it is imperative to trace the history of this matter and have a holistic understanding of how the provision, Section 6A, came into being. This historical context sheds light on Assam's evolving dynamics and challenges, which were marked by partition decisions and the subsequent establishment of regulatory frameworks governing movement and citizenship.

78. Before we begin our discussion on the political history of Assam, it is crucial to emphasize that this serves as a broad overview based on the material cited by both parties. It is not to be construed as an exercise of determining the factual veracity of competing versions of historical narratives and is not strictly germane to our legal analysis. It merely serves as a contextual background for those who might be unfamiliar with the origins of Section 6A and the present issue.

79. The region, known today as Assam, has historically been inhabited by diverse ethnic and linguistic communities. Throughout the sixteenth and seventeenth centuries, it was predominantly governed by the Ahom political authority, albeit with a brief period of Mughal rule. Subsequently, like numerous other regions across the nation, it came under British colonial administration in 1826.[73]

80. Prior to the beginning of the British colonial era, several parts of Assam fell under the dominion of the Burmese for a brief duration, during which the region underwent significant changes in its political and economic landscape. This period witnessed a substantial exodus of people from the valley, seeking refuge in the bordering towns of Bengal and other adjacent territories.[74] However, there was soon a change of hands in terms of control over these regions after the First Anglo–Burmese War.[75] By the middle of the nineteenth century, most of the Brahmaputra valley of Assam had fallen under British rule, and the East India Company assumed control over Assam. In 1874, a distinct province of Assam, administered by a Chief Commissioner, was established by amalgamating Goalpara, Cachar, Garo, Khasi and Jaintia Hills, and Naga Hills, with its capital at Shillong.[76]

81. Thereafter, in 1905, as part of the British partition of the Bengal Province, Assam became a constituent of the East Bengal region, with Dhaka serving as its capital, which is often regarded as the

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[73] EDWARD GAIT, *A History of Assam*, Thacker, Spink & Company, 1906.
[74] MANOR DIN: ARUPJYOTI SAIKIA ON HOW THE BURMESE INVASION OF ASSAM TRANSPIRED DOWN TO EARTH, https://www.downtoearth.org.in/interviews/governance/manor-din-arupjyoti-saikia-on-how-the-burmese-invasion-of-assam-transpired-93414.
[75] SANGEETA BAROOAH PISHAROTY, *Assam: The Accord, the Discord*, Penguin Random House, 2019, 221.
[76] ARUPJYOTI SAIKIA, *The Quest for Modern Assam*,Penguin Random House, 2023, 25.

inception of friction between the Assamese and Bengali communities.[77]

82. Initially, during the partition deliberations, Assam was intended to be amalgamated with Bengal. However, this proposal encountered significant opposition from political leaders in Assam, who opposed the integration. They perceived the proposed amalgamation as another attempt to subject Assam to Bengali dominance, resulting in their opposition to the British tendency to treat Assam as an extension of Bengal.[78]

83. This period also witnessed first-hand, the blending of communities and groups between the two regions. Unlike present-day India, which has linguistically organised states, the then-eastern front of British India witnessed numerous culturally divergent communities living together. The population of Sylhet in modern-day Bangladesh, for example, was then comprised of Bengali-speaking as well as Assamese-speaking people. This was representative of the fact that unlike the western border, in the eastern border, issues of culture and language were more at play.

84. After this period of unrest, the Nehru-Liaquat Pact of 1950 was signed between India and Pakistan, symbolising their mutual commitment to safeguard minorities and their interests in both nations. This period also denoted the Constitution of India coming into force, which contained a part prescribing different modes of citizenship, as already elucidated in paragraphs 19 and 21. In line with this, the Citizenship Act was enacted, empowering the Central

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[77] SANGEETA BAROOAH PISHAROTY, *supra* note 75.
[78] *Id*, 231.

Government to declare law on citizenship or nationality, the details of which have also been dealt with elaborately in the same.

85. Parallelly, in 1948, a permit system was instituted between West Pakistan and India *vide* the West Pakistan (Control) Ordinance, and subsequently, in 1952, a formal passport and visa system was introduced along the eastern border.[79] Until then, border traffic was almost entirely unregulated on the eastern borders. The span from 1960 to 1985 was marked by significant political turmoil, civil unrest, and violence in the country's northeastern parts.

86. Amidst these developments, the NRC was initially prepared exclusively for the state of Assam in 1951. It intended to identify illegal immigrants entering the state from Bangladesh, utilizing data from the 1951 Census.

87. However, the scenario changed dramatically on 25.03.1971, when Pakistan initiated 'Operation Searchlight' to quell the Bengali nationalist movement in East Pakistan. The following day, on 26.03.1971, Bangladesh declared independence from Pakistan, triggering the Bangladesh Liberation War. Following these developments, in December 1971, India joined the war against Pakistan. While immigrants from East Pakistan (present-day Bangladesh) had been migrating to India since 1948, the wars of 1971 led to an influx of immigrants from Bangladesh into the State of Assam and other Indian states.[80]

88. Soon, there was anxiety surrounding the issue of electoral rolls in the Northeast region, fueled by concerns revolving around the

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[79] Ministry of External Affairs Annual Report (1943-44), para 15.
[80] ANTARA DATTA, *Refugees and Borders in South Asia: The Great Exodus of 1971*, Routledge, 2015.

influx of refugees from erstwhile East Bengal into Assam.[81] During this period, the Assam Students Union (**AASU**) and the All Assam Gana Sangram Parishad (**AAGSP**) grew in popularity in the region. Thereafter, in 1979, the draft electoral rolls prepared for the bye-elections in the Lok Sabha Constituency of Mangaldoi in Assam revealed the names of numerous Bangladeshi immigrants. This led the AASU and AAGSP to launch a 6-year-long agitation, now known as the 'Assam Movement', fearing that Bangladeshi immigrants would overwhelm the indigenous population of Assam.[82] During this period, political tensions escalated, marked by fierce debates and demonstrations concerning the influx of immigrants into Assam. Simultaneously, there were counter-demonstrations in Bengal, expressing solidarity with the Bengali-speaking communities in Assam. These events had a detrimental impact on the economy and trade in Assam, and eventually, in 1981, the President's rule was imposed in the State.

89. In 1983, after more than a year of President's rule, the Union of India decided to hold elections, despite a breakdown in negotiations over electoral roll revisions and escalating student-led protests.[83] However, these aspirations came to an end with the occurrence of the Nellie Massacre on 18.02.1983, resulting in a devastating massacre of people with severe casualties. It is believed that factors contributing to the tragedy included administrative failure, warnings of potential clashes being ignored, and underlying land-related tensions. The Nellie Massacre marked a turning point, transforming the once-peaceful student protests into a violent agitation that garnered national and international attention.

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[81] SANGEETA BAROOAH PISHAROTY, *supra* note 75, 27.
[82] ARUPJYOTI SAIKIA, *supra* note 76, 549.
[83] *Id*, 566.

Thereafter, in 1984, negotiations between the Centre and AASU stalled, but in January 1985, the then Prime Minister expressed a willingness to resolve Assam's disputes, leading to the repeal of contentious laws and concessions to calm the agitations.[84]

90. The student-led Assam Movement finally came to an end on 15.08.1985, with the signing of a Memorandum of Settlement known as the 'Assam Accord' between the Central Government and the leaders of AASU and AAGSP. The Assam Accord declared 01.01.1966 as the base date for the detection of illegal immigrants and created three classes of immigrants: *first,* those who came before 01.01.1966, including those in the electoral list of 1967; *second,* those who came between 01.01.1966 and 24.03.1971; and *third,* those who came on or after 25.03.1971. The first class of persons were to be regularized under the Assam Accord, while those belonging to the second class were to be detected as foreigners, and their names were to be deleted from electoral rolls. It was further provided that their names would be restored after the expiry of ten years from their detection. The third class of persons, i.e., those who came on or after 25.03.1971, were to be detected and expelled as per the Assam Accord. Subsequently, Section 6A was inserted into the Citizenship Act through an amendment to give effect to the provisions of the Assam Accord.

91. However, despite the enactment of Section 6A, the influx of illegal immigrants into the State of Assam from Bangladesh was stronger than ever. In 1998, the then Governor of Assam submitted a report to the then President of India highlighting the threat posed by large-scale migration from Bangladesh into Assam. Currently, there exist thousands of migrants who have been accorded citizenship under

[84] SANGEETA BAROOAH PISHAROTY, *supra* note 75, 184.

Section 6A and have been residing in the State of Assam for several years. Conversely, there are also hordes of immigrants who have entered and continue to enter the State of Assam illegally. Thus, there presently exist two sets of immigrants who need to be bifurcated and treated differently—one set who will be conferred citizenship in accordance with the auspices of Section 6A and the other set who are illegal immigrants.

92. Having dealt with this historical and political context, and with this background, it is now pertinent to peruse the issues invoking constitutional challenge against the validity of Section 6A.

iii. The preambular notion of fraternity

93. The Petitioners seek to enforce the preambular notion of 'fraternity'. They have urged that the idea of fraternity, as encapsulated in the Constitution of India, is to be interpreted in the context of the unity and integrity of the nation. They argued against a global/transnational construction of the term, wherein the notion of fraternity is extended beyond the citizens of India. They asserted that the constitutional mandate in the Preamble pertains to fraternity amongst citizens and that this notion of fraternity might be destroyed when a legislative enactment such as Section 6A threatens to destroy the cultural demography of that citizenry. The Petitioners further contended that the influx of immigrants from Bangladesh into the State of Assam has jeopardized the very ideal of fraternity in India.

94. Contrarily, the Respondents submitted that the term fraternity means individuals having equal regard for each other and preventing relationships from being confined to specific clans. The Respondents stated that Section 6A reinforces the idea of fraternity,

in the absence of which, society would be broken into a division between 'others' and 'us'.

95. Having bestowed our consideration to the contentions set out by the parties, we must examine the meaning of the term fraternity and determine whether Section 6A violates or enforces the idea of fraternity.

(a) Meaning of 'fraternity'

96. As articulated in the Preamble, the term 'fraternity' embodies a sense of collective brotherhood amongst all Indians. It serves as a critical element for national unity and social cohesion. Fraternity assumes paramount significance in reinforcing the ideals of equality and liberty, both of which are integral facets of the Preamble.[85]

97. In order to have a holistic understanding of what fraternity as an ideal encompasses, it is integral to examine the meaning of 'fraternity' as envisaged by the drafters of the Constitution, as well as in terms of other jurisdictions which also employ the notion. Delving into the Constituent Assembly Debates would not only shed light on the ambit of fraternity but would also reveal a consensus that the principles of equality, liberty and fraternity are to be perceived as an indivisible whole.

98. The word 'fraternity' was initially not included as a part of the Objectives Resolution, which had been proposed by Jawaharlal Nehru on 13.12.1946 and thereafter adopted by the Constituent Assembly on 22.01.1947. In fact, this very resolution provided the basis for the inclusion of the Preamble to the Constitution of India.

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[85] Dr. B. R. Ambedkar, *Constituent Assembly Debates*, Volume 11, 25.11.1949.

Dr. B.R. Ambedkar, however, emphasized the significance of adding the term fraternity into the Preamble, defining it to mean a sense of shared brotherhood among all Indians, and highlighted that it was imperative for national unity and social solidarity.[86] In pursuance thereto, Dr. Ambedkar stated as follows:

> *"What does fraternity mean?* ***Fraternity means a sense of common brotherhood of all Indians— if Indians being one people. It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve.*** *The sooner we realise that we are not as yet a nation in the social and psychological sense of the world, the better for us. For then only we shall realise the necessity of becoming a nation and seriously think of ways and means of realising the goal."*
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> [Emphasis supplied]

99. Dr. Ambedkar introduced the term 'fraternity' into the preambular values of the Constitution with the objective of advancing his vision of democracy and eradicating the issues posed by caste distinctions. His vision encompassed fostering a societal framework characterised by shared interests and interconnectedness amongst all Indians. Notably, neither the deliberations within the Constituent Assembly nor Dr. Ambedkar's conceptualisation of fraternity suggests any inherent restriction of this principle to a specific community or segment of citizens. Instead, it was conceived as a concept intended to cultivate a sense of brotherhood amongst all individuals within society.[87] Dr. B.R. Ambedkar elucidated this core idea of fraternity in the following words:

> *"…What is your ideal society if you do not want caste is a question that is bound to be asked of you.* ***If you ask me, my***

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[86] *Id.*

[87] DR. BABSAHEB AMBEDKAR WRITINGS AND SPEECHES, Dr. Ambedkar Foundation, Vol. 1, 57, https://www.mea.gov.in/Images/attach/amb/Volume_01.pdf.

> ***ideal would be a society based on Liberty, Equality and Fraternity. And why not? What objection can there be to Fraternity? I cannot imagine any. An ideal society should be mobile, should be full of channels for conveying a change taking place in one part to other parts. In an ideal society there should be many interests consciously communicated and shared. There should be varied and free points of contact with other modes of association. In other words, there must be social endosmosis. This is fraternity, which is only another name for democracy. Democracy is not merely a form of Government.*** *It is primarily a mode of associated living, of conjoint communicated experience. It is essentially an attitude of respect and reverence towards fellowmen."*
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> [Emphasis supplied]

100. The idea of fraternity was therefore envisioned as a deep sense of well-being for others and understood as essential to counterbalance individualism, thereby preventing anarchy and sustaining moral order in society. It emphasized that a thriving democracy could be achieved through fraternity, which enabled the notions of liberty and equality to support each other rather than undermine one another. Further, it gave rise to the belief that the ideals of equality, liberty and fraternity could not be divorced from each other, as equality and liberty without fraternity would result in the supremacy of the few over the many.[88]

101. During the deliberations of the Constituent Assembly, the concepts of equality, fraternity, and liberty were perceived as constituting a trinity, forming the very bedrock of democracy. The notion of equality was afforded considerable impetus on account of the prevailing graded inequality within Indian society, characterized by affluence for some and abject poverty for many. Recognizing that

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[88] Dr. B.R. Ambedkar, *supra* note 85.

various approaches might not eliminate disparities in social and economic aspects of the citizens' lives, they formulated the principle of “one man, one value”, intending to create a level playing field for all.[89] However, the framers believed that equality devoid of liberty could lead to the forfeiture of individuality. Moreover, they recognized that in the absence of fraternity, the harmonious coexistence of liberty and equality would not be inherent or natural, necessitating external enforcement measures.[90]

102. The genesis of the very notion of fraternity can be traced back to the French ideal of fraternity or *fraternité*, originating from the French Revolution and intricately connected with the principles of liberty and equality. This period in French history reflected a marked shift from feudalistic societies governed by hereditary status to a society aspiring to be a democratic ideal. This evolution was recognised as not just a political concept but as a period that emphasised collective rights over the individual.[91]

103. The emergence of fraternity as a concept in the French context began to see recognition with the Declaration of the Rights of Man and Citizen, which prescribed communal participation in contrast to individual rights in the interests of society. This was, in essence, a clarion call for the notion of fraternity, though it had not been fully articulated at that point in time.[92] It was only with the emergence of the Third Republic and the formation of the Paris Commune in 1871 that fraternity was articulated more clearly and reflected the people’s need for a society based on collective welfare and shared interests. The Constitution of the Third Republic then

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[89] *Id.*.
[90] *Id.*
[91] GEORGES LEFEBVRE, *The Coming of the French Revolution*, R. R. Palmer (trans.), Princeton University Press, 1973.
[92] *Id.*

included and recognised the principles of liberty, equality and fraternity as cornerstones of French society. In this context, fraternity was not restricted to the idea of social cohesion but also extended to ensuring the dignity of each individual in a manner in which national unity and integrity were fostered. The evolution of fraternity, from a mere idea encompassing social values into a principle now embedded into the fabric of a nation's identity, is indeed fascinating.[93]

104. Within the French context, fraternity transcended mere brotherhood, expanding to encompass a collective sense of solidarity among citizens. This journey of fraternity from a mere idea into a fundamental value shows the deeply entrenched political and social transformation that occurred in France. Fraternity, therefore, came to be understood as a sense of collective consciousness that unified individuals in their need for an equitable society.

105. Although fraternity is embedded in the constitutional fabric of both India and France, the manner in which they have come to be construed inherently differs. A nuanced differentiation can be discerned by examining them through the lenses of French and Indian perspectives. In the French context, the principle of fraternity was initially envisaged to symbolize a commitment towards the collective well-being of citizens and to showcase a bond that unified them in their aspirations for a just society. However, over time, the notion of fraternity in France came to be somewhat eclipsed by equality, which was perceived to be paramount, with a

[93] THE NEW ENCYCLOPAEDIA BRITANNICA: MACROPAEDIA (Encyclopaedia Britannica Inc.), 1974.

heightened emphasis on individual rights.[94] Conversely, in India, fraternity was perceived by the Constituent Assembly, as seen in Dr. Ambedkar's speeches, as a means to realize equality and uplift marginalised groups. The divergence in the interpretation of the term fraternity by these two nations in relation to equality is thus distinctly evident.[95]

106. In the Indian context, the meaning of fraternity has thus entirely diverged from the French sense of the term and is intricately woven into the fabric of fostering social solidarity, uplifting marginalised groups, and achieving a more equitable society. Dr. B.R. Ambedkar's introduction of the term 'fraternity' into the constitutional Preamble reflects a deliberate intention to use this principle as a means to promote unity and brotherhood.[96] In light of Dr. B.R. Ambedkar's persistent efforts towards eradicating caste discrimination, his subsequent advocacy for fraternity among individuals appears to mirror his commitment to inclusivity. Unlike some Western perspectives, where fraternity may be overshadowed by an emphasis on individual rights, in India, fraternity is distinctly perceived as a vital instrument for realising equality and harmonising the diverse segments of society. It serves as a conduit for transcending societal disparities and working towards collective well-being.[97] Therefore, in the Indian constitutional context, fraternity assumes a dynamic and inclusive role, aligning with the broader goals of social justice, equality, and upliftment.

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[94] Decision 99-412 DC of June 15, 1999, Rec. 71 (European Charter for Regional or Minority Languages), para 10.
[95] JEREMIE GILBERT AND DAVID KEANE, *Equality versus fraternity? Rethinking France and its minorities*, International Journal of Constitutional Law, 2016, 14 (4), 901 and 902.
[96] Dr. B.R. Ambedkar, *supra* note 85.
[97] *Id.*

(b) Ethos of Section 6A is aligned with fraternity

107. Having examined the contentions presented by the Petitioners, it is imperative to scrutinize whether the preambular value of fraternity would be applicable to the immigrants entering into the State of Assam under the aegis of Section 6A.

108. In this regard, it would be apposite to consider whether such preambular values are justiciable in the first place. In the landmark case of ***Kesavananda Bharati v. State of Kerala***,[98] this Court affirmed that while the Preamble may be employed to interpret ambiguous provisions of the Constitution, it, by itself, is not enforceable in a court of law. Indeed, our current comprehension of the preamble is evident. It serves as a tool for interpreting the Constitution and guiding our trajectory. However, akin to the Directive Principles of State Policy (**DPSP**), it was not envisaged as being directly enforceable. Nevertheless, the discourse on 'fraternity' holds relevance in the current context and will undeniably shape our interpretation of the pertinent laws at hand.

109. At this juncture, it would be essential to take into consideration the evolution of the principle of fraternity in terms of judicial construction to get a complete understanding of the meaning and scope of fraternity as it stands today. The Preamble to the Constitution provides us insight into the values that embody the Constitution. The Preamble declares India to be a sovereign, socialist, secular, democratic, and republic and secures justice, equality, liberty, and fraternity for all its citizens. Though the Preamble does not grant any substantive rights and is not

[98] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

enforceable in courts, a plethora of cases have engaged with the Preamble and considered it to be a guiding light in interpreting the provisions of the Constitution.

110. Judicial precedents discussing fraternity will aid us in understanding whether fraternity remains to be seen as a beacon promoting togetherness amongst diverse groups or whether it has become more restrictive in its scope over time. This Court has dealt with the idea of fraternity or, at the very least, referred to it in a myriad of case laws. It has consistently held that the term 'fraternity' means a sense of common brotherhood of all citizens.[99] This Court has also often reiterated that the ideals of liberty, equality, and fraternity should not be treated as separate entities instead, should be viewed as a trinity that secures empowerment and political justice for all citizens. Additionally, fraternity was interpreted as a principle that afforded the means to achieve national unity and the dignity of the individual.[100]

111. This Court in ***Indian Medical Association v. Union of India***,[101] addressed multiple petitions that had been filed challenging the exemptions provided under law, which allowed a private, non-aided educational institution to admit the children of army personnel exclusively. While examining the constitutionality of the challenged provision, the Court highlighted the significance of access to education as a means to foster fraternity and further promote social cohesion and unity. In the cited case, the Court determined that the restrictive admission policy was an impediment to achieving fraternity in society. Although not spelt out explicitly in the

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[99] Shri Raghunathrao Ganpatrao v. Union of India, AIR 1993 SC 1267, para 109.
[100] Indra Sawhney v. Union of India, AIR 1993 SC 477, para 412; AIIMS Students' Union v. AIIMS, AIR 2001 SC 3262, para 58.
[101] Indian Medical Association v. Union of India, AIR 2011 SC 2365.

judgment, it is clear that the Court understood fraternity as encouraging the intermixing of people and one which discourages exclusivity or endogamous social structures.

112. It was, however, in the seminal case of ***Nandini Sundar v. State of Chhattisgarh***[102] that this Court, in the course of addressing issues pertaining to the appointment of Special Police Officers (**SPOs**) for the Salwa Judum in Chhattisgarh, extensively dealt with the aspect of fraternity. For context, the Salwa Judum was a militia formed and deployed to counter Maoist activities in the State of Chhattisgarh. This case brought to the fore several constitutional principles, including the ideals of fraternity, equality, the right to life, and personal liberty. This Court held that Section 9 of the Chhattisgarh Police Act, 2007 which allowed for the appointment of SPOs, violated the Constitution and delved into the relevance of the constitutional principle of fraternity.

113. In the aforesaid case, the Court interpreted fraternity as a safeguard against unchecked state power and an essential pillar for responsible governance. The Court held that state actions that de-humanized citizens violated the constitutional objective of the welfare of all citizens and would be wholly against the idea of dignity and fraternity, as enshrined in the Preamble to the Constitution. The Court further went on to underscore the significance of fraternity in shaping economic policies and stated thus:[103]

> *"**The primary task of the State is the provision of security to all its citizens, without violating human dignity.** This would necessarily imply the undertaking of tasks that would prevent the emergence of great dissatisfaction, and disaffection, on account of the manner*

[102] Nandini Sundar v. State of Chhattisgarh, (2011) 7 SCC 547.
[103] *Id*, para 25.

and mode of extraction, and distribution, of natural resources and organization of social action, its benefits and costs."

[Emphasis supplied]

114. The very scope of fraternity beyond just being an ideal in the Preamble was thus expanded to be a principle that would create checks and balances on the system of governance and state actions.

115. Having examined the notion of fraternity from various perspectives, it can be deduced that the essence of fraternity, therefore, is fundamentally geared towards fostering interconnectedness among Indians and was envisaged to be a principle for uplifting marginalised sections of society.

116. Consequently, it might be antithetical to the essence of fraternity to deploy this inclusive constitutional value in a way which deliberately excludes large swathes of the population, who have been duly conferred citizenship through procedure established by law, from the protection of constitutional rights. In fact, our understanding of fraternity, as also applied by this Court in ***Indian Medical Association v. Union of India (supra)***, is that it encourages, if not compels, people to fraternise and intermingle with people dissimilar to them.

117. In many ways, the Petitioners want fraternity to be interpreted in a highly restrictive manner, which allows them to choose their neighbours. Since this approach runs contrary to the very idea and ethos of fraternity that was envisaged by the Constituent Assembly and as subsequently interpreted by this Court, it cannot be accepted. Our reading of the Constitution and precedents is that fraternity requires people of different backgrounds and social

circumstances to 'live and let live'. The nomenclature of fraternity itself is self-explanatory to the extent that it exhibits the notion of inclusiveness and togetherness, as opposed to restricted applicability. Thus, it becomes imperative to refrain from employing this concept in a negative manner that selectively applies it to a particular segment while labelling another faction as 'illegal immigrants', solely based on the alleged unconstitutionality of Section 6A.

118. In this light, when faced with the dilemma of disenfranchising millions or safeguarding a community's endogamous way of life, this Court would certainly be compelled by the principles of fraternity to prioritize the former. Thus, in our considered view, the Petitioners contentions in this regard deserve to be rejected.

iv. Part II and Section 6A

(a) Section 6A and Articles 6, 7 and 11 of the Constitution

119. The Petitioners argued that our Constitution exhaustively addresses the conferment of citizenship to individuals who migrated from present-day Bangladesh and that the Parliament cannot legislate to the contrary without amending the Constitution. They asserted that Articles 6 and 7 prescribe a different regime for granting Indian citizenship to individuals who migrated from India to Pakistan or from Pakistan to India. They argued that 'Pakistan' encompasses Bangladesh, as it is a successor state to Pakistan, thus binding Parliament to the cut-off date of 19.07.1948 stipulated in Article 6 of the Constitution. Since these are constituent provisions and the Parliament enacted Section 6A through its ordinary legislative power, it could not have prescribed a different cut-off date in this Section for granting citizenship to

immigrants from Bangladesh. The Petitioners further claimed that Parliament should have sought a constitutional amendment instead. Consequently, they contended that Section 6A is unconstitutional for being in conflict with Articles 6 and 7.

120. *Per contra*, the Respondents put forth a different view. They urged that Section 6A does not violate Articles 6 and 7 because these Articles operate in different contexts, both in terms of time and geography. They provided additional context on the cut-off dates prescribed in Articles 6 and 7, asserting that these dates were a remnant of the permit system, which never applied to East Pakistan. Referring to the Constituent Assembly Debates, the Respondents also demonstrated that it was never intended for these provisions to apply to East Pakistan. Further, they argued that the spirit and intent behind Section 6A align with those of Articles 6 and 7 and that striking down Section 6A would not serve the objectives of these Constitutional provisions.

121. The Respondents further argued that even if it is assumed that Section 6A conflicts with Articles 6 and 7, Article 11 of the Constitution is a non-obstante provision that grants Parliament the power to make laws regarding citizenship and that the other provisions of Part II of the Constitution cannot derogate from this power. In this regard, they relied upon ***Izhar Ahmed Khan v. Union of India***,[104] where it is held that the Parliament can make a valid law even when it is against such provisions. This power is supplemented by Entry 17 of List I of the Seventh Schedule of the Constitution, which also empowers Parliament to legislate on the subject of citizenship.

[104] Izhar Ahmed Khan v. Union of India, AIR 1962 SC 1052.

122. The Petitioners refuted this plea, asserting that while Article 11 and Entry 17 of List 1 confer power upon Parliament, they do not include the authority to supersede other provisions within Part II of the Constitution. They interpreted Article 11 as a residual clause, empowering Parliament to enact laws that do not contravene other provisions within Part II. They argued that even if Article 11 admits multiple interpretations, the Court should adopt the construction that promotes harmony with the rest of the Constitution.

123. Considering these rival submissions, the issue that arises for consideration is whether Section 6A is violative of Articles 6 and 7 of the Constitution, and whether the Parliament had the power to enact Section 6A.

124. As we have specified previously in paragraphs 19 and 22 of this judgement, Article 6 specifies the conditions for granting citizenship to people who have immigrated to India from Pakistan.

125. The language of Article 6 unambiguously suggests that there exist two sets of conditions under this provision: for persons who migrated before 19.07.1948, and for those who migrated after this date. In terms of the former, Article 6 prescribes two further conditions: *first*, is the condition of birth/descent, mandating that such an individual, or either his parents or his grandparents must have been born in India; and *second*, is the condition of residence, prescribing that such an individual must have been a resident of India since migration. A third set of conditions is also prescribed for the people who migrated after 19.07.1948. This condition pertains to registration, which requires such individuals to have been registered as Indian citizens by an officer appointed for this purpose by the Government of India.

126. As a corollary to Article 6, and as previously discussed in paragraphs 19 and 22 above, Article 7 prescribes the condition for granting citizenship to people who migrated to Pakistan.

127. Thus, Article 7 mandates that a person who migrated to Pakistan after 01.03.1947 cannot claim Indian citizenship unless they fulfil three conditions: *first*, the person must have returned to India; *second*, such return must have been under permit for resettlement or permanent return; and *third*, that person must satisfy the conditions prescribed in Article 6 for a person migrating to India after 19.07.1948.

128. At this juncture, we may hasten to add that these conditions under Articles 6 and 7 covered both East and West Pakistan. This is visible from these provisions' text, which explicitly states "*territory* ***now*** *included in Pakistan*". Since Pakistan, at the time of the commencement of the Constitution (i.e., 1950), included both East and West Pakistan, creating any artificial distinction would militate against the text of these provisions. Accordingly, the Respondents' contention that these Articles would not cover East Pakistan cannot be accepted.

129. While the Respondents have cited the speeches of various members of the Constituent Assembly to argue that Articles 6 and 7 were not intended to apply to East Pakistan, we cannot use the opinion of individual members of the Constituent Assembly to negate the text of the Constitution, which, by itself, is the best manifestation of the Assembly's intention. While the usage of such external aid might have been possible had the text been ambiguous, it cannot be used in the present context because Articles 6 and 7 leave no room to doubt that that they extend to both East and West Pakistan.

130. Having delineated the scope and ambit of these provisions, it is pertinent to comprehend the criteria outlined in Section 6A for bestowing citizenship upon immigrants from former East Pakistan, which was summarized previously in paragraph 25 of this judgement.

131. A perusal of these different conditions reflects various points of congruency between Section 6A and Articles 6 and 7. *First*, Section 6A prescribes that the immigrant must have been of Indian origin, defined in Section 6A(1)(d) to mean the person/either of whose parents/grandparents were born in undivided India. Hence, similar to Articles 6 and 7, the condition of birth/descent is present. *Second*, similar to Article 6, which does not stipulate the condition of registration before 19.07.1948 but necessitates it thereafter, Section 6A also lacks a requirement for registration before the specified cut-off date (i.e., 01.01.1966) but imposes it afterwards. Finally, mirroring the provisions of Articles 6 and 7, Section 6A (2) and (3) introduce the condition of residence, mandating that the immigrant must have resided in India since their immigration.

132. Furthermore, Section 6A aligns with the fundamental purpose of Articles 6 and 7, which was to extend citizenship rights to those affected by the country's partition. Articles 6 and 7 aimed to safeguard the rights of individuals who were previously Indian citizens but found themselves residing in a foreign territory due to the political circumstances surrounding migration.[105] Akin to this, Section 6A is also based on the same underlying policy reason of granting citizenship to the people of Indian origin migrating from Pakistan due to political disturbances in a foreign territory.

[105] R. K. Sidhwa, *Constituent Assembly Debates*, Volume 9, 11.08.1949.

Accordingly, Section 6A is aligned with the Constitutional philosophy of Articles 6 and 7 and is not contrary to them.

133. Regardless of these similarities, Section 6A diverges from Articles 6 and 7 in terms of the cut-off dates. As discussed earlier, Articles 6 and 7 prescribe the cut-off dates of 19.07.1948 and 01.01.1947, respectively. However, Section 6A prescribes two different cut-off dates: 01.01.1966 and 25.03.1971. Immigrants who entered Assam before 01.01.1966 are granted deemed citizenship, and immigrants who entered Assam between these two dates are granted citizenship once they fulfil certain conditions. Immigrants entering Assam on or after 25.03.1971 are not granted citizenship and are impliedly declared to be illegal immigrants who must be detected and deported.

134. The Petitioners' contention that Section 6A is unconstitutional as it prescribes different dates in comparison to Articles 6 and 7 cannot be accepted because Article 6 does not prohibit the granting of citizenship after the cut-off date of 19.07.1948. It only specifies the fulfilment of certain conditions, which, as mentioned above, are also present in Section 6A (3). While Section 6A (2) grants deemed citizenship without these conditions, the competence of Parliament to prescribe different conditions—which will be analyzed in detail in the later part—is well embedded in Article 11.

135. Similarly, while Article 7 prohibits citizenship to people who re-migrated to India, this is only a sub-class of people who have been granted citizenship by Section 6A. Since Section 6A grants citizenship even to people who migrated for the first time, the class of re-migrants is severable from this provision. As will be discussed in the following paragraphs, the Parliament was competent to specify different conditions for this sub-class also.

Whether the Parliament had the competence to specify different conditions under Article 11

136. There is no quarrel among the parties that the Parliament has the power to enact laws on citizenship. This power is provided by Entry 17 of List 1 of the Seventh Schedule, which reads "*Citizenship, naturalisation and aliens*". Further, the present situation is also covered by Entry 19, which reads, "*Admission into, and emigration and expulsion from, India; passports and visas*". However, the parties are discordant to the extent of such power and whether law made by the Parliament can derogate from Article 6 and other provisions of Part II.

137. In this regard, it is pertinent to consider the objective and scope of Article 11 of the Constitution, which provides Parliament with the power to make laws on any matter relating to citizenship. Upon perusal of the text of Article 11, which was reproduced before in paragraph 19 of this judgement, two important considerations come to light. *First*, the phrase "*Nothing in the foregoing provisions of this Part shall derogate*" clearly fortifies that Article 11 confers overriding powers upon the Parliament to make laws even when they are against other provisions of Part II.

138. This was also duly acknowledged by a 5-judge bench of this Court in ***Izhar Ahmed Khan (supra)***, where it was explicitly noted that Article 11 grants Parliament the sovereign right to make laws on citizenship and that such laws cannot be impeached on the ground that they go against Articles 5 to 10 of the Constitution.

139. Incidentally, the overriding effect of Article 11 is also clearly established by various speeches in the Constituent Assembly. They highlight that the provisions of Part II were only meant to enact the law on citizenship for the time being at the commencement of the Constitution and the Parliament was empowered to enact provisions in the future, including making altogether new provisions.[106] As discussed in paragraph 16 earlier, this is consistent with the global practice of laying down only overarching principles of citizenship in the Constitution and empowering the Parliament to define the specifics through statutes.

140. From the phrase "*Nothing in the foregoing provisions of this Part shall derogate*", the judicial pronouncement of this Court in ***Izhar Ahmed Khan (supra)*** and the accompanying speeches in the Constituent Assembly, we can appropriately conclude that Article 11 gives the Parliament broad powers to enact laws on citizenship, notwithstanding any inconsistencies with any other provision in Part II of the Constitution.

141. The *second* important aspect of Article 11, which lends support to this conclusion, is that it grants the Parliament the power to make 'any' provision regarding citizenship. A critical amendment to the text of the draft Article 11 further fortifies this conclusion. Initially, the draft Article granted Parliament the power to make 'further provisions'. However, during a session of the Constituent Assembly on 29.04.1947, the President of the Assembly argued that the word 'further' might imply that Parliament should only make provisions in continuation of other Articles in Part II. Consequently, the word 'further' was replaced with 'any'. This amendment highlights the

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[106] Dr. B. R. Ambedkar, *Constituent Assembly Debates*, Volume 9, 10.08.1949; Alladi Krishnaswamy Ayyar and H. N. Kunzru, *Constituent Assembly Debates*, Volume 9, 12.08.1949; K. M. Munshi, *Constituent Assembly Debates*, Volume 3, 29.04.1947.

framers' intention to afford Parliament nearly unrestricted flexibility in crafting laws pertaining to citizenship.

142. Based on the analysis presented in this section, it can be concluded, and we hold so, that the Parliament indeed possesses the legislative power to enact laws concerning citizenship and that this authority is not restricted by the provisions of Part II of the Constitution.

(b) Section 6A and dual citizenship

143. The Petitioners, having not limited their contentions to the violation of Articles 6 and 7, also urged that since the immigrants did not renounce their citizenship before they were granted Indian citizenship, Section 6A enables dual citizenship and is therefore unconstitutional for violating Article 9. While the Respondents have not directly addressed this issue, it is vital to provide a comprehensive analysis for the sake of completeness.

144. The concept of dual citizenship means one has citizenship of two countries simultaneously. Across the world, there are various countries like China,[107] Japan,[108] Kuwait,[109] etc. that prohibit dual citizenship. Internationally, too, several countries have come together at various points to counter multiple citizenships. For instance, European nations that were members of the Council of Europe entered into the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, 1963, which, *inter alia*, provides that a person acquiring an additional nationality shall lose their previous

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[107] Nationality Law of People's Republic of China, 1980, Article 9.
[108] Japan's Nationality Law, 1950, Article 11.
[109] Kuwait, Ministerial Decree No. 15 of 1959 Promulgating the Nationality Law, Article 11.

nationality. Similarly, countries that were a part of the League of Nations (including India) entered the Convention on Certain Questions Relating to the Conflict of Nationality Law, 1930, to establish a commitment to abolishing dual citizenship.

145. In India, such citizenship is restricted by Article 9 of the Constitution and Section 9 of the Citizenship Act. Article 9 states that no person shall be granted Indian citizenship by Articles 5, 6, and 8 if such person has voluntarily acquired citizenship of a foreign state. As a corollary to this, Section 9 of the Citizenship Act provides:

> "*Termination of citizenship —*
>
> *(1)* ***Any citizen of India*** *who by naturalisation, registration or otherwise* ***voluntarily acquires****, or has at any time between the 26th January, 1950 and the commencement of this Act* ***voluntarily acquired, the citizenship of another country shall****, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:*
>
> *Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.*
>
> [Emphasis supplied]

146. While both Article 9 and Section 9 seemingly restrict dual citizenship, they operate in different time spheres. As was held by this court in ***Izhar Ahmed Khan (supra)***, while Article 9 contemplates the denial of Indian citizenship to a person who had acquired foreign citizenship before the Constitution came into force, Section 9 deals with the acquisition of foreign citizenship after the commencement of the Constitution.

147. However, while they operate in different time spheres, a common theme that runs across both these provisions is the restriction on dual citizenship. Using these provisions, the Petitioners have urged that since Section 6A does not mandate the express renunciation of the immigrants' previous citizenship before granting them Indian citizenship, Section 6A runs counter to these two constitutional and statutory provisions.

148. At the outset, even if it is assumed that Section 6A grants dual citizenship, it does not run counter to Article 9. We say so for the reason that these two provisions operate in different fields. As discussed above, Article 9 restricts a person possessing foreign citizenship from acquiring citizenship under Articles 5, 6, and 8. However, Section 6A does not grant citizenship under these provisions and is rather a separate method enacted by Parliament by virtue of its power under Article 11. The question of conflict between Article 9 and Section 6A, therefore does not arise at all.

149. Further, Section 6A also does not conflict with Section 9 because Section 6A does not override the scheme of Section 9 and must be read complementarily thereto. In case an immigrant who has been granted citizenship by Section 6A is found to have dual citizenship, Section 9 can always be invoked to hold that such person has ceased to be an Indian citizen. By virtue of Section 9(2), read with Rule 40 of Citizenship Rules, 2009, the Central Government will determine the question of such acquisition of foreign citizenship as per the detailed procedure prescribed under Schedule III of the aforementioned Rules.[110] Since Section 6A is not a safe harbor from

[110] Akbar Khan Alam Khan v. Union of India, AIR 1962 SC 70, para 5; State v. Syed Mohd. Khan, 1962 SCC OnLine SC 2, para 6.

Section 9 and is rather subject to the scheme of restricting dual citizenship, it is not in conflict with Section 9 of the Citizenship Act.

150. However, Section 6A, by operation of law, presumes the renunciation of previous citizenship. As was discussed before in paragraph 25, Section 6A (2) and 6A (3) grant citizenship to immigrants, with a possibility of opting out of such citizenship by filing prescribed forms. If such forms are not filed, and the immigrants choose to retain Indian citizenship, the presumption is that the person is an Indian citizen only and has foregone their previous citizenship. For this, an analogy can be drawn with the foreign territories incorporated in India after independence, for which India passed various legislations that granted Indian citizenship without mandating the explicit renunciation of their previously acquired foreign citizenship.[111] These legislations provide Indian citizenship by default and an opt-out mechanism similar to Section 6A. In the event the person does not opt-out, the law presumes renunciation of previous citizenship.

151. Globally as well, various jurisdictions have held that citizenship can be lost through implied renunciation. For instance, Article 13 of the Constitution of Panama explicitly provides implied renunciation of citizenship. In the USA, Section 349 of the Immigration and Nationality Act, 1952, provides for the automatic termination of citizenship when specific actions are taken. Similarly, in the case of ***Lorenzo v. McCoy***,[112] the Supreme Court of the Philippines held that express renunciation is not necessary

[111] Dadra and Nagar Haveli (Citizenship) Order, 1962; Goa, Daman and Diu, the Goa, Daman and Diu (Citizenship) Order, 1962; Chandernagore (Merger) Act, 1954, Section 12; Citizenship (Pondicherry) Order, 1962; Sikkim (Citizenship) Order, 1975.
[112] Lorenzo v. McCoy, 15 Phil., 559 (Philippines Supreme Court).

for the forfeiture of one's citizenship, and it could be terminated by the actions.

152. Similarly, by electing not to opt-out, immigrants involved in the present context are presumed to have implicitly renounced their previous citizenship as per the law. However, it is essential to acknowledge that this presumption regarding renunciation of citizenship is not definitive and is rebuttable. As elaborated earlier, if an individual is found to have voluntarily availed themselves of the benefits of foreign citizenship despite not opting out of Indian citizenship, such a person would fall under the purview of Section 9 of the Citizenship Act, allowing authorities to revoke their Indian citizenship and face consequential deportation.

