REPORTABLE

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 274 OF 2009

IN RE: SECTION 6A OF THE CITIZENSHIP ACT 1955

WITH

WRIT PETITION (CIVIL) NO. 916 OF 2014

WRIT PETITION (CIVIL) NO. 470 OF 2018

WRIT PETITION (CIVIL) NO. 1047 OF 2018

WRIT PETITION (CIVIL) NO. 68 OF 2016

WRIT PETITION (CIVIL) NO. 876 OF 2014

WRIT PETITION (CIVIL) NO. 449 OF 2015

WRIT PETITION (CIVIL) NO. 450 OF 2015

AND

WRIT PETITION (CIVIL) NO. 562 OF 2012

JUDGEMENT

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

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

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

A. BACKGROUND

Meaning of citizenship

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

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

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

The meaning of citizenship in India

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Modes of acquiring citizenship

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

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

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

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

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

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

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

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

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

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

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

Citizenship under the Constitution of India

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Legislative scheme on citizenship

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. TERMS OF REFERENCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. CONTENTIONS OF THE PARTIES

Petitioners' submissions

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

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

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

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

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

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

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

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

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

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

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

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

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

Respondents' submissions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. ISSUES

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

I. Prefatory issues

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

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

II. Challenges regarding constitutionality

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

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

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

f. Does Section 6A suffer from manifest arbitrariness?

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

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

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

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

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

l. Does Section 6A violate international laws?

E. ANALYSIS

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

PREFATORY CHALLENGES

i. Judicial review

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

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

(a) Concept of judicial review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Limits to judicial review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Emphasis supplied]

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

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

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

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

ii. Delay and maintainability of the writ petitions

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

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

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

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

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

(a) Limitation period for writs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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CHALLENGES REGARDING CONSTITUTIONALITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

iii. The preambular notion of fraternity

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

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

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

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

(a) Meaning of 'fraternity'

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

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

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

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

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

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

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

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

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[86] *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Emphasis supplied]

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

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

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

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

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

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

iv. Part II and Section 6A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[105] R. K. Sidhwa, *Constituent Assembly Debates*, Volume 9, 11.08.1949.

Accordingly, Section 6A is aligned with the Constitutional philosophy of Articles 6 and 7 and is not contrary to them.

133. Regardless of these similarities, Section 6A diverges from Articles 6 and 7 in terms of the cut-off dates. As discussed earlier, Articles 6 and 7 prescribe the cut-off dates of 19.07.1948 and 01.01.1947, respectively. However, Section 6A prescribes two different cut-off dates: 01.01.1966 and 25.03.1971. Immigrants who entered Assam before 01.01.1966 are granted deemed citizenship, and immigrants who entered Assam between these two dates are granted citizenship once they fulfil certain conditions. Immigrants entering Assam on or after 25.03.1971 are not granted citizenship and are impliedly declared to be illegal immigrants who must be detected and deported.

134. The Petitioners' contention that Section 6A is unconstitutional as it prescribes different dates in comparison to Articles 6 and 7 cannot be accepted because Article 6 does not prohibit the granting of citizenship after the cut-off date of 19.07.1948. It only specifies the fulfilment of certain conditions, which, as mentioned above, are also present in Section 6A (3). While Section 6A (2) grants deemed citizenship without these conditions, the competence of Parliament to prescribe different conditions—which will be analyzed in detail in the later part—is well embedded in Article 11.

135. Similarly, while Article 7 prohibits citizenship to people who re-migrated to India, this is only a sub-class of people who have been granted citizenship by Section 6A. Since Section 6A grants citizenship even to people who migrated for the first time, the class of re-migrants is severable from this provision. As will be discussed in the following paragraphs, the Parliament was competent to specify different conditions for this sub-class also.

Whether the Parliament had the competence to specify different conditions under Article 11

136. There is no quarrel among the parties that the Parliament has the power to enact laws on citizenship. This power is provided by Entry 17 of List 1 of the Seventh Schedule, which reads "*Citizenship, naturalisation and aliens*". Further, the present situation is also covered by Entry 19, which reads, "*Admission into, and emigration and expulsion from, India; passports and visas*". However, the parties are discordant to the extent of such power and whether law made by the Parliament can derogate from Article 6 and other provisions of Part II.

137. In this regard, it is pertinent to consider the objective and scope of Article 11 of the Constitution, which provides Parliament with the power to make laws on any matter relating to citizenship. Upon perusal of the text of Article 11, which was reproduced before in paragraph 19 of this judgement, two important considerations come to light. *First*, the phrase "*Nothing in the foregoing provisions of this Part shall derogate*" clearly fortifies that Article 11 confers overriding powers upon the Parliament to make laws even when they are against other provisions of Part II.

138. This was also duly acknowledged by a 5-judge bench of this Court in ***Izhar Ahmed Khan (supra)***, where it was explicitly noted that Article 11 grants Parliament the sovereign right to make laws on citizenship and that such laws cannot be impeached on the ground that they go against Articles 5 to 10 of the Constitution.

