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."*
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> (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).

xxx xxx xxx

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.

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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."

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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.

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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