153. Therefore, based on the aforementioned reasons, we are of the considered opinion that the framework outlined by Section 6A is that an individual falling under Sections 6A (2) and 6A (3) can only assert Indian citizenship. Such individuals are presumed to have relinquished their previous citizenship. If authorities have reasons to believe that the previous citizenship is still being exercised, they are empowered under Section 9 of the Citizenship Act and associated rules to take steps to revoke the Indian citizenship of the delinquent individuals. Consequently, it can be deduced that Section 6A does not contradict Section 9 of the Citizenship Act, and we declare so.

(c) Section 6A and the oath of allegiance

154. The Petitioners also contended that Section 6A contradicts Section 5 of the Citizenship Act (**Section 5**), which requires every citizen to take an oath of allegiance.

155. The Respondents refuted this argument by asserting that the failure to take the oath was inconsequential, and as such, an oath was not mandated for them.

156. A bare reading of Section 5(2) reflects that it requires the oath of allegiance specifically to be taken by persons who seek citizenship under Section 5(1), which, as summarized previously in paragraph 21, provides citizenship by registration upon making an application to the Central Government.

157. Hence, Section 5(2) requires an oath for a specific mode of acquisition of citizenship. Similarly, under the Citizenship Rules, 2009, the oath is limited to certain modes, such as citizenship by registration under Section 5, citizenship by naturalization under Section 6, etc. Since Section 5(2) does not mandate the oath for every form of citizenship, the immigrants cannot be said to have violated Section 5 by not taking the oath. Likewise, it is difficult to hold that the immigrants have contravened any constitutional provision, as the Constitution does not explicitly mandate an oath for citizenship.

158. Moreover, the absence of such an oath does not absolve the immigrants from their obligation to respect the law and order of India. Even when such oath is not taken before acquiring citizenship, every citizen has to compulsorily abide by the norms of the Constitution, statutory laws, and other rules and regulations. We need not further emphasise that once the immigrants have become Indian citizens by operation of Section 6A, they are regulated by the Constitution of India, the laws framed under it and the values enshrined within them. Hence, the explicit lack of an oath of allegiance before the conferral of citizenship by Section 6A

does not absolve the immigrants covered under this provision from following the laws of our country, just as any other citizen of India.

159. Hence, on account of the above-stated reasons, Section 6A cannot be run down on the premise that it does not mandate an oath of allegiance.

v. Article 14 and classification under Section 6A

160. In addition to the numerous other grounds, the Petitioners have vehemently contended that Section 6A falls foul of Article 14 as it treats equals unequally. They argued that the selective application of Section 6A solely to the State of Assam exhibits hostility against it in comparison to other states. They contended that since the issue of illegal immigration from East Pakistan was also prevalent in States like West Bengal or, rather, was significantly greater in comparison, hence singling out Assam is unconstitutional. The Petitioners further argued that such recourse is unjustifiable and that geographical considerations could not be the determining factor for applying laws differently. In support of their contention that the classification under Article 14 has to be on a reasonable basis and based on lawful object, the Petitioners cited, *inter alia*, ***Nagpur Improvement Trust v. Vithal Rao***[113] and ***Subramanian Swamy v. CBI***.[114]

161. In response, the Respondents have *first* contested the maintainability of the Petitioners' plea by asserting that Article 14 can only be invoked by individuals who are alleged to have been unfairly excluded from benefits granted to others and not by those singled out and subjected to restrictions alone. It is the

[113] Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500.
[114] Subramanian Swamy v. CBI, (2014) 8 SCC 682.

Respondents' case that Article 14 ensures equality in benefits provided but not in liabilities imposed. Given that the Petitioners' claim falls into the latter category, the Respondents contended that the same would not be maintainable. *Second*, the Respondents argued that a statute cannot be struck down as violating Article 14 merely because it does not encompass all classes, as the Parliament wields discretion in legislating for varying degrees of harm. Citing precedents such as the ***State of M.P. v. Bhopal Sugar Industries Ltd***[115] and ***Clarence Pais v. Union of India***,[116] the Respondents countered the Petitioners' arguments by asserting that Parliament can make reasonable classifications and enact different laws based on territorial basis, thus justifying the differential treatment in granting citizenship. *Third*, the Respondents argued that Assam's unique situation, marked by historical conflict, warrants differential treatment under Section 6A, ensuring that equals are not treated unequally. In this light, the central issue that arises for our consideration is whether Section 6A contravenes Article 14 of the Constitution.

162. Article 14, as widely understood, guarantees that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Typically, a claim under Article 14 is brought forth by an individual contending that they have been unfairly excluded from the benefits or protection under law. However, the Petitioners' argument diverges from this norm since they do not assert that they have been excluded from a benefit extended to similarly situated individuals. Instead, the Petitioners are contending that their rights under Article 14 are infringed because they alone have been statutorily compelled to

[115] State of M.P. v. Bhopal Sugar Industries Ltd, (1964) 6 SCR 846.
[116] Clarence Pais v. Union of India, (2001) 4 SCC 325.

bear the burden of Bangladeshi immigrants. Before examining whether Section 6A treats equals unequally, it is crucial to address whether the Petitioners have the *locus* to invoke a claim under Article 14 in the first place.

(a) Maintainability under Article 14

163. A bare reading of Article 14 indicates that it confers individuals with equality before the law and is not restricted to mere equality for the benefits provided under law. This provision came to be interpreted in the ***State of W.B. v. Anwar Ali Sarkar***.[117] In this case, a 7-judge Bench of this Court dealt with the challenge against the West Bengal Special Courts Act, 1950, which allowed the State government to refer certain offences to special courts. This Court noted that the procedure in such special courts was separate from the Code of Criminal Procedure and curtailed the rights of the accused. Accordingly, it held that since the Act singled out certain cases and imposed restrictions on them, it violated Article 14. For this, the Court enunciated the principle that as per Article 14, "*all persons similarly circumstanced shall be treated alike both in privileges conferred* ***and liabilities imposed***".[118]

164. The argument of the Petitioners is similar. They contest that Section 6A has singled out the State of Assam alone *vis-à-vis* other Indian States situated alongside the Bangladesh border and has curtailed the rights of only its original inhabitants. Accordingly, their plea of violation of Article 14 requires determination on merits.

165. This position is also clearly buttressed in ***John Vallamattom v. Union of India***,[119] in which the Court was concerned with a similar

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[117] State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1, para 7.
[118] *Id.*
[119] John Vallamattom v. Union of India, (2003) 6 SCC 611.

question regarding the imposition of restrictions upon Indian Christians alone and not on citizens belonging to other religions. Not only did the Court treat such a claim as maintainable under law, but it also held the provision to be violative of Article 14 because it applied restrictions on one class alone:

> *"28. The provision relating to making of testamentary disposition by the citizens of India vis-à-vis those professing the religion of Christianity* ***must be judged on the touchstone of Article 14 of the Constitution of India. It is true that they form a class by themselves but ex facie I do not find any justifiable reason to hold that the classification made is either based on intelligible differentia or the same has any nexus with the object sought to be achieved."***
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> *"61. (…)* ***The impugned provision is also attacked as discriminatory and violative of Articles 14 and 15 of the Constitution inasmuch as the restriction on bequest for religious and charitable purposes is confined to Christians alone and not to members of other communities. In my opinion, the classification between testators who belong to the Christian community and those belonging to other religions is extremely unreasonable.*** *All the testators who bequeath property for religious and charitable purpose belong to the same category irrespective of their religious identity and so the impugned provision, which discriminates between the members of one community as against another, amounts to violation of Article 14 of the Constitution. (…)"*
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> [Emphasis applied]

166. Given the law cited above, the Petitioners' assertion founded upon Article 14 cannot be invalidated at a preliminary stage merely because they are seeking equality in regard to a restriction as opposed to a benefit. Hence, the Respondents' objection regarding the maintainability of the Petitioners' claim under Article 14 is liable to be rejected.

(b) Section 6A vis-à-vis Article 14

167. The Petitioners argued that the exclusive application of Section 6A to Assam violates Article 14. They contended that by burdening Assam alone with the obligation to accommodate immigrants, Section 6A has detrimentally affected its natural resources and indigenous population. Furthermore, they asserted that since immigrants were also present in other States, there was no reasonable basis for discriminating against Assam and applying Section 6A solely to this State.

168. It is now a settled principle of law that the right to equality enshrined under Article 14 is not a mechanical idea of parity. Article 14 requires the legislature to treat equals equally, but it also allows for differential treatment if the characteristics of the classes differ.[120] In fact, treating unequal entities alike and subjecting them to the same laws could potentially lead to greater injustice. Therefore, rather than enforcing a fixed procrustean notion of equality, Article 14 permits the legislature to classify individuals into different groups and apply distinct norms accordingly.

169. While the legislation can indeed classify persons into different groups and apply distinct standards, such classification must be reasonable. This Court has acknowledged that the precise parameters of what constitutes 'reasonable' has not been firmly established, and there is no single test to determine the reasonableness of a classification.[121] However, while there is no straitjacket formula to determine reasonableness, certain

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[120] Special Courts Bill, 1978, In re, (1979) 1 SCC 380, para 72.
[121] Transport & Dock Workers Union v. Mumbai Port Trust, (2011) 2 SCC 575, para 24.

yardsticks can be used to evaluate it, broadly categorized into the *form* and *object* of the classification.

Yardsticks to check the reasonableness of classification

170. In terms of the form, the classification should not be based on arbitrary criteria and must instead be based on a logic which distinguishes individuals with similar characteristics i.e., the equals from the persons who do not share those characteristics—the unequals. Apart from requiring such differentia, this prong requires that the classification must be intelligible, such that it can be reasonably understood whether an element falls in one class or another.[122] If the class is so poorly defined that one cannot reasonably understand its constituents, it will fail this test of 'intelligible' differentia. Therefore, instead of being based on arbitrary selection, the classification must be supported by valid and lawful reasons.[123]

171. Hence, using an intelligible criterion, the classes must be constituted in a manner that distinguishes the components of that class from the elements that have been left out of the class. This is instantiated by ***State of Kerala v. N.M. Thomas***,[124] where a 7-judge bench was dealing with the challenge of exemption granted to Scheduled Castes from the departmental test required for promotion. The Court held that the same was based on intelligible differentia, as the persons belonging to the exempted class, i.e., the Scheduled Caste, differed from those excluded from this class.

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[122] THE OXFORD HANDBOOK ON INDIAN CONSTITUTION, Oxford University Press, 2016, 940.
[123] State of West Bengal v. Anwar Ali Sarkar, *supra* note 117, para 18.
[124] State of Kerala v. N. M. Thomas, (1976) 2 SCC 310.

172. At this juncture, it is essential to raise the question that if every person or object shares similarities and differences with others in numerous ways, how do we determine whether they are similar enough to be categorized together? To put this into context using an oft-quoted example–assume a law is enacted to create two classes of vehicles, one allowed inside the park and another prohibited.[125] In this scenario, a motorcycle is similar to a child's bicycle in that both these locomotives have two wheels but are dissimilar to the extent that the former operates with an engine and can achieve higher speeds. Further, while a bicycle differs from a motorcycle, it possesses characteristics similar to those of an electric motorcycle since both these vehicles do not emit pollution in the park. Simultaneously, an electric motorcycle is comparable to a fuel-based motorcycle due to their shared propulsion method by an engine, despite their disparity in pollution emissions. In light of these considerations, would such a classification be deemed reasonable if bicycles and electric motorcycles were grouped together as one class, excluding fuel-based motorcycles? Since different variables exist for checking the similarities and dissimilarities, how do we ascertain that 'similar' elements are effectively grouped together?

173. This Court has held that the classification must withstand the test akin to the Wednesbury principles such that the classification shall consider all the 'relevant' similarities and disregard insubstantial or microscopic differences.[126] However, this also does not answer the question conclusively, as one must still know the criterion for gauging 'relevance'. For instance, in the example above, we still do

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[125] H.L.A. HART, *Positivism and the Separation of Law and Morals*, Harvard Law Review, 1958, 71(4), 607.

[126] Ramesh Chandra Sharma v. State of Uttar Pradesh, (2024) 5 SCC 217, para 45; Roop Chand Adlakha v. DDA, 1989 Supp (1) SCC 116, para 19.

not know whether being propelled by an engine should be a relevant criterion or not causing pollution should be the basis of classification!

174. This leads to the second prong of the test, which requires the classification to be as per the object of the statute.[127] This Court has held that while determining who qualifies 'similarly situated' individuals in the given circumstances, the court must see the purpose of law:[128]

> *"54. A reasonable classification is one which includes all who are similarly situated and none who are not.* ***The question then is: what does the phrase "similarly situated" mean? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law.*** *The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good."*[129]
>
> [Emphasis supplied]

175. Hence, in the hypothetical above, the purpose of the law behind restricting the entry of vehicles inside the park will provide the standard of relevance for differentiating vehicles into separate classes. For instance, if the purpose is to stop pollution inside the park, electric motorcycles and bicycles can be grouped in the class of permissible vehicles. In contrast, vehicles based on petrol or diesel can be grouped into separate classes of restricted vehicles. However, if the purpose of the statute is to prevent people inside

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[127] Special Courts Bill, *supra* note 120, para 72; D.S. Nakara v. Union of India, (1983) 1 SCC 305, para 11.
[128] State of Gujarat v. Shri Ambica Mills Ltd., (1974) 4 SCC 656, para 54.
[129] *Id*; Roop Chand Adlakha v. DDA, *supra* note 126, para 16.

the park from getting hurt, children's bicycles might be allowed, but other vehicles might be grouped and restricted.

176. This prong of the test is also echoed in ***Rustom Cavasjee Cooper v. Union of India***,[130] in which an 11-judge Bench of this Court held that the object of the statute was to foment economic development through the assistance of banks, and from a resource standpoint, this development could be more effectively facilitated by 14 banks in particular. Consequently, the Court ruled that classifying these 14 banks in a separate class was based on reasoning that had a nexus with the object of the statute.

177. To sum up, a classification is reasonable if it differentiates between similar and dissimilar elements, if such distinction is intelligible, and if the similarities and dissimilarities have nexus with the purpose of the statute.[131]

178. Further, within this twin-test framework of checking the form and object of classification, this Court has held that the effect of the statute must also be considered.[132] Instead of a mere formalistic study of checking the intelligible differentia and nexus with the object, this Court would undertake a normative analysis and strike down a classification if the object itself is discriminatory or leads to

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[130] Rustom Cavasjee Cooper (Banks Nationalisation), *supra* note 56, paras 178-180.
[131] Provisions similar to Article 14 exist in Singapore (Article 12) and Malaysia (Art. 8(1)), which also use this twin test framework; PO YEN JAP, *Constitutional Dialogue in Common Law Asia*, Oxford University Press,2015; Similar provisions also exist in the Universal Declaration of Human Rights (Article 7), the International Covenant on Civil and Political Rights (Article 26), and Constitutions of other countries such as Bhutan (Article 7(15)), Brazil (Article 5), Canada (Article 15), China (Article 33), France (Article 1), Germany (Article 3), Italy (Article 3), Japan (Article 14), Nepal (Article 18), Switzerland (Article 8), and the USA (Article 1).
[132] Navtej Singh Johar v. Union of India, *supra* note 71, para 409; State of T.N. v. National South Indian River Interlinking Agriculturist Association, (2021) 15 SCC 534, para 21.

a prejudicial outcome not conducive to constitutional morality.[133] This effectively prevents the test of reasonable classification from becoming a mere formula and, instead, ensures that constitutional values are protected when the object itself is unjust.

Qualifications regarding the yardsticks

179. Having established the yardsticks for the reasonableness of classification, it is important to note two crucial qualifications to complete the understanding of this test. *First*, while establishing a nexus with the object of the statute is necessary, it is not essential to demonstrate that the classification was the optimal method to achieve the object in question. To this end, this Court has held that:[134]

> *"33.* ***The nexus test, unlike the proportionality test, is not tailored to narrow down the means or to find the best means to achieve the object. It is sufficient if the means have a "rational nexus" to the object. Therefore, the courts show a greater degree of deference to cases where the rational nexus test is applied. A greater degree of deference is shown to classification because the legislature can classify based on the degrees of harm to further the principle of substantive equality, and such classification does not require mathematical precision.*** *The Indian courts do not apply the proportionality standard to classificatory provisions (…)."*
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> [Emphasis supplied]

180. *Second*, when gauging the reasonableness of classification, the Court must adopt a pragmatic view and refrain from deeming a classification unconstitutional solely because it is marginally under-inclusive.[135] In adjudicating the validity of a statute, the

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[133] Ramesh Chandra Sharma, *supra* note 126, paras 34 and 40.
[134] South Indian River Interlinking, *supra* note 132, para 33.
[135] Shri Ambica Mills, *supra* note 128, para 55.

concept of under-inclusiveness arises when a classification within the law fails to encompass all individuals similarly situated with respect to the law's intended purpose.[136] The approach of Indian courts towards under-inclusive legislation generally exhibits tolerance[137] on the premise that the legislature is "free to recognize degrees of harm"[138] and is allowed to "hit evil where it is most felt".[139] Moreover, this Court has also justified some under-inclusive classifications on the grounds of administrative convenience and legislative experimentation.[140]

181. Likewise, in ***Basheer v. State of Kerala***,[141] this Court upheld the validity of the law as long as it could be reasonably discerned based on intelligible differentia that advanced the object of the statute. The Court emphasized that merely because there is marginal under-inclusivity or the presence of cases falling on both sides of the dividing line, the law would not be declared as *ultra vires* of Article 14. In this vein, it held that:

> *"20.* ***Merely because the classification has not been carried out with mathematical precision, or that there are some categories distributed across the dividing line, is hardly a ground for holding that the legislation falls foul of Article 14, as long as there is broad discernible classification based on intelligible differentia, which advances the object of the legislation, even if it be class legislation.*** *As long as the extent of overinclusiveness or underinclusiveness of the classification is marginal, the*

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[136] *Id.*
[137] Special Courts Bill, *supra* note 120, para 78; State of Uttar Pradesh v. Deoman Upadhyaya, 1960 SCC OnLine SC 8.
[138] Charanjit Lal Chowdhury v. Union of India, 1950 SCC Online SC 49.
[139] B. K. MILLER, *Constitutional Remedies for Underinclusive Statutes: A Critical Appraisal of Heckler v. Mathews*, Harvard Civil Rights-Civil Liberties Law Review, 1985, 20, 86.
[140] South India River Interlinking, *supra* note 132; Superintendent & Remembrancer of Legal Affairs v. Girish Kumar Navalakha, (1975) 4 SCC 754, para 10; Javed v. State of Haryana, (2003) 8 SCC 369, para 17.
[141] Basheer v. State of Kerala, (2004) 3 SCC 609, para 20.

constitutional vice of infringement of Article 14 would not infect the legislation."

[Emphasis supplied]

182. This principle was reiterated in ***Subramanian Swamy v. Raju***,[142] where it was argued that individuals under the age of 18 could demonstrate maturity, suggesting that age requirements should, therefore, be flexible under Article 14. While rejecting this argument, the Court held that categorization does not have to create classes with arithmetic precision, and instead, it would suffice if the classes are broadly comparable.

183. Having identified the criteria for evaluating the constitutionality of classifications, we can now proceed to analyse whether Section 6A is constitutionally valid.

Reasonableness of classification as per Section 6A

184. To assess the reasonableness of the classification made by Section 6A, it is imperative to delve into the background of this provision.

185. As discussed earlier, Section 6A grants citizenship to those who migrated from East Pakistan into India before 25.03.1971. This grant of citizenship was prompted by several factors, with two primary considerations:

(a) *First*, as exemplified by the remarks in the Parliament during the discussion on the bill to introduce Section 6A, humanitarian concerns played a significant role in granting citizenship because it was deemed inhumane to repatriate thousands of people who had migrated during times of war.

[142] Subramanian Swamy v. Raju, (2014) 8 SCC 390, para 63.

(b) *Second*, considerations of inter-state relations were pivotal, as India sought to extend cooperation to the newly formed nation of Bangladesh and help it in restoring normalcy. As part of this understanding, it was agreed to grant citizenship in India to immigrants who arrived before 1971.[143]

186. The pertinent question that arises now is why such citizenship was granted exclusively to immigrants entering Assam. As acknowledged by the Union of India in its affidavit, the issue of immigration also existed in West Bengal. Therefore, if individuals from Bangladesh were immigrating to other States as well, we must ask what criteria justified conferring citizenship solely in Assam.

187. The answer to this question lies in history, specifically when Section 6A was enacted. Between 1980 and 1985, the Government of India engaged in extensive negotiations with representatives of various bodies in Assam. Eventually, an agreement was reached among the Government of Assam, the Government of India, the AASU, and the AAGSP. According to this agreement, the movement's representatives against foreigners in Assam agreed to call off the agitation in exchange for granting Indian Citizenship to only a limited category of immigrants in Assam. As a result, the government also extended benefits to those involved in the agitation and committed to focusing on the socio-economic development of Assam, with particular emphasis on building educational institutions. Known as the Assam Accord, this agreement represented a political compromise that specifically granted

[143] Bholanath Sen, *Lok Sabha Debate* (CAB, 1985), 20.11.1985.

citizenship to immigrants in Assam based on the terms agreed upon in the Accord.

188. Section 6A was inserted to advance this political settlement established through the Assam Accord. The long title of the Citizenship Amendment Act, 1985 captures this by stating that, *"Whereas for the purpose of* ***giving effect to certain provisions of the Memorandum of Settlement relating to the foreigners' issue in Assam (Assam Accord)*** *which was laid down before the House of Parliament on the 10th day of August, 1985 it is necessary to amend the Citizenship Act, 1955."*

189. Since section 6A was predicated on the terms of the Assam Accord, it extended citizenship solely to immigrants in Assam because the Union of India had exclusively engaged in this accord with Assam. This serves as the basis of intelligible differentia *vis-à-vis* other States. As discussed earlier, in assessing the reasonableness of classification, the Court must ascertain whether relevant factors were considered and whether similarly situated individuals were grouped in alignment with the law's objective. Both these criteria are met in this instance. Section 6A duly considered the pertinent factors, notably that the Assam Accord pertained solely to the State of Assam. Since a piquant situation such as that in Assam did not exist in any of the other States, Section 6A's objective did not extend to allowing such citizenship in these other States. Hence, the classification between the State of Assam and other States had a direct nexus with the object of the statute.

190. The next question that arises before us is whether the Court should go one layer further and hold that since such an agreement was entered only with the State of Assam, the said exercise is liable to be construed as violative of Article 14 or whether the Union of India

ought to have entered into similar agreements with other States? This has to be answered in the negative since such a determination falls outside the scope of judicial review, as this Court being not a representative body, should refrain from substituting its judgment for that of the elected representatives. The decision to enter into political compromises and agreements is a prerogative of the political entities involved, based on the specific circumstances and negotiations at hand. In the case of Assam, the unique situation and the negotiations conducted between 1980 and 1985 led to the Assam Accord, wherein certain benefits were extended to the State. However, it may not be appropriate for us to venture into the exercise of analysing whether similar agreements should have been pursued with other States like West Bengal.

191. Apart from the cases discussed while analyzing ***Issue i (Judicial Review) (supra)***, such judicial restraint has also been advocated by foreign courts. Lord Ruskill, in a 5-judge bench of the House of Lords in ***Council for Civil Service Union v. Minister for the Civil Service,***[144] elucidated that:

> *"(…) Prerogative powers* ***such as those relating to the making of treaties****, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of ministers as well as others* ***are not, I think susceptible to judicial review because their nature and subject matter are such as not to be amenable to the judicial process. The courts are not the place wherein to determine whether a treaty should be concluded*** *or the armed forces disposed in a particular manner or Parliament dissolved on one date rather than another."*
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> [Emphasis supplied]

[144] Council for Civil Service Union v. Minister for the Civil Service, 1985 AC 374, para 177.

192. Indeed, India's federal structure allows for diverse relationships between the Union and its constituent States, enabling the Parliament to engage in different agreements based on distinct regional aspirations, political needs, and state-specific requirements. The Assam Accord, along with the introduction of Section 6A, is not the only instance of such political compromises. Historical records document numerous occurrences, such as Article 371A of the Constitution, which was inserted pursuant to the agreement between the Government of India and leaders of the Naga Peoples Convention.[145] Similarly, Article 371G was incorporated pursuant to a memorandum of settlement between the Government of India, the Government of Mizoram and the Mizo National Front.[146] Identical is the basis of Article 332(6), which was based on the agreement between the governments of India and Assam and the Bodo Liberation Tigers.[147] These agreements and provisions are based on asymmetric federalism, recognizing that different States may have unique circumstances and requiring differentiated treatment.

193. Moreover, this conclusion is also supported by various decisions of this Court, which have held that based on the unique historical circumstances of each State, the States may be grouped under different classes for the purpose of reasonable classification under Article 14.[148]

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[145] The Constitution (Thirteenth) Amendment Bill, 1962, Statement of Objects and Reasons.
[146] The Constitution (Fifty-Third) Amendment Bill, 1986, Statement of Objects and Reasons.
[147] The Constitution (Ninetieth) Amendment Bill, 2003, Statement of Objects and Reasons.
[148] Ram Krishna Dalmia v. S.R. Tendolkar, 1958 SCC OnLine SC 6, para 11; Gopi Chand v. Delhi Administration, 1959 SCC OnLine SC 29, para 11.

194. We thus do not find any fault with the government, nor do we dictate that similar agreements should have been made with other States when Parliament entered into a political agreement with Assam alone based on its unique historical situation.

196. As against these considerations, the Petitioners have not been able to conclusively establish that other States were similarly placed. It is an established principle of law that there exists a presumption of constitutionality that underpins legislative enactments unless proven otherwise.[149] With respect to Article 14 specifically, this Court has dismissed claims pertaining to discrimination when insufficient material was presented to support the claim.[150] It has been repeatedly held that to succeed with a claim under Article 14, a mere plea regarding differential treatment is insufficient, and the Petitioner must show that similarly placed classes were discriminated against unjustifiably.[151]

197. While Mr. Divan, learned Senior Counsel representing the Petitioners, argued that the burden would shift unto the State once the Petitioners established *prima facie* evidence of unequal treatment, this shift primarily occurs when the classification is *ex facie* arbitrary, such that the unjust discrimination is so apparent that no proof is required.[152] In such circumstances, the onus must shift because the claimant cannot be burdened to disprove the absence of reasons when there are none.

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[149] *Id.*; Mohd. Hanif Quareshi v. State of Bihar, 1957 SCC OnLine SC 17, para 15.
[150] Bhagwati Saran v. State of Uttar Pradesh, 1961 SCC OnLine SC 170, para 15.
[151] State of Madhya Pradesh v. Bhopal Sugar Industries Ltd., 1964 SCC OnLine SC 121, para 11.
[152] Ameerunnissa Begum v. Mahboob Begum, (1952) 2 SCC 697, para 19; Ram Prasad Narayan Sahi v. State of Bihar, (1953) 1 SCC 274, para 12.

198. However, unless the legislation is clearly arbitrary, this onus cannot be reversed liberally, as sought by the Petitioners. In the present case, the classification was not *ex-facie* arbitrary as it was grounded in the legitimate context of the unique circumstances prevailing in Assam. In addition, as discussed in paragraph 192, many States in India share a *sui generis* relationship with the Union, thereby raising the threshold for establishing *ex-facie* arbitrariness of Section 6A. Accordingly, the burden rested upon the Petitioners to rebut this presumption and demonstrate that other States were also comparably situated and faced similar levels of violence.

199. The illustrated burden has not been discharged by the Petitioners, and this Court is not engaging in a fact-finding endeavor at this stage. We are, therefore, bound to uphold the presumption of constitutionality and assume that the legislature has duly applied its mind and has taken into consideration relevant circumstances.

200. Further, the implementation of the Assam Accord and Section 6A brought quietus to the then-ongoing discord while concurrently enabling India to uphold its diplomatic commitments to Bangladesh and address humanitarian concerns. Although there is merit in the concern surrounding Assam alone having to shoulder the burden of these immigrants, it must be noted that this is not attributable to Section 6A alone. It is well documented, both by historians and by previous decisions of this Court, that incessant migration from Bangladesh has continued post-1971. It was neither the intention nor the effect of Section 6A to give shelter to this latter class of immigrants. Indeed, a large cause of the Petitioners' grievance is the government's failure to give effect to this latter part of the Assam Accord and our citizenship regime–

which envisages timely detection and deportation of these post-1971 immigrants.

201. However, even if it is assumed that other States are similarly placed and should have been included thereunder, this alone would not render Section 6A unconstitutional.

Under-inclusiveness and unconstitutionality of Section 6A

202. As was discussed previously in paragraphs 180 to 182 of this judgement, Courts are generally tolerant of marginally under-inclusive legislations and recognize that similar cases may fall on both sides of the dividing line, provided that there is a broad discernible classification based on intelligible differentia.[153] While analyzing validity under Article 14, the Court has to be cognizant of the fact that any division done by a classification cannot be mathematically precise and accurate. As long as the broad purpose of the law is being fulfilled, a classification cannot be deemed unreasonable.

203. We are thus of the considered opinion that even if there are States that could share similar characteristics with Assam, the comparison should be between two broad classes: Assam and the rest of India, rather than each individual constituent of these two classes. Since other States, in general, were not facing similar issues, the differentiation in classes was reasonable. Hence, even if some States like West Bengal were placed similarly to Assam, that in and of itself would not lead to holding Section 6A unconstitutional. Accepting the Petitioners' contention and striking down Section 6A on the grounds of non-inclusion only of West

[153] Basheer, *supra* note 141.

Bengal would amount to allowing an under-inclusivity challenge in disguise, which, as discussed before, is not generally permitted by this Court.

204. Instead of comparing borderline cases such as West Bengal with Assam, the comparison ought to be between Assam and an average constituent of the other class, i.e. the rest of India. As analysed in previous sections, Assam and the rest of India are distinguishable on the basis of the unique political situation created in Assam by the influx of immigrants. The classification under Section 6A, therefore, is not violative of Article 14 simply because it is applicable to the State of Assam alone.

205. On the basis of the aforesaid reasoning, it is held that Section 6A is not *ultra vires* Article 14 of the Constitution of India.

vi. Manifest arbitrariness

206. Citing ***Shayara Bano v. Union of India***,[154] the Petitioners argued that a provision can be struck down as unconstitutional if it is manifestly arbitrary. To prove that Section 6A is manifestly arbitrary, the Petitioners contended that:

(a) Section 6A is against the overarching principles of democracy, federalism and the rule of law and is liable to be struck down on the grounds of manifest arbitrariness.

(b) The cut-off dates in Section 6A, namely 01.01.1966 and 25.03.1971, have no rationale and have been set arbitrarily.

[154] Shayara Bano v. Union of India, (2017) 9 SCC 1.

(c) There is no machinery for evaluating, assessing and determining the grant of citizenship under Section 6A (2), thus allowing anyone above the age of 57 years in Assam to claim citizenship without claiming ancestry or provenance.

207. The Petitioners also contended that the expression 'ordinarily resident' is vague as it does not prescribe any yardstick for the number of days required to qualify the same. In this light, the Petitioners have cited this Court's decision in ***Harakchand Ratanchand Banthia v. Union of India***[155] to contend that when key concepts in a provision are vague, the same ought to be struck down.

208. *Per contra*, the Respondents contended that the challenge to Section 6A under Article 14 on the grounds of being 'manifestly arbitrary' is untenable as there is an underlying rationale for the cut-off dates. It was submitted that the validity of 01.01.1966 as the cut-off date is severable from the validity of 25.03.1971. Hence, even if it is held to be arbitrary, Section 6A as a whole cannot be held to be unconstitutional. The Respondents also contended that the very objective behind Section 6A and the Assam Accord, as a whole, reflect a constitutional tradition of accommodating differences within Indian polity through asymmetric federal arrangements. Lastly, the Respondents have submitted that the term 'ordinarily resident' has been defined by this Court in ***Arunachal Pradesh v. Khudiram Chakma***[156] and hence is not vague.

209. The issues that fall for our consideration are four-fold:

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[155] Harakchand Ratanchand Banthia v. Union of India, (1969) 2 SCC 166.
[156] Arunachal Pradesh v. Khudiram Chakma, 1994 Supp (1) SCC 615.

i. Is there any rationale for the cut-off dates, i.e., 01.01.1966 and 25.03.1971? Whether they are manifestly arbitrary?

ii. Whether the process envisaged under Section 6A and the Citizenship Rules, 2009 for the migrants is unreasonable and suffers from the vice of 'manifest arbitrariness'?

iii. Is Section 6A is so 'manifestly arbitrary' that it offends Part II of the Constitution?

iv. Is the term 'ordinarily resident' in Section 6A undefined and vague? If yes, does Section 6A deserve to be struck down on the grounds of being manifestly arbitrary?

(a) Relation between Article 14 and arbitrariness

210. At the outset, it is pertinent to address that apart from the reasonable classification aspect of non-discrimination discussed in the preceding section, Article 14 also prohibits manifestly arbitrary actions. The principle underlying the same is that if an act is arbitrary and no rational basis exists for its application, it may lead to differential application on similarly situated persons. Hence, such arbitrariness is not only antithetical to the notion of equality, it is also prohibited under Article 14.

211. The absence of arbitrariness, or non-arbitrariness, as an essential component of the rule of law and a concomitant need in Article 14 is sufficiently evident. The relation between rule of law and arbitrariness was also traced in ***Indira Nehru Gandhi v. Shri Raj Narain***[157] and thereafter, in ***E. P. Royappa v. State of Tamil Nadu***,[158] wherein equality was observed to be antithetical to

[157] Indira Nehru Gandhi v. Shri Raj Narain, 1975 Supp SCC 1.
[158] E. P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.

arbitrariness. Furthermore, it was underscored that when an act is arbitrary, it inherently embodies inequality in political logic and constitutional jurisprudence, thus contravening the principles enshrined in Article 14. It is imperative to understand the significance of logic as one of the critical facets behind state action, the absence of which would render such action susceptible to arbitrariness.

212. This Court further elaborated upon the relationship between Article 14 and the conception of non-arbitrariness in the seminal case of ***Maneka Gandhi v. Union of India***,[159] wherein after emphasizing the dynamic nature of 'equality' and citing the 'arbitrariness' doctrine as formalized through ***EP Royappa (supra)***, it was observed by PN Bhagwati, J. (as His Lordship then was) that:

> *"7. […] Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. […]"*

(b) Constituents of manifest arbitrariness

213. The test of 'manifest arbitrariness' itself was crystallized in the authoritative precedent set out in ***Shayara Bano v. Union of India (supra)***, where this Court dealt with the challenge to the practice of 'triple talaq' as recognized in the Muslim Personal Law (Shariat) Application Act, 1937. In that case, this Court over-ruled its previous decision in ***State of AP v. McDowell & Co.***,[160] wherein

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[159] Maneka Gandhi v. Union of India, (1978) 1 SCC 248, para 7.
[160] State of Andhra Pradesh v. McDowell & Co., (1996) 3 SCC 709.

it held that an enactment cannot be struck down on the grounds of it being arbitrary or unreasonable and that some constitutional infirmity has to be found before invalidating an Act.

214. Thus, the test of 'manifest arbitrariness' was set out in ***Shayara Bano (supra)*** as follows:

> *"101. […] Manifest arbitrariness, therefore, must be something done by the legislature* ***capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary."***
>
> [Emphasis supplied]

215. The test of 'manifest arbitrariness, as propounded in ***Shayara Bano (supra)***, was eventually relied on in a catena of decisions including ***Joseph Shine v. Union of India***,[161] and is the prevailing law on this issue.

(c) Facets of the test of manifest arbitrariness

216. The term 'irrationality' refers to the lack of reason or logic. While highlighting the need for the presence of clear reason or logic, this Court in ***Cellular Operators Assn. of India v. TRAI***,[162] determined that the legislation, statute or provision being challenged must be supported by a rationale. The rationale demonstrates the application of intelligent care and observation in the enactment of such laws or provisions. To this end, it was held that:

> *"48. (…) We cannot forget that when viewed from the angle of manifest arbitrariness or reasonable restriction, sounding in*

[161] Joseph Shine v. Union of India, (2019) 3 SCC 39.
[162] Cellular Operators Assn. of India v. TRAI, (2016) 7 SCC 703.

Article 14 and Article 19(1)(g) respectively, the Regulation must, in order to pass constitutional muster, ***be as a result of intelligent care and deliberation, that is, the choice of a course which reason dictates****. Any arbitrary invasion of a fundamental right cannot be said to contain this quality. (…)"*

[Emphasis applied]

217. Further, in ***Joseph Shine (supra)***, this Court emphasized the underlying logic while striking down the provision prohibiting adultery:

"30. […] The offence and the deeming definition of an aggrieved person, as we find, ***is absolutely and manifestly arbitrary as it does not even appear to be rational*** *and it can be stated with emphasis that it confers a licence on the husband to deal with the wife as he likes which is* ***extremely excessive and disproportionate****. We are constrained to think so, as it does not treat a woman as an abettor but protects a woman and simultaneously, it does not enable the wife to file any criminal prosecution against the husband. Indubitably, she can take civil action but the husband is also entitled to take civil action. However, that does not save the provision as being manifestly arbitrary. That is one aspect of the matter. If the entire provision is scanned being Argus-eyed, we notice that on the one hand, it protects a woman and on the other, it does not protect the other woman.* ***The rationale of the provision suffers from the absence of logicality of approach and, therefore, we have no hesitation in saying that it suffers from the vice of Article 14 of the Constitution being manifestly arbitrary****."*

[Emphasis supplied]

218. Still further, while the test of manifest arbitrariness requires the presence of logicality, such reasoning does not have to be stated explicitly and can be discernable from the facts and circumstances.[163] However, it should be noted that the converse may not hold. In other words, even if the reason or rationale behind

[163] J.S. Luthra Academy v. State of Jammu and Kashmir, (2018) 18 SCC 65.

the impugned provision is expressly stated, it does not automatically guarantee non-arbitrariness. Such reason also needs to align with constitutional morality and public interest, and must bear a nexus with the object of the statute. The aspect of irrationality, as found in the test for 'manifest arbitrariness', thus, does not solely imply the absence of reason but also requires alignment with constitutional morality. Hence, the legitimacy of the reason or logic behind the impugned legislation should be viewed from the lens of constitutional ideals. This was so observed by this Court in ***Joseph Shine (supra)***, wherein it was clarified that irrationality does not merely denote the absence of reason but also requires that such reasoning be in harmony with constitutionalism.

219. We may hasten to add that, the legitimacy of the reason behind the legislation that has been impugned must be viewed from the lens of public interest also. This Court, in ***Hindustan Construction Co. Ltd. v. Union of India,***[164] struck down Section 87 of the Arbitration and Conciliation Act, 1996, on the ground of manifest arbitrariness by observing that it was against public interest. This was also observed in ***Manish Kumar v. Union of India (supra),*** that the golden thread running through this ground, making up the doctrine of manifest arbitrariness, is the absence of public interest.

(d) Extent of review under manifest arbitrariness

220. The standard for applying the test of 'manifest arbitrariness' is reflected in the word 'manifest', which signifies that the arbitrariness should be palpable and visible on the face of it.[165]

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[164] Hindustan Construction Co. Ltd. v. Union of India, (2020) 17 SCC 324.
[165] Vivek Narayan Sharma (Demonetisation Case-5 J.) v. Union of India, (2023) 3 SCC 1, para 255.

Hence, while examining whether a provision is manifestly arbitrary, Courts should practice judicial restraint and must not substitute their will against that of lawmakers.[166] Using this test, Courts cannot question the wisdom of the policy but can only test its legality in terms of the aforementioned grounds.

221. Such judicial restraint becomes all the more necessary while testing the arbitrariness behind a bright-line test. In law, the bright-line test is a clearly defined norm that does not leave a scope of interpretation. For instance, consider a legal requirement stipulating that individuals must be 18 years old to marry. Such a rule leaves no room for interpretation. In this context, it could be argued that if maturity is the rationale behind marriageable age, the use of the bright-line test introduces arbitrariness into legal standards, as a person aged 17.5 years old may in theory be more mature and suitable for marriage than someone aged 18.5 years old.

222. The fallacy in this argument can be elucidated by the Sorites paradox, a logical quandary generated by vague terms, with blurred boundaries of application. To give an oft-quoted example, consider defining the term 'heap of wheat' based on the number of wheat grains. If a collection of N number of grains is called a heap, removing one grain would not alter the assessment because the difference between a heap and non-heap cannot be of one single grain. By the same reasoning, removing two wheat grains would not change the classification. Extending this logic incrementally, by deducting one wheat grain at a time, one could argue that even a

[166] K.S. Puttaswamy (Privacy-9J) v. Union of India, (2017) 10 SCC 1, para 310.

heap with N minus N grains would not be a heap, leading to a fallacious conclusion.

223. Applying this paradox to the above illustration, if an individual of 18 years is deemed mature enough for marriage, then logically, someone who is 18 years minus one day should also be considered mature. Following the same reasoning, one could argue that a person who is 18 years minus 365 days, effectively 17 years old, would also meet the maturity criterion and therefore, the stipulation of 18 years as the minimum age appears arbitrary, as it fails to account for the potential maturity of individuals who are younger. As already explained, there exists an inherent fallacy in this argument, and hence, it ought to be rejected.