139. Incidentally, the overriding effect of Article 11 is also clearly established by various speeches in the Constituent Assembly. They highlight that the provisions of Part II were only meant to enact the law on citizenship for the time being at the commencement of the Constitution and the Parliament was empowered to enact provisions in the future, including making altogether new provisions.[106] As discussed in paragraph 16 earlier, this is consistent with the global practice of laying down only overarching principles of citizenship in the Constitution and empowering the Parliament to define the specifics through statutes.

140. From the phrase "*Nothing in the foregoing provisions of this Part shall derogate*", the judicial pronouncement of this Court in ***Izhar Ahmed Khan (supra)*** and the accompanying speeches in the Constituent Assembly, we can appropriately conclude that Article 11 gives the Parliament broad powers to enact laws on citizenship, notwithstanding any inconsistencies with any other provision in Part II of the Constitution.

141. The *second* important aspect of Article 11, which lends support to this conclusion, is that it grants the Parliament the power to make 'any' provision regarding citizenship. A critical amendment to the text of the draft Article 11 further fortifies this conclusion. Initially, the draft Article granted Parliament the power to make 'further provisions'. However, during a session of the Constituent Assembly on 29.04.1947, the President of the Assembly argued that the word 'further' might imply that Parliament should only make provisions in continuation of other Articles in Part II. Consequently, the word 'further' was replaced with 'any'. This amendment highlights the

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[106] Dr. B. R. Ambedkar, *Constituent Assembly Debates*, Volume 9, 10.08.1949; Alladi Krishnaswamy Ayyar and H. N. Kunzru, *Constituent Assembly Debates*, Volume 9, 12.08.1949; K. M. Munshi, *Constituent Assembly Debates*, Volume 3, 29.04.1947.

framers' intention to afford Parliament nearly unrestricted flexibility in crafting laws pertaining to citizenship.

142. Based on the analysis presented in this section, it can be concluded, and we hold so, that the Parliament indeed possesses the legislative power to enact laws concerning citizenship and that this authority is not restricted by the provisions of Part II of the Constitution.

(b) Section 6A and dual citizenship

143. The Petitioners, having not limited their contentions to the violation of Articles 6 and 7, also urged that since the immigrants did not renounce their citizenship before they were granted Indian citizenship, Section 6A enables dual citizenship and is therefore unconstitutional for violating Article 9. While the Respondents have not directly addressed this issue, it is vital to provide a comprehensive analysis for the sake of completeness.

144. The concept of dual citizenship means one has citizenship of two countries simultaneously. Across the world, there are various countries like China,[107] Japan,[108] Kuwait,[109] etc. that prohibit dual citizenship. Internationally, too, several countries have come together at various points to counter multiple citizenships. For instance, European nations that were members of the Council of Europe entered into the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, 1963, which, *inter alia*, provides that a person acquiring an additional nationality shall lose their previous

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[107] Nationality Law of People's Republic of China, 1980, Article 9.
[108] Japan's Nationality Law, 1950, Article 11.
[109] Kuwait, Ministerial Decree No. 15 of 1959 Promulgating the Nationality Law, Article 11.

nationality. Similarly, countries that were a part of the League of Nations (including India) entered the Convention on Certain Questions Relating to the Conflict of Nationality Law, 1930, to establish a commitment to abolishing dual citizenship.

145. In India, such citizenship is restricted by Article 9 of the Constitution and Section 9 of the Citizenship Act. Article 9 states that no person shall be granted Indian citizenship by Articles 5, 6, and 8 if such person has voluntarily acquired citizenship of a foreign state. As a corollary to this, Section 9 of the Citizenship Act provides:

> "*Termination of citizenship —*
>
> *(1)* ***Any citizen of India*** *who by naturalisation, registration or otherwise* ***voluntarily acquires****, or has at any time between the 26th January, 1950 and the commencement of this Act* ***voluntarily acquired, the citizenship of another country shall****, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:*
>
> *Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.*
>
> [Emphasis supplied]

146. While both Article 9 and Section 9 seemingly restrict dual citizenship, they operate in different time spheres. As was held by this court in ***Izhar Ahmed Khan (supra)***, while Article 9 contemplates the denial of Indian citizenship to a person who had acquired foreign citizenship before the Constitution came into force, Section 9 deals with the acquisition of foreign citizenship after the commencement of the Constitution.

147. However, while they operate in different time spheres, a common theme that runs across both these provisions is the restriction on dual citizenship. Using these provisions, the Petitioners have urged that since Section 6A does not mandate the express renunciation of the immigrants' previous citizenship before granting them Indian citizenship, Section 6A runs counter to these two constitutional and statutory provisions.

148. At the outset, even if it is assumed that Section 6A grants dual citizenship, it does not run counter to Article 9. We say so for the reason that these two provisions operate in different fields. As discussed above, Article 9 restricts a person possessing foreign citizenship from acquiring citizenship under Articles 5, 6, and 8. However, Section 6A does not grant citizenship under these provisions and is rather a separate method enacted by Parliament by virtue of its power under Article 11. The question of conflict between Article 9 and Section 6A, therefore does not arise at all.