224. In that sense, every bright-line test, to some extent, is arbitrary. However, not every arbitrariness crosses permissible limits inherent in law. Indeed, the law sometimes prescribes these heuristic devices because the cost of arbitrariness is less than the gains received by prescribing a clear standard instead of keeping it vague. To put it differently, where arbitrariness is necessitated for a legislative distinction, the object of such a legislative act is also to prevent manifest arbitrariness.

225. To explain using another analogy, let us consider the context of setting speed limits. Juxtapose two scenarios: one, where a sign is posted saying "do not drive faster than 60 kmph"; and second, where the sign says, "do not drive fast". Following the logic discussed earlier, the 60 kmph standard appears arbitrary because if 60 kmph is deemed fast, then 59 kmph should also be considered fast, yet it would not be restricted. However, if the standard is left vague as "fast", the consequences could be unjust and manifestly arbitrary. Some cars might exceed 80 kmph, leading to potential

legal disputes when stopped. The lack of precise regulation could result in ineffective traffic control and costly litigation for public institutions. Conversely, if law enforcement clamps down to limit fast driving, it could create a chilling effect, slowing traffic even below the optimal speeds. Thus, while a 60 kmph limit may appear arbitrary, yet implementing that as a bright-line test would be more reasonable overall.

226. Therefore, while testing the arbitrariness of bright-line tests, the Courts must be mindful of the inherent limitations in such norms and therefore a microscopic review should be avoided. Instead, as discussed above, the effort should be to determine if the bright-line norm crosses the prescribed limit of 'manifest arbitrariness' and is irrational and capricious enough to be struck down. If the norm is backed by a policy reason, the Court must refrain from excessively questioning the specific standard and should exercise judicial review cautiously.

(e) Cut-off dates in Section 6A

227. The Petitioners vehemently challenged the cut-off dates and argue that those dates are arbitrary. As explained above, a bright-line test given by cut-off dates cannot be arbitrary unless it is shown to be unreasonable. This Court has, in a catena of decisions, maintained that the determination of cut-off dates falls within the domain of the Executive and the Court should not interfere with the fixation of the same, unless it appears to be, on the face of it, blatantly discriminatory and arbitrary.[167] To this effect, this Court has even held that the choice of a cut-off date cannot always be dubbed as arbitrary, even if no particular reason is forthcoming for the choice,

[167] State of Punjab v. Amar Nath Goyal, (2005) 6 SCC 754.

unless it is demonstrated to be capricious or whimsical.[168] This stance aligns with the understanding of the inherent arbitrariness of bright-line tests, as discussed above in paragraphs 221 to 224.

228. Adverting to the rationale behind the cut-off date of 01.01.1966, it seems there are historical circumstances, and the said date appears to be based on two significant policy reasons:

(a) Humanitarian grounds: As discussed in paragraph 185 of this judgement, Section 6A was predicated on humanitarian grounds, where citizenship was granted to the people displaced by wars and political turmoil. Between 1964 and 1965, a significant influx of refugees prompted the Union to issue instructions to register such persons as citizens.[169] The humanitarian grounds for the grant of citizenship apparently influenced the rationale for choosing this cut-off date.

(b) Administrative convenience: Further, the immigrants who migrated before 1966 were added to the electoral rolls prepared as on 01.01.1966. These rolls served as the nearest definite document that could be drawn upon to determine citizenship, especially with a view to desist from disturbing the *status quo* amidst the large-scale migration and consequent settlement of people before 01.01.1966.[170] It was also administratively convenient to select this cut-off date because of the impracticality of requesting documents from individuals who migrated much earlier, such as in 1951. Although 1961 was initially proposed as the cut-off date, but after due deliberations, eventually, the cut-off date of 01.01.1966 was

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[168] Union of India v. Parameswaran Match Works, (1975) 1 SCC 305.
[169] T. S. MURTY, *Assam, The Difficult Years: A Study of Political Developments in 1979-83*, Himalayan Books, 1983.
[170] *Id.*

agreed to, and thus, the period before and after 1966 was dealt with in a differential manner.

229. It can thus be concluded that the date of 01.01.1966 was not set arbitrarily but based on proper application of mind.

230. As regards to the reasoning behind the cut-off date of 25.03.1971, the same can be traced to the launch of Operation Searchlight by Pakistan, an event which also marked the onset of the Bangladesh Liberation War. Subsequently, on the very next day, on 26.03.1971, Bangladesh officially declared independence. In response to these developments, the Prime Minister of Bangladesh committed to "*by every means, the return of all the refugees who had taken shelter in India since March 25, 1971, and to strive, by every means to safeguard their safety, human dignity and livelihood*".[171]

231. Soon thereafter, the President of Bangladesh promulgated the Bangladesh Citizenship (Temporary Provisions) Order, 1972, on 15.12.1972, with retrospective validity from 26.03.1971. The 1972 Order essentially introduced a framework of constituent citizenship, signifying the initial acquisition of citizenship through the operation of the law. The 1972 Order put forth a discernible distinction and provided citizenship from 25.03.1971, ameliorating the issue of statelessness. Since the war had ended and a new nation was formed on 25.03.1971, the concern regarding providing citizenship based on humanitarian grounds was also assuaged. This appears to be the rationale behind prescribing the date of 25.03.1971 as a cut-off for obtaining citizenship in India.

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[171] Joint Communique issued at the end of the visit of the Prime Minister of Bangladesh, Sheikh Mujibur Rahman, to India, 08.02.1972.

232. This background indicates that the cut-off dates in Section 6A were not incorporated in a vacuous manner but were a result of considerable deliberation and discussion, and were also backed by a well-considered rationale. Furthermore, keeping in mind the humanitarian considerations that would have gone into the grant of citizenship under Section 6A, we cannot hold that the rationale behind the cut-off dates militates against any constitutional values or the concept of constitutional morality. Instead, Section 6A acknowledged the political and social realities of that period along with the impracticability of reversing the changes that had occurred.

233. Nevertheless, and as noted earlier, the determination of a cut-off date falls within the ambit of the policy makers and the Court would be reluctant to impinge into such fixation, save and except when the assigned date is vitiated with discriminatory and arbitrary considerations. Since the cut-off dates in Section 6A have been found not to offend the aforementioned principles, we are not inclined to interfere in the prescription of such cut-off dates.

234. We may hasten to add here that Section 6A does not operate perpetually and since it does not rescue those immigrants who entered the State of Assam on or after 25.03.1971 and has become redundant *qua* them, the cut-off dates prescribed therein cannot be said to be tainted with the element of manifest arbitrariness.

(f) Process prescribed under Section 6A

235. The Petitioners also claimed that the process as prescribed under Section 6A is also manifestly arbitrary. Let us now proceed to consider whether the process in built in Section 6A suffers with the

vice of manifest arbitrariness, regardless of the number of conditions prescribed therein for claiming citizenship.

236. The conditions for an individual who migrated prior to 01.01.1966 are such that *first,* the person must be of Indian origin; *second*, they should have migrated to Assam from the specified territory before 01.01.1966; and *third*, the person must have been ordinarily resident in Assam since the date of their entry into Assam. Additionally, the persons whose names were included in the electoral rolls for the 1967 elections were also to be conferred deemed citizenship. Section 6A (1) further defines the meaning of the terms contained in Section 6A (2). Section 6A (1) (a) explains 'Assam' to mean "*territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985"*. Section 6A (1) (c) defines 'specified territory' to mean "*territories included in Bangladesh immediately before the commencement of the Citizenship Act, 1985"*. Further, the person is deemed to be of 'Indian origin', as per Section 6A (1) (d), if "*he, or either of his parents or any of his grandparents was born in undivided India"*. The meaning of 'ordinarily resident in Assam' is also clear and has been discussed in the succeeding paragraphs. Hence, conferring deemed citizenship under Section 6A (2) is not arbitrary but subject to the abovementioned conditions.

237. Further, the migrants who came to Assam on or after 01.01.1966 and before 25.03.1971, will have to be subjected to the following conditions and processes, in addition to the conditions stipulated above:

i. Such persons should have been detected to be foreigners. Section 6A (1) (e) makes it clear that a person is deemed to have been a foreigner on the date on which a Tribunal

constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

ii. Such persons, thereafter, should register themselves in accordance with the provisions of the Citizenship Rules, 2009, with a registering authority as specified therein. Rule 19 of the Citizenship Rules, 2009 deals with the Registering Authority, who would be an officer not below the rank of the Additional District Magistrate.

iii. Thereafter, per Rule 19 (2), an application for registration under Form XVIII would have to be made by the persons so detected by the Tribunals, before the Registering Authority within 30 days of such detection. Such application must be made within 30 days of the appointment of the Registering Authority.

iv. The Registering Authority would thereafter enter the particulars of the application in Form XIX and return a copy of the application under his seal to the applicant.

v. The Authority would send such a copy of the application to the Central and State governments with a quarterly return in Form XX.

vi. Further, as per Section 6A (4), a person registered under the process mentioned above would be entitled from the date of his detection as a foreigner and till the expiry of ten years from that date, the same rights and obligations as an Indian citizen except for the right to vote.

vii. Rule 20 of the Citizenship Rules, 2009 also allows the Registering Authority to make a fresh reference to the Tribunals upon receipt of an application from an applicant when any question arises whether such person fulfils the necessary criteria or the Tribunal has not recorded a finding to that effect.

238. From the above, it is clear that there are legibly delineated conditions and a reasonable process envisaged under Section 6A and the Citizenship Rules, 2009 for migrants who came before 01.01.1966, as well as for those who came on or after 01.01.1966 and before 25.03.1971.

239. Still further, apart from these conditions prescribed within Section 6A itself, various other statutes supplement the issue of migrants in Assam. As will be detailed in the later part of this judgement under ***Issue xi (Citizenship Act vis- à-vis the IEAA) (infra)***, these statutes include the Immigrants (Expulsion from Assam) Act, 1950, Foreigners Act, 1946, the Foreigners (Tribunals) Order, 1964, the Passport (Entry into India) Act, 1920 and the Passport Act, 1967. In these statutes, the Immigrants (Expulsion from Assam) Act, 1950 prescribes the mechanism for the expulsion of immigrants acting against the public interest, and the Foreigners Act, 1946 as well as the Foreigners (Tribunals) Order, 1964 prescribe, *inter alia*, the mechanism for detection of foreigners, the norms regarding their stay in India before they are granted citizenship, and deportation of illegal immigrants post-1971. Additionally, the Passport (Entry into India) Act, 1920 can also be used to penalize illegal immigrants who entered India without a valid passport. The Passport Act, 1967 can be used for penalizing immigrants travelling out of India without such a passport.

240. The above statutes, for the reasons assigned in the later part, supplement Section 6A and are to be read together to create a harmonious code. The process which runs through all of these legislations does not appear to be capricious or irrational. We cannot therefore approve the Petitioners' approach of singularly reading Section 6A in isolation, calling it incomplete and terming it manifestly arbitrary for not prescribing all conditions exhaustively.

241. There also appears to be an explicit and legitimate reason behind the process of segregating migrants into different classes, as provided in Section 6A. This is so, since the over-arching objective of Section 6A and the Assam Accord was to achieve a comprehensive and lasting solution to the complex issue of migration in Assam; balancing legal, political, and humanitarian considerations.

242. At this juncture, it is crucial to distinguish between the prescribed process under the provision and its actual implementation. While the legislature had anticipated that the procedure outlined in Section 6A, along with other complementary statutes mentioned in paragraph 239 above, would suffice to address the issue of immigration into Assam, this intention has not been realized. Instead of adequately addressing the immigrants who entered the state before 1971 and timely identifying and deporting those who entered illegally post-1971, the Respondents have not properly implemented this legal regime, leading to a scenario where the latter category of immigrants have been residing in Assam like ordinary citizens. However, this failure is not attributable to Section 6A but rather to its inadequate implementation.

243. Certainly, had the law granted Indian citizenship to undocumented immigrants from another country on an ongoing basis without any intelligible criteria or discernible principle, it could have been susceptible to challenge. However, this is not the case here. As previously analyzed, Section 6A conferred citizenship only upon certain immigrants who met certain specified conditions up to a particular cut-off date. Functioning alongside other statutes, its aim was not only to legitimize the stay of a particular class of immigrants but also to facilitate the detection and deportation of others. Section 6A is clearly not manifestly arbitrary.

(g) Section 6A and Part II of the Constitution

244. The Petitioners further argued that individuals declared as citizens in Part II of the Constitution, along with successive generations, constitute the basic structure of the Constitution, and any statute or statutory provision which interferes with this basic structure, without reasonable care and fairness, should be deemed 'manifestly arbitrary' thus rendering Section 6A as liable to be struck down.

245. Since we have already dealt with Part II of the Constitution in the preceding parts, this issue need not be iterated again. It would be sufficient to observe that Section 6A does not go against the notion of citizens under Part II of the Constitution, and the same does not sustain a challenge based on either the 'basic structure' theory or 'manifest arbitrariness'.

(h) 'Ordinarily resident' in Section 6A

246. The Petitioners submitted that the expression 'ordinarily resident', as contained in Section 6A, is vague as it does not prescribe any yardstick for the number of days required to qualify the same. In

this light, the Petitioners cited this Court's holding in ***Harakchand Ratanchand Banthia v. Union of India (supra)***, to contend that when key concepts in a provision are vague, the same ought to be struck down.

247. Vagueness as one of the grounds for striking down a provision under Article 14 can be understood through judicial pronouncements made by this Court. In the ***Indian Social Action Forum v. Union of India***,[172] a 2-judge Bench of this Court dealt with a challenge to certain provisions of the Foreign Contribution (Regulation) Act, 2010 and the Foreign Contribution (Regulation) Rules, 2011. While particularly analyzing the words 'activity, ideology and programme' in Section 5 (1) of the above enactment, this Court affirmed the High Court's view that the abovementioned words do not suffer from the vice of vagueness, and would not invite the wrath of Article 14. This Court observed as follows:

> *"16. […] The High Court held that the words "activities of the organisation, the ideology propagated by the organisation and the programme of the organisation" having nexus with the activities of a political nature are expansive but cannot be termed as vague or uncertain. Sufficient guidance is provided by Parliament in Section 5 and it is for the rule-making authority to lay down the specific grounds.* ***We are in agreement with the High Court that Section 5(1) does not suffer from the vice of vagueness inviting the wrath of Article 14****. […]"*
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> [Emphasis supplied]

248. The vagueness doctrine was further developed in ***Nisha Priya Bhatia v. Union of India***[173] which observed that a duly enacted law cannot be struck down merely on the grounds of vagueness,

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[172] Indian Social Action Forum v. Union of India, (2021) 15 SCC 60.
[173] Nisha Priya Bhatia v. Union of India, (2020) 13 SCC 56.

unless such vagueness transcends into arbitrariness. With this background, we shall now examine the test for assessing vagueness and whether Section 6A falls foul of the same.

Vagueness in law

249. Vagueness is an inherent feature of language. The same intention can be expressed with a variety of words and expressions, and any given choice of words can relate to multiple different intentions. This problem is particularly exacerbated with vague terms, which often have a wide variety of referents, leading to comparatively greater open-endedness and variability. It is well known that unless the law prescribes a bright-line test, which too has its own set of interpretative problems as discussed before, most standards in law have some degree of open texture, and inevitably harbor some vagueness or multiple meanings.

250. The following example may be considered to understand the import of a word with an open texture. Suppose a statute uses the term 'tall' instead of prescribing a particular numerical test for height. Now, the meaning of this term can vary depending on the context and the purpose of the statute. The standard of tallness might differ for a ride at an amusement park and perhaps in discerning the maximum height of vehicles on motorways. Hence, in that sense, the term is vague and open to wide interpretation.

251. Vagueness in law, however, exists on a spectrum, and different scenarios necessitate different degrees of tolerance towards vagueness. Excessive vagueness in law can make the statute overbroad and might make the exercise of discretion a capricious exercise. At the same time, it might sometimes be desirable in the interest of justice to retain some open texture in statutes, to cover

future eventualities that the legislature might not have anticipated but intended to address based on the overarching purpose of the law. In that sense, the sliding scale of vagueness in law determines whether the law is just and inclusive, or unjust and capricious.

252. To instantiate, consider Section 5 of the Limitation Act, 1963, which allows the condonation of delay if 'sufficient cause' has been delineated by such applicant. In this context, instead of prescribing a mathematically precise formula in regards to what is a sufficient cause, it was considered necessary to use words that provide a broad spectrum and enable a fact-based analysis for each case. Since lawmakers could not possibly envisage all potential situations that may arise in the future at the time of legislating, it was therefore considered prudent to leave it to the facts and circumstances of each individual case.

253. Apart from enabling individualized application of the broad legal directive, a certain degree of vagueness is also necessary to address evolving societal needs. An excellent example of this is reflected in the jurisprudence of Article 21. In this scenario, if the framers of the Constitution had sought to include a laundry list encompassing a myriad of conditions to which Article 21 would be applicable, the ramifications would have been substantial. Any interpretation of the right to privacy would have required a constitutional amendment. Therefore, it may often be beneficial to prescribe a broad standard and allow enough flexibility to address changing needs of the society. Judicial discretion in that sense is often wedded unto the law and cannot be eliminated by invoking excessive formalism.

254. This takes us to the question that if vagueness is inherent in law and may even be desirable on some level, then what ought to be the

test and standard for striking down a law on grounds of being vague. In this regard, we will now analyze the test and standard for vagueness, which would make a statute or legislation liable to be struck down on that basis.

Test for void-for-vagueness

255. Vagueness needs to be viewed from the perspective of: (*a*) the authorities applying the impugned law; and (*b*) the persons being regulated by the impugned law, as was held in ***Shreya Singhal v Union of India***,[174] where this Court dealt with the constitutionality of Section 66A of the Information Technology Act, 2000. This Court, after referring to terms in Section 66A, such as 'grossly offensive' or 'menacing', observed the same to be very vague and held that neither the prospective offender under Section 66A nor the authorities who are to apply Section 66A would have any manageable standard to charge a person for an offence under Section 66A. It was observed as follows:

> *"85. […] Quite obviously, a* ***prospective offender of Section 66-A*** *and the* ***authorities who are to enforce Section 66-A*** *have absolutely no manageable standard by which to book a person for an offence under Section 66-A […]."*
>
> [Emphasis supplied]

256. With respect to the first limb, i.e., the perspective of the person applying the law, the standards are made clear in ***State of Madhya Pradesh v. Baldeo Prasad***,[175] where while dealing with a constitutional challenge to the validity of the Central Provinces and Berar Goondas Act, 1946, it was observed that the definition of the word '*goonda*' does not give necessary assistance to the District

[174] Shreya Singhal v Union of India, (2015) 5 SCC 1.
[175] State of Madhya Pradesh v. Baldeo Prasad, (1961) 1 SCR 970.

Magistrate, in deciding whether a particular citizen falls under the category of '*goonda*' or not. Further, in ***Maneka Gandhi (supra)***, a Constitution Bench of this Court, while trying to construe the import of the words 'in the interests of general public' in Section 10(3)(c) of the Passport Act, 1967, observed that the law is well settled to the effect that "*when a statute vests unguided and unrestricted power in any authority to affect the rights of a person without laying down any policy or principle which is to guide the authority in exercise of this power, it would be affected by the vice of discrimination…".* After noting that the impugned words in the provision are taken *ipsissima verba* from Article 19(5) of the Constitution, it was held as follows:

> *"16. (…)We are clearly of the view that* ***sufficient guidelines are provided by the words "in the interests of the general public" and the power conferred on the Passport Authority to impound a passport cannot be said to be unguided or unfettered****(…)."*
>
> [Emphasis supplied]

257. This view has also been endorsed in ***Harakchand Ratanchand Banthia (supra),*** where a Constitution Bench of this Court dealt with the constitutional validity of the Gold Control Act, 1968. The challenge made by the Petitioners therein, against Section 27 of the Act, mainly contended that the conditions imposed through the section for the grant or renewal of licenses were uncertain, vague and unintelligible, thus conferring broad and unfettered power upon the statutory authorities in the matter of grant or renewal of license.

258. Hence, to satisfy the first facet regarding the person applying the law, the impugned law must be clear enough to provide necessary

guidelines regarding application, and must not confer unfettered discretion.

259. When evaluating the issue from the second perspective, which focuses on the individuals affected by the law, it is essential to adopt an objective standard reflecting the viewpoint of a person of average intelligence within the affected group. Thus, it follows that a person of ordinary intelligence amongst such a class of persons on which the impugned law operates should be able to understand the scope or sphere of application of the law. This standard was observed by a Constitution Bench of this Court in ***Kartar Singh v. State of Punjab***,[176] where it dealt with the constitutionality of specific provisions in the Terrorist and Disruptive Activities (Prevention) Act, 1987, analyzed the term 'abet' and gave it a reasonable construction to avoid the vice of vagueness. It was observed that vague laws offend important values and reinforce the need for laws to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited.

260. ***Nisha Priya Bhatia (supra),*** was a case where a challenge to Rule 135 of the Research and Analysis Wing (Recruitment, Cadre and Services) Rules, 1975 was laid. This Court observed that such a challenge on the ground of vagueness could only be sustained if the Rule does not provide a person of ordinary intelligence with a reasonable opportunity to know the scope of the sphere in which the Rule would operate. This position was further developed, in line with the perspective of the persons upon which the provision operates, by observing that this standard is to be applied from the

[176] Kartar Singh v. State of Punjab, (1994) 3 SCC 569.

point of view of a member working in the organization as an intelligence officer, more particularly, a Class I intelligence officer.

261. Furthermore, this standard was also seen to have been applied in the ***Federation of Obstetrics & Gynaecological Societies of India (FOGSI) v. Union of India***,[177] wherein the constitutional validity of Sections 23 (1) and 23 (2) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 was being challenged. While holding against such a challenge, it was observed by this Court that the provisions are not vague and that a responsible doctor is expected to know what they are undertaking and what their responsibilities are. In this light, the standard of a 'person of ordinary intelligence' was also seen to be employed and the Court went on to observe that a person of ordinary intelligence can comprehend the provisions of the Act and they can have fair notice of what is prohibited and what omission they should make. A nuanced understanding of the term 'ordinary intelligence' can be gained from this Court's ruling in ***Seksaria Cotton Mills Ltd. v. State of Bombay***,[178] where, albeit in a different context, while interpreting the meaning of the word 'possession', it was observed as follows:

> *"21. But we need not go into all this. Here is an order which is to affect the business of hundreds of persons, many of whom are small petty merchants and traders, the sort of men who would not have lawyers constantly at their elbow; and even if they did, the more learned their advisers were in the law the more puzzled they would be as to what advice to give, for it is not till one is learned in the law that subtleties of thought and bewilderment arise at the* ***meaning of plain English words which any ordinary man of average intelligence, not***

[177] Federation of Obstetrics & Gynaecological Societies of India (FOGSI) v. Union of India, (2019) 6 SCC 283.
[178] Seksaria Cotton Mills Ltd. v. State of Bombay, (1953) 1 SCC 561, para 21.

versed in the law, would have no difficulty in understanding *[...]"*

[Emphasis supplied]

262. To sum up this facet, the impugned law is to be tested from the perspective of a person of 'ordinary intelligence' from the class to which the law applies. We have also delineated cases where the impugned law operates on a specialized class of persons, such as a Class-I intelligence officer of the Research and Analysis Wing, as seen in ***Nisha Priya Bhatia (supra)***, and medical practitioners or doctors as seen in ***FOGSI (supra)***. In any case, even if the persons being regulated are not a specialized class of persons, the Court would adopt the standard of an ordinary man of average intelligence, who, though not well versed in law, would have no difficulty in understanding the plain meaning of the words contained in the impugned law, when confronted with it.

263. Given the above, it is observed that the test for striking down a law on the grounds of vagueness can be viewed through two perspectives, both of which are to be taken into account, and the standards for the same have to be satisfied to sustain a challenge on the grounds of a law or provision being void for vagueness. Thus, a statute or its provision can be struck down for vagueness if:

i. The authority interpreting and applying the impugned law or provision is not sufficiently guided by such law or provision and is conferred unfettered discretion by virtue of the same; and

ii. When confronted with the plain meaning, a person of ordinary intelligence, amongst the persons regulated by the impugned

law or provision, faces difficulty in understanding the sphere of their application.

The extent of review for the test of 'void for vagueness'

264. It is also well settled that ordinarily, courts should endeavour to draw a demarcating line and infer some reasonable meaning from an impugned provision, rather than hastening to intervene and striking down the entire provision on the grounds of vagueness. This view was also echoed in ***K.A. Abbas v. Union of India***,[179] where a Constitution Bench of this Court dealt with the constitutionality of Section 5B of the Cinematograph Act, 1952 and laid down the thresholds for applicability of the vagueness doctrine. It was held that if a law is vague, it should be accorded the interpretation which best suits the legislature's intention and advances the purpose of the legislation. If that was not possible, and the legislation was marred with uncertainty which *prima facie* appeared to take away a guaranteed freedom, it could be struck down. However, this Court also cautioned that such recourse be resorted to sparingly, and the Court should instead endeavor to draw the line of demarcation where possible.

265. Similarly, another important principle governing this doctrine is that vagueness ought to be inversely proportional to the gravity of the consequences involved—i.e., the more penal the consequences, the less vague the legislation should be. Vagueness, especially in criminal laws, ought to be used to protect the individual facing penalty.[180]

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[179] K.A. Abbas v. Union of India, (1970) 2 SCC 780.
[180] Shreya Singhal, *supra* note 174.

Whether Section 6A is void for being vague

266. Now turning to the issue at hand, the Petitioners' apprehension concerns the meaning of the phrase 'ordinarily resident in Assam', as provided in Section 6A, and more particularly in clauses (2) and (3) thereof.

267. At the very threshold, we must note that the consequences of Section 6A are relevant for our determination of vagueness, as discussed in paragraph 263 of this judgement. Section 6A confers citizenship upon a sub-class of immigrants into Assam, and can therefore not be classified as criminal or penal. Instead, by legitimizing the stay of certain immigrants in India, Section 6A is more akin to a beneficial legislation. Given this, we are inclined to extend greater laxity when testing the term 'ordinarily resident' for vagueness.

268. *First*, while examining the expression 'ordinarily resident' from the viewpoint of the authority interpreting and applying the law, it could be observed that there is little vagueness in this term, given that this Court has already dealt with the same and extracted its import, particularly within the context of its usage in Section 6A. ***Khudiram Chakma (supra)***, dealt with the case of the Chakmas, who were a group of people who had migrated to Assam in 1964 and had shifted to Arunachal Pradesh thereafter, and were claiming citizenship under Section 6A. It was held that 'ordinarily resident' within Section 6A meant "*ordinarily resident in Assam from the date of entry till the incorporation of Section 6-A, namely, 07.12.1985*". To further understand the nuanced import of 'ordinarily resident', this Court, after placing reliance on ***Smt.***

Shanno Devi v. Mangal Sain[181] observed the same to mean that "*it is not necessary that for every day of this period he should have resided in India. In the absence of the definition of the words 'ordinarily resident' in the Constitution it is reasonable to take the words to mean 'resident during this period without any serious break.'*" In ***Smt. Shanno Devi (supra)***, this Court was interpreting the term 'ordinarily resident' as appearing in Article 6 of the Constitution, which applies in the case of citizenship for persons who migrated to India from Pakistan. The term 'ordinarily resident' under Section 6A can thus hardly be said to be undefined or vague.

269. In addition, it must also be noted that the phrase 'ordinarily resident' is used in various Indian legislations, in contexts not too dissimilar from Section 6A. Besides the Indian Constitution, it finds mention in Sections 5 and 10 of the Citizenship Act, 1955, in the Representation of the People Act, 1950, in the Life Insurance Corporation Act, 1956, the Income Tax Act, 1961 and the Patents Act, 1970, among other statutes. Given such frequent usage, it would be difficult to term 'ordinarily resident' as vague. This Court has held the same in ***Premium Granites v. State of T.N.,***[182] where it was noted that the term 'public interest' had acquired the character of being a 'definitive concept' in Indian jurisprudence, owing to its widespread usage in the Constitution and other enactments, apart from its interpretation in several judicial pronouncements.

270. Hence, the words 'ordinarily resident in Assam', as contained in Section 6A (2) and (3), cannot be seen to suffer from the vice of vagueness, keeping in view the fact that the judicial officers

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[181] Smt. Shanno Devi v. Mangal Sain, (1961) 1 SCR 576.
[182] Premium Granites v. State of T.N., (1994) 2 SCC 691.

constitute the Foreigners Tribunals; their orders are subject to review by superior courts; and there are civil administration officers aiding the Tribunals, all of whom are well conversant with the nuances of the procedure contemplated under Section 6A.

271. When proceeding to apply the second limb of the test of vagueness, i.e., from the perspective of persons regulated by the impugned law, the relevant class of persons for consideration would be the immigrants who came to Assam from erstwhile East Pakistan before the cut-off date of 25.03.1971.

272. Such an analysis would indicate that an immigrant from East Pakistan of ordinary intelligence, who has come before 25.03.1971 to Assam and who is not versed in law, when confronted with the plain meaning of the words 'ordinarily resident since the date of his entry in Assam', would readily be able to understand the scope or sphere or application of the words. The emphasis here is whether a person of ordinary intelligence can understand the meaning *simpliciter* and gain a basic idea of the scope or sphere of application of the same within the context of the impugned law, and not a nuanced or exact legal understanding. On application of such a threshold with respect to the persons being regulated, it would be difficult to hold that such persons would be unable to understand the *simpliciter* contour and indicative meaning of the phrase 'ordinarily resident', and would find it so vague as to be unable to the meaning of the words. This observation is further bolstered by the fact that none from the affected class of immigrants has contended before us that they found the term 'ordinarily resident' to be vague or evasive.

273. We thus hold that Section 6A does not suffer from manifest arbitrariness because: (*a*) there is application of mind behind the incorporation of the cut-off dates; (*b*) the process under Section 6A is not arbitrary; (*c*) Section 6A does not violate Part II; and (*d*) the term 'ordinary residence' is not vague enough to be void.

vii. Article 29 and Section 6A

274. The Petitioners have attempted to claim endogamous community rights through the route of Article 29 of the Constitution. They contended that there has been a drastic demographic change in the State of Assam due to the influx of illegal migrants from erstwhile East Pakistan, which has resulted in Assamese culture being lost. They further argued that the right under Article 29(1) is absolute and provides a group the freedom to shape their cultural identity. This, they argue, gets jeopardized when there is a forcible imposition of a foreign culture, as is happening through the unchecked migration of Bangladeshi immigrants into Assam.

275. Countering the Petitioners' contentions, the Respondents submitted that demographic changes could not be a constitutionally valid metric for measuring cultural change. Changes to religious demographics could be traced to several different factors, including state reorganisation and internal migration. Further, they contended that the objective of Article 29(1) is to establish a multicultural society, and not an endogamous one. They argued that accepting the Petitioners' argument would lead to cultural exclusivity, which they felt was not constitutionally permissible. Further, they also urged that a constitutional culture exists in India, which ought not to be endangered on the basis of demographic change.

(a) Background of Article 29

276. Article 29(1) of the Constitution, which is included in Part III, confers upon any section of citizens residing in the territory of India, the right to conserve its language, script or culture. The text of the provision reads as follows:

> *"29. Protection of interests of minorities. — (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."*

277. Incorporated into the constitutional framework with a distinctive approach to bestowing rights upon a segment of the populace, this provision underwent extensive debate and scrutiny within the halls of the Constituent Assembly. The deliberations surrounding this provision serve as an invaluable resource for comprehensively understanding the significance of Article 29, affording us insight into the overarching intent of its framers during the formulation of this particular provision.

278. Article 29, which was then draft Article 23 prior to its inclusion into the Constitution, was the subject matter of intense debate, with respect to both the terms used in the provision itself and the import of the rights it conferred. Although draft Article 23 initially used the term 'minority', it was substituted for the words 'section of citizens'. This change was made keeping in mind the diversity of India and with the aim of ensuring that children received education in the language of their choice, while simultaneously making sure that they continued to learn the language of whichever State they may be a part of.[183] Thereafter, the term 'section of citizens' got

[183] Begum Aizaz Rasul, *Constituent Assembly Debates*, Volume 7, 08.12.1948.

crystallised to the extent that attempts to replace it with the term 'minority' were negatived by the Assembly.[184] With that, Article 29, as we are familiar with today, found its place as a part of the Constitution.

279. Provisions akin to Article 29(1), which establish a right to preserve culture, can be identified in numerous Constitutions across various jurisdictions. For instance, Article 20(2) of the Constitution of Albania grants the right to 'preserve and develop' ethnic, cultural, and linguistic identity. A similar right is articulated in Article 56 of the Armenian Constitution, Article 11 of the Georgian Constitution, Article 59 of the Kosovan Constitution, Article 114 of the Latvian Constitution, and Article 35(1) of the Polish Constitution. While these provisions share the common objective of cultural preservation, they vary slightly from Article 29(1) by incorporating the term 'develop'.

280. The Petitioners in the present case allege a violation of their right specifically under Article 29(1). This article aims to protect and guarantee the right conferred upon every citizen of India to conserve their language, script or culture. When read in conjunction with Article 30, the overarching objective of Article 29 is to allow minority communities to establish educational institutions to preserve and fortify their cultural, linguistic, or scriptural heritage. However, given the specific allegations presented by the Petitioners, our scrutiny will be confined exclusively to assessing a potential violation of Article 29(1).

[184] Z. H. Lari, *Constituent Assembly Debates*, Volume 7, 08.12.1948.

(b) Standing under Article 29(1)

281. Article 29(1) effectively has two key aspects that need to be determined: *first*, whether there is a 'section of citizens' seeking to conserve their language, script or culture and *second,* that such language, script or culture in question is 'distinct'.

282. Article 29(1) begins with the term 'any section of citizens'. Though the term 'minority' is used in the marginal heading, the scope of Article 29(1) is not restricted to minorities as understood in the technical sense.[185] It instead extends to any section of citizens residing in the territory of India. This was a conscious choice on the part of the framers of our Constitution,[186] as is apparent from the following words of Dr. B.R. Ambedkar:

> *"For instance, for the purposes of this article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities.* ***Similarly, if certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in the technical sense, they would be cultural and linguistic minorities in Bengal. The article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the terms as I have explained just now.*** *That is the reason why we dropped the word "minority" because we felt that the word might be interpreted in the narrow sense of the term, when the intention of this House, when it passed article 18, was* ***to use the word "minority" in a much wider sense, so as to give cultural protection to those who were technically not minorities but minorities nonetheless. It was felt that this protection was necessary for the simple reason that people who go from one province to another and settle there, do not settle there permanently. They do not***

[185] Dr. B.R. Ambedkar, *Constituent Assembly Debates*, Volume 7, 08.12.1948.
[186] *Id.*

uproot themselves from the province from which they have migrated, but they keep their connections. *They go back to their province for the purpose of marriage. They go back to their province for various other purposes, and* ***if this protection was not given to them when they were subject to the local Legislature and the local Legislature were to deny them the opportunity of conserving their culture, it would be very difficult for these cultural minorities to go back to their province and to get themselves assimilated to the original population to which they belonged.*** *In order to meet the situation of migration from one province to another, we felt it was desirable that such a provision should be incorporated in the Constitution."*

[Emphasis supplied]

283. Thus, Article 29(1), while conferring the right to conserve, does not restrict itself only to the notion of a minority as understood in the technical sense but includes any group that may seek to conserve a distinct language, script or culture.

284. This interpretation of Article 29(1) has also been established by a 9-judge bench of this Court in ***Ahmedabad St. Xavier's College Society v. State of Gujarat***,[187] wherein it held that:

"6. It will be wrong to read Article 30(1) as restricting the right of minorities to establish and administer educational institutions of their choice only to cases where such institutions are concerned with language, script or culture of the minorities. The reasons are these. ***First, Article 29 confers the fundamental right on any section of the citizens which will include the majority section whereas Article 30(1) confers the right on all minorities. Second, Article 29(1) is concerned with language, script or culture, whereas Article 30(1) deals with minorities of the nation based on religion or language. Third, Article 29(1) is concerned with the right to conserve language,***

[187] Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717, para 6.

script or culture, whereas Article 30(1) deals with the right to establish and administer educational institutions of the minorities of their choice. Fourth, the conservation of language, script or culture under Article 29(1) may be by means wholly unconnected with educational institutions and similarly establishment and administration of educational institutions by a minority under Article 30(1) may be unconnected with any motive to conserve language, script or culture. A minority may administer an institution for religious education which is wholly unconnected with any question of conserving a language, script or culture."

"238. [...] ***Article 29(1) gives security to an interest: Article 30(1) gives security to an activity.***"

[Emphasis supplied]

285. The Petitioners herein have sought to protect their 'culture'. While there is no single definition of the term, academicians and scholars have defined culture as "*that complex whole which includes knowledge, belief, arts, morals, law, custom and any other capabilities and habits* acquired *by a man as a member of society*"[188] or as "*the handiwork of man and as the medium through which he achieves his ends.*"[189] Hence, although a precise definition of the term 'culture' cannot explicitly be delineated, its comprehensive connotation is expansive, encompassing diverse elements inherent to a specific group or community.

286. Considering these aspects, the next point which arises for consideration is whether the right under Article 29(1) can be invoked by the entire section of citizens aiming to preserve their culture or language or if it can be invoked by a few individuals on behalf of the larger section of citizens. In this context, it becomes

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[188] PASCUAL GISBERT, *Fundamentals of Sociology*, Orient Longman, 1973 (3rd ed.), 342.
[189] BRONISLAW MALINOWSKI, *A Scientific Theory of Culture and Other Essays*, The University of North Carolina Press, 1944, 67.)

essential to examine previous decisions of this Court where a violation of Article 29(1) has been put forth to ascertain who the invoking party was.

287. In ***State of Karnataka v. Associated Management of English Medium Primary and Secondary Schools***,[190] the imposition of a particular language by the State in primary schools was under challenge. Rights under Article 29(1) were asserted by an association representing private schools. Similarly, in ***State of Bombay v. Bombay Education Society and others***,[191] the right of the Anglo-Indian community to conserve their culture and language under Article 29(1) was upheld. The parties invoking the right were the Bombay Society and its two directors, which sought to ensure value-based education for the underprivileged. Thus, notwithstanding the language of Article 29(1), it is not necessary that the right must be invoked by the entirety of the section of citizens belonging to a particular community, or that such community must collectively seek redressal.

288. In the instant case, the Petitioners include various Assamese student organisations like the Assam Sanmilita Mahasangha and All Assam Ahom Sabha; their invocation of Article 29(1) is, therefore, maintainable. Furthermore, it is not in dispute before us that there exists a distinct Assamese culture. Indeed, Assam proudly serves as a testament to our nation's rich culture and diversity, with various groups and sub-groups co-existing harmoniously, including the Koch-Rajbangsi, Bodo, Sonowal Kacharis, Dimasas, and more.[192] This cohabitation reflects a

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[190] State of Karnataka v. Associated Management of Medium Primary and Secondary Schools, (2014) 9 SCC 485.
[191] State of Bombay v. Bombay Education Society, (1954) 2 SCC 152.
[192] CULTURE OF ASSAM – ASSAM STATE PORTAL, https://static.mygov.in/saas/s3fs-saas/assam/mygov_149761430071181.pdf.

cooperative and peaceful integration of diverse cultures within the region. Furthermore, adding to the cultural mosaic, Assam also boasts of linguistic diversity, with over 13 million residents conversing in Assamese and Bengali while also embracing local languages like Karbi, Mishing, Rabha, Tiwa, Dimaca, and more.[193] Indeed, the crux of the matter at hand does not revolve around whether Article 29(1) applies to the Petitioners. Instead, the focal point is whether Section 6A by its operation has curtailed the Petitioners' rights under Article 29 to conserve their distinct culture.

(c) Substance of Article 29(1)

289. As discussed previously, Article 29(1) aims to 'conserve' the language, culture or script of a section of citizens. Instead of obligating the State to make any special provisions for the development of such language, script, or culture, the ambit of the term 'conserve' is to prohibit state intervention in these aspects.[194] This intent to proscribe interference, though not apparent, has been explicitly emphasized in the discussions of the Constituent Assembly and has consistently been underscored by this Court in various decisions.

290. A dialogue between K. Santhanam and Hasrat Mohani during the Assembly debates notably encapsulates this dimension of non-intervention. It suggests that the objective of Article 29(1) was envisioned to forestall any potential harm to cultures by fascist regimes, should such a scenario arise.[195] K. Santhanam, in particular, had stated in this regard as follows:

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[193] CENSUS OF INDIA, 2011.
[194] Govind Ballabh Pant, *Constituent Assembly Debates*, Volume 7, 08.12.1948
[195] K. Santhanam, Constituent Assembly Debates, Volume 7, 08.12.1948.