149. Further, Section 6A also does not conflict with Section 9 because Section 6A does not override the scheme of Section 9 and must be read complementarily thereto. In case an immigrant who has been granted citizenship by Section 6A is found to have dual citizenship, Section 9 can always be invoked to hold that such person has ceased to be an Indian citizen. By virtue of Section 9(2), read with Rule 40 of Citizenship Rules, 2009, the Central Government will determine the question of such acquisition of foreign citizenship as per the detailed procedure prescribed under Schedule III of the aforementioned Rules.[110] Since Section 6A is not a safe harbor from

[110] Akbar Khan Alam Khan v. Union of India, AIR 1962 SC 70, para 5; State v. Syed Mohd. Khan, 1962 SCC OnLine SC 2, para 6.

Section 9 and is rather subject to the scheme of restricting dual citizenship, it is not in conflict with Section 9 of the Citizenship Act.

150. However, Section 6A, by operation of law, presumes the renunciation of previous citizenship. As was discussed before in paragraph 25, Section 6A (2) and 6A (3) grant citizenship to immigrants, with a possibility of opting out of such citizenship by filing prescribed forms. If such forms are not filed, and the immigrants choose to retain Indian citizenship, the presumption is that the person is an Indian citizen only and has foregone their previous citizenship. For this, an analogy can be drawn with the foreign territories incorporated in India after independence, for which India passed various legislations that granted Indian citizenship without mandating the explicit renunciation of their previously acquired foreign citizenship.[111] These legislations provide Indian citizenship by default and an opt-out mechanism similar to Section 6A. In the event the person does not opt-out, the law presumes renunciation of previous citizenship.

151. Globally as well, various jurisdictions have held that citizenship can be lost through implied renunciation. For instance, Article 13 of the Constitution of Panama explicitly provides implied renunciation of citizenship. In the USA, Section 349 of the Immigration and Nationality Act, 1952, provides for the automatic termination of citizenship when specific actions are taken. Similarly, in the case of ***Lorenzo v. McCoy***,[112] the Supreme Court of the Philippines held that express renunciation is not necessary

[111] Dadra and Nagar Haveli (Citizenship) Order, 1962; Goa, Daman and Diu, the Goa, Daman and Diu (Citizenship) Order, 1962; Chandernagore (Merger) Act, 1954, Section 12; Citizenship (Pondicherry) Order, 1962; Sikkim (Citizenship) Order, 1975.
[112] Lorenzo v. McCoy, 15 Phil., 559 (Philippines Supreme Court).

for the forfeiture of one's citizenship, and it could be terminated by the actions.

152. Similarly, by electing not to opt-out, immigrants involved in the present context are presumed to have implicitly renounced their previous citizenship as per the law. However, it is essential to acknowledge that this presumption regarding renunciation of citizenship is not definitive and is rebuttable. As elaborated earlier, if an individual is found to have voluntarily availed themselves of the benefits of foreign citizenship despite not opting out of Indian citizenship, such a person would fall under the purview of Section 9 of the Citizenship Act, allowing authorities to revoke their Indian citizenship and face consequential deportation.

153. Therefore, based on the aforementioned reasons, we are of the considered opinion that the framework outlined by Section 6A is that an individual falling under Sections 6A (2) and 6A (3) can only assert Indian citizenship. Such individuals are presumed to have relinquished their previous citizenship. If authorities have reasons to believe that the previous citizenship is still being exercised, they are empowered under Section 9 of the Citizenship Act and associated rules to take steps to revoke the Indian citizenship of the delinquent individuals. Consequently, it can be deduced that Section 6A does not contradict Section 9 of the Citizenship Act, and we declare so.

(c) Section 6A and the oath of allegiance

154. The Petitioners also contended that Section 6A contradicts Section 5 of the Citizenship Act (**Section 5**), which requires every citizen to take an oath of allegiance.

155. The Respondents refuted this argument by asserting that the failure to take the oath was inconsequential, and as such, an oath was not mandated for them.

156. A bare reading of Section 5(2) reflects that it requires the oath of allegiance specifically to be taken by persons who seek citizenship under Section 5(1), which, as summarized previously in paragraph 21, provides citizenship by registration upon making an application to the Central Government.

157. Hence, Section 5(2) requires an oath for a specific mode of acquisition of citizenship. Similarly, under the Citizenship Rules, 2009, the oath is limited to certain modes, such as citizenship by registration under Section 5, citizenship by naturalization under Section 6, etc. Since Section 5(2) does not mandate the oath for every form of citizenship, the immigrants cannot be said to have violated Section 5 by not taking the oath. Likewise, it is difficult to hold that the immigrants have contravened any constitutional provision, as the Constitution does not explicitly mandate an oath for citizenship.

158. Moreover, the absence of such an oath does not absolve the immigrants from their obligation to respect the law and order of India. Even when such oath is not taken before acquiring citizenship, every citizen has to compulsorily abide by the norms of the Constitution, statutory laws, and other rules and regulations. We need not further emphasise that once the immigrants have become Indian citizens by operation of Section 6A, they are regulated by the Constitution of India, the laws framed under it and the values enshrined within them. Hence, the explicit lack of an oath of allegiance before the conferral of citizenship by Section 6A

does not absolve the immigrants covered under this provision from following the laws of our country, just as any other citizen of India.

159. Hence, on account of the above-stated reasons, Section 6A cannot be run down on the premise that it does not mandate an oath of allegiance.

v. Article 14 and classification under Section 6A

160. In addition to the numerous other grounds, the Petitioners have vehemently contended that Section 6A falls foul of Article 14 as it treats equals unequally. They argued that the selective application of Section 6A solely to the State of Assam exhibits hostility against it in comparison to other states. They contended that since the issue of illegal immigration from East Pakistan was also prevalent in States like West Bengal or, rather, was significantly greater in comparison, hence singling out Assam is unconstitutional. The Petitioners further argued that such recourse is unjustifiable and that geographical considerations could not be the determining factor for applying laws differently. In support of their contention that the classification under Article 14 has to be on a reasonable basis and based on lawful object, the Petitioners cited, *inter alia*, ***Nagpur Improvement Trust v. Vithal Rao***[113] and ***Subramanian Swamy v. CBI***.[114]

161. In response, the Respondents have *first* contested the maintainability of the Petitioners' plea by asserting that Article 14 can only be invoked by individuals who are alleged to have been unfairly excluded from benefits granted to others and not by those singled out and subjected to restrictions alone. It is the

[113] Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500.
[114] Subramanian Swamy v. CBI, (2014) 8 SCC 682.

Respondents' case that Article 14 ensures equality in benefits provided but not in liabilities imposed. Given that the Petitioners' claim falls into the latter category, the Respondents contended that the same would not be maintainable. *Second*, the Respondents argued that a statute cannot be struck down as violating Article 14 merely because it does not encompass all classes, as the Parliament wields discretion in legislating for varying degrees of harm. Citing precedents such as the ***State of M.P. v. Bhopal Sugar Industries Ltd***[115] and ***Clarence Pais v. Union of India***,[116] the Respondents countered the Petitioners' arguments by asserting that Parliament can make reasonable classifications and enact different laws based on territorial basis, thus justifying the differential treatment in granting citizenship. *Third*, the Respondents argued that Assam's unique situation, marked by historical conflict, warrants differential treatment under Section 6A, ensuring that equals are not treated unequally. In this light, the central issue that arises for our consideration is whether Section 6A contravenes Article 14 of the Constitution.

162. Article 14, as widely understood, guarantees that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Typically, a claim under Article 14 is brought forth by an individual contending that they have been unfairly excluded from the benefits or protection under law. However, the Petitioners' argument diverges from this norm since they do not assert that they have been excluded from a benefit extended to similarly situated individuals. Instead, the Petitioners are contending that their rights under Article 14 are infringed because they alone have been statutorily compelled to

[115] State of M.P. v. Bhopal Sugar Industries Ltd, (1964) 6 SCR 846.
[116] Clarence Pais v. Union of India, (2001) 4 SCC 325.

bear the burden of Bangladeshi immigrants. Before examining whether Section 6A treats equals unequally, it is crucial to address whether the Petitioners have the *locus* to invoke a claim under Article 14 in the first place.

(a) Maintainability under Article 14

163. A bare reading of Article 14 indicates that it confers individuals with equality before the law and is not restricted to mere equality for the benefits provided under law. This provision came to be interpreted in the ***State of W.B. v. Anwar Ali Sarkar***.[117] In this case, a 7-judge Bench of this Court dealt with the challenge against the West Bengal Special Courts Act, 1950, which allowed the State government to refer certain offences to special courts. This Court noted that the procedure in such special courts was separate from the Code of Criminal Procedure and curtailed the rights of the accused. Accordingly, it held that since the Act singled out certain cases and imposed restrictions on them, it violated Article 14. For this, the Court enunciated the principle that as per Article 14, "*all persons similarly circumstanced shall be treated alike both in privileges conferred* ***and liabilities imposed***".[118]

164. The argument of the Petitioners is similar. They contest that Section 6A has singled out the State of Assam alone *vis-à-vis* other Indian States situated alongside the Bangladesh border and has curtailed the rights of only its original inhabitants. Accordingly, their plea of violation of Article 14 requires determination on merits.

165. This position is also clearly buttressed in ***John Vallamattom v. Union of India***,[119] in which the Court was concerned with a similar

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[117] State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1, para 7.
[118] *Id.*
[119] John Vallamattom v. Union of India, (2003) 6 SCC 611.

question regarding the imposition of restrictions upon Indian Christians alone and not on citizens belonging to other religions. Not only did the Court treat such a claim as maintainable under law, but it also held the provision to be violative of Article 14 because it applied restrictions on one class alone:

> *"28. The provision relating to making of testamentary disposition by the citizens of India vis-à-vis those professing the religion of Christianity* ***must be judged on the touchstone of Article 14 of the Constitution of India. It is true that they form a class by themselves but ex facie I do not find any justifiable reason to hold that the classification made is either based on intelligible differentia or the same has any nexus with the object sought to be achieved."***
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> *"61. (…)* ***The impugned provision is also attacked as discriminatory and violative of Articles 14 and 15 of the Constitution inasmuch as the restriction on bequest for religious and charitable purposes is confined to Christians alone and not to members of other communities. In my opinion, the classification between testators who belong to the Christian community and those belonging to other religions is extremely unreasonable.*** *All the testators who bequeath property for religious and charitable purpose belong to the same category irrespective of their religious identity and so the impugned provision, which discriminates between the members of one community as against another, amounts to violation of Article 14 of the Constitution. (…)"*
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> [Emphasis applied]

166. Given the law cited above, the Petitioners' assertion founded upon Article 14 cannot be invalidated at a preliminary stage merely because they are seeking equality in regard to a restriction as opposed to a benefit. Hence, the Respondents' objection regarding the maintainability of the Petitioners' claim under Article 14 is liable to be rejected.