"Sir, you will remember that throughout Europe, after the first World War, all that the minorities wanted was the right to have their own schools, ***and to conserve their own cultures which the Fascist and the Nazis refused them****. In fact, they did not want even the State schools. They did not want State aid, or State assistance.* ***They simply wanted that they should be allowed to pursue their own customs and to follow their own cultures and to establish and conduct their own schools. Therefore, I do not think it is right on the part of any minority to depreciate the rights given in article 23(1)****."*

[Emphasis supplied]

291. Likewise, Dr. B.R. Ambedkar gave his perspective on the matter, echoing the sentiment that the State should refrain from intervening and imposing any culture, whether local or otherwise, upon a community. Dr. B.R. Ambedkar further underscored that the provision does not levy any burden or obligation upon the State.[196] In this regard, he articulated the following:

"I think another thing which has to be borne in mind in reading article 23 is that it does not impose any obligation or burden upon the State. It does not say that, when for instance the Madras people come to Bombay, the Bombay Government shall be required by law to finance any project of giving education either in Tamil language or in Andhra language or any other language. There is no burden cast upon the State. ***The only limitation that is imposed by article 23 is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law impose upon it any other culture which may be either local or otherwise [...]****"*

"[…] The original article as it stood in the Fundamental Rights only cast a sort of duty upon the State that the State shall protect their culture, their script and their language. ***The original article had not given any Fundamental Right to these various communities. It only imposed the duty and***

[196] Dr. B.R. Ambedkar, *supra* note 185.

added a clause that while the State may have the right to impose limitations upon these rights of language, culture and script, the State shall not make any law which may be called oppressive, not that the State had no right to make a law affecting these matters, but that the law shall not be oppressive. *Now, I am sure about it that the protection granted in the original article was very insecure. It depended upon the goodwill of the State.* ***The present situation as you find it stated in article 23 is that we have converted that into a Fundamental Right, so that if a State made any law which was inconsistent with the provisions of this article, then that much of the law would be invalid by virtue of article 8 which we have already passed****."*

[Emphasis supplied]

292. The nature of the protection afforded by Article 29 also came up before this Court in ***D.A.V. College v. State of Punjab***,[197] which analysed a counterfactual and held that had the State intervened in compelling affiliated colleges, including minority institutions, to provide instruction in the Punjabi language, it would have impeded the right to conserve their language, script, and culture. It held that such an intervention would have amounted to stifling the language and script of other sections of citizens and encroaching on their right to conserve their own culture and language.

293. At this juncture, it is imperative to recognize that Article 29 does not advocate for absolute governmental abstention in matters involving culture, language or script. In fact, to some extent, government intervention is unavoidable as regulation is essential for the maintenance of public order and for upholding constitutionalism. State actions and regulations with an insignificant or merely incidental effect on a community's cultural

[197] D.A.V. College v. State of Punjab, (1971) 2 SCC 269.

rights might also not be caught in the crosshairs of Article 29(1). This is also seconded by various decisions of this Court, where some such regulatory interventions by the State were held to not constitute a curtailment of Article 29(1) rights.[198] In addition, although not germane to the controversy at hand, we must add a word of caution that not all cultural practices of a section of citizens—for example, those blatantly running against the spirit and grain of our Constitution, like casteism and gender discrimination—would be protected by Article 29(1).

294. A violation of Article 29, therefore hinges on the 'nature' and 'degree' of State intervention and not merely on the *simpliciter* fact of intervention. In other words, the violation of Article 29 is necessarily a question of law which requires adjudication of the circumstances, intention and effect of the state intervention on the aggrieved section of citizens, as well as the society at large.

295. To sum up our discussion, the rights conferred by Article 29(1) require that the State not take any steps to erode a community's culture, language or script; and concomitantly accords to such section of citizens the freedom and independence to preserve and conserve their culture, language and script, by themselves. At the same time, the right under Article 29(1) does not necessitate the Government to enact specific provisions for its enforcement and also does not altogether restrict the State from enacting regulations.

(d) Section 6A vis-à-vis Article 29

296. Having scrutinized the fundamental basis on which the applicability of Section 6A needs to be examined, it is imperative at

[198] S. P. Mittal v. Union of India, (1983) 1 SCC 51.

this juncture to systematically address each of the Petitioners' contentions.

297. The Petitioners contended that the presence of immigrants from Bangladesh has led to an erosion of their culture. However, it is not their contention, nor is it our opinion, that the scheme of Section 6A was intended to take away these cultural rights. Section 6A does not address culture at all; it focuses solely on establishing the criteria that migrants from the East Pakistan region must fulfil within specified dates to obtain citizenship upon entering Assam. The impact on Assamese culture, if any, would be only incidental and not direct or intentional.

298. In addition, the onus is on the Petitioners to not only show effect, but also demonstrate causation. The Petitioners need to establish both, that there has been an adverse impact on Assamese culture over time and that such impact is attributable to the legitimisation of the citizenship status of pre-1971 immigrants. The Petitioners have been unable to establish the latter. Indeed, the respondents have proffered various other plausible explanations, like internal migration, state reorganization and unchecked immigration post-1971 which fall outside the umbrella of Section 6A. Additionally, Section 6A does not compel pre-1971 immigrants to keep residing within the territory of Assam once they have obtained Indian citizenship, given that they would enjoy Article 19(1)(e) rights like any other citizen of India.

299. To substantiate the former limb on effect, the Petitioners have cited data showing changes in Assam's religious and linguistic demographics. These metrics by themselves are not 'culture' within the meaning of Article 29(1). Although significant changes to the demographics of a region can affect the interests of its original

inhabitants, the 'culture' of a region by itself is a far more complex and dynamic phenomenon—involving an interplay of various competing forces and interconnected elements.

300. Though we are not oblivious to the Petitioners' demographic anxiety, we must be cautious of the impact our findings would have on the greater national landscape. Accepting the Petitioners' assertion that a mere change in demographics is sufficiently actionable evidence of erosion of rights under Article 29(1) would have far reaching consequences. We say so, for the reason that it would undermine the idea of fraternity envisaged by our Constitutional drafters, and bring to life their fears by threatening the cohesion of our diverse nation. It would open the floodgates for similar challenges by residents of other states who might seek to undermine Article 19(1)(e) rights and inter-state migration under the guise of protecting their indigenous culture under Article 29(1). The Constitution of India, and indeed this Court as well, does not envision India as a union of endogamous-homogenous territories. The cascading ramifications of accepting the Petitioners' stand on federalism and national harmony would be significant, deleterious and not improbable.

301. The Petitioners further asserted that the influx of migrants from East Pakistan has led to a substantial acquisition of land and scarce resources by these immigrants, consequently resulting in the marginalization of the original Assamese inhabitants within their own territory. It was their specific contention that such acquisition not only poses a threat to Assamese people but specifically to the culture and heritage of endangered tribes in Assam.

302. Though the material on record does not substantiate such claim, regardless thereto, such a plea has no legally sustainable foundation. All citizens have the right to own property and, unless restricted by statute or other law, they are free to enter into private land transactions. Once such a transaction has taken place between two private individuals, this Court cannot set the clock back in the teeth of Article 300A of the Constitution merely because when seen collectively it results in a pattern of land ownership which is considered undesirable by some other groups. Simultaneously, individual allegations of involuntary land transactions are best not dealt with us, considering that we are examining a question of constitutional interpretation, while sitting in writ jurisdiction.

303. At this stage, and given the restricted ambit of the present proceedings, this Court cannot embark on a complex or microscopic fact-finding exercise to determine whether factually there has been any cultural erosion as alleged by the Petitioners.

304. We thus sum up our analysis of the Petitioners' claim under Article 29, holding that though they have the standing to make such a claim but on the facts of the present case, they have failed to show either an actionable impact on Assamese culture, or trace the cause of it to Section 6A. On the contrary, Section 6A when read along with the larger statutory regime surrounding citizenship and immigration, mandates timely detection and deportation of illegal immigrants, a large portion of whom entered Assam post-1971. Seen from this perspective, it is the non-implementation of the statutory regime which is the cause of the Petitioners' concerns; their attack on the constitutionality of Section 6A is misplaced.

viii. Article 21 and Section 6A

305. The Petitioners contended that Section 6A is violative of Article 21 because it infringes upon the rights of the 'indigenous' Assamese community. They argued that immigration has led to the marginalization and disruption of their socio-economic aspirations. Further, relying on Article 1 of ICCPR, they urged that their right of self-governance is being violated by Section 6A. Lastly, the Petitioners claimed that the inclusion of an unidentified migrant population burdens the country's natural resources, particularly impacting the citizens residing in a State and hindering sustainable development, along with depriving the Assamese community from enjoying the full spectrum of socio-economic rights.

306. *Per contra*, the Respondents argued that instead of contravening Article 21, Section 6A enforces the same because foreigners' rights are also protected thereunder. Additionally, they contend that Section 6A, in fact, gives quietus to a long-standing dispute. According to the Respondents, the provision does not violate Article 21 as Section 6A is to be construed as a "procedure established by law".

307. The issue that arises for consideration therefore is whether Section 6A is violative of Article 21. Though Article 21 needs no introduction, it provides that no person can be deprived of life and personal liberty except according to procedure established by law.

(a) 'Marginalization' of a community

308. In this regard, the Petitioners have put forth an argument akin to their claim under Article 29 and have argued that Section 6A violates Article 21 as it affects the way of life of original inhabitants.

309. Although the rights conferred by Article 21 differ from those under Article 29 of the Constitution; the burden to be discharged by the Petitioners to support their claims would remain broadly similar. It would be otiose for us to delineate the legal tests and the substance of the rights provided by Article 21 in the context of the Petitioners' cultural claims, given that the Petitioners have failed to provide material beyond mere averments.

310. As elaborated in paragraph 298 of this judgement, the Petitioners need to establish both a deleterious effect of Section 6A on their indigenous communities as well as trace the cause of such effect to Section 6A. In light of our conclusions in the preceding segment re: Article 29, namely, that the Petitioners have been not been able to show a constitutionally actionable impact on their communities, and if at all there is any such impact it can be attributed to several factors beyond Section 6A. The Petitioners' challenge on the ground of violation of Article 21, thus deserves to be closed at the threshold itself.

(b) Right of self-governance

311. In addition to asserting that their community is being marginalized, the Petitioners have also laid claim to the right of self-governance. In support of this assertion, they have referenced Article 1 of the ICCPR, which affirms that all "peoples" possess the right to self-governance. The expression 'peoples' has a wide connotation and it is nearly impossible to outline its exact constituents. It is however, a settled proposition that Article 1 referred to above, is a collective right, which cannot be claimed by an individual.

312. In any case, India has declared its reservation regarding this Article and has stated that:[199]

> *"The Government of the Republic of India declares that the words 'the right of self-determination' appearing in [this article] apply* ***only to the peoples under foreign domination*** *and that these words do not apply to sovereign independent States or* ***to a section of a people*** *or nation--which is the essence of national integrity."*
>
> [Emphasis supplied]

313. Further, we are of the considered opinion that the perceived right under Article 1 of the ICCPR is not enforceable through writ jurisdiction. Even otherwise, it cannot be invoked by the Petitioners, more so in light of India's explicit reservation against its application in India, and given that it generally is applicable only to people under foreign domination.

314. That apart, it is difficult to countenance the assertion that immigration has impacted the self-governance of the original inhabitants of Assam. The Petitioners have not demonstrated how Section 6A affects their right to govern themselves democratically. In India, the right of self-governance has to be understood within the contours of the Constitution and the laws framed under it, which provides self-governance at the level of political units such as Panchayats and District Councils, in addition to the national-level Parliament and various state-level Legislatures.[200] In addition, as discussed in ***Issue ix (Article 326 and Section 6a)*** **(*infra*)**,

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[199] PERMANENT MISSION OF INDIA, HUMAN RIGHTS COMMITTEE https://pmindiaun.gov.in/pageinfo/ODY3#:~:text=Article%201%3A%20The%20Government%20of,which%20is%20the%20essence%20of.

[200] Constitution, *supra* note 22, Part IX, IXA, Sixth Schedule.

India allows the opportunity for self-governance by providing the right to vote on the basis of adult franchise.

315. We must also note that the Petitioners' have not claimed that any of these Constitutional or other electoral legislations have been violated. We are therefore not inclined to entertain the Petitioners' claim on self-governance, which in a way amounts to a prayer for creation and recognition of an extra-Constitutional right. In any case, our analysis in this context would border on adjudicating the appropriateness and sufficiency of the electoral framework created by the Constitution.

316. It is clarified that, the arguments surrounding dilution of the voting ability of the indigenous Assamese have been addressed in the next section. Without repeating our observations on demographic anxiety in paragraph 300 of this judgement, it would suffice to state that we are unable to agree with the Petitioners' argument that conferring citizenship to a subset of immigrants from East Pakistan with a different language or culture would amount to undermining the self-governance rights of the Assamese.

(c) Right of sustainable development

317. The Petitioners have contended that Article 21 has been infringed by Section 6A, as it permits immigrants to utilize natural resources, thereby contravening the public trust doctrine. They argued that had the immigrants been resettled in other States, the strain on natural resources in Assam would have been mitigated, and the government could have managed resources more effectively. The Petitioners have also contended that allowing increased access to Assam's natural resources contradicts the principles of sustainable development.

318. In this vein, the doctrine of public trust provides that the State holds the natural resources as the trustee of the general public, and as a consequence, bears a duty to protect them.[201] This doctrine mandates that resources should be used in a manner that does not efface other people's and subsequent generations' right to use such resources in the long term. A 5-judge bench of this Court has held that the task of adjudicating whether public trust has been violated or not, would not entail a comparative analysis of alternative deployments of such natural resources. The Court ought to only assess whether the deployment under challenge as implemented by the government, is fair or not.[202]

319. We therefore need to examine whether the Parliamentary enactment contravenes the constitutional principles for having expropriated natural resources in an unfair, wasteful or exploitative manner, such that larger collective or community rights have been undermined.

320. In our considered opinion, the mere fact that a sub-class of immigrants whose status has been legitimised by Section 6A also has access to these resources does not automatically imply a disruption of ecological balance or a violation of the original inhabitants' rights to resource usage. This argument conflates the idea of "unfair usage" with "more usage"—a premise that cannot be accepted.

321. Sustainable development and population growth can coexist harmoniously and need not be mutually exclusive. A nation can accommodate immigrants and refugees, while simultaneously

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[201] M. C. Mehta v. Kamal Nath, (1997) 1 SCC 388, para 34.
[202] Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1, para 146.

prioritizing sustainable development and equitable allocation of resources. By implementing policies that encourage environmental conservation, efficient resource management, and social integration, a country can effectively address the challenges posed by demographic changes while safeguarding its long-term prosperity. The logic underlying the Petitioners' argument, if allowed, can tomorrow be extended to seek controls on even domestic inter-state movement. The Petitioners' challenge on the basis of sustainable development under Article 21 therefore, must be rejected.

ix. Article 326 and Section 6A

322. The Petitioners contended that the application of Section 6A on the State of Assam violates the Assamese people's right to vote under Article 326 of the Constitution. It was asserted that the right to vote and the right to be registered on the electoral rolls is specific only to the citizens of India and not to illegal immigrants. They further contended that the process of Section 6A conferring political rights upon millions of Bangladeshi immigrants has resulted in the marginalisation of the political rights of the people of Assam, which, in turn, is not in the interest of the security and integrity of the State. They asserted that continuance of these immigrants on Indian soil poses severe threat to the identity of the indigenous people of Assam, as well as the security of the nation.

323. The Respondents argued that the contentions advanced by the Petitioners in the present case amount to a reverse reading of Article 326 of the Constitution. They submitted that considering the persons falling under Section 6A would be valid citizens, the right under Article 326 would therefore naturally follow to such 'citizens'. Additionally, they also urged that Section 6A is not

concerned with the preparation of the electoral roll and only deals with the grant of citizenship to the categories of persons covered thereunder.

324. Thus, in examining the purported violation of the Petitioners' rights, it is imperative to first delve into the historical progression of adult suffrage in India, given that Article 326 explicitly addresses the conferment of voting rights upon Indian citizens.

(a) Background and evolution of adult suffrage

325. In response to the clamour for adult suffrage, the issue of franchise in India was heavily deliberated upon in the Round Table Conference in 1931, and the Indian Franchise Committee was set up. However, the Committee's report, presented with an air of caution, vehemently discouraged the adoption of universal adult franchise in India, citing the widespread illiteracy rates. Instead, the Committee's proposal for franchise resulted in the enactment of the Government of India Act, 1935. The Act put forth several parameters regarding voter eligibility, including the extent of property owned, amount of taxes paid, residence, etc. Yet, despite these efforts, only a mere one-fifth of the adult population found themselves deemed worthy of the electoral badge of honour at that pivotal juncture in history.[203]

326. In any case, the 1935 Act was short-lived, with the onset of Indian independence and the subsequent establishment of the Constituent Assembly. The Constituent Assembly itself was constituted as a formal constitution-making body under the Cabinet Mission Plan, 1946. The provincial assemblies elected the

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[203] ORNIT SHANI, *How India Became Democratic: Citizenship and the Making of the Universal Franchise*, Cambridge University Press, 2017.

389 members that comprised the Constituent Assembly based on a single transferable vote system having proportional representation. These members were, thus, indirectly elected representatives tasked with the mammoth project of drafting a Constitution for India. The Constituent Assembly sat for a period of two years, eleven months and seventeen days, between 06.12.1946 and 24.01.1950, to write the Constitution of India.

327. On the issue of adult franchise, the notion was initially met with opposition by the likes of M. Thirumala Rao and Brajeshwara Prasad, who considered universal adult franchise to be a violation of the tenets of democracy on account of the largely illiterate populace of the country.[204] Other members, such as Hriday Nath Kunzru, believed that while franchise being bestowed based on parameters such as property was antithetical to the idea of a democracy, universal adult suffrage at such a nascent stage would prove troublesome. Instead, he recommended enfranchising approximately half the population and then extending it to the remaining population in a phased manner over a period of fifteen years.[205]

328. However, during the final days of the Assembly, several Assembly members began to express their views in favour of universal adult franchise, arguing that the inclusion of adult franchise into the Constitution would contribute towards the cause of nation-building and secure the betterment of the common man. Hence, universal adult franchise was incorporated into the Indian Constitution, as enshrined in Article 326. The inaugural general elections of Independent India were conducted between 25.10.1951 and

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[204] M. Thirumala Rao, *Constituent Assembly Debates*, Volume 11, 22.11.1949; Brajeshwar Prasad, *Constituent Assembly Debates*, Volume 8, 16.06.1949.
[205] Hriday Nath Kunzru, *Constituent Assembly Debates*, Volume 11, 22.11.1949.

21.02.1952. This monumental exercise witnessed the participation of a sixth of the world's population, rendering it the largest election globally at that juncture.

329. The historic inclusion of universal adult suffrage as a constitutional value in India was noteworthy for accommodating an unprecedented number of voters, and its revolutionary nature. What is now considered a matter of fact was, at that time, perceived as a daring and potentially risky endeavour. The embrace of universal adult suffrage in India, devoid of property, taxation, or literacy qualifications, was deemed a 'bold experiment', particularly given the country's vast geographical expanse and population. This stride was even monumental, especially when juxtaposed with the trajectory of more economically advanced nations, such as the United States of America, which achieved universal adult franchise only in 1965.[206] India's adoption of adult franchise also positioned it in close proximity to the timelines of countries like France and Britain, where universal adult suffrage commenced in 1945 and 1928, respectively.

330. This historical background, coupled with the Constituent Assembly deliberations, unmistakably signify that the incorporation of universal adult suffrage through Article 326 was undertaken with the avowed purpose of granting voting rights and empowerment to every adult citizen of India, devoid of any unjustifiable limitations or constraints. Thus, the drafters of the Constitution crystallized their vision of 'one man, one value, one vote' by enshrining it in Article 326.[207]

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[206] Voting Rights Act of 1965.
[207] Dr. B.R. Ambedkar, *Constituent Assembly Debates*, Volume 11, 25.11.1949.

(b) Aim of Article 326

331. The text of Article 326 provides that "*the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage*." Article 326 further lays down the qualifications for being a voter, subject to statutory limitations concerning disqualification, corrupt practices, detention, etc. As established previously, these Articles were encapsulated within the Constitution to provide the right to vote to large swathes of people, irrespective of their literacy or ownership of property. Nevertheless, it is imperative to delineate the nature of the right to vote. This analysis will serve as a crucial foundation in conclusively determining the validity of the contentions presented by the Petitioners regarding the alleged violation and adverse impact on their right to vote stemming from the influx of migrants from Bangladesh.

332. The right to vote has been the subject of considerable deliberation and judicial interpretation. This Court has evolved the notion of the right to vote, per constitutional and statutory principles, to empower voters further. One of the very first cases to discuss the issue pertaining to the nature of the right to vote was ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency***, where this Court categorically held that "*the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to limitation imposed by it.*"[208] This view was upheld in the case of ***Jyoti Basu v. Debi Ghosal***, [209] holding that the right to elect is neither a fundamental

[208] N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, AIR 1952 SC 64.
[209] Jyoti Basu v. Debi Gosal, AIR 1982 SC 983.

nor a common law right but a statutory right. This was, thereafter, the consistent view that was laid down in a plethora of decisions.[210]

333. There were diverging views expressed in the case of the ***People's Union for Civil Liberties v. Union of India***, wherein this Court held that though the right to vote may not be construed as a fundamental right, it is nonetheless a constitutional right.[211] The debate on this issue was finally laid to rest by this Court in ***Rajbala v. State of Haryana***[212] in the course of adjudicating the constitutionality of the Haryana Panchayati Raj (Amendment) Act, 1935. The Court therein held that the right to vote under Article 326 was not merely a statutory right but was a constitutional right that conferred upon citizens the right to vote, subject to certain limitations. It may thus be seen that with the aid of judicial construction in the context of the nature of the right to vote, it has been upgraded from being a mere statutory right to a constitutional right. More recently, this view was once again affirmed by this Court in ***Anoop Baranwal v. Union of India***.[213]

334. It is also crucial to take into consideration that Articles 325 and 326 contained in Part XV of the Constitution, deal with rights and duties in the context of elections. These provisions broadly encompass the powers and duties conferred upon various bodies, with the objective of ensuring that elections are conducted in a free and fair manner. For instance, Article 324 vests the Election Commission with powers to supervise elections, thereby ensuring free and fair elections. Similarly, Article 329 limits the Supreme Court's jurisdiction in election matters. Any challenge to an election

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[210] Shyamdeo Prasad Singh v. Nawal Kishore Yadav, (2000) 8 SCC 46, para 25; Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467.
[211] People's Union for Civil Liberties v. Union of India, (2013) 10 SCC 1.
[212] Rajbala v. State of Haryana, (2016) 2 SCC 445.
[213] Anoop Baranwal v. Union of India, (2023) 6 SCC 161.

can be made after the election has been completed through an election petition under the Representation of People Act, 1951.[214] These provisions have been included with the intent of strengthening the political rights of the citizens of the country. It is trite law that provisions which pertain to the same subject matter must be read as a whole and in their entirety, each throwing light and illuminating the meaning of the other.

335. The objective of these provisions, and more specifically Article 326, is, therefore, to enfranchise people as opposed to disenfranchising them. As illuminated by the historical trajectory of adult suffrage in India and the meticulous deliberations of the framers in instating Article 326, the evident purpose of its inclusion was to bestow upon every individual citizen the right to exercise their vote and choose their elected representatives. Hence, in contemplating the contentions put forth by the Petitioners, the question which arises is whether the right under Article 326 can be invoked to exclude certain individuals.

(c) Right of exclusion and Article 326

336. Article 326, while conferring the right to vote, also broadly provides that this right would be subject to certain statutory limitations. A brief perusal of the Constituent Assembly Debates, along with contemporary jurisprudence, clearly indicates that Article 326 confers the right to vote upon individuals and does not elaborate on the procedure of exclusion of persons from this entitlement. In order to ascertain where the power of exclusion has been enumerated, we will analyse the following: *(i)* Constituent Assembly

[214] Inderjit Barua v. Election Commission of India, AIR 1984 SC 1911.

Debates; *(ii)* the practice in comparative jurisdictions; *(iii)* relevant statute; and *(iv)* contemporary jurisprudence.

337. Primarily, the considerations of the Constituent Assembly during the discourse on the right to vote emphasized that determinations regarding disqualifications and exclusions from the right to vote should be outlined by the legislature through suitable statutes. In this context, focused deliberations were conducted, particularly addressing the prescription of qualifications for the right to vote, with Dr. B.R. Ambedkar asserting that the establishment of such qualifications ought to be entrusted to the legislature.[215] Similar observations were articulated by other members of the Assembly during discussions on the qualifications and disqualifications to the right to vote and inclusion of individuals in the electoral rolls.[216]

338. Furthermore, an examination of practices in comparable jurisdictions underscores that the authority to exclude individuals from voting is usually entrusted to the legislature. For instance, in the United Kingdom, the rationale and procedure for the exclusion of any individual from voting are delineated in the Representation of the People Act, 1918. Similarly, in the USA, the power and discretion to enforce the right to vote of citizens are bestowed upon Congress.[217]

339. In India, too, the Representation of People Acts, 1950 and 1951 delineate provisions relating to the disqualification from voting, removal of disqualification, the right to vote, and prohibitions against seeking votes by appealing to divisive factors. In fact, the 1951 Act also elucidates the right to vote under Section 62 and

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[215] B.R. Ambedkar, *Constituent Assembly Debates*, Volume 8, 02.06.1949.
[216] Alladi Krishnaswamy Ayyar, *Constituent Assembly Debates*, Volume 11, 23.11.1949.
[217] South Carolina v. Katzenbach, 383 U.S. 301 (1966).

establishes limitations and disqualifications surrounding it. The Representation of People Act, 1950 has in place a scheme and procedure for effectuating changes onto the electoral roll if it is considered erroneous under Section 22. This provision states that if the electoral registration officer for a constituency, upon an application made to him or on his own motion, is satisfied that an entry in the electoral roll of a constituency is defective or erroneous, should be transposed to another place on account of the concerned person having changed his place of ordinary residence, or if the person is dead or is not entitled to be registered on that roll, then the officer may amend, transpose or delete such an entry. By virtue of the aforementioned sections, the Act thus clearly envisages mechanisms and procedures for disqualifying individuals from voting and removing the names of people from the electoral roll.

340. These deliberations and instances further strengthen the assertion that the aspect of exclusion from the right to vote cannot be invoked merely by alleging the violation of Article 326. In absence of any such right guaranteed under Article 326, and in light of there being such provision under the Representation of People Acts of 1950 and 1951, the question of exclusion of individuals from the right to vote needs to be viewed from the lens of the aforementioned two statutes.[218]

341. This leads us to the contention raised by the Petitioners that the inclusion of individuals in the electoral rolls by virtue of Section 6A has resulted in a violation of Article 326. To summarise our foregoing analysis, Article 326 bestows upon individuals the right to vote and the right to be included in electoral rolls unless disqualified by the legislature or other constitutional provisions.

[218] Lakshmi Charan Sen v. A.K.M. Hassam Uzzaman, (1985) 4 SCC 689, para 22.

However, the crucial question that arises is the nature of the right conferred by Article 326—particularly, whether it allows the Petitioners to seek an *en masse* removal of an entire block of people based upon generalised assertions surrounding their impact on another group of citizens and their voting rights.

342. We cannot answer this in the affirmative, not only because allowing such a plea would militate against the spirit of Article 326 and the centuries-old struggle for enfranchisement that it embodies, but also because the language of Article 326 unambiguously devolves the power to set out the mechanism for excluding people from the voter list to the legislature. If there is an inclusion of ineligible migrants in the voter list, persons aggrieved are free to invoke the existing provisions under the Representation of the People Acts of 1950 and 1951, to seek the removal of such individual voters from the voter list. Upon receipt of such an application, if the electoral Registration Officer, after due consideration, determined that an error existed in the inclusion of these individuals, the officer would have rectified the situation by amending, transposing, or deleting the relevant entries as per the prevailing legal provisions. We are unable to persuade ourselves to read an additional ground for disqualification and removal of voters directly into Article 326.

343. Additionally, the Petitioners' arguments on this count demonstrate a fundamental misreading of Article 326. They fail to note that once deemed citizens by operation of Section 6A, the erstwhile-immigrants would enjoy equal rights as any other Indian citizen, including the right to vote, irrespective of the mode or time of acquisition of citizenship. Such constitutional rights cannot be summarily revoked or infringed upon.

344. We are, therefore, not inclined to accept the Petitioners' contention that the influx of immigrants in the State of Assam has affected the right of the Assamese people to vote. Moreover, there has been no violation of the right of the Petitioners under Article 326 as it merely grants them the right to vote and be included in the electoral rolls, which continues to subsist to this day devoid of any interruption. As stated earlier, the Petitioners have not claimed any violation of their statutory rights and have failed to demonstrate the violation of any rights under Article 326 of the Constitution.

x. Article 355 and Section 6A

345. The Petitioners contended that Section 6A is violative of Article 355 of the Constitution on account of the continued presence of millions of illegal Bangladeshi immigrants in Assam, purportedly, leading to a transformation in the demographic composition of the State. They contended that the continuing influx has resulted in a scenario where the indigenous population of Assam finds themselves effectively reduced to a minority in their own State.

346. Drawing upon the precedent in ***Sarbananda Sonowal (supra)***, the Petitioners posit that Assam is currently grappling with a state of 'external aggression' and 'internal disturbance' due to the said influx of immigrants. Consequently, they argue that it becomes the duty of the Union, as provided in Article 355, to undertake necessary measures for the protection of Assam. In such circumstances, the Petitioners contend that Section 6A, in its current form, contravenes Article 355 and should, therefore, be deemed unconstitutional and struck down.

347. The Petitioners further argued that the Union's obligation, as outlined in Article 355, to safeguard a 'State' from 'external

aggression' encompasses not only a responsibility towards the territorial integrity but also extends to the inhabitants of the State, encompassing their culture and identity. According to the Petitioners, this duty mandates the State to shield itself from cultural aggression arising from extensive migration.

348. *Au contraire*, the Respondents maintained that the conclusions drawn in ***Sarbananda Sonowal (supra)*** are distinguishable, as that case primarily focused on the inadequate detection and deportation of illegal migrants entering after the year 1971, without delving into the provisions related to the grant of citizenship under Section 6A. Moreover, it is asserted that the prerequisite for 'external aggression' is the principle of '*animus belligerendi',* and since the migration in question was distress-driven, intending to seek refuge in India, it should not fall within the purview of Article 355.

349. The Respondents also contend that Article 355 should not be considered an independent and standalone basis for challenging Section 6A. They argue that any challenge to Section 6A based on the alleged violation of Article 355 would be unsuccessful unless the claimed deprivation of rights can be directly linked to Part III of the Constitution. Additionally, the Respondents assert that the primary objective of Section 6A was to provide a lasting solution to the disturbances in Assam and to facilitate the governance of the state in conformity with the constitutional provisions. According to the Respondents, Section 6A therefore does not contravene the provisions of Article 355; instead, it strengthens and reinforces the principles enshrined therein.

350. Against this backdrop, the Court is confronted with deciding whether Section 6A is unconstitutional for being violative of Article 355.

(a) Intention behind Article 355

351. In order to comprehend the reason behind the inclusion of Article 355, it is vital to understand its intended objective. Article 355 states that it is the duty of the Union to protect every State against 'external aggression' and 'internal disturbance' and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution. Article 355, expounded in Part XVIII of the Indian Constitution, which pertains to 'Emergency Provisions,' was initially not present in the Draft Constitution of 1948. However, it was subsequently introduced in 1949 by the Chairman of the Drafting Committee in the Constituent Assembly.[219] At that time, Article 355 was denoted as Article 277A and was presented for discussion in the Constituent Assembly along with draft Articles 278 and 278A, now recognized as Articles 356 and 357 of the Indian Constitution.

352. In the context of the introduction of draft Article 277A, later designated as Article 355, Dr. B.R. Ambedkar elucidated its underlying purpose. He emphasized that despite the numerous provisions conferring overriding powers on the Center, the Indian Constitution was fundamentally federal, with States having primacy in legislating over their designated domains. Accordingly, if the Centre was to interfere in the administration of provincial affairs through Article 356 and 357 (draft Articles 278 and 278A of the Indian Constitution), there ought to be some obligation which

[219] Dr. B.R. Ambedkar, *Constituent Assembly Debates*, Volume 9, 03.08.1949 and 04.08.1949.

the Constitution imposes upon the Center. It was emphasized that such an 'invasion' by the Centre of the Provincial field "*must not be an invasion which is wanton, arbitrary and unauthorized by law*." Thus, it was succinctly stated that "*in order to make it quite clear that Draft Arts. 278 and 278A are not deemed as a wanton invasion by the Centre upon the authority of the provision, we propose to introduce Article 277A*."

353. Similar clauses appear in the Australian and American Constitutions. Dr. Ambedkar stated that Article 355 incorporated an additional clause to the principle enunciated in these other constitutions, namely, that it shall also be the duty of the Union to protect the Constitutional mandate in the Provinces. For context, Article 355 is seen to be borrowed from Article IV, Section 4 of the Constitution of the United States and Section 119 of the Australian Constitution. Article IV, Section 4 of the Constitution of the United States provides as follows:

> *"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence."*

354. Similarly, Section 119 of the Australian Constitution provides as follows:

> *"The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence."*

355. The key differentiation, evident from the aforementioned provisions of the American and Australian Constitutions, as opposed to Article 355, lies in the terminology employed—specifically, the use of

'invasion' and 'domestic violence' in contrast to 'external aggression' and 'internal disturbance' as outlined in Article 355. Another notable distinction is that, in the corresponding provisions of the American and Australian Constitutions, it is mandated that the State must apply to the Centre for protection against domestic violence. In contrast, no such condition is stipulated in India under Article 355.

(b) Sarbananda Sonowal v. Union of India

356. In ***Sarbananda Sonawal (supra)***, the petitioner, a citizen of Assam, filed a writ petition challenging the constitutional validity of the Illegal Migrants (Determination by Tribunals) Act, 1983 (**IMDT Act**), which was made applicable to the state of Assam for the detection and deportation of illegal immigrants entering into India, on or after 25.03.1971. The petitioner therein alleged, *inter alia*, that the IMDT Act had failed to effectuate the detection and deportation of such illegal immigrants. In comparison, the Foreigners Act, 1946, which was applicable to the rest of the country, was asserted to be more effective in deporting illegal immigrants. The petitioner therein argued that since the unabated illegal immigration posed a threat to the security of the State, the IMDT Act would be violative of Article 355 of the Constitution.

357. The Court analyzed the provisions of the IMDT Act and noted that it laid down a high threshold for establishing an individual as an illegal immigrant. Moreover, if a citizen of India wanted to inform the authorities regarding the whereabouts of an illegal immigrant, such a citizen needed to be a resident of the same police station where the immigrant was purportedly residing. Since the immigrants were constantly on the move, this condition was held to be arbitrary. In essence, the Court held that the IMDT Act had

been purposefully enacted to provide shelter to the immigrants who entered Assam from Bangladesh after 25.03.1971.

358. The Court thereafter held that the Union has the duty to protect its citizens. While interpreting Article 355, the Court held that the term 'aggression' is of wide import and is different from the term 'war', which involves a contest between two nations for the purpose of vanquishing each other. On the contrary, the term 'aggression' is a broader term that may include complex situations depending on the fact situation and its impact. Accordingly, illegal immigration was held to be included in 'external aggression'. Consequently, the Court held as follows:

> "62. *[…] The Governor of Assam in his report dated 8-11-1998 sent to the President of India has clearly said that* ***unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State. It is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of Assam but has more dangerous dimensions of greatly undermining our national security.*** *Pakistan's ISI is very active in Bangladesh supporting militants in Assam. Muslim militant organisations have mushroomed in Assam. The report also says that this can lead to the severing of the entire landmass of the North-East with all its resources from the rest of the country which will have disastrous strategic and economic consequences. The report is by a person who has held the high and responsible position of the Deputy Chief of the Army Staff and is very well equipped to recognise the* ***potential danger or threat to the security of the nation by the unabated influx and continued presence of Bangladeshi nationals in India****. Bangladesh is one of the world's most populous countries having very few industries. The economic prospects of the people in that country being extremely grim, they are too keen to cross over the border and occupy the land wherever it is possible to do so. The report of the Governor, the affidavits and other material on record show that* ***millions of Bangladeshi nationals have illegally crossed the international border and have occupied vast tracts of land like "Char land" barren or cultivable***

land, forest area and have taken possession of the same in the State of Assam*. Their willingness to work at low wages has deprived Indian citizens and specially people of Assam of employment opportunities. This, as stated in the Governor's report, has led to insurgency in Assam****. Insurgency is undoubtedly a serious form of internal disturbance which causes grave threat to the life of people, creates panic situation and also hampers the growth and economic prosperity of the State of Assam though it possesses vast natural resources.***"

"*63.* ***This being the situation there can be no manner of doubt that the State of Assam is facing "external aggression and internal disturbance" on account of large-scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of the Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution****. Having regard to this constitutional mandate, the question arises whether the Union of India has taken any measures for that purpose.*"

[Emphasis supplied]

359. Thereafter, the Court held that as compared to the Foreigners Act, 1946, the IMDT Act was not as effective in the detection and deportation of illegal immigrants and created insurmountable hurdles regarding the same. Hence, this Act was held to be beneficial for illegal immigrants, whose numbers ran into the millions and who were creating a scenario of insurgency in the State of Assam. Accordingly, the Act was held to be violative of Article 355.

360. We respectfully agree with ***Sarbananda Sonowal (supra)*** in its holding that the term aggression in Article 355 is of a wide import and can include unabated migration if it poses a threat to the security of the state. Therefore, in such cases, the Union indeed bears a duty to protect the State from such unabated immigration

that it amounts to external aggression or internal disturbance; and those statutes which violate this duty can be held unconstitutional.

361. Having established that, we shall now consider whether Section 6A falls flat because of being violative of Article 355.

(c) Section 6A vis-à-vis Article 355

362. In this regard, the Respondents have argued that the claim under Article 355 is not maintainable since migration cannot be termed as external aggression, and because a statute cannot be held unconstitutional for being violative of Article 355 *simpliciter*. However, as seen above, this contention has already been negatived in ***Sarbananda Sonowal (supra)***, to which we profoundly agree. Therefore, their objection against the maintainability of Petitioners' claim is rejected.

363. That being said, the Respondents are seemingly right to contend that the cited decision is not applicable to the facts at hand presently. As may be seen from the reproduction of the analysis in ***Sarbananda Sonowal (supra)*** at paragraph 358 above, this Court held that migration could constitute 'external aggression'. Although the present situation is similar in nature to ***Sarabananda Sonowal (supra)***, but it differs in degree. There, this Court was dealing with a situation where millions of illegal immigrants had been coming into the State of Assam incessantly post-1971 and were posing a security threat for the country. This understanding of 'external aggression' is also in tune with the case of ***Extra-Judicial Execution Victim Families Assn. v. Union of India***,[220] wherein this Court interpreted the term and held that it threatens

[220] Extra-Judicial Execution Victim Families Assn. v. Union of India, (2016) 14 SCC 536, para 169.

the security of the country. In Constituent Assembly Debates as well, the term 'external aggression' was interpreted to include situations similar to war, without its actual declaration.[221]

364. However, in the present case, Section 6A is limited in its ambit and does not by itself create unabated migration or legitimize its continuance. As was seen in paragraph 25 of this judgement, Section 6A segregates immigrants from East Pakistan to Assam into three classes. It grants deemed citizenship only to the immigrants who migrated before 01.01.1966, and citizenship by registration to immigrants between 01.01.1966 and 25.03.1971. Further, when read along with other legislations on immigration and citizenship, it declares by implication, immigration into the State post-1971, as illegal. In fact, Section 6A adopts a practical solution for the problem of incessant illegal immigration into Assam by devising an implementable solution keeping in mind India's commitments, international relations and administrative realities.

365. Not only this, as was deliberated in the section on 'manifest arbitrariness', the migrants also need to satisfy certain conditions for invoking Section 6A, apart from being persons of Indian origin and ordinary residents in India. Hence, unlike the immigration scrutinized in ***Sarbananda Sonowal (supra)***, Section 6A addresses a controlled and regulated form of immigration that in our opinion would fall short of 'external aggression'.

366. Along similar lines, the migration legitimized by Section 6A also does not constitute internal disturbance. As was discussed before, Section 6A was a crucial step in bringing quietus to the political upheaval in Assam and marked the culmination of various

[221] H.V. Kamath, *Constituent Assembly Debates*, Volume 9, 02.08.1949

agitations surrounding illegal immigration and the rights of indigenous communities. Given this background, it is difficult to accede to the proposition that Section 6A caused 'internal disturbance'.

367. Hence, the claim of the Petitioners regarding Section 6A being contrary to Article 355 cannot be accepted. However, that being said, upholding the constitutionality of Section 6A should not be construed as an impediment in implementing existing citizenship and immigration legislations, or giving effect to other judicial decisions controlling the field.

xi. Citizenship Act vis-à-vis the IEAA

368. The Petitioners have finally contended that the Immigrants (Expulsion from Assam) Act, 1950 (**IEAA**), being a special statute *qua* the immigrants in Assam, alone can apply to the exclusion of the Foreigners Act, 1946. Accordingly, the Petitioners assailed the phrase 'detected to be a foreigner' in Section 6A, in so far as it applies to the Foreigners Act, 1946 and not the IEAA. In addition to this, the Petitioners contended that the IEAA, is a Parliamentary Statute, and its main purpose being that of expulsion, should apply exclusively to the immigrants in Assam.