(b) Section 6A vis-à-vis Article 14

167. The Petitioners argued that the exclusive application of Section 6A to Assam violates Article 14. They contended that by burdening Assam alone with the obligation to accommodate immigrants, Section 6A has detrimentally affected its natural resources and indigenous population. Furthermore, they asserted that since immigrants were also present in other States, there was no reasonable basis for discriminating against Assam and applying Section 6A solely to this State.

168. It is now a settled principle of law that the right to equality enshrined under Article 14 is not a mechanical idea of parity. Article 14 requires the legislature to treat equals equally, but it also allows for differential treatment if the characteristics of the classes differ.[120] In fact, treating unequal entities alike and subjecting them to the same laws could potentially lead to greater injustice. Therefore, rather than enforcing a fixed procrustean notion of equality, Article 14 permits the legislature to classify individuals into different groups and apply distinct norms accordingly.

169. While the legislation can indeed classify persons into different groups and apply distinct standards, such classification must be reasonable. This Court has acknowledged that the precise parameters of what constitutes 'reasonable' has not been firmly established, and there is no single test to determine the reasonableness of a classification.[121] However, while there is no straitjacket formula to determine reasonableness, certain

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[120] Special Courts Bill, 1978, In re, (1979) 1 SCC 380, para 72.
[121] Transport & Dock Workers Union v. Mumbai Port Trust, (2011) 2 SCC 575, para 24.

yardsticks can be used to evaluate it, broadly categorized into the *form* and *object* of the classification.

Yardsticks to check the reasonableness of classification

170. In terms of the form, the classification should not be based on arbitrary criteria and must instead be based on a logic which distinguishes individuals with similar characteristics i.e., the equals from the persons who do not share those characteristics—the unequals. Apart from requiring such differentia, this prong requires that the classification must be intelligible, such that it can be reasonably understood whether an element falls in one class or another.[122] If the class is so poorly defined that one cannot reasonably understand its constituents, it will fail this test of 'intelligible' differentia. Therefore, instead of being based on arbitrary selection, the classification must be supported by valid and lawful reasons.[123]

171. Hence, using an intelligible criterion, the classes must be constituted in a manner that distinguishes the components of that class from the elements that have been left out of the class. This is instantiated by ***State of Kerala v. N.M. Thomas***,[124] where a 7-judge bench was dealing with the challenge of exemption granted to Scheduled Castes from the departmental test required for promotion. The Court held that the same was based on intelligible differentia, as the persons belonging to the exempted class, i.e., the Scheduled Caste, differed from those excluded from this class.

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[122] THE OXFORD HANDBOOK ON INDIAN CONSTITUTION, Oxford University Press, 2016, 940.
[123] State of West Bengal v. Anwar Ali Sarkar, *supra* note 117, para 18.
[124] State of Kerala v. N. M. Thomas, (1976) 2 SCC 310.

172. At this juncture, it is essential to raise the question that if every person or object shares similarities and differences with others in numerous ways, how do we determine whether they are similar enough to be categorized together? To put this into context using an oft-quoted example–assume a law is enacted to create two classes of vehicles, one allowed inside the park and another prohibited.[125] In this scenario, a motorcycle is similar to a child's bicycle in that both these locomotives have two wheels but are dissimilar to the extent that the former operates with an engine and can achieve higher speeds. Further, while a bicycle differs from a motorcycle, it possesses characteristics similar to those of an electric motorcycle since both these vehicles do not emit pollution in the park. Simultaneously, an electric motorcycle is comparable to a fuel-based motorcycle due to their shared propulsion method by an engine, despite their disparity in pollution emissions. In light of these considerations, would such a classification be deemed reasonable if bicycles and electric motorcycles were grouped together as one class, excluding fuel-based motorcycles? Since different variables exist for checking the similarities and dissimilarities, how do we ascertain that 'similar' elements are effectively grouped together?

173. This Court has held that the classification must withstand the test akin to the Wednesbury principles such that the classification shall consider all the 'relevant' similarities and disregard insubstantial or microscopic differences.[126] However, this also does not answer the question conclusively, as one must still know the criterion for gauging 'relevance'. For instance, in the example above, we still do

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[125] H.L.A. HART, *Positivism and the Separation of Law and Morals*, Harvard Law Review, 1958, 71(4), 607.

[126] Ramesh Chandra Sharma v. State of Uttar Pradesh, (2024) 5 SCC 217, para 45; Roop Chand Adlakha v. DDA, 1989 Supp (1) SCC 116, para 19.

not know whether being propelled by an engine should be a relevant criterion or not causing pollution should be the basis of classification!

174. This leads to the second prong of the test, which requires the classification to be as per the object of the statute.[127] This Court has held that while determining who qualifies 'similarly situated' individuals in the given circumstances, the court must see the purpose of law:[128]

> *"54. A reasonable classification is one which includes all who are similarly situated and none who are not.* ***The question then is: what does the phrase "similarly situated" mean? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law.*** *The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good."*[129]
>
> [Emphasis supplied]

175. Hence, in the hypothetical above, the purpose of the law behind restricting the entry of vehicles inside the park will provide the standard of relevance for differentiating vehicles into separate classes. For instance, if the purpose is to stop pollution inside the park, electric motorcycles and bicycles can be grouped in the class of permissible vehicles. In contrast, vehicles based on petrol or diesel can be grouped into separate classes of restricted vehicles. However, if the purpose of the statute is to prevent people inside

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[127] Special Courts Bill, *supra* note 120, para 72; D.S. Nakara v. Union of India, (1983) 1 SCC 305, para 11.
[128] State of Gujarat v. Shri Ambica Mills Ltd., (1974) 4 SCC 656, para 54.
[129] *Id*; Roop Chand Adlakha v. DDA, *supra* note 126, para 16.

the park from getting hurt, children's bicycles might be allowed, but other vehicles might be grouped and restricted.

176. This prong of the test is also echoed in ***Rustom Cavasjee Cooper v. Union of India***,[130] in which an 11-judge Bench of this Court held that the object of the statute was to foment economic development through the assistance of banks, and from a resource standpoint, this development could be more effectively facilitated by 14 banks in particular. Consequently, the Court ruled that classifying these 14 banks in a separate class was based on reasoning that had a nexus with the object of the statute.

177. To sum up, a classification is reasonable if it differentiates between similar and dissimilar elements, if such distinction is intelligible, and if the similarities and dissimilarities have nexus with the purpose of the statute.[131]

178. Further, within this twin-test framework of checking the form and object of classification, this Court has held that the effect of the statute must also be considered.[132] Instead of a mere formalistic study of checking the intelligible differentia and nexus with the object, this Court would undertake a normative analysis and strike down a classification if the object itself is discriminatory or leads to

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[130] Rustom Cavasjee Cooper (Banks Nationalisation), *supra* note 56, paras 178-180.
[131] Provisions similar to Article 14 exist in Singapore (Article 12) and Malaysia (Art. 8(1)), which also use this twin test framework; PO YEN JAP, *Constitutional Dialogue in Common Law Asia*, Oxford University Press,2015; Similar provisions also exist in the Universal Declaration of Human Rights (Article 7), the International Covenant on Civil and Political Rights (Article 26), and Constitutions of other countries such as Bhutan (Article 7(15)), Brazil (Article 5), Canada (Article 15), China (Article 33), France (Article 1), Germany (Article 3), Italy (Article 3), Japan (Article 14), Nepal (Article 18), Switzerland (Article 8), and the USA (Article 1).
[132] Navtej Singh Johar v. Union of India, *supra* note 71, para 409; State of T.N. v. National South Indian River Interlinking Agriculturist Association, (2021) 15 SCC 534, para 21.

a prejudicial outcome not conducive to constitutional morality.[133] This effectively prevents the test of reasonable classification from becoming a mere formula and, instead, ensures that constitutional values are protected when the object itself is unjust.

Qualifications regarding the yardsticks

179. Having established the yardsticks for the reasonableness of classification, it is important to note two crucial qualifications to complete the understanding of this test. *First*, while establishing a nexus with the object of the statute is necessary, it is not essential to demonstrate that the classification was the optimal method to achieve the object in question. To this end, this Court has held that:[134]

> *"33.* ***The nexus test, unlike the proportionality test, is not tailored to narrow down the means or to find the best means to achieve the object. It is sufficient if the means have a "rational nexus" to the object. Therefore, the courts show a greater degree of deference to cases where the rational nexus test is applied. A greater degree of deference is shown to classification because the legislature can classify based on the degrees of harm to further the principle of substantive equality, and such classification does not require mathematical precision.*** *The Indian courts do not apply the proportionality standard to classificatory provisions (…)."*
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> [Emphasis supplied]

180. *Second*, when gauging the reasonableness of classification, the Court must adopt a pragmatic view and refrain from deeming a classification unconstitutional solely because it is marginally under-inclusive.[135] In adjudicating the validity of a statute, the

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[133] Ramesh Chandra Sharma, *supra* note 126, paras 34 and 40.
[134] South Indian River Interlinking, *supra* note 132, para 33.
[135] Shri Ambica Mills, *supra* note 128, para 55.

concept of under-inclusiveness arises when a classification within the law fails to encompass all individuals similarly situated with respect to the law's intended purpose.[136] The approach of Indian courts towards under-inclusive legislation generally exhibits tolerance[137] on the premise that the legislature is "free to recognize degrees of harm"[138] and is allowed to "hit evil where it is most felt".[139] Moreover, this Court has also justified some under-inclusive classifications on the grounds of administrative convenience and legislative experimentation.[140]

181. Likewise, in ***Basheer v. State of Kerala***,[141] this Court upheld the validity of the law as long as it could be reasonably discerned based on intelligible differentia that advanced the object of the statute. The Court emphasized that merely because there is marginal under-inclusivity or the presence of cases falling on both sides of the dividing line, the law would not be declared as *ultra vires* of Article 14. In this vein, it held that:

> *"20.* ***Merely because the classification has not been carried out with mathematical precision, or that there are some categories distributed across the dividing line, is hardly a ground for holding that the legislation falls foul of Article 14, as long as there is broad discernible classification based on intelligible differentia, which advances the object of the legislation, even if it be class legislation.*** *As long as the extent of overinclusiveness or underinclusiveness of the classification is marginal, the*

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[136] *Id.*
[137] Special Courts Bill, *supra* note 120, para 78; State of Uttar Pradesh v. Deoman Upadhyaya, 1960 SCC OnLine SC 8.
[138] Charanjit Lal Chowdhury v. Union of India, 1950 SCC Online SC 49.
[139] B. K. MILLER, *Constitutional Remedies for Underinclusive Statutes: A Critical Appraisal of Heckler v. Mathews*, Harvard Civil Rights-Civil Liberties Law Review, 1985, 20, 86.
[140] South India River Interlinking, *supra* note 132; Superintendent & Remembrancer of Legal Affairs v. Girish Kumar Navalakha, (1975) 4 SCC 754, para 10; Javed v. State of Haryana, (2003) 8 SCC 369, para 17.
[141] Basheer v. State of Kerala, (2004) 3 SCC 609, para 20.

constitutional vice of infringement of Article 14 would not infect the legislation."

[Emphasis supplied]

182. This principle was reiterated in ***Subramanian Swamy v. Raju***,[142] where it was argued that individuals under the age of 18 could demonstrate maturity, suggesting that age requirements should, therefore, be flexible under Article 14. While rejecting this argument, the Court held that categorization does not have to create classes with arithmetic precision, and instead, it would suffice if the classes are broadly comparable.

183. Having identified the criteria for evaluating the constitutionality of classifications, we can now proceed to analyse whether Section 6A is constitutionally valid.

Reasonableness of classification as per Section 6A

184. To assess the reasonableness of the classification made by Section 6A, it is imperative to delve into the background of this provision.

185. As discussed earlier, Section 6A grants citizenship to those who migrated from East Pakistan into India before 25.03.1971. This grant of citizenship was prompted by several factors, with two primary considerations:

(a) *First*, as exemplified by the remarks in the Parliament during the discussion on the bill to introduce Section 6A, humanitarian concerns played a significant role in granting citizenship because it was deemed inhumane to repatriate thousands of people who had migrated during times of war.

[142] Subramanian Swamy v. Raju, (2014) 8 SCC 390, para 63.

(b) *Second*, considerations of inter-state relations were pivotal, as India sought to extend cooperation to the newly formed nation of Bangladesh and help it in restoring normalcy. As part of this understanding, it was agreed to grant citizenship in India to immigrants who arrived before 1971.[143]

186. The pertinent question that arises now is why such citizenship was granted exclusively to immigrants entering Assam. As acknowledged by the Union of India in its affidavit, the issue of immigration also existed in West Bengal. Therefore, if individuals from Bangladesh were immigrating to other States as well, we must ask what criteria justified conferring citizenship solely in Assam.

187. The answer to this question lies in history, specifically when Section 6A was enacted. Between 1980 and 1985, the Government of India engaged in extensive negotiations with representatives of various bodies in Assam. Eventually, an agreement was reached among the Government of Assam, the Government of India, the AASU, and the AAGSP. According to this agreement, the movement's representatives against foreigners in Assam agreed to call off the agitation in exchange for granting Indian Citizenship to only a limited category of immigrants in Assam. As a result, the government also extended benefits to those involved in the agitation and committed to focusing on the socio-economic development of Assam, with particular emphasis on building educational institutions. Known as the Assam Accord, this agreement represented a political compromise that specifically granted

[143] Bholanath Sen, *Lok Sabha Debate* (CAB, 1985), 20.11.1985.

citizenship to immigrants in Assam based on the terms agreed upon in the Accord.

188. Section 6A was inserted to advance this political settlement established through the Assam Accord. The long title of the Citizenship Amendment Act, 1985 captures this by stating that, *"Whereas for the purpose of* ***giving effect to certain provisions of the Memorandum of Settlement relating to the foreigners' issue in Assam (Assam Accord)*** *which was laid down before the House of Parliament on the 10th day of August, 1985 it is necessary to amend the Citizenship Act, 1955."*

189. Since section 6A was predicated on the terms of the Assam Accord, it extended citizenship solely to immigrants in Assam because the Union of India had exclusively engaged in this accord with Assam. This serves as the basis of intelligible differentia *vis-à-vis* other States. As discussed earlier, in assessing the reasonableness of classification, the Court must ascertain whether relevant factors were considered and whether similarly situated individuals were grouped in alignment with the law's objective. Both these criteria are met in this instance. Section 6A duly considered the pertinent factors, notably that the Assam Accord pertained solely to the State of Assam. Since a piquant situation such as that in Assam did not exist in any of the other States, Section 6A's objective did not extend to allowing such citizenship in these other States. Hence, the classification between the State of Assam and other States had a direct nexus with the object of the statute.