369. The Respondents have not made any particular submissions in this regard. However, for the sake of the comprehensiveness of analysis, we shall address this issue as well.

370. Having taken into account these contentions, the issues that arise for our consideration are twofold–*(i)* whether the IEAA should apply to the immigrants in Assam, to the exclusion of the Foreigners Act, 1946; and *(ii)* whether the IEAA is in conflict with the intent and aim of Section 6A.

371. We must note here that the Petitioners have argued that the IEAA should override the provisions of other enactments like the Foreigners Act, 1946 or Section 6A, as they presume some conflict between these legislations. However, we find that this fundamental assumption made by the Petitioners, as to the existence of a conflict, is misplaced. Indeed, it is not only possible but also our endeavor to read all the enactments controlling the field harmoniously, supplementing and complementing each other.

372. The intent behind the IEAA can be understood from its Statement of Objects and Reasons stipulating that:

> *"During the last few months a serious situation had arisen from the immigration of a very large number of East Bengal residents into Assam. Such large migration is disturbing the economy of the province, besides giving rise to a serious law and order problem. The Bill seeks to confer necessary powers on the Central Government to deal with the situation."*

373. This intention is manifested in Section 2 of IEAA, which grants Central Government the power to direct the removal of immigrants who are detrimental to the interests of India.

374. Similar to this, the preamble of Foreigners Act, 1946 reads:

> *"Whereas it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into India, their presence therein and their departure therefrom."*

375. In light of this objective, Section 3 (1) of the Foreigners Act, 1946 empowers the Central Government to make provisions concerning foreigners' entry, departure, presence, or continued presence in India. Without diminishing the expansive authority granted by Section 3 (1), Section 3 (2) confers upon the Central Government the power to issue comprehensive orders regarding foreigners,

which include directives such as prohibiting a foreigner from remaining in India or any specified area, requiring the individual to meet the cost of removal from India, or compliance with specified conditions, etc.

376. We find from a perusal of both, the IEAA and the Foreigners Act, 1946, that these legislations seek to regulate the residence and departure of foreigners in India. To that extent, there is thus no conflict between the Statutes and both of them supplement and complement each other within the framework of Section 6A. This is also seconded by ***Sarbananda Sonawal (supra)***, which held:

> *"83. To sum up our conclusions, the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 are ultra vires the Constitution and are accordingly struck down. The Illegal Migrants (Determination by Tribunals) Rules, 1984 are also ultra vires and are struck down. As a result, the Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease to function.* ***The Passport (Entry into India) Act, 1920, the Foreigners Act, 1946, the Immigrants (Expulsion from Assam) Act, 1950 and the Passport Act, 1967 shall apply to the State of Assam*** *[…]"*
>
> [Emphasis supplied]

377. That apart, and as held by the Court in ***Sarbanda Sonawal (supra)***, apart from the IEAA, there are various other statutes—including the Passport (Entry into India) Act, 1920, the Foreigners Act, 1946, the Immigrants (Expulsion from Assam) Act, 1950 and the Passport Act, 1967—which are applicable to the State of Assam.

378. In light of the brief foregoing analysis of various statutes, we are of the considered opinion that Section 6A need not be construed in a restrictive manner to mean that a person shall be detected and deported only under the Foreigners Act, 1946. If there is any other

piece of legislation such as the IEAA, under which the status of an immigrant can be determined, we see no reason as to why such statutory detection shall also not be given effect to, for the purposes of deportation. We thus hold that the provisions of IEAA shall also be read into Section 6A and be applied along with the Foreigners Act, 1946 for the purpose of detection and deportation of foreigners.

379. Similarly, in light of this, we find it difficult to accept the second contention of the Petitioners that the IEAA is a complete code in dealing with the situation of immigrants in Assam, and that Section 6A cannot prescribe contrary norms by granting immigrants citizenship. As discussed above, IEAA is only one of the statutes that addressed a specific problem that existed in 1950. The issue of undesirable immigration in 1950 necessitated the promulgation of the IEAA and the granting of power to the Central government to expel such immigrants. On the contrary, the provisions of Section 6A have to be viewed from the focal point of 1971, when Bangladesh was formed as a new nation and an understanding was reached to grant citizenship to certain classes of immigrants who had migrated from erstwhile East Pakistan, as has been detailed in paragraphs 230 and 231 of this judgement. Hence, Section 6A, when examined from this perspective, is seen to have a different objective—one of granting citizenship to certain classes of immigrants, particularly deemed citizenship to those immigrants who came to India before 01.01.1966 and qualified citizenship, to those who came on or after 01.01.1966 and before 25.03.1971.

380. Since the two statutes operate in different spheres, we find no conflict existing between them. The Parliament was fully conversant with the dynamics and realities, while enacting both the Statutes. The field of operation of the two enactments being distinct

and different and there being a presumption of the Legislature having informed knowledge about their consequences, we decline to hold that Section 6A is in conflict with a differently situated statute, namely the IEAA.

381. Instead, we are satisfied that IEAA and Section 6A can be read harmoniously along with other statutes. As held in ***Sarbananda Sonawal (supra)***, none of these Statutes exist as a standalone code but rather supplement each other.

382. We may also hasten to add that the present reference is restricted and limited to the constitutional validity of Section 6A, and the extent of applicability of IEAA is not the subject matter of reference. As discussed earlier, there are multiple statutory enactments to address the influx of immigrants in Assam, namely Section 6A of the Citizenship Act, the Foreigners Act, 1946, the Foreigners (Tribunals) Order, 1964, the Passport (Entry into India) Act, 1920 and the Passport Act, 1967. Hence, in our view, the IEAA must be effectively applied along with all other Statutes which occupy similar or related fields and are, in a way, complementary to each other.

xii. Interface with international law

383. In support of the constitutionality of Section 6A, the Respondents have argued that an international norm against statelessness exists, and thus, the Court should harmonize the interpretation of domestic law with international law. They contend that holding Section 6A unconstitutional would potentially render these immigrants stateless, and therefore, the Court should refrain from invalidating this provision.

384. In light of the discussion in the foregoing sections, since we have not been able to persuade ourselves to strike down Section 6A on the strength of the contentions of Petitioners, the need to examine the issue of statelessness does not arise and is rendered academic.

385. The Petitioners too have invoked Article 27 of the ICCPR, to argue that since Section 6A impacts the culture of original inhabitants, it therefore violates Article 27.

386. Similar to Article 29 of the Constitution of India, Article 27 of the ICCPR also restricts intervention in one's culture.[222] In this regard, since we have already analysed in detail that Section 6A *per se* does not intervene in culture of Assamese people, we see no need to re-agitate the issue here. In any case, it is an established principle that international law cannot trump domestic law.[223] Therefore, Section 6A cannot be assailed on the ground of the perceived violation of Article 27 of the ICCPR as well.

F. CONCLUSIONS AND DIRECTIONS

387. Drawing upon the comprehensive analysis presented in the preceding sections, we thus hold that Section 6A falls within the bounds of the Constitution and does not contravene the foundational principles of fraternity, nor does it infringe upon Articles 6 and 7, Article 9, Article 14, Article 21, Article 29, Article 326, or Article 355 of the Constitution of India. Furthermore, Section 6A does not clash with the IEAA or established principles

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[222] Länsman v Finland (511/92); Diergaardt et al. v. Namibia, Communication No. 760/1997 (25 July 2000); Lubicon Lake Band v. Canada, Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990); Rakhim Mavlonov and Shansiy Sa'di case (Mavlonov v. Uzbekistan), Communication No. 1334/2004, UN Doc. CCPR/C/95/D/1334/2004 (2009)

[223] Kesavananda Bharati v. State of Kerala, *supra* note 98.

of international law. Hence, the constitutional validity of Section 6A, as contested before us, is resolved accordingly.

388. Nevertheless, it is imperative to acknowledge and address the valid concerns raised by the Petitioners regarding the persistent immigration in the State of Assam post 25.03.1971. Although Section 6A conferred citizenship rights exclusively to immigrants arriving before this cut-off date, there seems to still be an ongoing influx of migrants through various border States of India. Due to porous borders and incomplete fencing, this unceasing migration imposes a significant challenge.

389. On account of these concerns, we passed an order on 07.12.2023 and directed the Respondent Union of India to provide data, *inter alia*, the estimated inflow of illegal migrants into India after 25.03.1971, the number of cases presently pending before the Foreigner Tribunals for such immigrants and the extent to which border fencing has been carried out.

390. Regarding the inquiry into the estimated influx of illegal migrants post 25.03.1971, the Union of India was unable to provide precise figures due to the clandestine nature of such inflows. This underscores the necessity for more robust policy measures to curb illicit movements and enhance border regulation. Additionally, it was disclosed that approximately 97,714 cases are pending before the Foreigner Tribunals, and nearly 850 kilometres of border remain unfenced or inadequately monitored.

391. We hold that while the statutory scheme of Section 6A is constitutionally valid, there is inadequate enforcement of the same—leading to the possibility of widespread injustice. Further, the intention of Section 6A, i.e., to restrict illegal immigration post-

1971 has also not been given proper effect. Accordingly, we deem it fit to issue following directions:

(a) In view of the conclusion drawn in paragraph 387, it is held that Section 6A of the Citizenship Act, 1955 falls within the bounds of the Constitution and is a valid piece of legislation;

(b) As a necessary corollary thereto, *(i)* immigrants who entered the State of Assam prior to 1966 are deemed citizens; *(ii)* immigrants who entered between the cut off dates of 01.01.1966 and 25.03.1971 can seek citizenship subject to the eligibility conditions prescribed in Section 6A (3); and *(iii)* immigrants who entered the State of Assam on or after 25.03.1971 are not entitled to the protection conferred *vide* Section 6A and consequently, they are declared to be illegal immigrants. Accordingly, Section 6A has become redundant *qua* those immigrants who have entered the State of Assam on or after 25.03.1971;

(c) The directions issued in ***Sarbananda Sonowal (supra)*** are required to be given effect to for the purpose of deporting the illegal immigrants falling in the category of direction (b) (iii) above;

(d) The provisions of the Immigrants (Expulsion from Assam) Act, 1950 shall also be read into Section 6A and shall be effectively employed for the purpose of identification of illegal immigrants;

(e) The statutory machinery and Tribunals tasked with the identification and detection of illegal immigrants or foreigners in Assam are inadequate and not proportionate to the requirement of giving time-bound effect to the legislative object of Section 6A read with the Immigrants (Expulsion from

Assam) Act, 1950, the Foreigners Act, 1946, the Foreigners (Tribunals) Order, 1964, the Passport (Entry into India) Act, 1920 and the Passport Act, 1967; and

(f) The implementation of immigration and citizenship legislations cannot be left to the mere wish and discretion of the authorities, necessitating constant monitoring by this Court.

392. For this purpose, let this matter be placed before Hon'ble the Chief Justice of India for constituting a bench to monitor the implementation of the directions issued hereinabove.

393. These writ petitions are accordingly disposed of in terms of this judgment.

394. Pending applications (if any) are also disposed of.

..... J.
[SURYA KANT]

..... J.
[M.M. SUNDRESH]

..... J.
[MANOJ MISRA]

NEW DELHI
DATED: 17.10.2024

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 274 OF 2009

IN RE: SECTION 6A OF THE CITIZENSHIP ACT, 1955

WITH

WRIT PETITION (CIVIL) NO. 916 OF 2014

WRIT PETITION (CIVIL) NO. 470 OF 2018

WRIT PETITION (CIVIL) NO. 1047 OF 2018

WRIT PETITION (CIVIL) NO. 68 OF 2016

WRIT PETITION (CIVIL) NO. 876 OF 2014

WRIT PETITION (CIVIL) NO. 449 OF 2015

WRIT PETITION (CIVIL) NO. 450 OF 2015

AND

WRIT PETITION (CIVIL) NO. 562 OF 2012

J U D G M E N T

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts: -

1. I have had the benefit of reading a very erudite judgment penned by my learned brother, Justice Surya Kant – holding Section 6A of the Citizenship Act, 1955 ("**the Citizenship Act**") to be constitutionally valid. However, with all humility at my command, I beg to differ with the views expressed by Justice Surya Kant on certain issues.

2. I have examined the matter from a different dimension, more particularly by applying the doctrine of temporal reasonableness. I propose to hold Section 6A of the Citizenship Act invalid with prospective effect, for the reasons I shall assign hereinafter in my judgment.

3. However, before I proceed to express my views, I would like to highlight a few salient features of the judgment penned by Justice Surya Kant.

I. SALIENT FEATURES OF THE JUDGMENT PENNED BY JUSTICE SURYA KANT.

4. Justice Surya Kant, in his judgment, after giving an overview of the jurisprudence regarding the concept of citizenship and the associated statutory framework in India and various other international jurisdictions, has framed and discussed twelve issues. The first two issues are preliminary in nature and deal with the scope and extent of judicial review and the applicability of doctrine of delay and laches to the present case. The

remaining ten issues pertain to the various challenges to the constitutionality of Section 6A of the Citizenship Act as raised by the Petitioners.

5. In the present judgment, I have dealt with the issues pertaining to the manifest arbitrariness and temporal unreasonableness of Section 6A of the Citizenship Act. Hence, I do not deem it appropriate to express my views on all the issues as framed by Justice Surya Kant in his judgment. I have expressed my concurrence or disagreement, as the case may be, with the views taken by him, only where I deemed it to be completely necessary for the purposes of answering the questions framed by me in this judgment.

6. On the first prefatory issue pertaining to the scope and extent of judicial review, Justice Surya Kant has held that it is well within the domain of this Court to examine the challenges raised by the petitioners against the *vires* of Section 6A of the Citizenship Act. He has considered and rejected the objections of the respondents that Section 6A, being in the nature of foreign policy, should not be examined on the touchstone of constitutionality[1].

7. Further, Justice Surya Kant has delineated the extent of judicial review and has observed that while examining the constitutionality of a policy, the courts have to examine whether the policy infringes upon the fundamental rights of

[1] Paragraphs 45-46 of the judgment of Justice Surya Kant.

the citizens, contravenes constitutional or statutory provisions or displays manifest arbitrariness, capriciousness or *mala fides*. At the same time, he has clarified that this Court should not sit in judgment over a policy to determine whether revisions are necessary for its enhancement.

8. On the second preliminary issue pertaining to delay and laches, Justice Surya Kant has held that although there has been a considerable delay in filing of the present batch of petitions, yet they do not deserve to be dismissed at the outset as they raise substantial questions that pertain to the constitutional validity of a statutory provision and affect the public at large[2]. I concur with the views expressed by him on both the prefatory issues.

9. On the substantive issues, Justice Surya Kant has first dealt with the submission of the petitioners that Section 6A of the Citizenship Act is violative of the preambular notion of fraternity. After elaborating on the idea of fraternity as understood by the framers of our Constitution in detail, he has held that the ethos underlying Section 6A align with the concept of fraternity, as envisaged by our Constitution and interpreted by our courts. He has held that the concept of fraternity cannot be applied in a restrictive manner to protect and promote the endogamous way of life of any specific community[3].

[2] *Id.*, paragraphs 72, 75.
[3] *Id.*, paragraphs 117-118.

10. Justice Surya Kant has thereafter examined if Section 6A of the Act is violative of Articles 6[4] and 7[5] respectively of the Constitution and whether the Parliament in exercise of its powers under Article 11[6] of the Constitution could have enacted such a provision. He has held that it was within the competence of the legislature to enact the provision and that the conditions mentioned under Section 6A are similar to those under Articles 6 and 7 of the Constitution, thereby indicating that Section 6A aligns with the

[4] **6. Rights of citizenship of certain persons who have migrated to India from Pakistan**.— Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—
(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and
(b)(i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:
Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

[5] **7. Rights of citizenship of certain migrants to Pakistan.—** Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India:
Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

[6] **11. Parliament to regulate the right of citizenship by law.—** Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

underlying object of both these Articles, which was to grant citizenship to people affected by the partition of India[7].

11. While I agree with my learned brother's view that the Parliament, undoubtedly, has the jurisdiction to specify conditions for the conferment of citizenship and thus Section 6A of the Citizenship Act is not rendered void for the lack of competence of the legislature, I wish to express my disagreement with the fundamental premise of his reasoning that Section 6A is similar in form and identical in spirit with Articles 6 and 7 respectively of the Constitution.

12. A close reading of both the aforesaid Articles would indicate that unlike Section 6A(3) of the Citizenship Act which entrusts the State with the duty of detecting immigrants and conferring citizenship on them, Article 6 prescribes for a registration system that places the onus of individually undertaking such registration on the person who wishes to avail citizenship. Secondly, unlike Section 6A(3) of the Citizenship Act which has no prescribed end-date for the completion of registration, Article 6 prescribes that an application for registration has to be made before the date of commencement of the Constitution. As discussed by me in detail in the later

[7] Paragraph 132 of the judgment of Justice Surya Kant.

parts of this judgment, these two crucial differences are the underlying reasons for shrouding Section 6A of the Citizenship Act with a cloak of unconstitutionality.

13. Justice Surya Kant has further dealt with the challenge raised by the petitioners that Section 6A of the Citizenship Act is violative of Article 14[8] of the Constitution. While rejecting the preliminary objection raised by the respondents that the petitioners cannot seek equality in regard to a restriction as opposed to a benefit[9], Justice Surya Kant, after a detailed consideration of the arguments and precedents, has rejected the contention of the petitioners and has held that Section 6A does not violate Article 14. He has held that Section 6A is a result of a political settlement between the Government and the people of Assam, namely the Assam Accord, and thus is not violative of Article 14 for treating Assam differently from the rest of the States[10].

14. Further, on the question of Section 6A of the Act being 'manifestly arbitrary' and thus violative of Article 14, Justice Surya Kant has held that neither the cut-off dates[11] prescribed in the scheme of Section 6A of the Citizenship Act

[8] **14. Equality before law.—** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
[9] Paragraphs 164 and 166 of the judgment of Justice Surya Kant.
[10] *Id.*, paragraphs 187-190.
[11] *Id.*, paragraphs 230-232.

nor the criteria and the procedure[12] provided for conferment of citizenship under the said provision are devoid of reason or are palpably arbitrary. For these reasons, he has held that Section 6A does not suffer from manifest arbitrariness.

15. I am in agreement with the view taken by Justice Surya Kant that it was permissible for the legislature to enact Section 6A of the Citizenship Act solely for the State of Assam in view of the extraordinary conditions prevailing therein and the Assam Accord which was entered into as a culmination of such circumstances. Further, I concur with his view that Section 6A cannot be said to be violative of Article 14 for being under-inclusive. However, I differ from his views on the aspect of manifest arbitrariness for the reasons that I have assigned in the later parts of this judgment. I am also of the considered view that Section 6A has acquired unconstitutionality subsequent to its enactment in 1985 by efflux of time and has thus become violative of Article 14 for being temporally unreasonable. I have dealt with this aspect too in detail in the later parts of this judgment.

16. The next issue which my learned brother has dealt with pertains to the violation of the Article 29[13] of the Constitution on account of Section 6A of

[12] *Id.*, paragraphs 238-241.

[13] **29. Protection of interests of minorities.—** (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any

the Citizenship Act. The view taken by him is that Section 6A does not deal with culture, but merely prescribes the conditions for conferment of citizenship on certain categories of immigrants. Thus, any impact on culture is only incidental and not direct or intentional. He has also held that Section 6A does not compel the pre-1971 immigrants to continue to reside within the territory of Assam after having obtained Indian citizenship which entitles them to reside and settle in any part of the country[14]. In the ultimate analysis, he has held that due to the failure of the petitioners to establish an actionable impact on Assamese culture, Section 6A cannot be held to be violative of Article 29 of the Constitution[15].

17. Justice Surya Kant has also considered the issue as to whether Section 6A of the Citizenship Act is violative of Article 21[16] of the Constitution, and has held that the petitioners have failed to show a constitutionally actionable impact. He has taken the view that the impact caused in the State of Assam due to immigration can be attributed to several factors other than just Section 6A of the Citizenship Act. For such reasons, he has held Section 6A to be non-violative of Article 21 of the Constitution[17].

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educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

[14] Paragraphs 297-298 of the judgment of Justice Surya Kant.

[15] *Id.*, paragraphs 300, 304.

[16] **21. Protection of life and personal liberty.—** No person shall be deprived of his life or personal liberty except according to procedure established by law.

[17] Paragraphs 310 and 315 of the judgment of Justice Surya Kant.

18. The next issue considered by Justice Surya Kant is whether Article 326[18] of the Constitution stood violated by Section 6A of the Citizenship Act. After traversing the history and evolution of adult franchise in India and the case laws on this aspect, he has held that the petitioners have failed to show how their rights under Article 326 have been violated by Section 6A. He has also observed that the language of Article 326 unambiguously confers the power to set out the mechanism for excluding people from the electoral rolls on the legislature. It is, thus, open to the petitioners to follow the mechanism prescribed under the Representation of People Act, 1951 to seek the removal of individual immigrants, wherever such immigrants are wrongly enrolled on the electoral rolls[19].

19. Justice Surya Kant has also examined the contention raised by the petitioners that whether on account of continued presence of illegal immigrants, Section 6A of the Citizenship Act is violative of Article 355[20] of the Constitution.

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[18] **326. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.—** The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than 2 [eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

[19] Paragraph 342 of the judgment of Justice Surya Kant.

[20] **355. Duty of the Union to protect States against external aggression and internal disturbance.—** It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.

Relying on the decision of this Court in ***Sarbananda Sonowal v. Union of India*** reported in **(2005) 5 SCC 665**, he has rejected the preliminary contention of the respondents that Section 6A of the Citizenship Act cannot be held unconstitutional for violating Article 355 simplicter. However, he has held that the magnitude and degree of immigration in the case governed by Section 6A is much lesser than that referred to in the ***Sarbananda Sonowal*** *(supra)* case, and thus doesn't amount to external aggression[21].

20. Justice Surya Kant has also considered the interplay of Section 6A of the Citizenship Act with Immigrants (Expulsion from Assam) Act, 1950 ("**IEAA, 1950**") and has held that Section 6A should be read harmoniously with the other existing provisions and thus it cannot be said to be contrary to the object of the IEAA, 1950[22].

21. Finally, Justice Surya Kant has held that Section 6A of the Citizenship Act is not violative of any international covenant, treaty or any other obligation imposed on India by any international law[23].

[21] Paragraph 364-366 of the judgment of Justice Surya Kant.
[22] *Id.*, paragraphs 380-382.
[23] *Id.*, paragraph 386.

II. FACTUAL MATRIX

22. For a more comprehensive understanding of the issues raised in the present case, it is necessary to refer to the historical and sociological context in which these issues have arisen.

A. HISTORICAL BACKGROUND

i. Colonial

23. Between 1817 and 1826, there were multiple invasions by the Burmese into Assam. This brought the Kingdom of Ava, i.e., the sovereign kingdom that ruled Upper Burma into conflict with the British East India Company.

24. There was a great deal of mistrust and friction between the British and the Burmese. This culminated into the first Anglo-Burmese war in 1824 which ended with the signing of the Yandabo Peace Treaty on 24.02.1826 between the East India Company and the Burmese Kingdom of Ava. The treaty, *inter-alia*, stipulated for the ceding of the territories of Assam, Manipur, Arakan, and the Taninthayi to the British. However, two more wars were fought between the British and Burmese before annexation of Burma was completed by the British.

25. Through subsequent treaties, the regions included in the erstwhile Ahom Kingdom were integrated within the Bengal Presidency. Adjacent territories,

including those forming the present-day states of Meghalaya, Mizoram, Arunachal Pradesh and Nagaland, were designated as the 'frontier tracts' and were annexed in due course. The British province that came to be known as 'Assam' roughly took shape by 1873. Subsequently, in the same year, the British introduced inner line under the Bengal Eastern Frontier Regulation of 1873 to restrict the migrants.[24]

26. In 1836, Bengali was declared as the official language of the Bengal province of which Assam was a constituent. In 1839, with the annexation of Maran/Matak territory in upper Assam, the British control over Assam was complete and the British saw it fit to extract the most out of Assam's fertile lands.

27. The charter granted to the East India Company in 1833[25] marked the triumph of the British industrial interests over its mercantile interest and had a significant impact on the settlement of the newly conquered Assam. The Charter permitted the Europeans to hold land outside the Presidency towns on a long-term lease or with free-hold rights. This paved the path for a colonial plantation economy. The Assam Company which was started in

[24] Bengal Eastern Frontier Regulation, 1873, Regulation 2, Regulation 5 of 1873.
[25] The Charter Act, 1833, Chapter No. 85, Acts of Parliament (U.K.).

1839 became the first joint-stock company of India to be incorporated with limited liabilities under an Act of Parliament in August, 1845[26].

28. In 1858, with India coming under the rule of the British Crown as a unified territory, the growing demand of labour in tea-plantations and the expanding agriculture provided an opportunity to the planters to import cheap indentured labour from across India to the fertile valleys of Brahmaputra River in Assam.

29. This migration was accompanied by an influx of Bengali speaking population into positions of administrative services. The British dismantled the existing structure of governance, made Bengali the official language and recruited Bengali speaking populace to run the administration.[27] Assam was more sparsely populated than East Bengal. As a result, the Bengali speaking population coming from East Bengal reclaimed thousands of acres of land, cleared vast tracts of dense jungle along the south bank of the Brahmaputra, and occupied flooded lowlands all along the river.[28]

[26] The Assam Company Act, 1845, No. 19 of 1845, Acts of Parliament (U.K.).
[27] Myron Weiner, *The Political Demography of Assam's Anti-Immigrant Movement*, 9, POPUL. DEV. REV., 283 (1983).
[28] *Id.*

30. However, owing to the inconvenience of governing the Assam districts as a division of the Bengal Presidency and on the demand of the tea planters, Assam Proper, Cachar, Goalpara, Sylhet and Hill District were constituted as a separate Chief Commissioner's province of Assam, also known as the North East Frontier, with capital at Shillong. With this development, Assamese, which had been replaced with Bengali as the official language during the annexation of Assam in 1830s, was reinstated alongside Bengali as the official language. However, Assam's status as a separate province came to an end on 16.10.1905 and it was reconstituted as a part of the newly born composite province of Eastern Bengal and Assam.

31. The partition of Bengal was short-lived because of the rise of anti-British sentiment on account of their policies which led the British to attempt to bring about political stability in the territory of India. At the Delhi Durbar held on 12.12.1911, the partition of Bengal was annulled by a royal declaration. Assam-Sylhet was formally reverted to its old status as a Chief Commissioner's province with effect from 01.04.1912. The province of East Bengal was reorganized by removing Assam from East Bengal, and Assam was constituted as a separate administrative province.

32. In 1937, the Government of India Act, 1935 ("**GOI Act, 1935**") came into force. With the introduction of the GOI Act, 1935, the territory of Burma ceded from India and Assam was incorporated as a territory of India.

ii. Post-Independence

33. The Indian Independence Bill, 1947 proposed that all of Sylhet would become a part of East Bengal. After partition, Sylhet district was transferred to East Pakistan by a referendum.

34. The Indian Independence Act, 1947 was passed on 18.07.1947, dividing erstwhile India into two new nations, i.e., India and Pakistan. Considering the incessant migration at the time of partition, the Influx from West Pakistan (Control) Ordinance, 1948 was promulgated, putting into place a permit system. The ordinance was subsequently replaced by the Influx from Pakistan (Control) Ordinance, 1948. Thereafter, on 22.04.1949, the Influx from Pakistan (Control) Act, 1949 was enacted.

35. It was the understanding during the drafting of the Constitution that as Assam and East Bengal shared a long history of migration, thus it would not be prudent to apply the permit system for migration in East India vis-à-vis the permit system that was in place for the territory of North-West India and erstwhile West Pakistan. Consequently, the permit system was never implemented in relation to the border with East Pakistan.

36. At the time of independence, Assam occupied one-fifteenth of India's total land surface and had a very fluid border. The muddy and riverine border with

East Pakistan led to regular trouble as disputes over territory surfaced. There were claims and counter-claims about the territorial jurisdiction of India and East Pakistan. [29]

37. In 1950, keeping in mind the excessive migration taking place into Assam post-independence, the Government of India sought to stabilize the situation and protect the resources of the country from excess migration and enacted IEAA, 1950. During this period, there were instances of communal disturbance and some immigrants living in the districts of Goalpara, Kamrup and Darrang in Assam fled to East Pakistan, leaving their properties behind.[30]

38. *Inter-alia* in light of the aforesaid developments, an agreement between the Governments of India and Pakistan respectively was signed on 08.04.1950, popularly known as the Nehru-Liaquat Agreement[31], whereby refugees were allowed to return to dispose of their properties.

39. On 26.12.1952, the Influx from Pakistan (Control) Repealing Act, 1952 was enacted to repeal the Influx from Pakistan (Control) Act, 1949 and this ended the permit system w.e.f. 15.10.1952.

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[29] ARUPJYOTI SAIKIA, QUEST FOR MODERN ASSAM: A HISTORY (Penguin Books 2023).
[30] *Id.*
[31] Agreement Between the Government of India and Pakistan Regarding Security and Rights of Minorities (Nehru-Liaquat Agreement), India-Pak., Apr. 8, 1950, New Delhi.

40. The Citizenship Act, 1955 came into force on 30.12.1955, *inter-alia*, prescribing and laying down the various manners and conditions under which the citizenship of India was to be obtained or granted.

41. Post the partition of the country, there were constant skirmishes between the two newly born nations, and the India-Pakistan war of 1965 occasioned a large-scale migration of people from East Pakistan (now Bangladesh) into India, particularly into the states of Assam and West Bengal, creating fresh security concerns.

42. Until 1963, the task of detection, prosecution and deportation of illegal immigrants was solely done by the police forces. Concerned by the excessive migration to Assam as well as the lack of judicial scrutiny in the procedure of detection and deportation of immigrants, the Government decided to establish tribunals in Assam to bring in an element of judicial scrutiny and as such the Foreigners (Tribunals) Order, 1964 was issued. The tribunals constituted under the said order were entrusted with the task of deciding whether a person was a foreigner or not as defined by the Foreigners Act, 1946.

43. Meanwhile, in the absence of any resolution of ongoing disputes between the East and the West Pakistan, the War of Independence broke out in March, 1971 in Bangladesh. By early April, several thousands of Bangladeshi

citizens were killed resulting in a massive flow of refugees into India which took the form of a huge humanitarian crisis.

44. During this period, Assam was undergoing significant territorial changes with States such as Meghalaya, Manipur and Tripura coming into existence as well as the formation of the Union Territories of Mizoram and Arunachal Pradesh.

45. On 19.03.1972, a treaty of friendship, co-operation and peace, popularly known as the Indira-Mujib Agreement[32] was signed between India and Bangladesh.

46. A Joint Communiqué between the Prime Ministers of India and Bangladesh respectively was signed in Calcutta. *Inter alia*, it stated thus:

> "*The Prime Minister of Bangladesh solemnly re-affirmed his resolve to ensure by every means the return of all the refugees who had taken shelter in India since March 25, 1971, and to strive by every means to safeguard their safety, human dignity and means of livelihood"*[33]

47. On 15.12.1972, the Bangladesh Citizenship (Temporary Provisions) Order, 1972[34], came to be promulgated by the Government of Bangladesh, which

[32] Treaty of Peace and Friendship Between the Government of India and the Government of the People's Republic of Bangladesh, India-Bangl., Mar. 19, 1972, Dacca.
[33] Joint Communiqué between the Prime Minister of Bangladesh Sheikh Mujibur Rahman and the Prime Minister of India, India-Bangl., Feb. 8, 1972, (Calcutta).
[34] Bangladesh Citizenship (Temporary Provisions) Order, 1972, No. 149, President's Order, 1972, (Bangl.).

provided that any person whose father or grand-father was born in Bangladesh and who was a permanent resident of Bangladesh on 25.03.1971 and continued to reside in the present-day Bangladesh as on 25.03.1971, shall be a citizen of Bangladesh. In other words, all persons who migrated to India before 25.03.1971, were not entitled to Bangladeshi citizenship.

48. With the influx of Bengali speaking migrants from East Pakistan, the situation at the ground level in Assam underwent a significant change. The confrontation between Bengali and Assamese speakers took multiple forms. On the one hand, Assamese-speaking students boycotted classes, whereas on the other there was an increasing demand for state-support for the Bengali language.[35]

49. In March, 1972, when Guwahati University provided the students with an option of writing their exams in Bengali language, it evoked strong protest from Assamese students, who cited this as an attack on their identity and culture. This created a grave security situation in the area.[36]

[35] ARUPJYOTI, *supra* note 29.
[36] Sarat Chandra Sinha, Chief Minister, Assam, Letter to K.C. Pant, Union Minister, Home Affairs, State (Jun. 23, 1972) (on file with Gauhati University, File No. CMS 39/72, Assam State Archives) 'When the people of Cachar presented their apprehension to the Government, we informally suggested to the University authorities the need to reconsider their earlier decision in keeping with the spirit of the relevant provisions in the Assam Official Language Act'.

50. Thereafter, it was proposed that a separate university, fully funded by the Central Government, would be established in Cachar. However, this did not go down well with the Assamese speakers. The Asam Sahitya Sabha and the All-Assam Students Union ("**AASU**"), followed by many others, opposed the idea of a separate central university in Assam and that of bilingual instruction in the universities of Assam[37]. An Assam Bandh, called by the AASU, was observed.[38] Clashes took place with instances of riot, loot, burning of homes, etc., taking place. Several people, including students died in the ensuing unrest. [39]

51. Due to the protest and agitations in Assam, the Government withdrew its decision to open a university in Cachar and also introduced compulsory learning of Assamese till high school.[40] A formal announcement of the end of the agitation was also made by AASU.[41] However, the groundwork for future conflicts between the Bengali and Assamese speakers was gradually being prepared with hostilities continuing in some manner or the other.

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[37] Jatindra Nath Goswami, General Secretary, Asam Sahitya Sabha, Letter to Chief Minister, Assam (Sept. 30, 1972) (on file with Gauhati University, File No. CMS 39/72, Assam State Archives); Prasanna Narayan Choudhury, General Secretary, Post-Graduate Students' Union, Gauhati University, Letter to Members of Academic Council, Gauhati University (June 3, 1972) (on file with Gauhati University, File No. CMS 39/72, Assam State Archives); Telegram from DC, Nagaon to Principal Private Secretary to Chief Minister (Sept. 29, 1972) (on file with Gauhati University, File No. CMS 39/72, Assam State Archives); Dainik Asam, Oct. 1, 1972.
[38] Dainik Asam, Oct. 4, 1972; Times of India, Oct. 6, 1972; Times of India, Oct. 7, 1972.
[39] Uddipan Dutta, *The Role of Language Management and Language Conflict in the Transition of Post-Colonia Assamese Identity*, (2012).
[40] Assam Tribune, Nov. 12 1972.
[41] Times of India, Nov. 13 1972.

iii. Assam Accord

52. By June 1978, the students belonging to the All-Guwahati Students Union ("**AGSU**") and AASU staged several protests and demonstrations. They demanded, *inter alia*, that the flow of outsiders into Assam be checked, only the youth from Assam be employed in government undertakings and that they be allowed to write the Assam Public Service Commission examination in Assamese.[42] The AASU took to the streets, boycotted classes and eventually enforced a strike on 22.09.1978 which brought the state to a halt.[43]

53. The Chief Election Commissioner in 1978 made a statement that a large number of foreigners had entered the electoral rolls in the North-Eastern states of India. The news about discrepancies in the electoral rolls soon found its way into the Assamese popular press.[44]

54. In 1979, during the routine update of the electoral rolls, various illegal immigrants were detected therein causing the AASU to observe its first state-wide strike to protest against the infiltration of illegal immigrants. The publication of the electoral rolls of the Mangaldoi parliamentary constituency ahead of a bye-election in 1979 is widely considered as the proximate episode which kickstarted the six-year long student-led movement in Assam.

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[42] Assam Tribune, Jun. 2 and 3, 1978.
[43] Dainik Asam, Sept. 23, 1979; Assam Tribune, Sept. 23, 1979.
[44] ARUPJYOTI, *supra* note 29.

55. The reports that the number of eligible voters in Mangaldoi had increased by a vast margin since the last election held two years ago, led many in the state to make formal complaints that challenged the citizenship of many voters included in the electoral rolls. This came in the wake of multiple, well-publicised accounts detailing the continuous high levels of migration from Bangladesh into Assam. Shortly after this, in June, 1979, the AASU demanded the detection, disenfranchisement and deportation of foreigners.

56. In 1980, the then Prime Minister once again invited leaders of the Assam movement for deliberations over the prevailing issues. The student leaders met the Prime Minister and submitted a memorandum detailing their demands, the economic situation and a future roadmap for Assam. Their demands included a register of citizens, detection of all foreigners who came to live in Assam since 1951 and their deportation. However, consensus could not be arrived at between the Central Government and the leaders of the Assam movement leading to the continuation of the agitation. The student leaders were given the option of accepting 1967 as the cut-off date for the detection and deportation of illegal citizens but the offer was turned down.[45]

57. Between 1980 and 1983, talks with the student leaders continued at the highest level of the Central Government. However, the Assamese leaders

[45] SANGEETA BAROOAH PISHAROTY, ASSAM: THE ACCORD, THE DISCORD (Penguin 2019).

stuck to the 1951 benchmark for grant of citizenship as per the Citizenship Act.

58. Arupjyoti Saikia has observed that the student-led movement presented "no specific charter or program for bringing political and economic change to Assam. Instead, it focused on two demands that the agitators believed would bring the desired change – first, push back the foreigners and secondly, increase Assam's share in the Union budget."[46] He has also observed that "the movement at its essence was largely in the hands of student leaders – both rural and urban. Students across the rural and urban divide had withdrawn from classrooms, the large majority missing class for an entire year in 1980."

59. In 1981, both the Central government and the Assam leaders tried to seek an answer to the definition of 'illegal' foreigners[47], and the former was willing to deport those who came after 1966.[48] However, by the end of 1982, the dispute was mainly about the fate of those who had entered Assam between 1961 and 1971[49]. The Central Government agreed that those who had entered Assam post-1971 would be deported from India—a decision believed to have been supported by various political groups in Assam.

[46] ARUPJYOTI, *supra* note 29.
[47] Indian Express, Jul. 1, 1981.
[48] Indian Express, Aug. 1 1981.
[49] Indian Express, Oct. 2, 1982.

60. After a little less than a year of the President's Rule in Assam, the Union government tried to get the support of the opposition parties to hold elections for the constitution of the Seventh Assam Legislative Assembly. The Union government, without specifying the legal and political modalities for the identification of a foreigner, offered to drop from the electoral rolls the names of foreigners and identify those who had come to Assam between 1966 and 24.03.1971 (the date is linked with the Bangladesh Liberation War which began on 25.03.1971), but the offer was rejected by the Assamese student leaders.[50]

61. As the Central Government decided to proceed with the state legislative assembly elections in Assam in February 1983, protests turned violent and many were reportedly killed in the ensuing violence. What was till then largely seen as a powerful, popular and relatively peaceful movement came at the center of national and international attention after this unfortunate turn of events.

62. The holding of elections in Assam in February 1983 was a constitutional requirement after a one-year period of President's Rule. However, the fundamental demand of the protestors for holding elections, i.e., the revision

[50] Dainik Asam, Jan. 6, 1983.

of electoral rolls was not fulfilled.[51] The Assamese leaders were steadfast in their demand that "no election should be held to the Assembly or Parliament before the deletion of the names of foreigners from the electoral rolls."[52]

63. Despite the unstable political environment existing in Assam at that time, the Central Government decided to proceed with the elections. However, the elections took place in the backdrop of distrust between the student-led movement and the Central government. As per news reports, on the day of voting, many polling stations returned empty ballot boxes.

64. On the morning of 18.02.1983, the unfortunate tragedy of Nellie unfolded. Attackers, reportedly armed with guns, knives, spears, bows and arrows attacked the people of Nellie.

65. Post the Nellie incident, the situation became more tense and volatile than ever before. As per various reports, the religious narrative overtook the regional, economic and political character of the anti-foreigner movement, and there was heavy communal, linguistic and ethnic polarization. The social relations between communities – based on economic exchanges and agrarian

[51] *Report of the Non-Official Judicial Inquiry Commission on the Holocaust of Assam Before During and After Election 1983*, Order of R.K. Trivedi, Chief Election Commissioner, India, Annexure F, 201 (Jan. 7, 1983).
[52] *Report of the Non-Official Judicial Inquiry Commission on the Holocaust of Assam Before During and After Election 1983*, Note Submitted by S.L. Khosla, Chief Electoral Officer, Assam to R.V. Subramaniam, Advisor to Governor, Assam, Annexure E, 193 (Sept. 29, 1982).

relations – had been less polarized prior to 1980. The Nellie incident was not an isolated event and many places reported widespread clashes.

66. In light of the ongoing instability and violence in the State, the main issue was the fate of the people in Assam who had migrated from East Pakistan or, later, from Bangladesh. The discord was about the cut-off date, as it was called, that is the year until which the migrants would be accepted as Indian citizens by the leaders of the movement. The Central Government, in their early negotiations with the Assamese leaders, suggested 1971 as this date, which was generally agreed upon by the opposition political parties. Given the humanitarian crisis, this consensus was crucial. However, the Assamese leaders insisted on 1951 as the cut-off date.

67. However, after February 1983, the mass support for the agitational programs reportedly began to wither. The intensity of popular mobilization had fizzled out by the second half of 1983. The events of early 1983 had created a sense of cluelessness; many were tormented by the violent turn the movement had taken, and the movement began to lose its unifying appeal.

68. In 1983, the Government of India enacted the Illegal Migrants (Determination by Tribunals) Act, 1983 ("**IMDT Act**") by which tribunals were established for determining whether a person is an illegal migrant and

to enable the Central Government to expel or deport those determined as such. The IMDT Act was made applicable to anyone who came into India after 25.03.1971 and was made applicable only to the State of Assam. However, in 2005, a three-Judge Bench of this Court in ***Sarbananda Sonowal*** *(supra)* struck down the IMDT Act and the rules made thereunder.

69. However, after a period of ebb, the agitation briefly resurfaced in mid-1984. This was largely an outcome of the State Government's determination to correct the electoral rolls in June, 1984 without securing any political consensus. Once again, students took to the streets and called for bandhs and picketing.[53]

70. However, as the movement became long drawn, the leaders too recognized the ground reality – that it was time for a settlement with the Central Government. After years of popular protest, the number of street agitators had declined and the outlook of the leaders of the movement also changed accordingly.[54]

71. After a series of negotiations held in Shillong, agreement was arrived at on some of the most contentious issues on 30.07.1985.[55] Early in the morning

[53] Assam Tribune, Jun. 15 and 16, 1984.
[54] *Lok Sabha Debates*, Statement of A.K. Sen, Minister of Law and Justice on Statutory Resolution Regarding Disapproval of Representation of the People (Amendment) Ordinance and Representation of the People (Amendment) Bill., at cols. 190–93, (Jan. 23, 1985).
[55] Assam Tribune, Jul. 28, 1985.

of 15.08.1985, the Central Government and the leaders of the movement signed the Assam Accord, which promised that all immigrants who had arrived in Assam after 1965 would be disenfranchised and immigrants who arrived after 24.03.1971 would be deported. The Prime Minister also assured the student leaders that the state legislature, elected in the disputed poll of 1983, would be dissolved, with a caretaker government in control until fresh elections could be held. This was seen as the biggest victory for the leaders of the movement. Apart from the promises to accelerate the economic development of Assam, legislative and administrative safeguards were also promised by the Central Government to protect the cultural, social and linguistic identity and heritage of the Assamese people. Concerning those who had come to Assam post-1965, the then Home Minister clarified that though their right to vote would be suspended, they would not be harassed in any way and would continue to enjoy all other legal and constitutional rights.[56] The date of the beginning of the Bangladesh War, that is, 25.03.1971, was accepted as the cut-off date for the deportation of foreigners.[57] The Central Government also promised in the accord to erect a fence along the riverine and open part of the Indo-Bangladeshi border. This

[56] K.C. Khanna, *Minefield of Uncertainties: The Assam Accord and After*, TIMES OF INDIA, (20 August 1985).

[57] MANI SHANKAR AIYAR, RAJIV GANDHI'S INDIA: A GOLDEN JUBILEE RETROSPECTIVE, NATIONHOOD, ETHNICITY, PLURALISM AND CONFLICT RESOLUTION, (Atlantic Publishers 1998); Hiteswar Saikia acknowledged that, to him, 'the Accord was good because, for the first time, those who came to Assam right from 1947 to 1971 after the Partition were recognised' as citizens of India.

officially marked the end of the six-year-long anti-foreigner movement in Assam.

72. On the basis of the Assam Accord, the Government of India introduced Section 6A of the Citizenship Act, whereby it sought to codify the political settlement arrived at through a series of negotiations and provide clarity, *inter-alia,* on the status of citizenship of immigrants between 1950 to 1971.

B. SALIENT FEATURES OF THE ASSAM ACCORD

73. As a result of the student movement and the ensuing negotiations between the Central Government, State Government, AASU, and the All Assam Gana Sangram Parishad ("**AAGSP**"), a Memorandum of Settlement was arrived at on 15.08.1985, which is commonly known as the "Assam Accord". Terms of the Assam Accord are reproduced below for ease of reference: -

> *"MEMORANDUM OF SETTLEMENT*
>
> *1. Government have all along been most anxious to find a satisfactory solution to the problem of Foreigners in Assam. The All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) have also expressed their Keenness to find such a solution.*
>
> *2. The AASU through their Memorandum dated 2nd February, 1980 presented to the Late Prime Minister Smt. Indira Gandhi, conveyed their profound sense of apprehensions regarding the continuing influx of foreign nationals into Assam and the fear about adverse effects upon the political, social, cultural and economic life of the State.*

3. Being fully alive to the genuine apprehensions of the people of Assam, the then Prime Minister initiated the dialogue with the AASU/AAGSP. Subsequently, talks were held at the Prime Minister's and Home Ministers levels during the period 1980-83. Several rounds of informal talks were held during 1984. Formal discussions were resumed in March, 1985.

4. Keeping all aspects of the problem including constitutional and legal provision, international agreements, national commitments and humanitarian considerations, it has been decided to proceed as follows :-

Foreigners Issue:

5. 1. For purpose of detection and deletion of foreigners, 1-1-1966 shall be the base date and year.

5.2. All persons who came to Assam prior to 1-1-1966, including those amongst them whose names appeared on the electoral rolls used in 1967 elections, shall be regularized.

5.3 Foreigners who came to Assam after 1-1-1966 (inclusive) and upto 24th March, 1971 shall be detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1939.

5.4 Names of foreigners so detected will be deleted from the electoral rolls in force. Such persons will be required to register themselves before the Registration Officers of the respective districts in accordance with the provisions of the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939.

5.5 For this purpose, Government of India will undertake suitable strengthening of the governmental machinery.

5.6 On the expiry of the period of ten year following the date of detection, the names of all such persons which have been deleted from the electoral rolls shall be restored.

5.7 All persons who were expelled earlier, but have since re-entered illegally into Assam, shall be expelled.

5.8 Foreigners who came to Assam on or after March 25, 1971 shall continue to be detected, deleted and expelled in accordance with the law. Immediate and practical steps shall be taken to expel such foreigners.

5.9 The Government will give due consideration to certain difficulties express by the AASU/AAGSP regarding the implementation of the Illegal Migrants (Determination by Tribunals) Act, 1983.

Safeguards and Economic Development:

6. Constitutional, legislative and administrative safeguards, as may be appropriate, shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people.

7. The Government takes this opportunity to renew their commitment for the speedy all round economic development of Assam, so as to improve the standard of living of the people. Special emphasis will be placed on the education and Science & Technology through establishment of national institutions.

Other Issues:

8.1 The Government will arrange for the issue of citizenship certificate in future only by the authorities of the Central Government.

8.2 Specific complaints that may be made by the AASU/AAGSP about irregular issuance of Indian Citizenship Certificates (ICC) will be looked into.

9. The international border shall be made secure against future infiltration by erection of physical barriers like walls barbed wire fencing and other obstacles at appropriate places. Patrolling by security forces on land and riverine routes all along the international border shall be adequately intensified. In order to further strengthen the security arrangements, to prevent effectively future infiltration, an adequate number of check posts shall be set up.

9.2 Besides the arrangements mentioned above and keeping in view security considerations, a road all along the international border shall be constructed so as to facilitate patrolling by security forces. Land between border and the road would be kept free of human habitation, wherever possible. Riverine patrolling along the international border would be intensified. All effective measures would be adopted to prevent infiltrators crossing or attempting to cross the international border.

10. It will be ensured that relevant laws for prevention of encroachment of government lands and lands in tribal belts and blocks are strictly enforced and unauthorized encroachers evicted as laid down under such laws.

11. It will be ensured that the law restricting acquisition of immovable property by foreigners in Assam is strictly enforced.

12. It will be ensured that Birth and Death Registers are duly maintained.

Restoration of Normalcy:

13. The All-Assam Students Unions (AASU) and the All Assam Gana Sangram Parishad (AAGSP) call off the agitation, assure full co-operation and dedicate themselves towards the development of the Country.

14. The Central and the State Government have agreed to:
a. Review with sympathy and withdraw cases of disciplinary action taken against employees in the context of the agitation and to ensure that there is no victimization;
b. Frame a scheme for ex-gratia payment to next of kin of those who were killed in the course in the agitation.
c. Give sympathetic consideration to proposal for relaxation of upper age limit for employment in public service in Assam, having regard to exceptional situation that prevailed in holding academic and competitive examinations etc. in the context of agitation in Assam:
d. Undertake review of detention cases, if any, as well as cases against persons charged with criminal offences in

connection with the agitation, except those charged with commission of heinous offences.
e. Consider withdrawal of the prohibitory orders/ notifications in force, if any:

15. The Ministry of Home Affairs will be the nodal Ministry for the implementation of the above.

Signed/- *R.D. Pradhan* *Home Secretary* *Govt. of India*	*Signed/-* *P.K. Mahanta* *President* *All Assam Students Union*

Signed/-	*Signed/-*	*Signed/-*
(B.K. Phukan) *General Secretary* *All Assam Students Union*	*(Biraj Sharma)* *Convenor* *All Assam Gana Sangram Parishad*	*(Smt. PP Trivedi)* *Chief Secretary* *Govt. of Assam*

In the presence of
Signed/-
(RAJIV GANDHI)
PRIME MINISTER OF INDIA

Date: 15th August, 1985
Place: New Delhi"

74. The clauses of the Accord dealt with, *inter-alia*, the following issues: -

- The foreigners' issue in Assam;
- Constitutional, legislative and administrative safeguards for cultural, social and linguistic identity and heritage of the Assamese people;
- Economic development of Assam;
- Security of the international border;

- Restricting acquisition of immovable property by foreigners;
- Prevention of encroachment of government lands;
- Registration of births and deaths;
- Call-off of the agitation by the protesting groups;
- Withdrawal of cases against persons involved in the agitation; and
- Framing of scheme for payment of ex-gratia compensation to next of kin of those who were killed during the agitation, etc.

75. For the purpose of the present discussion, it is important to highlight the features of clause 5 of the Accord which deals with the foreigners' issue and also forms the basis of Section 6A of the Citizenship Act.

76. Clause 5.1 provided that foreigners who have entered into Assam after 25.03.1971 will continue to be detected and their names will be deleted from the electoral rolls and they will be deported from India.

77. Clause 5.2 provided for the regularization of citizenship of all the immigrants who had entered into Assam on or before 31.12.1965 including those whose names appeared in electoral rolls published in 1967.

78. Further, Clause 5.9 provided that "*the Government will give due consideration to certain difficulties expressed by AASU/AAGSP regarding the implementation of IMDT Act, 1983".*

79. Clause 5 also provided for detection of people entering into Assam between 01.01.1966 and 24.03.1971. For this category of immigrants, citizenship was to be granted in terms of Clause 5.3 of the Accord. As per the said Clause, immigrants belonging to the aforesaid category were to be detected in accordance with the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964. As per Clause 5.4, upon detection the names of such immigrants were to be deleted from the electoral rolls and subsequently they would be required to get themselves registered for grant of citizenship in accordance with the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939, failing which they would be liable to get deported. Ten years post such detection, their names would be reinstated on the electoral rolls. Clause 5.3 subsequently became the basis of Section 6A(3) of the Citizenship Act.

III. SUBMISSIONS ON THE DAMAGE CAUSED DUE TO THE INFLUX OF ILLEGAL IMMIGRANTS INTO ASSAM

80. It is the case of the petitioners that the acute problem of illegal immigration has led to a major change of demography in the State of Assam, and is posing a serious threat to the unity, integrity and security of India. It was submitted before us that Section 6A of the Citizenship Act has directly impacted the political landscape of the State by granting citizenship to a large number of

immigrants from Bangladesh thereby rendering the local population a minority.

81. It was submitted by the petitioners that the grant of citizenship in the manner provided under Section 6A of the Citizenship Act has altered the demographics of the State of Assam, which has led to the marginalization of the citizens belonging to various indigenous and ethnic groups living in the State prior to the coming into force of Section 6A.

82. The petitioners relied on a report relating to the unabated influx of people from Bangladesh into Assam dated 08.11.1998 submitted to the President by the then Governor of Assam, Lt. General (retd.) Shri S.K. Sinha.[58] The following key findings of the report were highlighted during the course of the hearing:

    a. The report was prepared keeping in mind the demographic change in Tripura and Sikkim to highlight the issues that have arisen and that may arise with the unabated influx of immigrants which has been legitimized/attempted to be legitimized with Section 6A of the Citizenship Act.

[58] Governor of Assam Report to the President of India on Illegal Migration into Assam, D.O. No. GSAG.3/98, (Nov. 8, 1998).

b. The report stated that the issue of unchecked immigration threatens to reduce the native Assamese population to a minority in the State of Assam.

c. The Governor in his report was conscious of the fact that in the absence of any census being carried out to determine the number of illegal immigrants, precise and authentic figures regarding the same were not available.[59] However, the Governor on the basis of estimates, extrapolations and various indicators indicated that the number of immigrants ran into millions. The Governor drew attention towards the speech of Mr. Indrajit Gupta, the then Home Minister of India, who, while making a speech in the Parliament on 06.05.1997, stated that there were ten million illegal immigrants residing in India.[60]

d. The report estimated the number of immigrants by considering the shortfall of population growth in Bangladesh**.** In 1970, the total population of East Pakistan was 75 million but in 1974 it had come down to 71.4 million. On the basis of 3.1 percent annual population growth rate during that period, the population of Bangladesh in

[59] *Id.* at para 13.
[60] *Id.* at para 16.

1974 should have been 77 million. The shortfall of about six million people could only be explained by large-scale immigration.[61]

83. The petitioners, placing reliance on a study titled *"The Change of Religion and Language Composition in the State of Assam in Northeast India: A Statistical Analysis Since 1951 to 2001"*[62] conducted by Dr. Bhupender Kumar Nath and Prof. Dilip Nath, submitted that the districts bordering Bangladesh witnessed a significantly high growth of Bengali speakers post partition. The study indicated that from 1951 to 2011, the percentage of Bengali speaking population in Assam increased by 36.36% (from 21.2% to 28.91% of the total population of Assam), but during this period the proportion of Assamese speaking people in the State had declined by 30.18% i.e. (from 69.3% to 48.38% of the total population of Assam). However, rest of the districts did not experience a substantial change in linguistic composition. As far as the other languages are concerned, no major change was seen for Hindi, Nepali and other language groups.[63] Dr. Bhupender Nath, while relying on the empirical analysis based on district-level census data, concluded that the proportion of Bengali-speaking and Muslim population rapidly rose between 1951-2001, more than any other religion and

[61] *Id.* at para 18(c).
[62] Dr. Bhupendra Nath & Dilip C Nath, *The Change of Religion and Language Composition in the State of Assam in Northeast India: A Statistical Analysis Since 1951 to 2001*, 5 INT. J. SCI. RES. PUB. 2, (2012).
[63] *Id.*, at 5.

language.[64] The same stands true as per the data available from the 2011 census as well. As per Dr. Nath, this unusually high growth could not be attributed to natural increase, and thus, could only be attributed to the influx of Bangladeshi immigrants into Assam. This could adversely affect the future of the Assamese language given the rate at which the immigration has been regularized.[65]

84. In other words, the submission of the petitioners is that while the proportion of Bengali speaking population has risen over the past few decades, the proportion of Assamese speakers has declined in all the districts of Assam. Such a change in the demography of Assam has led to many adverse consequences and may continue to cause damage to the interests of the State. The influx of immigrants into the State has accelerated population growth, altered demographic attributes, increased border fluidities and has created economic and political pressure on the country.[66]

85. In response to the aforesaid concerns raised by the petitioners, the learned Solicitor General fairly accepted that the negative consequences of the unabated influx on the people of Assam, as pointed out by the petitioners,

[64] *Id.*
[65] *Id.*
[66] Nandita Saikia, William Joe, Apala Saha & Utpal Chutia, *Cross Border Migration in Assam during 1951-2011: Process, Magnitude, and Socio-Economic Consequences*, Report submitted to ICSSR 38, (2016).

cannot be denied. He further submitted that the problem is a serious and a continuing one. However, the aforesaid ongoing issues cannot form the basis for declaring Section 6A of the Citizenship Act as unconstitutional as the said provision is confined to a particular period of time.

IV. ISSUE FOR DETERMINATION

86. During the course of hearing, it was submitted by Mr. Shyam Divan, the learned Senior Counsel appearing for the petitioners, that there is no temporal limit to the operation of Section 6A(3) of the Citizenship Act which means that the provision continues to remain applicable till this date. He submitted that an immigrant of the 1966-71 stream can make an application even today for the purpose of seeking benefit under the said provision. He further argued that in the absence of any time-limit for working out the provision, it will remain on the statute book indefinitely and will continue to act as an incentive attracting immigrants to Assam. It was argued by him that in the absence of any prescribed time period for seeking the benefit of the provision, the same has also proved to be a fertile ground for local industries with regard to counterfeiting of documents, etc.

87. Mr. Divan further submitted that the power of the Central Government under Section 2 of the IEAA, 1950[67] to direct a person to remove himself is coupled

[67] ***2. Power to order expulsion of certain immigrants.—*** *If the Central Government is of opinion that any person or class of persons, having been ordinarily resident in any place*

with a duty to conduct expeditious detection and deportation of the immigrants. However, in the absence of any time-limit for working out Section 6A(3) of the Citizenship Act, it is difficult to balance the duty cast by Section 2 of the IEAA, 1950. He also submitted that for taking the benefit of registration under Section 6A(3), detection as a foreigner is a condition precedent. However, there is no method by which an immigrant can make a self-declaration, thereby shifting the onus of detection solely on the state and making it an endless exercise.

88. Mr. Vijay Hansaria, the learned Senior Counsel appearing for another set of petitioners, relied upon the constitutional scheme under Article 6(b)(ii) to argue that to be able to seek the benefit of citizenship under Article 6[68], a

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outside India, has or have, whether before or after the commencement of this Act, come into Assam and that the stay of such person or class of persons in Assam is detrimental to the interests of the general public of India or of any section thereof or of any Scheduled Tribe in Assam, the Central Government may by order —

(a) direct such person or class of persons to remove himself or themselves from India or Assam within such time and by such route as may be specified in the order; and

(b) give such further directions in regard to his or their removal from India or Assam as it may consider necessary or expedient:

Provided that nothing in this section shall apply to any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been displaced from or has left his place of residence in such area and who has been subsequently residing in Assam.

[68] **6. Rights of citizenship of certain persons who have migrated to India from Pakistan.—** Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b)(i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

person migrating to India from Pakistan after 19.07.1948 had to make an application before the commencement of the Constitution. Thus, the scheme of Section 6A, in the absence of a temporal-limit on its functioning and the sole onus of detection on the state, marks a departure from the prevalent statutory scheme and leads to absurd consequences. Mr. Hansaria further submitted that the benefit of Section 6A should only be limited to the 32,381 people already detected as foreigners of the 1966-71 stream till date, as stated by Union of India in its affidavit, and should not continue any further.

89. The petitioners, in the alternative, submitted that the impugned provision may be struck down with prospective effect as the provision was inserted for a historic and limited purpose i.e., for granting citizenship to those immigrants who came in between the years 1966 and 1971. The petitioners relied upon the decision of this Court in ***Somaiya Organics (India) Ltd. & Another v. State of U.P. & Another*** reported in **(2001) 5 SCC 519** and ***Synthetics and Chemicals Ltd. v. State of U.P.*** reported in **(1990) 1 SCC 109** to buttress their submission.

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:
Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

90. Thus, having read into the line of reasoning as assigned by my learned brother Justice Surya Kant and also having regard to the specific submissions canvassed on behalf of the petitioners, more particularly, the submissions on temporal limits and manifest arbitrariness, the only question that needs to be addressed in my considered view is as under:

> "Whether the absence of any temporal limits in the scheme of Section 6A of the Citizenship Act has rendered the said provision manifestly arbitrary and thus violative of Article 14 of the Constitution? To put it in other words, whether the efflux of time has rendered Section 6A of the Citizenship Act temporally unreasonable and thus liable to be struck down in consequence of violation of Article 14?"

V. ANALYSIS

A. SCHEME AND MECHANISM OF SECTION 6A

91. Pursuant to the signing of the Assam Accord, the Citizenship Act was amended by the Parliament in order to give effect to the mandate of the Accord and accordingly Section 6A came to be inserted by the Citizenship (Amendment) Act, 1985. The Statement of Object and Reasons which accompanied the Citizenship (Amendment) Bill, 1985 reads as under: -

> *"The core of the Memorandum of Settlement (Assam Accord) relates to the foreigners' issue, since the agitation launched by the A.A.S.U. arose out of their apprehensions regarding the continuing*

influx of foreign nationals into Assam and the fear about adverse effects upon the political, social, cultural and economic life of the State.

Assam Accord being a political settlement, legislation is required to give effect to the relevant clauses of the Assam Accord relating to the foreigners' issue.

It is intended that all persons of Indian origin who came to Assam (including such of those whose names were included in the electoral rolls used for the purpose of General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam ever since shall be deemed to be citizens of India as from the 1st day of January, 1966. Further, every person of Indian origin who came on or after the 1st January, 1966 but before the 25th March, 1971 from territories presently included in Bangladesh and who has been ordinarily resident in Assam ever since and who has been detected in accordance with the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 shall, upon registration, be deemed to be a citizen for all purposes as from the date of expiry of a period of ten years from the date of detection as a foreigner. It is also intended that in the intervening period of 10 years, these persons should not suffer from any other disability vis-a-vis citizens, excepting the right to vote and that proper record should be maintained of such persons. To inspire confidence, judicial element should be associated to determine eligibility in each and every case under this category.

The Bill seeks to amend the Citizenship Act, 1955 to achieve the above objectives."

(Emphasis supplied)

92. The Preamble to the Citizenship (Amendment) Act, 1985 reads as follows: -

"THE CITIZENSHIP (AMENDMENT) ACT, 1985
No. 65 of 1985

[7th December, 1985]

An Act further to amend the Citizenship Act, 1955.

Whereas for the purpose of giving effect to certain provisions of the Memorandum of Settlement relating to the foreigners' issue in Assam (Assam Accord) which was laid before the Houses of

Parliament on the 16th day of August, 1985 it is necessary to amend the Citizenship Act, 1955;

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows"

93. A perusal of Section 6A of the Citizenship Act[69], more particularly the use of the words "*Special provisions*" and "*Assam Accord*" in the marginal note

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[69] ***6A. Special provisions as to citizenship of persons covered by the Assam Accord. —*** *(1) For the purposes of this section —*

(a) "Assam" means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amend-ment) Act, 1985;

(b) "detected to be a foreigner" means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunals) Order, 1964 by a Trib-unal constituted under the said Order;

(c) "specified territory" means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985;

(d) a person shall be deemed to be of Indian origin, if he, or either of his parents for any of his grandparents was born in undivided India;

(e) a person shall be deemed to have been detected to be a for-eigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who: —

(a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and

(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

(c) has been detected to be a foreigner, shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (thereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detec-tion, his name shall be deleted therefrom.

Explanation. — In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause

(c) of this sub-section and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall,—

(i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;

(ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order hang jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.

(4) A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 (15 of 1967) and the obligations connected therewith), but shall not be entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.

(5) A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

(6) Without prejudice to the provisions of section 8, —

(a) If any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, for year a declaration that he does not wish to be a citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;

(b) If any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement the Citizenship (Amendment) Act, 1985, for year or from the date on which he has been detect-ed to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-sec-tion and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).

Explanation. — Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force to act on his behalf.

(7) Nothing in sub-sections (2) to (6) shall apply in relation to any person—

(a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985, for year is a citizen of India;

(b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, for year under the Foreigners Act, 1946 (31 of 1946).

(8) Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.

makes it abundantly clear that the said provision was in the nature of a special provision pertaining to citizenship and was intended only for a limited class of persons in Assam who were covered by the Assam Accord which, as stated earlier, was a political settlement meant to tackle the exigencies prevailing in the State of Assam at the time of signing of the Accord.

94. A close reading of Section 6A reveals that the benefit of citizenship to the immigrants from Bangladesh, as envisaged under the Assam Accord, has been conferred under the said provision in two distinct ways.

95. First, Section 6A sub-section (2) provides that persons of Indian origin who came into Assam from the territories now part of Bangladesh before 01.01.1966 and subsequent to their entry have been ordinarily resident in Assam are deemed to be citizens of India.

96. In other words, immigrants falling under the aforesaid category are automatically conferred citizenship by virtue of a legal fiction. For an immigrant to be entitled to the benefits under sub-section (2), the following requirements have been prescribed: -

i. Immigrant is a Person of Indian Origin[70]; and

[70] *Id.,* § 6A sub-section (1) cl. (d), *"a person shall be deemed to be of Indian origin, if he, or either of his parents for any of his grandparents was born in undivided India".*

ii. Has entered into Assam[71] from Bangladesh[72]; and

iii. Has entered into Assam prior to the cut-off date of 01.01.1966; and

iv. Has been ordinarily resident in Assam since the date of entry.

97. Secondly, Section 6A sub-section (3) provides that persons of Indian origin who came into Assam from the territories now part of Bangladesh on or after 01.01.1966 but before 25.03.1971 and since then have been ordinarily resident in Assam and subsequently have been detected to be a foreigner, shall be liable to have their names deleted from the electoral rolls for a period of ten years from the date of their detection. The provision further stipulates that persons belonging to this category will be entitled to get themselves registered as citizens with the appropriate authority as per the prescribed procedure and the rules only upon detection as a foreigner and upon consequent deletion of their name from the electoral rolls.

98. Thus, unlike section 6A sub-section (2), the benefit under sub-section (3) is not automatically conferred but rather has to be availed by an immigrant after he or she has been detected as a foreigner by a tribunal constituted under the Foreigners (Tribunal) Order, 1964. In other words, to be able to avail the benefit under Section 6A sub-section (3), the following requirements have to be fulfilled: -

[71] *Id.,* § 6A sub-section (1) cl. (a), *"Assam" means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amend-ment) Act, 1985.*
[72] *Id.,* § 6A sub-section (1) cl. (c), *"specified territory" means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985.*

i. Immigrant must be a Person of Indian Origin; and

ii. Has entered into Assam from Bangladesh; and

iii. Has entered into Assam on or after 01.01.1966 but before 25.03.1971; and

iv. Has been ordinarily resident in Assam since the date of entry[73]; and

v. Has been detected to be a foreigner subsequent to the date of entry; and

vi. Having been detected, has registered himself with the appropriate authority designated by the Central Government in accordance with the Rules made under Section 18 of the Citizenship Act.

99. The White Paper on Foreigners Issue[74] published by the Government of Assam in 2012 ("**White Paper**") explained the working mechanism of Section 6A as follows:

> *"Border Police Personnel ("BPP") are deployed in all the districts of Assam for detection of suspected foreigners and deportation/push back of declared foreigners. BPP would conduct survey work for the identification of suspected foreigners by seeking assistance from local people. The survey work is generally conducted in areas of new settlements, construction sites, encroached land, government land, forest land, etc. If any doubtful person is found then they are asked to produce documents in support of their citizenship. If the documents produced are found to be unauthenticated or unreliable, then an enquiry is initiated with the approval of the Superintendent of Police ("SP"). If the SP is satisfied with the enquiry report, then he could make a reference to the Foreigners Tribunal ("FT") constituted under the Foreigners (Tribunal) Order, 1964. If the suspected*

[73] *Id.,* § 6A sub-section (1) cl. (e), "*a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned."*

[74] Govt. of Assam, White Paper on Foreigner's Issue, (October 2012).

person is able to produce any document establishing arrival in India before 01.01.1966, then he is treated as a citizen in accordance with s. 6A(2) of the Act. If the suspected person fails to establish arrival before 01.01.1966, but produces any document establishing his entry into India between 01.01.1966 to 24.03.1971, then an enquiry is initiated whether he is a suspected foreigner of the 1966-1971 stream. Their names are then removed from the electoral roll for a period of 10 years and they are required to register with the registering authority within a period of 60 days, failing which they are liable to be deported."

100. The rules for giving effect to Section 6A of the Citizenship Act were inserted in the Citizenship Rules, 1956 ("**Rules, 1956**") vide the Citizenship (Amendment) Rules, 1986 which were brought into force by the notification dated 15.01.1987[75]. After the said amendment, Rule 16D[76] of the Rules, 1956 provided for reference to tribunals constituted under the Foreigners (Tribunals) Order, 1964 as prescribed under the Explanation (ii) to Section 6A(3) of the Citizenship Act. Rule 16E[77] provided for the jurisdiction of the Foreigners Tribunal to decide upon the references received under Rule 16D.

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[75] Notification No. G.S.R. 25(E) dated 15.01.1987 w.e.f. 15.01.1987.

[76] **16D. Reference to Tribunal.—** Where in the case of a person seeking registration under sub-section (3) of section 6A of the Act -

(a) Any question arises as to whether such person complies with any requirement contained in the said sub-section, or

(b) The opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 in relation to such person does not contain a finding with respect to any requirement contained in the said sub-section other than the question that he is a foreigner, the registering authority shall, within fifteen days of receipt of an application in Form XXIII from such person, make a fresh reference to the Tribunal in this regard.

[77] **16E. Jurisdiction of the Tribunal.—** A Tribunal constituted under the Foreigners (Tribunals) Order, 1964 having jurisdiction over a district or part thereof in State of Assam shall exercise jurisdiction to decide references received from the registering authority of that district in relation to all references made under sub-section (3) of section 6A of the Act in respect of the corresponding area covered by the Tribunal.

Rule 16F[78] prescribed the registering authority for the purpose of Section 6A(3) and the appropriate form[79] to be filled for the purpose of registration. Finally, Rule 16G[80] laid down the procedure for making a declaration under Section 6A(6) of the Citizenship Act.

101. The relevant rules pertaining to Section 6A of the Citizenship Act were incorporated virtually *pari materia* in the Citizenship Rules, 2009 ("**the Rules, 2009**") thereby replacing the Rules, 1956. For the sake of clarity, the provisions pertaining to Section 6A of the Citizenship Act contained in the Rules, 1956 and their corresponding provisions in the Rules, 2009 are listed in the following table:

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[78] **16F. The registering authority for the purpose of section 6A (3) and form of application for registration.—**
(1) The registering authority, for the purpose of sub-section (3) of section 6A of the Act shall be such officer as maybe appointed for each district of Assam by the Central Government.
(2) An application for registration under sub-section (3) of section 6A of the Act shall be filed in Form XXIII by the person with the registering authority for the district in which he is ordinarily resident-
(a) Within thirty days from the date of his detection as a foreigner, where such detection takes place after the commencement of the Citizenship (Amendment) Rules, 1986; or
(b) Within thirty days of the appointment of the registering authority for the district concerned where such detection has taken place before the commencement of the Citizenship (Amendment) Rules, 1986.
(3) The registering authority shall, after entering the particulars of the application in a register in Form XXIV, return a copy of the application under his seal to the applicant.
(4) One copy of every application received during a quarter shall be sent by the registering authority to the Central Government and the State Government of Assam along with a quarterly return in Form XXV.
(5) The period referred to in sub-rule (2) may be extended for a period not exceeding sixty day by the registering authority for reasons to be recorded in writing.
[79] Form XXIII, Schedule I, Citizenship Rules, 1956.
[80] **16G. Declaration under section 6A(6) .—** The declaration referred to in clauses (a) and (b) of sub-section (6) of section 6A of the Act shall be made to the District Magistrate of the area within whose jurisdiction the person concerned is ordinarily resident in Form XXVI.

The Citizenship Rules, 1956	The Citizenship Rules, 2009
Rule 16D	Rule 20
Rule 16E	Rule 21
Rule 16F	Rule 19
Rule 16G	Rule 22

102. Rule 19 of the Rules, 2009 was further amended by the Citizenship (Amendment) Rules, 2013. The amended Rule 19 came into effect vide notification dated 16.07.2013. The amendment stipulated that all immigrants belonging to the 1966-71 stream, who had been detected as a "foreigner" by a foreigners tribunal before 16.07.2013 and who couldn't register as per the prescribed procedure either due to the non-receipt of the order of the tribunal or due to the refusal of the registering authority owing to the delay in registration, would be provided one last opportunity to register themselves within the period prescribed in the amended Rule 19. A comparative chart showing Rule 16F of the Rules, 1956; Rule 19 of the Rules, 2009; and Rule 19 of the Rules, 2009 as amended by the Citizenship (Amendment) Rules, 2013 is produced below:

16F. The registering authority for the purpose of section 6A (3) and form of	***19. Registering authority for the purpose of sub-section (3) of section***	***19. Registering authority for the purpose of sub-section (3) of section 6A and form for registration-***

application for registration	***6A and form for registration-***	
(1) The registering authority, for the purpose of sub-section (3) of section 6A of the Act shall be such officer as maybe appointed for each district of Assam by the Central Government.	*(1) The Central Government may, for the purposes of sub-section (3) of section 6A, appoint an officer not below the rank of Additional District Magistrate as the registering authority for every district of the State of Assam.*	*(1) The Central Government may, for the purposes of sub-section (3) of section 6A, appoint an officer not below the rank of Additional District Magistrate as the registering authority for every district of the State of Assam.*
(2) An application for registration under sub-section (3) of section 6A of the Act shall be filed in Form XXIII by the person with the registering authority for the district in which he is ordinarily resident- *(a) Within thirty days from the date of his detection as a foreigner, where such detection takes place after the commencement of the Citizenship (Amendment) Rules, 1986; or* *(b) Within thirty days of the appointment of the registering authority for the district concerned where such detection has taken place before*	*(2) An application for registration under sub-section (3) of section 6A shall be made in Form XVIII, by the person to the registering authority for the district in which he is ordinarily resident, within a period of thirty days from the date of his detection or identification as a foreigner or, as the case may be, within a period of thirty days of the appointment of the registering authority in the district.*	***(2) An application for registration under sub-section (3) of section 6A shall be made in Form XVIII, by the person to the registering authority for the district in which such person is ordinarily a resident within a period of thirty days from the date of receipt of order of the Foreigners Tribunal declaring such person as a foreigner; Provided that the registering authority may, for reasons to be recorded in writing, extend the said period to such further period as may be justified in each case but not exceeding sixty days.*** ***(2A) A person who has been declared as a***

the commencement of the Citizenship (Amendment) Rules, 1986.		***foreigner by the Foreigners Tribunal prior to 16th July, 2013 and has not been registered under sub-section (3) of Section 6A for the reason of non-receipt of order of the Foreigners Tribunal or refusal by the registering authority to register such person as a foreigner on account of delay may, within a period of thirty days from the date of receipt of the order passed by the Foreigners Tribunal, or, from the date of publication of this notification, make an application for registration in Form XVIII to the registering authority of the district in which such person is ordinarily a resident: Provided that the registering authority may, for reasons to be recorded in writing, extend the said period to such further period as may be justified in each case but not exceeding one hundred eighty days***
(3) The registering authority shall, after entering the particulars of the application in a register in Form XXIV, return a copy of the application under his seal to the applicant.	*(3) The registering authority shall, after entering the particulars of the application in a register in Form XIX, return a copy of the application under his seal to the applicant.*	
(4) One copy of every application received during a quarter shall be sent by the registering authority to the Central Government and the State Government of Assam along with a quarterly return in Form XXV.	*(4) One copy of every application received during a quarter shall be sent by the registering authority to the Central Government and the State Government of Assam along with a quarterly return in Form XX.*	
(5) The period referred to in sub-rule (2) may be extended for a period not exceeding sixty day by the registering authority for reasons to be recorded in writing.	*(5) The registering authority may, and for the reasons to be recorded in writing, extend the period specified in sub-rule (2) for a period not exceeding sixty days.*	

		(As amended by Notification dated 16.07.2013) *(3) The registering authority shall, after entering the particulars of the application in a register in Form XIX, return a copy of the application under his seal to the applicant.* *(4) One copy of every application received during a quarter shall be sent by the registering authority to the Central Government and the State Government of Assam along with a quarterly return in Form XX.*

B. HOW MANY IMMIGRANTS ELIGIBLE UNDER SECTION 6A(3) OF THE ACT HAVE REGISTERED TILL DATE?

103. Although exact figures on the extent of immigration from Bangladesh into Assam are not available, yet the debates that took place in the Rajya Sabha during the introduction of the Citizenship (Amendment) Act, 1985 give an approximate number of immigrants who came into Assam from Bangladesh during the time-period covered under section 6A[81]: -

[81] Session No. 136, Rajya Sabha Deb., Statement of Shri. Baharul Islam on The Citizenship (Amendment) Bill, 1985 at cols. 323-324, (Dec. 2, 1985).

1. **1951 to 31.12.1965**: 15,33,000 of which nearly 6,59,000 figured in the electoral rolls.
2. **01.01.1966 to 24.03.1971**: 5,45,000 of which nearly 2,34,000 figured in the electoral rolls.

104. The White Paper mentions the following about the working of foreigners tribunals prior to the student-led agitation: -

> "*The number of Foreigner's Tribunals established has varied from time to time, according to the requirements of the situation. The Foreigner's Tribunals established after 1964 were gradually wound up between December 31, 1969 and March 1, 1973 in phases when they were no longer found necessary as most of the infiltrators had been deported. Besides, with the issue of revised procedure for deportation of Pakistani infiltrators in June 1969, it was decided that fresh references for the Foreigners Tribunals were to be dispensed with and the existing Tribunals were to continue only till the old pending cases were disposed of. For the residue work, the task was to be by the normal course of law. However, the Foreigner's Tribunals were revived in 1979, and 10 Foreigners Tribunals were constituted on July 4, 1979. The Foreigner's Tribunals co-existed with IM(D)Ts with the signing of the Assam Accord. While IM(D)Ts took up cases of suspected foreigners of the post March 25th 1971 stream, the existing Foreigners Tribunals were entrusted with the responsibility of disposing of cases pertaining to pre-March 25th 1971 stream of suspected foreigners*."
>
> (Emphasis supplied)

105. It can be seen from the above that the detection of foreigners gained pace on the commencement of the student-led agitation in Assam. It could be presumed that certain number of immigrants of the 1966-71 stream would have either been detected and deported prior to the enactment of Section 6A in 1985, or might have left Assam apprehending such detection and

deportation. However, even after taking into consideration such variations, the data on the number of immigrants detected by virtue of Section 6A, as presented to us by the Union of India, is not commensurate to the extent of influx that took place during the relevant period.

Number of immigrants belonging to the 1966-71 stream detected/registered:

S. No.	Particulars	White Paper on Foreigner's Issue (October, 2012)	Affidavit dated 11.12.2023 filed by the Union of India
1.	Number of immigrants of the 1966-71 stream declared as foreigners between 1985 - July, 2012	32,537	Not Applicable
2.	Number of immigrants of the 1966-71 stream declared as foreigners by an order of the Foreigners Tribunal (till 31.10.2023)	Not Applicable	32,381
3.	Number of immigrants belonging to the 1966-71 stream to whom citizenship has been granted under Section 6A(3)	Not Available	17,861 (persons who had registered with the FRRO till 31.10.2023)

Note: Although the white paper was published in 2012, yet the number of immigrants of the 1966-71 stream who have been detected as foreigners indicated therein is higher than that indicated in the Affidavit dated 11.12.2023.

106. As is evident from the table above, the number of immigrants belonging to the 1966-71 stream and detected as "foreigner" is significantly smaller in comparison to the approximate number of immigrants who had entered into

Assam from Bangladesh between 01.01.1966 and 24.03.1971. This, in my considered opinion, doesn't appear to be solely due to the inadequate implementation of Section 6A, but rather due to the inherent and manifest arbitrariness in the mechanism prescribed under the provision, which I shall elaborate upon in later parts of this judgment.

C. OBJECT SOUGHT TO BE ACHIEVED BY THE PRESCRIPTION OF TWO SEPARATE CUT-OFF DATES

107. From the aforesaid discussion, it is clear that Section 6A creates three categories of immigrants by prescribing two distinct cut-off dates. The first two categories of immigrants are those who had immigrated on or before 24.03.1971 (i.e., those entitled to citizenship), and the third category consists of those who immigrated into Assam after 24.03.1971 and are considered as illegal immigrants who are liable to be deported. However, a different mechanism has been prescribed for acquisition of citizenship even within the first two classes, as indicated by the following table:

CATEGORY I – Immigrants who came before 01.01.1966	**CATEGORY II –** Immigrants who came between 01.01.1966 – 24.03.1971	**CATEGORY III –** Immigrants who came after 24.03.1971
Governed by Section 6A(2) of the Citizenship Act.	Governed by Section 6A(3) of the Citizenship Act.	Not entitled to citizenship under Section 6A of the Citizenship Act.

108. At this juncture, it is important to examine whether it was open to the legislature to prescribe two cut-off dates, thereby creating two different classes of immigrants who are entitled to citizenship by two distinct mechanisms. The determination of this question requires ascertaining whether there is any intelligible differentia between the two classes of immigrants, that is, those who immigrated prior to 01.01.1966 and those who immigrated between 01.01.1966 and 24.03.1971. The observations made by Justice Surya Kant in paragraphs 170 and 171 respectively speak for themselves. The said paragraphs are reproduced hereinbelow: -

> *"170. In terms of the form, the classification should not be based on arbitrary criteria and must instead be based on a logic which distinguishes individuals with similar characteristics i.e., the equals from the persons who do not share those characteristics—the unequals. Apart from requiring such differentia, this prong requires that the classification must be intelligible, such that it can be reasonably understood whether an element falls in one class or another. If the class is so poorly defined that one cannot reasonably understand its constituents, it will fail this test of 'intelligible' differentia. Therefore, instead of being based on arbitrary selection, the classification must be supported by valid and lawful reasons.*
>
> *171. Hence, using an intelligible criterion, the classes must be constituted in a manner that distinguishes the components of that class from the elements that have been left out of the class. This is instantiated by* ***State of Kerala v. N.M. Thomas****, where a 7-judge bench was dealing with the challenge of exemption granted to Scheduled Castes from the departmental test required for promotion. The Court held that the same was based on intelligible differentia, as the persons belonging to the exempted class, i.e., the Scheduled Caste, differed from those excluded from this class.*"

109. The cut-off date of 01.01.1966 clearly categorizes the immigrants into two discernible and determinable categories. The first category is conferred citizenship by the mechanism prescribed under Section 6A sub-section (2) and the second category is conferred citizenship by the procedure prescribed under Section 6A sub-section (3).

110. Further, it is necessary to decipher the object sought to be achieved by creating two distinct categories of immigrants with fundamentally different procedure under Section 6A for the purpose of conferring the same benefit, that is, the benefit of conferment of citizenship on the immigrants from Bangladesh.

111. Indisputably, Section 6A was enacted to give statutory effect to the political settlement arrived at in the form of Assam Accord. The Accord was a result of years of negotiation that took place between the Central Government, State Government, AASU and AAGSP. The *sui-generis* scheme of Section 6A also reflects this process of negotiation, or "give and take", so to say.

112. I have already discussed in paragraph 54 of this judgment that the proximate event which led to protests and demonstrations over the immigrant issue in Assam was the publication of the electoral rolls for the bye-elections to be held for the Mangaldoi constituency in 1979. The

apprehension of the local population was that a large number of illegal immigrants had managed to get themselves on the electoral rolls thereby rendering the local population a minority in the coming bye-elections. The resentment soon translated into state-wide movement against illegal immigration, which was led at the forefront by several student-run organisations.

113. As Sangeeta Barooah Pisharoty has discussed in her book, *Assam: The Accord, The Discord*[82], and as also discussed in paragraph 56 of this judgment, initially, the demand of the protesting students was that the National Register of Citizens ("**NRC**") prepared in the year 1951 should act as the baseline for detection and deportation of illegal immigrants. However, during the course of negotiations, an understanding was reached that 24.03.1971 would act as the cut-off date for detection and deportation of illegal immigrants. However, to avoid deadlocks and expedite the settlement, a further cut-off date of 01.01.1966 was decided as the cut-off date for disenfranchisement as opposed to deportation of the immigrants belonging to the 1966-71 stream. In other words, the said cut-off date was decided as the baseline for detection of immigrants and their consequent deletion from the electoral rolls.

[82] SANGEETA BAROOAH PISHAROTY, *supra*, note 45.

114. Thus, it appears from an overview of the historical context that the only purpose behind the introduction of an additional cut-off date of 01.01.1966 and the corresponding concept of detection and deletion from the electoral rolls was to assuage the apprehensions of the protesting students. By mandating the deletion of all the immigrants belonging to the 1966-71 stream from the electoral rolls, it was hoped that the effect of wrongful inclusion of immigrants in the electoral rolls on the upcoming elections would be mitigated.

115. However, as discussed in the later paragraphs of this judgment, the object of removal of the immigrants belonging to the 1966-71 stream from the electoral rolls could only be meaningful if it was given effect through an exercise of *en-masse* detection and deletion conducted within a fixed time-period. It can be seen from paragraph 62 of this judgment that the protesting leaders in Assam at the relevant point of time were opposed to the conduct of elections to the Parliament and State Legislature unless and until the names of immigrants were dropped from the electoral rolls.

116. Another purpose which is clearly discernible from the scheme of Section 6A is the intention of the legislature to confer citizenship on the immigrants in a graded manner. To illustrate, an immigrant who crossed the border and came into Assam sometime before 01.01.1966, was conferred with

automatic deemed citizenship on the date of coming into force of Section 6A, that is, 07.12.1985. On the other hand, an immigrant who crossed the border to come into Assam between 01.01.1966 and 24.03.1971 had to undergo detection, deletion and registration as specified in Section 6A(3). Further, any immigrant who came into Assam after 24.03.1971 was not considered entitled to citizenship at all. Thus, it is evident that within the first two categories, the conditions for acquisition of citizenship were more stringent for the immigrants belonging to the 1966-71 stream, while there was a complete denial of citizenship to immigrants belonging to the post-1971 stream.

117. The mechanism of graded conferment of citizenship was introduced to arrive at a common ground during the negotiations, which otherwise might have ended in a failure, due to the reluctance of the student protestors to agree to a blanket conferment of citizenship up to the cut-off date in 1971.

118. It could be said that Section 6A was a humanitarian and beneficial provision for the immigrants. However, to say that the sole object sought to be achieved by Section 6A was to confer benefits on the immigrants alone would amount to taking a reductive view of the historical context in which the provision was enacted.

119. In the aforesaid context, I may only say that if such was the sole object of the provision, then there was no need for the legislature to create two distinct categories of immigrants who were eligible for citizenship. The legislature could have simply conferred deemed citizenship on every immigrant who came into Assam before 24.03.1971 from the date of coming into force of Section 6A. The very fact that a second category of immigrants (1966-71) was statutorily created and subjected to undergo a more stringent test of procedure for the purpose of obtaining citizenship would indicate that conferment of citizenship was not the sole object of Section 6A(3). The object behind insertion of Section 6A(3) seems to have been to pacify the apprehension of the people of Assam that conferment of citizenship would not have an immediate impact on the then upcoming elections in the State of Assam due to the inclusion of a large number of immigrants. The apprehension was taken care of by the scheme of Section 6A(3) which provides for the removal of the immigrants belonging to the 1966-71 stream from the electoral rolls for a period of ten years from the date of their detection. Section 6A(3) embodies the approach of the government of the day in finding a middle ground between two competing interests prevailing at that time – on one hand, adopting a humanitarian approach towards the immigrant population in Assam; and on the other, ensuring that large scale immigration doesn't result into the loss of culture, economy and the political rights of the people of Assam.

120. While construing the object of enactment of Section 6A, one should not lose sight of an important fact that Section 6A was enacted to give a statutory avatar to certain clauses of the Assam Accord. The provision, thus, could be said to have been multifaceted in design and purpose and representative of the interests of all the parties to the negotiation. I am of the view that the intention of the parties while signing the Accord should be kept in mind while construing the object of Section 6A of the Citizenship Act.

D. WHETHER THE ONUS OF DETECTION OF FOREIGNERS OF THE 1966-71 STREAM LIES ON THE STATE?

121. From a perusal of Section 6A and the associated rules, it is clear that there is no provision which prescribes or provides for self-declaration/registration or voluntary detection as a foreigner within a given time period for availing the benefit of citizenship by registration under Section 6A(3).

122. The mechanism of implementation of Section 6A is set into motion with the first step of reference of a suspected foreigner to the foreigners tribunal. As soon as a reference is made to the tribunal, the onus is on the suspected person to either establish that he or she is an Indian citizen, or to establish that he or she is an immigrant eligible to avail the benefit available under Section 6A. Once the tribunal holds that the suspected person is a foreigner

of the 1966-71 stream of immigrants, then again, the onus is on the said person to get registered in accordance with the Citizenship Rules, 2009 failing which his or her claim to citizenship would abate.

123. While the statute is clear that the onus completely shifts on the suspected foreigner once a reference is made to the tribunal, it appears to me as illogically unique that a person wanting to avail the benefit of citizenship by registration under Section 6A(3) has to await identification as a suspicious immigrant and subsequent reference to the tribunal. There is no plausible reason why it should be impermissible for him or her to set the mechanism of Section 6A into motion by voluntarily choosing to get detected as a foreigner of the class specified in Section 6A, or to make an application for conferment of citizenship.

124. Further, what stands out as palpably irrational in the scheme of Section 6A of the Citizenship Act is that there is no end date after which the benefit of citizenship under Section 6A(3) cannot be availed. I have dealt in later parts of this judgment as to how this militates against the very purpose of the enactment of Section 6A(3).

125. Section 6A(3) was enacted as a beneficial provision, both for the immigrants who entered into Assam before 25.03.1971 as well as for the people of Assam. It confers citizenship in a graded manner upon all such

persons who meet the conditions specified therein. On the other hand, by implication, it denies the benefit of citizenship to illegal immigrants of the post-1971 stream. Additionally, it also prescribes a stricter citizenship regime for the class of immigrants who came between 01.01.1966 and 24.03.1971 including the deletion of names of such immigrants from the electoral rolls. The key intent behind inserting Section 6A and conferring citizenship only upon a limited segment of persons, that too by a retrospective cut-off date, was to ensure that apart from a very limited number of immigrants who had already come into Assam much before the enactment of Section 6A, all other illegal immigrants shall be expelled and no other benefit would be provided.

126. Citizenship provides a bouquet of rights to the person who is conferred with it. It was pointed by Shri Bholanath Sen, Member of the Lok Sabha, during the discussions on the Citizenship Amendment Bill, 1985, that: -

> *"All those who had come between 1966 and 1971 had no such right before. No such law was there in this country which could have given them this protection. This protection is now being given. Many people go to Haj for religious reasons and they need a Passport. They will be given Passport. They might like to go even to Bangladesh to see their own relations. They will be given Passport. Passport will be given to them and that is recognised by this legislation clearly. The only thing that is being taken away from them is that they will not be able to cast vote for ten years from the date of detection as foreigners."*
>
> (Emphasis supplied)

127. One of the ideas behind providing for a stricter citizenship regime for the immigrants belonging to the 1966-71 category was expressed by Shri Bir Bhadra Pratap Singh, Member of the Rajya Sabha, during the discussions on the Citizenship (Amendment) Bill was expressed thus: -

> *"[...] People from East Pakistan have come here. We have welcomed them. We love them. But we will ensure whether they have come with genuine intentions to stay in this country and they will be good citizens. Let them register themselves. Let them get their claim decided. For ten years their voting right will be suspended, but after ten years we will confer full citizenship on them. De you think we do not have a right to scrutinise the bona fides of these people? We have a right to scrutinise to see whether they have come here with genuine intentions to settle in this country. But we have never intended to throw them out. We have welcomed them [...]"*

128. The statutory scheme of Section 6A(3), which doesn't envisage voluntary detection at the option of the immigrant, marks a clear departure, for no intelligible reason, from the prevalent scheme noticed under the rest of the Citizenship Act. Even across other international jurisdictions, citizenship by registration or naturalisation is a process that is initiated at the behest of the person seeking to avail the benefit of citizenship by registration or naturalization. Articles 6(b) and 7 respectively of the Constitution, which deal with citizenship by registration and the permit system introduced to meet the exigencies of partition, too, place the onus of registration and obtaining permit on the person who wishes to claim such benefit. Thus, there is no discernible reason why the mechanism prescribed under Section

6A does not require, or at the very least, permit an immigrant to come forward and make an application to avail the benefit.

E. TEMPORAL REASONABLENESS

129. Oxford Advanced Learner's Dictionary defines 'temporal' as *'connected with or limited by time'*. The term 'Temporal Reasonableness', thus, describes what in our jurisprudence we say as something which was earlier reasonable is no longer so or ceases to be so with the passage of time.

130. The doctrine of temporal reasonableness is encapsulated in the Latin maxim *"Cessante ratione legis cessat ipsa lex"* which means that reason is the soul of the law and when the reason of any particular law ceases, so does the law itself. Thus, when the reason for which a particular law was enacted ceases to exist due to efflux of time, then the law too must cease to exist.

131. For better analysis, it is also necessary to understand the concept of temporal triggers. A time trigger may be defined as "*a point in time that initiates or terminates a legal event. A time trigger activates or terminates laws, powers, rights, and obligations*."[83] Allocative time triggers are points in time that mark the beginning or coming into force of treaties,

[83] Liaqat A. Khan, *Temporality of Law*, 40 MCGEORGE L. REV. (2016).

constitutions, statutes, obligations, rights, etc. Terminative time triggers on the other hand end powers, rights, obligations and claims.

132. In the aforesaid context, it would be apposite to refer to a few decisions of this Court wherein the dynamic nature of law *vis-à-vis* the passage of time has been discussed. In ***Independent Thought v. Union of India*** reported in **(2017) 10 SCC 800**, it was observed thus by a two-Judge Bench of this Court: -

> *"88. ... Traditions that might have been acceptable at some historical point of time are not cast in stone. If times and situations change, so must views, traditions and conventions."*
>
> (Emphasis supplied)

133. In ***Modern Dental College and Research Centre and Ors. v. State of Madhya Pradesh and Ors.*** reported in **(2016) 7 SCC 353**, a five-Judge Bench of this Court observed as follows: -

> *"69. ... law is not an Eden of concepts but rather an everyday life of needs, interests and the values that a given society seeks to realise in a given time. The law is a tool which is intended to provide solutions for the problems of human being in a society.*
>
> *xxx xxx xxx*
>
> *92. ... law is not static, it has to change with changing times and changing social/societal conditions."*
>
> (Emphasis supplied)

134. In ***Satyawati Sharma v. Union of India,*** reported in **(2008) 5 SCC 287**, a two-Judge Bench of this Court observed as under: -

> *"32. It is trite to say that legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent [...]"*
>
> (Emphasis supplied)

135. In ***Malpe Vishwanath Acharya v. State of Maharashtra*** reported in **(1998) 2 SCC 1**, a three-Judge Bench of this Court considered the validity of determination of standard rent by freezing or pegging down the rent as on 01.09.1940 or as on the date of first letting, under Sections 5(10)(b), 7, 9(2)(b) and 12(3) respectively of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. It was held that the said process of determination under the said Act, which was reasonable when the law was made, became arbitrary and unreasonable with the passage of time in view of constant escalation of prices due to inflation and corresponding rise in money value. The relevant extracts are as follows: -

> *"29. Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure*

that a disproportionately larger benefit than the one which was intended is not given to the tenants"

(Emphasis supplied)

136. In ***State of M.P. v. Bhopal Sugar Industries Ltd.,*** reported in **1964 SCC OnLine SC 121,** a five-Judge Bench of this Court was hearing a challenge to the Bhopal State Agricultural Income Tax Act, 1953 on the ground that it was applicable only within the territory of the former State of Bhopal and not in the rest of the territories of Madhya Pradesh. This Court while remanding the case to the High Court, observed that a provision introduced to achieve a temporary objective, could not be allowed to assume permanency. The relevant observations read as under: -

"6. The reorganized State of Madhya Pradesh was formed by combining territories of four different regions. Shortly after reorganisation, the Governor of the State issued the Madhya Pradesh Adaptation of Laws (State and Concurrent Subjects) Order, 1956, so as to make certain laws applicable uniformly to the entire State and later the legislature by the Madhya Pradesh Extension of Laws Act, 1958, made other alterations in the laws applicable to the State. But Bhopal remained unamended and unaltered : nor was its operation extended to other areas or regions in the State. Continuance of the laws of the old region after the reorganisation by Section 119 of the States Reorganisation Act was by itself not discriminatory even though it resulted in differential treatment of persons, objects and transactions in the new State, because it was intended to serve a dual purpose — facilitating the early formation of homogeneous units in the larger interest of the Union, and maintaining even while merging its political identity in the new unit, the distinctive character of each region, till uniformity of laws was secured in those branches in which it was expedient after full enquiry to do so. The laws of the regions merged in the new units had therefore to be continued on grounds of necessity and expediency. Section 119 of the States Reorganisation Act was

intended to serve this temporary purpose viz. to enable the new units to consider the special circumstances of the diverse units, before launching upon a process of adaptation of laws so as to make them reasonably uniform, keeping in view the special needs of the component regions and administrative efficiency. Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not, therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared."

(Emphasis supplied)

137. In ***Rattan Arya and Ors. v. State of Tamil Nadu and Ors.*** reported in **(1986) 3 SCC 385**, this Court observed thus:

"...As held by this court in Motor General Traders v. State of A.P. [(1984) 1 SCC 222 : AIR 1984 SC 121] a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, become discriminatory and liable to challenge on the ground of its being violative of Article 14. ..."

138. Having discussed the concept and the position of law on temporal reasonableness, I shall now look into the submissions of the petitioners on the lack of a temporal limit to the application of Section 6A and the consequences that follow.

i. <u>Whether there is a temporal limit on the applicability of Section 6A(3)</u>?

139. Neither Section 6A nor the rules made thereunder prescribe any outer time-limit for the completion of detection of all such persons who belong to the 1966-71 stream and are eligible to avail the benefits of Section 6A(3). The clock only starts to tick once the detection is made by the foreigners tribunal and there is no prescription as to the period of time within which the exercise of detection is to be completed from the commencement of Section 6A.

140. The absence of any prescribed time-limit for detection of foreigners of the 1966-71 stream has two-fold adverse consequences – *first*, it relieves the state from the burden of effectively identifying, detecting, and deleting from the electoral rolls, in accordance with law, all immigrants of the 1966-71 stream. *Secondly*, it incentivises the immigrants belonging to the 1966-71 stream to continue to remain on the electoral rolls for an indefinite period and only get themselves registered under Section 6A once detected by a competent tribunal. Hence, the manner in which the provision is worded, counter-serves the very purpose of its enactment, which is the speedy and effective identification of foreigners of the 1966-71 stream, their deletion from the electoral rolls, registration with the registering authority and conferring of regular citizenship. As submitted on behalf of the petitioners,

the open-ended nature of Section 6A(3) also subserves the legislative intent behind the enactment of the IEAA, 1950 and the spirit of the Assam Accord.

141. Section 6A(3) of the Citizenship Act was never meant to maintain the status quo regarding the immigrants of the 1966-71 stream. It was enacted with the object of achieving *en-masse* deletion of this category of immigrants from the electoral rolls subsequent to which *de-jure* citizenship was to be conferred on them after a cooling-off period of ten years.

142. In the absence of any statutory mandate to do so within a time limit, and there being no temporal limit to the applicability of Section 6A(3), it follows that any immigrant of the 1966-71 stream, whose name figures in the electoral rolls, would not voluntarily want to get detected as a foreigner, as upon detection, such immigrant becomes liable to having his or her name struck off from the electoral rolls, and is also required to register with the registering authority within a specified time period, failing which he or she would become liable to deportation. Even otherwise, no person belonging to the aforesaid category would, out of their own volition, get detected as a foreigner due to the inherent subjectivity that is involved in the process of scrutiny and determination of the various conditions as stipulated under Section 6A(3), i.e., date of entry into Assam, ordinarily resident, etc. However, the same degree of reluctance would not have been present on part of the immigrants of the said category if the procedure of conferment

of citizenship under Section 6A(3) was instead a one-time exercise which was to be mandatorily undertaken in a time-bound manner by anyone who wished to avail the benefit of citizenship under the said provision, and any failure to abide by such time-bound procedure would have resulted into the abatement of their claim to citizenship. Seen thus, the working mechanism of Section 6A(3) goes against its avowed objective.

ii. <u>Whether placing temporal limitations on the period of applicability is an objective implicit in the scheme of Section 6A</u>?

143. Upon perusal of the statutory scheme under the Citizenship Act, the Foreigners Act, 1946 and other related provisions, it could be seen that the mechanism prescribed for giving effect to Section 6A is imbued with the idea of temporal limitations and in the absence of temporal limits on the period during which Section 6A is made applicable, the provision counter-serves the object it was enacted with.

144. A foreigner's tribunal enters upon adjudication on the citizenship status of a person only upon a reference received from a competent authority. Paragraph 2(1)[84] of the Foreigners (Tribunal) Order, 1964 prescribes that

[84] ***2. Constitution of Tribunals.—***
(1) The Central Government or the State Government or the Union territory administration or the District Collector or the District Magistrate may, by order, refer the question as to whether a person is not a foreigner within the meaning of the Foreigners Act, 1946 (31 of 1946) to a Tribunal to be constituted for the purpose, for its opinion.

the Central Government may refer the question whether a person is a foreigner or not within the meaning of the Foreigners Act, 1946 to the Foreigners Tribunal. Paragraph 2(1A)[85] also empowers the registering authority constituted under Rule 19 of the Rules, 2009 to make a reference to the foreigners tribunal to ascertain whether a person of Indian origin complies with the requirements under section 6A(3) of the Citizenship Act.

145. Paragraph 3(14)[86] of the Foreigners (Tribunal) Order, 1964 which was inserted vide amendment dated 10.12.2013 prescribes that the foreigners tribunal must dispose of the case **within 60 days** of receipt of reference from the competent authority.

146. Rule 19(2)[87] of the Citizenship Rules, 2009 prescribes that an application for registration under Section 6A(3) has to be made **within 30 days** from the date of the receipt of the order of the foreigners tribunal.

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[85] *(1-A) The registering authority appointed under sub-rule (1) of Rule 19 of the Citizenship Rules, 2009] may also refer to the Tribunal the question whether a person of Indian Origin, complies with any of the requirements under sub-section (3) of Section 6-A of the Citizenship Act, 1955 (57 of 1955).*

[86] ***3. Procedure for disposal of questions.—***

… … …

(14) The Foreigners Tribunal shall dispose of the case within a period of sixty days of the receipt of the reference from the competent authority.

[87] ***19. Registering authority for the purpose of sub-section (3) of section 6A and form for registration.—***

… … …

(2) An application for registration under sub-section (3) of section 6A shall be made in Form XVIII, by the person to the registering authority for the district in which such person is ordinarily a resident within a period of thirty days from the date of receipt of order of the

147. Rule 20[88] of the Citizenship Rules, 2009 provides that the registering authority, in case any question arises as to whether any person fulfils any requirement contained in Section 6A(3), has to make a fresh reference to the foreigners tribunal **within 15 days**.

148. Section 6A(4)[89] of the Citizenship Act prescribes that upon detection as a foreigner, the name of the immigrant is struck off the electoral rolls for **a period of 10 years**, after which the person becomes entitled to have his or her name on the rolls again.

149. Section 6A(6)(a)[90] of the Citizenship Act prescribes that any person referred to under section 6A(2) who doesn't wish to become a citizen of

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Foreigners Tribunal declaring such person as a foreigner; Provided that the registering authority may, for reasons to be recorded in writing, extend the said period to such further period as may be justified in each case but not exceeding sixty days.

[88] ***20. Reference to Tribunals.—*** *Where in case of a person seeking registration under sub-section (3) of section 6A -*
(a) any question arises as to whether such person fulfils any requirement contained in the said sub-section; or
(b) the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 in relation to such person does not contain a finding with respect to any requirement contained in the said sub-section other than the question that he is a foreigner, then, the registering authority shall, within a period of fifteen days of the receipt of the application under sub-rule (2) of rule 19, make a fresh reference to the Tribunal in this regard.

[89] *(4) A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 (15 of 1967) and the obligations connected therewith), but shall not be entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.*

[90] *(6) Without prejudice to the provisions of section 8, —*
(a) If any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, for year a declaration that he does not wish to be a

India has to give a declaration **within sixty days** of the commencement of the Citizenship Amendment Act, 1985.

150. Section 6A(6)(b)[91] provides that any person referred to under section 6A(3) who doesn't wish to become a citizen of India has to give a declaration **within sixty days** of coming into force of the Citizenship Amendment Act, 1985 or from the date of detection as a foreigner, whichever is later.

151. A perusal of all the above provisions indicates that at every stage, except the first stage of detection, the mechanism for implementation of Section 6A is circumscribed by specific temporal limits. The same was taken note of by a Full Bench of the Gauhati High Court in ***State of Assam v. Moslem Mandal*** reported in **2013 SCC OnLine Gau 1**:

> *"108. Rule 16F of the Citizenship Rules, 1956, as amended in 2005, provides the time limit for registration of a foreigner within the meaning of section 6A(3), which is 30 days from the date of detection as a foreigner, which period is extendable by another 60 days by the registering authority for the reasons to be recorded in writing. Rule 16D of the said Rules also empowers the registering authority to make a reference to the Tribunal if any question arises as to whether such person complies with any requirement contained in section 6A(3) of the 1955 Act, which is required to be*

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citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;

[91] *(b) If any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement the Citizenship (Amendment) Act, 1985, for year or from the date on which he has been detect-ed to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-sec-tion and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).*

decided by the Tribunal under rule 16E of the said Rules. The 2009 Rules, which has repealed the 1956 Rules, also contains pari materia provisions. From the aforesaid provisions, it, therefore, appears that the 1955 Act confers the deeming citizenship on the persons of Indian origin who came to Assam from the specified territory before 1.1.1966 and who have been ordinarily resident in Assam since the date of their entry into Assam. The other class of persons, namely, the persons who came to Assam from the specified territory on or after 1st day of January, 1966 but before 25th day of March, 1971, would not become citizens of India automatically and they would continue to be foreigners, unless of course they are registered in accordance with the provisions contained in sub-section (3) of section 6A of the 1955 Act read with Rule 1.9 of the 2009 Rules.

109. Prescription of time for filing such application seeking registration has a purpose, persons, who are detected to be a foreigner of the stream between 1.1.1966 and 25.3.1971, cannot enjoy the right under sub-section (4) of section 6A for an indefinite period of time, without registering their names as required by law. They being recognized as the foreigners by sub-section (3) of section 6A, they will be treated as foreigners for all purposes, unless they register their names within the time limit prescribed. The limited rights and obligations as a citizen of India, however, has been conferred on those persons, by virtue of sub-section (4) of section 6A, so that they are not deprived of the basic rights as a citizen during the time limit prescribed for filing the application and till the order is passed by the registering authority registering their names. By virtue of the provisions contained in sub-section (4) of section 6A, it cannot be said that the persons who are detected to be foreigners of the stream between 1.1.1966 and 25.3.1971 would continue to be the citizens of India and as such cannot be deported from India, even if they do not file their applications for registration at all, as required by law. The time limit prescribed by the aforesaid provisions of law would, however, commence from the date of rendering the opinion by the Tribunal.

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111. 1956 Rules as well as 2009 Rules, as noticed above, provide the initial time limit for filing application for registration, i.e., one month, which is extendable by another 60 days by the registering

authority. Though there is no time limit prescribed in section 6A of the 1955 Act for filing such application, having regard to the purpose for which section 6A of the 1955 Act has been enacted, it also cannot be said that the fixation of time limit for filing the application has no bearing on the ***purpose sought to be achieved by such enactment****. However, such time limit can be extended by the registering authority, only under very exceptional circumstances preventing the applicant from filing the application due to reasons beyond his control, for which the reasons have to be recorded by the registering authority.* ***But such extension of time cannot also be for an indefinite period of time, having regard to the object of the enactment of section 6A of the 1955 Act****. A person who does not register within the time limit fixed or within the time limit that may be extended by the registering authority, is liable to be deported from India as he is admittedly a foreigner and he has not acquired the right of a citizen of India as has been acquired by a person of Indian origin who came to Assam from the specified territory prior to 1.1.1966, by virtue of the deeming provision in sub-section (2) of section 6A of the 1955 Act. The decision of the Apex Court in National Human Rights Commission (supra) on which Mr. Das, learned senior counsel has placed reliance, does not support the contention that a person of Indian origin who came to Assam from specified territory between 1.1.1966 to 25.6.1971 would continue to be the citizen of India despite non-filing of application for registration. In the said case, the Apex Court had interfered with the quit notices and ultimatum issued by a Student organization, on the ground that they do not have the authority to issue the same and it tantamounts to threat to the life and liberty of each and every person of Chakma tribe. The Apex Court had also directed not to evict or remove the Chakmas from their occupation on the ground that he is not a citizen of India until the competent authority takes a decision on the application filed by them for registration under the provisions of the 1955 Act."*

(Emphasis supplied)

152. Another absurdity which is manifest in the scheme of Section 6A is that once an immigrant belonging to the 1966-71 stream is detected as a foreigner, that person has to mandatorily register within a fixed time

period, otherwise the person concerned would be liable to deportation. However, a similarly situated immigrant, who is yet to be detected by the state, can continue to stay in Assam without incurring any liability of deportation.

153. Thus, from an analysis of the scheme of Section 6A and the corresponding rules along with the decision in the case of ***Moslem Mandal*** *(supra),* it is as clear as the noon-day sun that placing temporal limitations on the benefits available under Section 6A appears to have been one of the objects of the legislation - as otherwise the provision would go against the spirit of the Assam Accord.

154. It is pertinent to mention that even the permit system, which was brought in after the partition of the country to allow the immigrants from Pakistan to migrate to India had a temporal limit to its applicability. The said system was brought to an end on 26.12.1952 by the Influx from Pakistan (Control) Repealing Act, 1952. Seen in this context, it appears to me to be unreasonable why Section 6A of the Citizenship Act, which too was brought in to deal with a one-time extraordinary situation, should be allowed to continue for all times to come.

155. Continuance of the exercise of detection indefinitely without any temporal limitations promotes the immigrants to stay in Assam, and the immigrants

residing in the neighbouring states to come into Assam[92] in the hope of never being detected as a foreigner, or of setting up a defence under Section 6A of the Citizenship Act upon identification to claim its benefit.

iii. Absurd consequences arising out of Section 6A(3) in the absence of any temporal limits to its application.

156. Shri S.W. Dhabe, Member of the Rajya Sabha, during discussion on the Citizenship (Amendment) Bill, 1985 mentioned[93]: -

> "*What do you mean by "ten years from the date on which he has been detected to be a foreigner"? In Sub-Clause (5) on page 3 it is stated:*
>
> *"A person registered under sub- section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner."*
>
> *Suppose you take 15 years or 20 years or 30 years for detection purposes, the person shall not be eligible to vote for ten years after the detection. Is that so? It means not from just 1971 it can go to 1990. Therefore, there is a big lacuna. I hope the Minister seriously considers this aspect. Unfortunately, the wording of this clause is not happily or properly set."*
>
> (Emphasis supplied)

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[92] SANGEETA BAROOAH PISHAROTY, *supra* note 45, *"That the government gave a general amnesty to such migrants in Assam, have also led some to presume that it might have encouraged that category of people from other border states to move into Assam. Since the government didn't register the category of people who came to the state post the 1950 citizenship cut-off date before granting the general amnesty of 1971, there is no data, though, to pin down exactly how many people benefitted from the exclusive cut-off date in Assam."*.

[93] Session No. 136, Rajya Sabha Deb., Statement of Shri. S.W. Dhabe on The Citizenship (Amendment) Bill, 1985 at cols. 371-372 (Dec. 2, 1985).

157. Shri P. Babul Reddy, Member of the Rajya Sabha from Andhra Pradesh, during the aforesaid discussion on the Bill remarked thus[94]: -

> *"Then, I will point out one more defect. The Bill says, after ten years of detection they would be entitled to citizenship, not for ten years from detection. This starting point from "detection" is wrong. It must start from a particular date. Otherwise, it would lead to a lot of anomalies. The Hon. Minister may see the point I am making. Justice Baharul Islam, the Hon. Member, here has given the figure of 5,66,000 people fall in category two, that is, those who came after 1966 but before 1971. So, the Tribunal has to enquire about these 5,66,000 people. They have to be detected, and then they have to be registered. From the date of registration their rights would start. They would have all the rights of citizenship for what time? For ten years. From what date? From the date of detection. Suppose, in one man's case detection takes place in 1985 and in another man's case the detection takes place in 1988. So, the 1988 man will have to wait for another ten years. So, it should not be from the date of detection. This is a great anomaly. I have not seen this having been pointed out. And I am sure, I am not running on a slippery ground. It means that about 6,66,000 people you have to make enquiries. The Tribunal will detect one man today, another man five years afterwards. Because there is delay in detection, why should that man suffer after ten years for another five years? So, this date should also be amended. It should be from a particular date. You can give one date. Irrespective of when detection takes place, he should have citizenship right from that date. In all seriousness I submit that this requires particular attention."*
>
> (Emphasis supplied)

158. If the statutory construction that there is no time-limit within which the exercise of detection under Section 6A(3) is to be completed is accepted as correct, then it follows that an immigrant of the 1966-71 stream, upon

[94] Session No. 136, Rajya Sabha Deb., Statement of Shri. P. Babul Reddy on The Citizenship (Amendment) Bill, 1985 at cols. 327-329 (Dec. 2, 1985).

detection, can avail the benefit of Section 6A(3) even today by following the procedure prescribed under the rules. Thus, it follows that an immigrant who would have entered in the 1966-71 stream and who gets detected as a foreigner of the 1966-71 stream today, can register with the registering authority and his or her name will then be struck off from the electoral rolls for a period of 10 years starting today.

159. Thus, an immigrant whose name figures in the electoral roll, despite being a foreigner, continues to be eligible to vote in the elections till that person is detected as a foreigner and the name of that person is struck off the electoral roll. There being no temporal limit to the applicability of Section 6A, this situation would continue in the years to come till the detection exercise is completed. Further, there would never be any way to assess if all the immigrants eligible for availing the benefit of citizenship under Section 6A(3) have done so, despite the set of people eligible for such a benefit being distinct and determinable. The object of Section 6A(3) of the Citizenship Act was never to permit the immigrants of the 1966-71 stream to vote for an indefinite period of time without first having been deleted from the electoral rolls for a period of ten years or without having been conferred *de-jure* citizenship in the first place.

160. One another way of looking at the aforesaid is by the use of 'time triggers.' In the case of an immigrant of the pre-1966 stream, the date of coming into effect of Section 6A acts as the terminative time trigger with respect to the status of that person as an 'illegal immigrant' and at the same time, it also acts as the allocative time trigger with respect to that person's status as a citizen of India. That is, on the date of commencement of the Citizenship (Amendment) Act, 1985, such a person ceases to be an illegal immigrant and becomes a citizen in the eyes of the law as per the deeming fiction provided in Section 6A sub-section (2).

161. However, in the case of an immigrant belonging to the 1966-71 stream, the situation is much more complicated. Even after the commencement of the Citizenship (Amendment) Act, 1985, an immigrant belonging to this class continues to be an illegal immigrant till the date of his or her detection as a foreigner. This date of detection then becomes the allocative trigger, conferring upon such person a right to register. Subsequent and subject to registration, the immigrant then enjoys all the rights similar to that of a citizen except voting rights for a period of ten years from the date of detection as a foreigner. On expiry of the period of ten years from the date of detection, an allocative time trigger confers the status of *de-jure* citizenship on that person on the day the ten-year period comes to an end.

162. The consequence of devising a complex and deceptive mechanism under Section 6A(3) by the legislature is brought to daylight by virtue of the aforesaid analysis. While the object of Section 6A(3), as discussed elaborately in the preceding paragraphs, was to make conferment of citizenship a stricter affair as compared to Section 6A(2) and to facilitate the deletion of immigrants of the 1966-71 stream from the electoral rolls through the exercise of detection, however, the shifting of onus of detection on the state coupled with the absence of any temporal limit ensures that such an immigrant continues to stay on the electoral rolls and enjoy the rights of being a *de-facto* citizen till the time detection takes place, if it ever takes place.

163. Another corollary of the aforesaid is that in the absence of a temporal limit to the exercise of detection, the condition - '*has been ordinarily resident in Assam since the date of entry*' stipulated under Section 6A of the Citizenship Act, tethers the immigrants of the 1966-71 stream and incentivises them to continue to stay in Assam and not move out of Assam to any other place in or outside India, since that would potentially jeopardize their claim to citizenship under Section 6A. To illustrate, if an immigrant had entered into Assam from Bangladesh in the year 1970, but hasn't been detected to be a foreigner till date, such a person would be incentivised to continue to stay in Assam indefinitely, pending his

detection as a foreigner. I say so because an immigrant belonging to the 1966-71 stream becomes eligible for the conferment of citizenship only if, on the date of his detection as a foreigner, he is able to establish that he '*has been ordinarily resident in Assam since the date of entry*'. To further add to the absurdity of the provision, the requirement of *'ordinarily resident'* also doesn't have a prescribed temporal limit, meaning thereby an immigrant of the 1966-71 stream is left with no choice but to continue to reside in Assam till he or she happens to get detected as a foreigner.

164. Thus, the submission of the learned Attorney General that an immigrant once granted citizenship is free to move and settle in any part of the country doesn't hold true for the immigrants falling under Section 6A(3). I say so because the date of conferment of citizenship is dependent on the date of 'detection as a foreigner' and the condition of 'ordinarily resident in Assam' both of which are mandatory in nature. Thus, an immigrant of the 1966-71 stream is left with no choice but to continue to reside in Assam till the detection exercise takes place.

165. In my considered opinion, the open-ended nature of Section 6A has, with the passage time, become more prone to abuse due to the advent of forged documents to establish, *inter-alia*, wrong date of entry into Assam, inaccurate lineage, falsified government records created by corrupt

officials, dishonest corroboration of the date of entry by other relatives so as to aid illegal immigrants who are otherwise not eligible under Section 6A by virtue of having entered into Assam after 24.03.1971.

166. In a report submitted to the Indian Council for Social Science Research, 2016 titled "***Cross Border Migration in Assam During 1951-2011: Process, Magnitude, and Socio-Economic Consequences***" by Dr. Nandita Saikia & Dr. William Joe[95], the problem of fake documents and corrupt officials was highlighted, and it was observed that many illegal immigrants were using forged documents to secure citizenship. The relevant observations are reproduced below: -

> ***"Corrupt police officers***
> *The entire problem of bribing and simultaneous political pressure cripples the police as well.*
>
> *Government is negligent in this case. Officials deny the presence of Bangladeshis for bribe. Even on complaining, the police come and report that the targets have run away and thus do not report their presence. This problem will not be solved. (Male, aged 50 years, Science teacher)*
>
> *Assam police Border personnel force is like milking cow...they can go, take money and…Our people are equally responsible; as a policeman, as mondal, hakim, general people as employer, we think about our own benefits. (Male, aged 67 years, retired Principal).*
>
> *The police therefore are seen to not co-operate with the locals and provide both direct and indirect support to the immigrants.*
>
> ***Fake Documentation***
> *The whole problem of enumerating and estimating illegal immigrants in Assam exists because most illegal settlers possess*

[95] Saikia, *supra* note 65.

legal documents. Therefore, it becomes very difficult to tell them apart from the legal citizens. And these legal documents are acquired by illegal means.

Indigenous people in Assam are living in great fear. The immigrants are collecting the legal documents huge way. For example, consider my today's experience: a birth certificate is shown to me which was signed on a date of 2009 but was printed in 2012. On the same page, the year of print was printed in very small fonts. As an officer, I send these kinds of certificates for review but it will be sent back to me as "no record is available". Now I have two options: to file a criminal case which will take 7 to months... or to file an FIR. But at the end, everything will be managed by money …Also thousands of people are buying (Male, aged 34 years, ADC).

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This is a racket known most commonly to locals, yet the government seems most unaware of. Therefore, it is this complex network of corruption that makes legal documents available to illegal settlers through illegal means to designate them as legal citizens with the right to vote and return benefits to the corrupt politicians."

(Emphasis supplied)

167. Thus, Section 6A without any end date of application, promotes further immigration into Assam – immigrants come hoping with forged documents[96] to set up the defence of belonging to pre-1966 or the 1966-71 stream upon identification as a foreigner and reference to the tribunal.

168. While the object that was sought to be achieved long back with the aid of the enactment of Section 6A of the Citizenship Act remained a distant dream, its misuse has only continued to increase with the efflux of time. I

[96] The Hindu Bureau, Assam plans action against people who forged documents to be in NRC, THE HINDU, Dec. 10, 2023.

say so because with the passage of time, the government records would get damaged and perish making it increasingly difficult to cross-check the false claims that may be made by the immigrants of the post-1971 stream trying to misuse the benefits conferred exclusively to the immigrants of the pre-1971 stream.

169. It could be argued that the principle of temporal unreasonableness cannot be made applicable to a situation where the classification still remains relevant to the object sought to be achieved by the provision. However, as discussed in the foregoing paragraphs, the underlying object behind the creation of two distinct categories of immigrants under Section 6A of the Citizenship Act could have been achieved only if the exercise of detection of the immigrants of the 1966-71 stream and their deletion from the electoral rolls was conducted in an *en-masse* and time-bound manner. However, the same having not been achieved as intended, I find no justification to hold that the classification made between the immigrants of the pre-1966 and 1966-71 stream still remains relevant to the object of Section 6A. To allow Section 6A to continue indefinitely for all times to come would tantamount to taking a reductive and one-sided view of the historical context in which Section 6A came to be enacted, more particularly, that Section 6A sought to achieve a delicate balance between two competing interests.

F. MANIFEST ARBITRARINESS VIS-À-VIS TEMPORAL UNREASONABLENESS

170. Having discussed in detail the working mechanism and the object sought to be achieved by the enactment of Section 6A of the Citizenship Act, I shall now examine if the said section suffers from manifest arbitrariness.

171. It is settled law that even if a statutory provision fulfils the two-pronged test of reasonable classification and rational nexus with the object of enactment, it can still suffer from the vice of manifest arbitrariness and be violative of Article 14 if the provision may lead to differential application on similarly situated persons.

172. The test for manifest arbitrariness was laid down in ***Shayara Bano v. Union of India*** reported in **(2017) 9 SCC 1**, wherein it was held as follows:

> *"**101.** It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that*

arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

(Emphasis supplied)

173. In ***Cellular Operators Assn. of India v. Telecom Regulatory Authority of India*** reported in **(2016) 7 SCC 703**, it was held by this Court that in order to pass the scrutiny of Article 14, the provision under challenge must be shown to have been drafted as a result of intelligent care and deliberation.

174. From a perusal of the scheme of Section 6A sub-section (3), it is evident that the procedure prescribed therein leaves the possibility of differential application on similarly situated persons wide open. From any view of the matter, the way in which the provision is worded doesn't effectively serve either the purpose of granting citizenship to the immigrants belonging to the 1966-71 category, nor does it effectively serve the object of the expeditious deletion of the same category of immigrants from the electoral rolls. On the contrary, as discussed in the foregoing paragraphs, Section 6A, in the absence of any temporal limit to its application, with the efflux of time is rather counter-serving the object with which it was enacted.

175. The mechanism doesn't permit an immigrant of the 1966-71 stream to voluntarily seek citizenship and such an immigrant has to wait, indefinitely, for a reference to be made to the foreigners tribunal.

176. Similarly, in the absence of any specified date for availing the benefit of citizenship under Section 6A sub-section (3), the object of expeditious deletion of immigrants from the electoral roll is not met.

177. Manifest arbitrariness also encompasses the aspect of temporal unreasonableness that a statute may acquire with the efflux of time. As was held by this Court in ***Joseph Shine v. Union of India*** reported in **(2019) 3 SCC 39**, the arbitrariness present in the mechanism devised under Section 6A has evidently been brought to light with efflux of time, and the provision can no longer serve the purpose with which it was enacted. The very objective of having a category of immigrants who are to be deleted from the electoral rolls for a period of ten years has disappeared with more than 40 years having passed since the enactment of the provision. The relevant observations read as under: -

> *"103. Further, the real heart of this archaic law discloses itself when consent or connivance of the married woman's husband is obtained — the married or unmarried man who has sexual intercourse with such a woman, does not then commit the offence of adultery. This can only be on the paternalistic notion of a woman being likened to chattel, for if one is to use the chattel or is licensed to use the chattel by the "licensor", namely, the husband, no offence is committed. Consequently, the wife who has committed adultery is not the subject-matter of the offence, and cannot, for the reason that she is regarded only as chattel, even be punished as an abettor. This is also for the chauvinistic reason that the third-party male has "seduced" her, she being his victim. <u>What is clear, therefore, is that this archaic law has long outlived its purpose and does not square with today's constitutional morality, in that the very object with which it was made has since become manifestly arbitrary, having</u>*

> *lost its rationale long ago and having become in today's day and age, utterly irrational. On this basis alone, the law deserves to be struck down, for with the passage of time, Article 14 springs into action and interdicts such law as being manifestly arbitrary. That legislation can be struck down on the ground of manifest arbitrariness is no longer open to any doubt, as has been held by this Court in Shayara Bano v. Union of India [Shayara Bano v. Union of India, (2017) 9 SCC 1 : (2017) 4 SCC (Civ) 277] …"*
>
> (Emphasis supplied)

178. In my considered opinion, the aforesaid departure of the scheme of Section 6A from the Constitutional and statutory framework and the prevalent international practice coupled with the absence of any temporal limits on the applicability of Section 6A has the effect of rendering it manifestly arbitrary and constitutionally invalid.

179. While the test of manifest arbitrariness entails a two-prong test which requires that first, there is a reasonable classification based on an intelligible differentia; and second that such classification has a rational nexus with the object sought to be achieved by such classification. The test of temporal unreasonableness, on the other hand, would involve a further examination into whether the aforesaid two prongs have continued to remain relevant with the passage of time.

180. Thus, the test of temporal unreasonableness would require examining the provision in two different time frames – first, when the provision was

enacted, and second when such provision comes to be challenged on the ground of temporal unreasonableness. Even if a provision passes the two-prong test in the first time-frame, it may still fail the test in the subsequent time-frame if the efflux of time renders either the classification, or the object sought to be achieved by such classification, or both as arbitrary and thus violative of Article 14 of the Constitution. This could be said to be the third prong in the test of manifest arbitrariness under Article 14 as envisaged by the doctrine of temporal unreasonableness.

G. DAMAGE CAUSED BY THE SCHEME OF SECTION 6A

181. From the discussion above, it can be seen that the mechanism by which the implementation of Section 6A is to take place is riddled by two serious problems – absence of a temporal limit as to the period of application, and shifting of the onus of identification and detection of an immigrant as a foreigner on the state.

182. In my view, the absurd and faulty mechanism that has been prescribed under Section 6A of the Citizenship Act, constitutes the genesis of the controversy before us. The legislature, instead of providing for a one-time process to avail the benefits of Section 6A to all those who are eligible has instead provided a process where each immigrant of the 1966-71 category has to be first identified and then referred to the foreigners tribunal. The

tribunal is then required to determine in each individual case whether the person referred is an illegal migrant, his date of entry in Assam, whether he is entitled to any benefits under Section 6A, etc.

183. The determination by the foreigners tribunal in each individual case introduces judicial-element in the process of determination of nationality of suspected persons. However, I emphasize that the infirmity of Section 6A lies not in the judicial determination of the status of each immigrant individually, but in the steps preceding such determination, that is, identifying suspected immigrants and referring them to the foreigners tribunal. The onus of referring suspected immigrants to the tribunal lying solely on the state; absence of any provision for self-declaration or registration by the immigrant; and absence of any time-limit during which the benefit of Section 6A may be availed – collectively have the effect of making the provision constitutionally invalid when subjected to the three-prong test of temporal unreasonableness as elucidated above.

184. The result of the aforesaid infirmity has been that, to this date, the benefit of Section 6A can be availed if an immigrant shows that he or she falls within Section 6A sub-sections (2) and (3). This has added another layer of complexity in the very detection process of illegal migrants, who have

mingled amongst those who have legitimately availed the benefit under Section 6A.

185. Even a person who is otherwise not eligible under Section 6A can put-up a false claim that he or she is covered under Section 6A, and the foreigners tribunal would have to examine the legitimacy of the such a claim, thereby slowing down the entire process of detection and deportation in Assam.

186. We find substance in the submission of the petitioners that the stipulation of the condition '*ordinarily resident in Assam*' created a vortex that attracted other illegal immigrants located in West Bengal or other bordering states also to come into Assam in the hope of securing citizenship, all because of the faulty mechanism coupled with poor implementation of conferring the benefit under Section 6A.

187. It is also pertinent to observe that the regime under the Citizenship Act has been made more stringent over the years by a slew of amendments. Significantly, the Citizenship (Amendment) Act, 2003 introduced the definition of an '*illegal immigrant*'. The Statement of objects and reasons accompanying the Citizenship (Amendment) Bill, 2003, reads as under: -

> *"[...] 2. The above objects are proposed to be achieved, inter alia, by amending provisions of the Citizenship Act so as to —*
> *(i) make acquisition of Indian citizenship by registration and naturalisation more stringent;*

(ii) prevent illegal migrants from becoming eligible for Indian citizenship*;*
(iii) simplify the procedure to facilitate the re-acquisition of Indian citizenship by persons of full age who are children of Indian citizens, and former citizens of independent India;
(iv) provide for the grant of overseas citizenship of India to persons of Indian origin belonging to specified countries, and Indian citizens who choose to acquire the citizenship of any of these countries at a later date;
(v) provide for the compulsory registration and issue of a national identity card to all citizens of India;
(vi) enhance the penalty for violation of its provisions, as well as the rules framed under it; and
(vii) to omit all provisions recognizing, or relating to the Commonwealth citizenship from the Act."

(Emphasis supplied)

188. A perusal of the above would show that one of the objects of the 2003 amendment to the Citizenship Act was to exclude illegal immigrants from the benefit of citizenship. Thus, while on the one hand the legislature has gradually moved towards a regime which bars illegal immigrant from the benefit of Indian citizenship, Section 6A, on the other hand, continues to be present on the statute book endlessly, and owing to its abuse-prone and temporally unlimited mechanism, goes against the present-day statutory position and policy with regard to the illegal immigrants.

189. More than 38 years having elapsed since Section 6A came into effect, with the benefit of retrospect, we find force in the submission of the petitioners that Section 6A, which was meant to dispel and discourage incoming illegal

immigrants, turned out to be a beacon for the illegal immigrants from Bangladesh to come into Assam, by taking advantage of the poor mechanism which is prone to open abuse. There can be no denying that the provision has far exceeded the time-limit within which it should have been made applicable, and has become vulnerable to misuse owing to the inherent arbitrariness, as pointed above.

190. Assam Accord was a one-time political settlement, arrived at in the specific context of widespread violence and agitation in Assam. The extraordinary conditions existing in the years 1979-85 cannot provide a permanent and perennial ground for continuation of a manifestly arbitrary provision, which is uncertain and indeterminable owing to its *sui-generis* mechanism.

191. I shall now refer to the decision of a three-Judge Bench of this Court in ***Sarbananda Sonowal*** *(supra)*, by which the IMDT Act was struck down. One of the primary reasons for which the IMDT Act was struck down was that this Court was of the view that instead of achieving the avowed object of the legislation, the IMDT Act was defeating the very purpose for which it was enacted. Relevant portions of the said decision are reproduced hereinbelow: -

> *"70. As mentioned earlier, the influx of Bangladeshi nationals who have illegally migrated into Assam pose a threat to the integrity and security of North-Eastern region. Their presence has changed the*

demographic character of that region and the local people of Assam have been reduced to a status of minority in certain districts. In such circumstances, if Parliament had enacted a legislation exclusively for the State of Assam which was more stringent than the Foreigners Act, which is applicable to rest of India, and also in the State of Assam for identification of such persons who migrated from the territory of present Bangladesh between 1-1-1966 and 24-3-1971, such a legislation would have passed the test of Article 14 as the differentiation so made would have had rational nexus with the avowed policy and objective of the Act. <u>But the mere making of a geographical classification cannot be sustained where the Act instead of achieving the object of the legislation defeats the very purpose for which the legislation has been made</u>. As discussed earlier, the provisions of the Foreigners Act are far more effective in identification and deportation of foreigners who have illegally crossed the international border and have entered India without any authority of law and have no authority to continue to remain in India. For satisfying the test of Article 14, the geographical factor alone in making a classification is not enough but there must be a nexus with the objects sought to be achieved. If geographical consideration becomes the sole criterion completely overlooking the other aspect of "rational nexus with the policy and object of the Act" it would be open to the legislature to apply enactments made by it to any sub-division or district within the State and leaving others at its sweet will. This is not the underlying spirit or the legal principle on which Article 14 is founded. Since the classification made whereby the IMDT Act is made applicable only to the State of Assam has no rational nexus with the policy and object of the Act, it is clearly violative of Article 14 of the Constitution and is liable to be struck down on this ground also."

(Emphasis supplied)

192. There have been various judgments of this Court wherein directions were issued for reconsideration of the impugned provision on the ground that with the passage of time, the provision had become temporally unreasonable and rather than fulfilling the object with which it was enacted, the same was proving to be counter-productive.

193. In ***Narottam Kishore Deb Varman v. Union of India,*** reported in **(1964) 7 SCR 55**, a five-Judge Bench of this Court was called upon to decide a batch of petitions challenging the validity of Section 87B of the Code of Civil Procedure, 1908. The said section required that before a suit could be filed against a former ruler of a Princely State, prior sanction of the Union Government had to be obtained. This Court, relying upon its previous decision, stopped short from holding the provision as unconstitutional. However, it called upon the Government to examine if the provision was to be allowed to continue for all times. It further noted that Section 87B being a result of a political settlement reached between the Government and former rulers, its continuance forever was something that the Government ought to reconsider. The relevant observations read as under:

> *"9. The legislative background to which we have referred cannot be divorced from the historical background which is to be found for instance, in Article 362. This article provides that in the exercise of the power of Parliament or of any legislature of any State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of Article 291 with respect to the personal rights, privileges and dignities of a Ruler of an Indian State. This has reference to the covenants and agreements which had been entered into between the Central Government and the Indian Princes before all the Indian States were politically completely assimilated with the rest of India. The privileges conferred on the Rulers of former Indian States has its origin in these agreements and covenants. One of the privileges is that of extra-territoriality and exemption from civil jurisdiction except with the sanction of the Central Government. It was thought that the privilege which was claimed by foreign Rulers and Rulers of Indian States prior to the independence was attained and the States had become part of India, and that is how in 1951, the Civil*

Procedure Code was amended and the present Sections 86, 87, 87-A and 87-B came to be enacted in the present form.

10. Considered in the light of this background, it is difficult to see how the petitioners can successfully challenge the validity of the provisions contained in Section 87-B. In the case of Mohan Lal Jain [(1962) 1 SCR 702] this Court has held that the ex-Rulers of Indian States form a class by themselves and the special treatment given to them by the impugned provisions cannot be said to be based on unconstitutional discrimination. There is, of course, discrimination between the ex-Rulers and the rest of the citizens of India, but that discrimination is justified having regard to the historical and legislative background to which we have just referred. If that be so, it would follow that the restriction imposed on the petitioners' fundamental right guaranteed by Article 19(1)(f) cannot be said to be unreasonable. The restriction in question is the result of the necessity to treat the agreements entered into between the Central Government and the ex-Rulers of Indian States as valid and the desirability of giving effect to the assurances given to them during the course of negotiations between the Indian States and the Central Government prior to the merger of the States with India. We have to take into account the events which occurred with unprecedented swiftness after 15th August, 1947 and we have to bear in mind the fact that the relevant negotiations carried on by the Central Government were inspired by the sole object of bringing under one Central Government the whole of this country including the former Indian States. Considered in the context of these events, we do not think it would be possible to hold that the specific provision made by Section 87-B granting exemption to the Rulers of former Indian States from being sued except with the sanction of the Central Government, is not reasonable and is not in the interests of the general public. It is true that the restriction works a hardship so far as the petitioners are concerned; but balancing the said hardship against the other considerations to which we have just referred, it would be difficult to sustain the argument that the section itself should be treated as unconstitutional.

11. Before we part with this matter, however, we would like to invite the Central Government to consider seriously whether it is necessary to allow Section 87-B to operate prospectively for all time. The agreements made with the Rulers of Indian States may, no doubt, have to be accepted and the assurances given to them may have to be observed. But considered broadly in the light of the basic

principle of the equality before law, it seems somewhat odd that Section 87-B should continue to operate for all time. For past dealings and transactions, protection may justifiably be given to Rulers of former Indian States; but the Central Government may examine the question as to whether for transactions subsequent to 26th of January, 1950, this protection need or should be continued. If under the Constitution all citizens are equal, it may be desirable to confine the operation of Section 87-B to past transactions and not to perpetuate the anomaly of the distinction between the rest of the citizens and Rulers of former Indian States. With the passage of time, the validity of historical considerations on which Section 87-B is founded will wear out and the continuance of the said section in the Code of Civil Procedure may later be open to serious challenge."

(Emphasis supplied)

194. In ***H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt.,*** reported in **(1979) 4 SCC 642**, a five-Judge Bench of this Court was called upon to determine the constitutionality of applicability of the Madras Hindu Religious Charitable Endowments Act to the South Kanara district. The South Kanara district, which was formerly a part of the State of Madras, became a part of the State of Mysore as a result of the reorganisation of states on 01.11.1956 and by reason of Section 119 of the States Reorganisation Act, the Madras Hindu Religious and Charitable Endowments Act continued to apply to South Kanara notwithstanding the fact that it was no longer a part of the State of Madras. The appellants urged that the application of the Madras Act to only one district of the State of Karnataka offended Article 14. The Court held that even after passage of 23 years, no serious attempts were made to

remove the inequality between the South Kanara district and other districts of the State of Karnataka. The relevant observations read as under:

> *"31. But that is how the matter stands today. Twenty-three years have gone by since the States Reorganisation Act was passed but unhappily, no serious effort has been made by the State Legislature to introduce any legislation — apart from two abortive attempts in 1963 and 1977 — to remove the inequality between the temples and Mutts situated in the South Kanara District and those situated in other areas of Karnataka. Inequality is so clearly writ large on the face of the impugned statute in its application to the district of South Kanara only, that it is perilously near the periphery of unconstitutionality. We have restrained ourselves from declaring the law as inapplicable to the district of South Kanara from today but we would like to make it clear that if the Karnataka Legislature does not act promptly and remove the inequality arising out of the application of the Madras Act of 1951 to the district of South Kanara only, the Act will have to suffer a serious and successful challenge in the not distant future. We do hope that the Government of Karnataka will act promptly and move an appropriate legislation, say, within a year or so. A comprehensive legislation which will apply to all temples and Mutts in Karnataka, which are equally situated in the context of the levy of fee, may perhaps afford a satisfactory solution to the problem. This, however, is a tentative view-point because we have not investigated whether the Madras Act of 1951, particularly Section 76(1) thereof, is a piece of hostile legislation of the kind that would involve the violation of Article 14. Facts in regard thereto may have to be explored, if and when occasion arises."*
>
> (Emphasis supplied)

195. This Court, has on many occasions, struck down provisions for having become temporally unreasonable, that is, for having become obsolete and discriminatory with the passage of time.

196. In ***Motor General Traders v. State of A.P.,*** reported in **(1984) 1 SCC 222**, a two-Judge Bench of this Court was examining the validity of Section

32(b) of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960. The impugned provision exempted all buildings constructed after 26.08.1957 from the application of the said Act. This Court held that a temporary exemption having nexus with the object of the Act to promote new builders had become obsolete with the passage of time, and was acting in the form of a permanent bonanza without any rational basis. The Bench proceeded to strike down the impugned provision. The relevant observations read as under:

> *"24. It is argued that since the impugned provision has been in existence for over twenty-three years and its validity has once been upheld by the High Court, this Court should not pronounce upon its validity at this late stage. There are two answers to this proposition. First, the very fact that nearly twenty-three years are over from the date of the enactment of the impugned provision and the discrimination is allowed to be continued unjustifiably for such a long time is a ground of attack in these cases. As already observed, the landlords of the buildings constructed subsequent to August 26, 1957 are given undue preference over the landlords of buildings constructed prior to that date in that the former are free from the shackles of the Act while the latter are subjected to the restrictions imposed by it. What should have been just an incentive has become a permanent bonanza in favour of those who constructed buildings subsequent to August 26, 1957. There being no justification for the continuance of the benefit to a class of persons without any rational basis whatsoever, the evil effects flowing from the impugned exemption have caused more harm to the society than one could anticipate. What was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century. The second answer to the above contention is that mere lapse of time does not lend constitutionality to a provision which is otherwise bad. "Time does not run in favour of legislation. If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyers to perceive and set up its invalidity. Albeit, lateness in an attack upon the constitutionality of a statute is but a reason for exercising special caution in examining the arguments by which the attack is supported. [See W.A. Wynes : Legislative, Executive and*

Judicial Powers in Australia, Fifth Edition, p 33] We are constrained to pronounce upon the validity of the impugned provision at this late stage because the garb of constitutionality which it may have possessed earlier has become worn out and its unconstitutionality is now brought to a successful challenge."

(Emphasis supplied)

197. In ***Satyawati Sharma*** *(supra)* a two-Judge Bench of this Court was examining the constitutional validity of Section 14(1)(e) of the Delhi Rent Control Act, 1958. This Court partly read down the provision on the ground that the blanket protection from eviction given to tenants of non-residential buildings, with the passage of time, had become unreasonable and was liable to be taken away. The relevant observations read as under: -

"32. <u>It is trite to say that legislation which may be quite reasonable and rational at the time of its enactment may with the lapse of time and/or due to change of circumstances become arbitrary, unreasonable and violative of the doctrine of equality and even if the validity of such legislation may have been upheld at a given point of time, the Court may, in subsequent litigation, strike down the same if it is found that the rationale of classification has become non-existent</u>. In State of M.P. v. Bhopal Sugar Industries Ltd. [AIR 1964 SC 1179] this Court while dealing with a question whether geographical classification due to historical reasons could be sustained for all times observed : (AIR p. 1182, para 6)

> *"6. ... Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not, therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational*

basis to support it after the initial expediency and necessity have disappeared.""

(Emphasis supplied)

H. DOCTRINE OF PROSPECTIVE OVERRULING

198. The doctrine of prospective overruling was originally developed by American jurists. This doctrine was first applied in an Indian context in ***I.C. Golak Nath v. State of Punjab*** reported in **AIR 1967 SC 1643**. It was decided by this Court therein that the power of amendment under Article 368 of the Constitution did not allow the Parliament to abridge the fundamental rights contained in the Part III of the Constitution. However, while holding thus, this Court made the decision operative with prospective effect.

199. The decision was given prospective effect in recognition of the fact that from the coming into force of the Constitution upto the date of the decision in ***Golak Nath*** *(supra)*, the Parliament had in fact exercised the power of amendment in a way which, as per the decision in ***Golak Nath*** *(supra),* was void. This Court observed that if retrospectivity were to be given to the decision, it would introduce chaos and unsettled conditions in the country. On the other hand, this Court also recognized that such a possibility of chaos might be preferable to the alternative of a totalitarian rule. This Court, therefore, sought to evolve a reasonable principle to meet the

extraordinary situation. The reasonable principle which was evolved was the doctrine of prospective overruling.

200. The decision in ***Golak Nath*** *(supra)* was overruled by subsequent decision in ***Kesavananda Bharati v. State of Kerala*** reported in **(1973) 4 SCC 225**. However, the observations of this Court regarding the evolution of the doctrine of prospective overruling, which hold to this day, are as follows:

> *"45. There are two doctrines familiar to American Jurisprudence, one is described as Blackstonian theory and the other as "prospective over-ruling" which may have some relevance to the present enquiry. Blackstone in his Commentaries, 69 (15th Edn., 1809) stated the common law rule that the duty of the Court was "not to pronounce a new rule but to maintain and expound the old one". It means the Judge does not make law but only discovers or finds the true law. The law has always been the same. If a subsequent decision changes the earlier one, the latter decision does not make law but only discovers the correct principle of law. The result of this view is that it is necessarily retrospective in operation. But Jurists, George F. Canfield, Robert Hill Freeman, John Henry Wigmore and Cardozo have expounded the doctrine of "prospective over-ruling" and suggested it as "a useful judicial tool". In the words of Canfield the said expression means:*
>
> > *"... a court should recognize a duty to announce a new and better rule for future transactions whenever the court has reached the conviction that on old rule (as established by the precedents) is unsound even though feeling compelled by stare decisis to apply the old and condemned rule to the instance case and to transactions which had already taken place".*
>
> *Cardozo, before he became a Judge of the Supreme Court of the United States of America, when he was the Chief Justice of New York State addressing the Bar Association said thus:*

"The rule (the Blackstonian rule) that we are asked to apply is out of tune with the life about us. It has been made discordant by the forces that generate a living law. We apply it to this case because the repeal might work hardship to those who have trusted to its existence. We give notice however that any one trusting to it hereafter will do at his peril."

The Supreme Court of the United States of America in the year 1932, after Cardozo became an Associate Justice of that Court in Great Northern Railway v. Sunburst Oil & Ref. Co. [(1932) 287 US 358, 366 : 77 LEd 360], applied the said doctrine to the facts of that case. In that case the Montana Court had adhered to its previous construction of the statute in question but had announced that that interpretation would not be followed in the future. It was contended before the Supreme Court of the United States of America that a decision of a court overruling earlier decision and not giving its ruling retroactive operation violated the due process clause of the 14th Amendment. Rejecting that plea, Cardozo said:

"This is not a case where a Court in overruling an earlier decision has come to the new ruling of retroactive dealing and thereby has made invalid what was followed in the doing. Even that may often be done though litigants not infrequently have argued to the contrary…. This is a case where a Court has refused to make its ruling retroactive, and the novel stand is taken that the Constitution of the United States is infringed by the refusal. We think that the Federal Constitution has no voice upon the subject. A state in defining the elements of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward. It may be so that the decision of the highest courts, though later overruled, was law nonetheless for intermediate transactions…. On the other hand, it may hold to the ancient dogma that the law declared by its Courts had a platonic or ideal existence before the act of declaration, in which event, the discredited declaration will be viewed as if it had never been and to reconsider declaration as law from the beginning……The choice for any state may be determined by the juristic philosophy of the Judges of her Courts, their considerations of law, its origin and nature."

The opinion of Cardozo tried to harmonize the doctrine of prospective over-ruling with that of stare decisis.

xxx *xxx* *xxx*

47. Though English Courts in the past accepted the Blackstonian theory and though the House of Lords strictly adhered to the doctrine of 'precedent' in the earlier years, both the doctrines were practically given up by the "Practice Statement (Judicial Precedent)" issued by the House of Lords, recorded in (1966) 1 WLR 1234. Lord Gardiner L.C., speaking for the House of Lords made the following observations;

> *"Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.*
>
> *In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.*
>
> *The announcement is not intended to affect the use of precedent elsewhere than in this House."*

It will be seen from this passage that the House of Lords hereafter in appropriate cases may depart from its previous decision when it appears right to do so and in so departing will bear in mind the danger of giving effect to the said decision retroactivity. We consider that what the House of Lords means by this statement is that in differing from the precedents it will do so only without interfering with the transactions that had taken place on the basis of earlier decisions. This decision, to a large extent, modifies the Blackstonian theory and accepts, though not expressly but by necessary implication the doctrine of "prospective overruling."

xxx *xxx* *xxx*

49. It is a modern doctrine suitable for a fast moving society. It does not do away with the doctrine of stare decisis, but confines it to past transactions. It is true that in one sense the court only declares the law, either customary or statutory or personal law. While in strict theory it may be said that the doctrine involves making of law, what the court really does is to declare the law but refuses to give retroactivity to it. It is really a pragmatic solution reconciling the two conflicting doctrines, namely, that a court finds law and that it does make law. It finds law but restricts its operation to the future. It enables the court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It is left to the discretion of the court to prescribe the limits of the retroactivity and thereby it enables it to mould the relief to meet the ends of justice.

50. In India there is no statutory prohibition against the court refusing to give retroactivity to the law declared by it. Indeed, the doctrine of res judicata precludes any scope for retroactivity in respect of a subject-matter that has been finally decided between the parties. Further, Indian Courts by interpretation reject retroactivity to statutory provisions though couched in general terms on the ground that they affect vested rights. The present case only attempts a further extension of the said rule against retroactivity.

51. Our Constitution does not expressly or by necessary implication speak against the doctrine of prospective overruling. Indeed, Articles 32, 141 and 142 are couched in such wide and elastic terms as to enable this Court to formulate legal doctrines to meet the ends of justice. The only limitation thereon is reason, restraint and injustice. Under Article 32, for the enforcement of the fundamental rights the Supreme Court has the power to issue suitable directions or orders or writs. Article 141 says that the law declared by the Supreme Court shall be binding on all courts; and Article 142 enables it in the exercise of its jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. These articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such directions or pass such orders as are necessary to do complete justice. The expression "declared" is wider than the words "found or made". To declare is to announce opinion.

Indeed, the latter involves the process, while the former expresses result. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law. The law declared by the Supreme Court is the law of the land. If so, we do not see any acceptable reason why it, in declaring the law in supersession of the law declared by it earlier, could not restrict the operation of the law as declared to future and save the transactions, whether statutory or otherwise that were effected on the basis of the earlier law. To deny this power to the Supreme Court on the basis of some outmoded theory that the Court only finds law but does not make it is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary of this country.

52. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions : (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest Court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its "earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

(Emphasis supplied)

201. Although the doctrine of "prospective overruling" has been drawn from American jurisprudence, yet this Court, through its decisions, has imbued it with indigenous characteristics. The parameters of the power concerned were sought to be laid down in ***Golak Nath*** *(supra)* itself wherein it was observed: -

"52. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different

circumstances, we would like to move warily in the beginning. We would lay down the following propositions :
(1) The doctrine of prospective over-ruling can be invoked only in matters arising under our Constitution;
(2) It can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India;
(3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

202. This doctrine was also applied by this Court in the case of ***Synthetics and Chemicals Ltd. v. State of UP*** *(supra)*. In the said case originally, this Court in ***State of UP v. Synthetics and Chemicals Ltd***. reported in **(1980) 2 SCC 441**, had upheld the validity of the State legislature to impose tax on industrial alcohol.

203. Subsequently, this matter was referred to a Seven-Judge Bench, by the 2nd Synthetics Case, and this Court struck down the validity of the provisions of the said Act, permitting levy of excise duty in the form of vend fee, prospectively.

204. The significance of the prospective overruling was dealt with by a five-Judge Bench of this Court in ***Somaiya Organics (India) Ltd. & Anr. v. State of U.P. & Anr***. *(supra)*. This Court had elaborated upon the term "prospective overruling" as follows: -

"24. The word "prospective overruling" implies an earlier judicial decision on the same issue which was otherwise final. That is how it was understood in Golak Nath [AIR 1967 SC 1643 : (1967) 2 SCR 762] . However, this Court has used the power even when deciding on an issue for the first time. Thus in India Cement Ltd. v. State of T.N. [(1990) 1 SCC 12] when this Court held that the cess sought to be levied under Section 115 of the Madras Panchayats Act, 1958 as amended by Madras Act 18 of 1964, was unconstitutional, not only did it restrain the State of Tamil Nadu from enforcing the same any further, it also directed that the State would not be liable for any refund of cess already paid or collected.

25. This direction was considered in *Orissa Cement Ltd.* v. *State of Orissa* [1991 Supp (1) SCC 430] at p. 498 where it was held that: (SCC para 69)

> "*The declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof are two different things and, in the latter sphere, the court has, and must be held to have, a certain amount of discretion. It is a well-settled proposition that it is open to the court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. It will be appreciated that it is not always possible in all situations to give a logical and complete effect to a finding.*"

26. Again in Union of India v. Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] it was held that non-furnishing of a copy of the enquiry report to an employee amounted to violation of the principles of natural justice and any disciplinary action taken without furnishing such report was liable to be set aside. However, it was made clear that the decision would have prospective application so that no punishment already imposed would be open to challenge on this count. (See also Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] .)

27. In the ultimate analysis, prospective overruling, despite the terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the justice of the case — justice not in its logical but in its equitable sense. As far as this country is concerned, the power has been expressly conferred by Article 142

of the Constitution which allows this Court to "pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it". In exercise of this power, this Court has often denied the relief claimed despite holding in the claimants' favour in order to do "complete justice".

28. Given this constitutional discretion, it was perhaps unnecessary to resort to any principle of prospective overruling, a view which was expressed in Narayanibai v. State of Maharashtra [(1969) 3 SCC 468] at p. 470 and in Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299] In the latter case, while dealing with the "doctrine of prospective overruling", this Court said that it was a method evolved by the courts to adjust competing rights of parties so as to save transactions "whether statutory or otherwise, that were effected by the earlier law". According to this Court, it was a rule

> *"...of judicial craftsmanship with pragmatism and judicial statesmanship as a useful outline to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law operated prior to the date of the judgment overruling the previous law".*

Ultimately, it is a question of this Court's discretion and is, for this reason, relatable directly to the words of the Court granting the relief.

xxx xxx xxx

32. The doctrine of prospective overruling was applied in Belsund Sugar Co. Ltd. v. State of Bihar [(1999) 9 SCC 620] . The question which arose for consideration there was whether market fee could be levied under the Bihar Agricultural Produce Markets Act, 1960 in respect to transactions of purchase of sugarcane, sugar and molasses by sugar mills. In view of the provisions of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 read with the Sugar (Control) Order, 1966 issued under the Essential Commodities Act, it was held that the provisions of the Sugarcane Act and the Sugarcane Order, on the one hand, and the Bihar Market Act on the other could not operate harmoniously and, therefore, the Sugarcane Act and the Sugarcane Order prevailed over the Market Act. It was then contended that the appellants therein should be allowed to get refund of the market fee which they had paid under the Market Act subject to their showing

that they had not passed on the burden on the principle of unjust enrichment. Dealing with the above contentions, it was observed as follows: (SCC pp. 667-68, paras 112-13)

> *"112. Under these circumstances, keeping in view the peculiar facts and circumstances of these cases, we deem it fit to direct in exercise of our powers under Article 142 of the Constitution of India that the present decision will have only a prospective effect. Meaning thereby that after the pronouncement of this judgment all future transactions of purchase of sugarcane by the sugar factories concerned in the market areas as well as the sale of manufactured sugar and molasses produced therefrom by utilising this purchased sugarcane by these factories will not be subjected to the levy of market fee under Section 27 of the Market Act by the Market Committees concerned. All past transactions up to the date of this judgment which have suffered the levy of market fee will not be covered by this judgment and the collected market fees on these past transactions prior to the date of this judgment will not be required to be refunded to any of the sugar mills which might have paid these market fees."""
>
> (Emphasis supplied)

205. Taking a clue from the above referred decisions, it could be said that this Court has been endowed with the power to mould the relief so as to do complete justice in a given situation, and to avoid the possibility of chaos and confusion that may be caused in the society at large. In the present case, a number of immigrants who came into the State of Assam from Bangladesh, have already been conferred with citizenship under Section 6A of the Citizenship Act. Further, as discussed, the unconstitutionality of Section 6A is attributable to the efflux of time.

206. Section 6A being manifestly arbitrary, temporally unreasonable and, demonstrably unconstitutional cannot be allowed to continue for all times to come. Hence, in my opinion it would be appropriate to declare Section 6A as unconstitutional with prospective effect. This would ensure that the benefit which has already been derived by the immigrants in Assam is not taken away, more particularly when the challenge to Section 6A has been made after a considerable delay.

VI. CONCLUSION

207. The distinction drawn between the State of Assam and other states for the grant of citizenship to immigrants was on the basis of special circumstances prevailing in Assam at the time of enactment of Section 6A. Section 6A was a statutory codification of a political settlement reached between the Government and the people of Assam and thus was not violative of the equality clause enshrined under Article 14 at the time of its enactment in 1985.

208. However, Section 6A has acquired unconstitutionality with the efflux of time. The efflux of time has brought to light the element of manifest arbitrariness in the scheme of Section 6A(3) which fails to provide a temporal limit to its applicability.

209. The prescribed mechanism also shifts the burden of detection of a foreigner solely on the State, thus, counter-serving the very purpose for which the provision was enacted, that is, the expedient detection of immigrants belonging to the 1966-71 stream, their deletion from the electoral rolls, and conferment of *de-jure* citizenship only upon the expiry of ten-years.

210. Justice Surya Kant has said in so many words that although Section 6A might not have been constitutionally invalid from its inception, yet the possibility of the provision incurring such invalidity anytime in future should not be ruled out. In light of the discussion in the foregoing paragraphs, I am of the clear view that Section 6A suffers from the vice of manifest arbitrariness on account of the *"systematic failure of the legislative vision",* if I may put it in the very words of my learned brother.

211. Justice Surya Kant has also acknowledged the fact that despite the enactment of Section 6A, the influx of illegal immigrants into the State of Assam did not abate after 1985. He has relied upon the report published by the then Governor of Assam in 1998, to underscore that there are hordes of immigrants who have illegally entered Assam and are residing there. However, the ultimate view taken by him is that such illegal immigration cannot be attributed to Section 6A which is limited in its ambit and does not by itself create unabated immigration. As discussed earlier, Section 6A

owing to its inherent problems of absence of temporal limit and the sole onus of detection upon the State, has indeed resulted in the influx and continued presence of illegal immigrants into the State of Assam, to this date.

212. One another issue on which I would like to respectfully disagree with Justice Surya Kant pertains to the fundamental premise that Section 6A aligns with the fundamental purpose of Articles 6 and 7 respectively of the Constitution – that is, Section 6A also confers citizenship rights on those affected by the partition of India. However, a careful perusal of Section 6A vis-à-vis Articles 6 and 7 respectively would reveal that despite a few similarities between the two, the crucial difference lies in the fact that in Article 6, the onus of registration for a person seeking citizenship lies on that person and not on the State. Additionally, all those persons who migrated to India from Pakistan after 19.07.1948, had to make an application before the commencement of the Constitution. The permit system which was introduced as per Article 7 was also brought to an end in 1952 as discussed in the foregoing paragraphs. However, as discussed, both these conditions i.e., the onus of registration as well as the specification of a cut-off date till which such applications could have been made are absent from the very scheme of Section 6A. Seen in the context

of temporal unreasonableness, this glaring absence renders the scheme of Section 6A arbitrary and as a result unconstitutional.

213. Justice Surya Kant has emphasized on the importance of distinguishing between the prescribed mechanism under the provisions of Section 6A and its actual implementation. After examining the mechanism prescribed under Section 6A, he has held that when Section 6A is read with the complimentary statutes more particularly, the Foreigners Act, 1946, Passport Act, 1967, IEAA, 1950 and the Foreigners (Tribunals Order), 1964, the same is adequate and sufficient to address the issue of illegal immigration into Assam. However, the ultimate conclusion drawn by him is that despite of there being sufficient measures, the problem of illegal immigration has persisted in Assam till this date because of the inadequacies in Section 6A and its faulty implementation. I am of the view, that the inadequate implementation of Section 6A(3) of the Act is inextricably linked to the fallacious mechanism that has been prescribed under it.

214. Justice Surya Kant in paragraph 298 of his judgment, has observed that by virtue of Article 19(1)(e), Section 6A does not compel pre-1971 immigrants to keep residing in the territory of Assam once they have obtained citizenship thereunder. While the aforesaid may be true for the immigrants belonging to the pre-1966 stream who were conferred

citizenship automatically, and thus became citizens of India for all purposes from the date of commencement of Section 6A itself, the same does not hold true for the immigrants belonging to the 1966-71 category. I say so, because, in the absence of any temporal limit, within which all immigrants belonging to the 1966-71 category are to be detected, deleted and registered as citizens, the immigrants of this category are tethered to the territory of Assam, so as to satisfy the criteria of "ordinarily resident in Assam" on the date when they eventually happen to get detected.

215. Lastly, Justice Surya Kant, in paragraph 304, has observed that Section 6A when read along with the larger statutory regime surrounding citizenship and immigration, has mandated timely detection and deportation of illegal immigrants. In my view, although the mandate of timely detection and deportation of illegal immigrants was the fundamental premise on which the Assam Accord was signed, yet, this intention recorded in the Accord, was never translated statutorily, due to a faulty mechanism prescribed under Section 6A(3), either due to inadvertence or advertence of the legislature.

216. Before, I proceed to draw my final conclusion, I must refer to R.W.M. Dias's "Jurisprudence" Fifth Edition Chapter 15. Dias says that one of the tasks in the achievement of justice is adapting to change. Just as

consonance with accepted ideas is an inducement to obey, so also when these change, tensions arise between the law on the one hand, and needs and outlook on the other, and there is then an inducement to ignore the law or to disobey. Failure to use power to adapt to change is, in its own way, an abuse of power. The issue is thus not one of change or no change, but of the direction and speed of change. According to Dias, no society is static. Changes develop gradually over the years in practically every sphere brought about by evolution in environmental, economic and political circumstances, national and global, as well as in religious and moral ideas. In the words of Dias "…*They may occur slowly or rapidly; they may be ephemeral as with passing fashions, or permanent. What happens is that practices evolve which influence the ways in which laws actually operate, e.g. trade practices. When the behaviour of people has moved away from the law with a sufficient degree of permanence, tensions arise with varying results. The law itself may be stretched to take account of the development, or it may be ignored until it becomes a dead letter, or it may be repealed and a new law substituted. In these ways evolution gives direction to future development*."

217. For all the foregoing reasons, I have reached to the conclusion that Section 6A of the Citizenship Act deserves to be declared invalid with prospective effect and the same is accordingly declared so.

218. I summarize my final conclusions as follows: -

a. Immigrants who migrated before 01.01.1966 and were conferred deemed citizenship on the date of commencement of Section 6A(2), subject to fulfilment of all the conditions mentioned therein, shall remain unaffected.

b. Immigrants who migrated between 01.01.1966 and 24.03.1971 (both inclusive) and have been granted citizenship after following the due procedure prescribed under Section 6A(3) shall remain unaffected.

c. Immigrants who migrated between 01.01.1966 and 24.03.1971 (both inclusive) and who have been detected as foreigners and have registered themselves with the registering authority as per the prescribed rules, shall be deemed to be citizens of India for all purposes from the date of expiry of a period of ten years from the date on which they were detected as foreigners.

d. Immigrants who migrated between 01.01.1966 and 24.03.1971 (both inclusive) and who have been detected as foreigners but have not registered themselves with the registering authority within the prescribed time limit as per the Citizenship Rules, 2009 will no longer be eligible for the benefit of citizenship.

e. Immigrants who migrated between 01.01.1966 and 24.03.1971 (both inclusive) and whose applications are pending for adjudication before the Foreigners Tribunal, or who have preferred any appeal against any order of such tribunal which is pending before any court will continue to be

governed by Section 6A(3) as it stood immediately prior to the pronouncement of this judgment, till their appeals are disposed of.

f. From the date of pronouncement of this judgment, all immigrants in the State of Assam shall be dealt with in accordance with the applicable laws and no benefit under Section 6A shall be available to any such immigrant. To be precise, if someone is apprehended as an illegal immigrant after the pronouncement of this judgment, Section 6A of the Citizenship Act will have no application.

219. The petitions are disposed of in the aforesaid terms.

220. Pending application(s), if any, also stand disposed of.

..... J.
(J.B. Pardiwala)

New Delhi;

17th October, 2024