190. The next question that arises before us is whether the Court should go one layer further and hold that since such an agreement was entered only with the State of Assam, the said exercise is liable to be construed as violative of Article 14 or whether the Union of India

ought to have entered into similar agreements with other States? This has to be answered in the negative since such a determination falls outside the scope of judicial review, as this Court being not a representative body, should refrain from substituting its judgment for that of the elected representatives. The decision to enter into political compromises and agreements is a prerogative of the political entities involved, based on the specific circumstances and negotiations at hand. In the case of Assam, the unique situation and the negotiations conducted between 1980 and 1985 led to the Assam Accord, wherein certain benefits were extended to the State. However, it may not be appropriate for us to venture into the exercise of analysing whether similar agreements should have been pursued with other States like West Bengal.

191. Apart from the cases discussed while analyzing ***Issue i (Judicial Review) (supra)***, such judicial restraint has also been advocated by foreign courts. Lord Ruskill, in a 5-judge bench of the House of Lords in ***Council for Civil Service Union v. Minister for the Civil Service,***[144] elucidated that:

> *"(…) Prerogative powers* ***such as those relating to the making of treaties****, the defence of the realm, the prerogative of mercy, the grant of honours, the dissolution of Parliament and the appointment of ministers as well as others* ***are not, I think susceptible to judicial review because their nature and subject matter are such as not to be amenable to the judicial process. The courts are not the place wherein to determine whether a treaty should be concluded*** *or the armed forces disposed in a particular manner or Parliament dissolved on one date rather than another."*
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> [Emphasis supplied]

[144] Council for Civil Service Union v. Minister for the Civil Service, 1985 AC 374, para 177.

192. Indeed, India's federal structure allows for diverse relationships between the Union and its constituent States, enabling the Parliament to engage in different agreements based on distinct regional aspirations, political needs, and state-specific requirements. The Assam Accord, along with the introduction of Section 6A, is not the only instance of such political compromises. Historical records document numerous occurrences, such as Article 371A of the Constitution, which was inserted pursuant to the agreement between the Government of India and leaders of the Naga Peoples Convention.[145] Similarly, Article 371G was incorporated pursuant to a memorandum of settlement between the Government of India, the Government of Mizoram and the Mizo National Front.[146] Identical is the basis of Article 332(6), which was based on the agreement between the governments of India and Assam and the Bodo Liberation Tigers.[147] These agreements and provisions are based on asymmetric federalism, recognizing that different States may have unique circumstances and requiring differentiated treatment.

193. Moreover, this conclusion is also supported by various decisions of this Court, which have held that based on the unique historical circumstances of each State, the States may be grouped under different classes for the purpose of reasonable classification under Article 14.[148]

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[145] The Constitution (Thirteenth) Amendment Bill, 1962, Statement of Objects and Reasons.
[146] The Constitution (Fifty-Third) Amendment Bill, 1986, Statement of Objects and Reasons.
[147] The Constitution (Ninetieth) Amendment Bill, 2003, Statement of Objects and Reasons.
[148] Ram Krishna Dalmia v. S.R. Tendolkar, 1958 SCC OnLine SC 6, para 11; Gopi Chand v. Delhi Administration, 1959 SCC OnLine SC 29, para 11.

194. We thus do not find any fault with the government, nor do we dictate that similar agreements should have been made with other States when Parliament entered into a political agreement with Assam alone based on its unique historical situation.

196. As against these considerations, the Petitioners have not been able to conclusively establish that other States were similarly placed. It is an established principle of law that there exists a presumption of constitutionality that underpins legislative enactments unless proven otherwise.[149] With respect to Article 14 specifically, this Court has dismissed claims pertaining to discrimination when insufficient material was presented to support the claim.[150] It has been repeatedly held that to succeed with a claim under Article 14, a mere plea regarding differential treatment is insufficient, and the Petitioner must show that similarly placed classes were discriminated against unjustifiably.[151]

197. While Mr. Divan, learned Senior Counsel representing the Petitioners, argued that the burden would shift unto the State once the Petitioners established *prima facie* evidence of unequal treatment, this shift primarily occurs when the classification is *ex facie* arbitrary, such that the unjust discrimination is so apparent that no proof is required.[152] In such circumstances, the onus must shift because the claimant cannot be burdened to disprove the absence of reasons when there are none.

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[149] *Id.*; Mohd. Hanif Quareshi v. State of Bihar, 1957 SCC OnLine SC 17, para 15.
[150] Bhagwati Saran v. State of Uttar Pradesh, 1961 SCC OnLine SC 170, para 15.
[151] State of Madhya Pradesh v. Bhopal Sugar Industries Ltd., 1964 SCC OnLine SC 121, para 11.
[152] Ameerunnissa Begum v. Mahboob Begum, (1952) 2 SCC 697, para 19; Ram Prasad Narayan Sahi v. State of Bihar, (1953) 1 SCC 274, para 12.

198. However, unless the legislation is clearly arbitrary, this onus cannot be reversed liberally, as sought by the Petitioners. In the present case, the classification was not *ex-facie* arbitrary as it was grounded in the legitimate context of the unique circumstances prevailing in Assam. In addition, as discussed in paragraph 192, many States in India share a *sui generis* relationship with the Union, thereby raising the threshold for establishing *ex-facie* arbitrariness of Section 6A. Accordingly, the burden rested upon the Petitioners to rebut this presumption and demonstrate that other States were also comparably situated and faced similar levels of violence.

199. The illustrated burden has not been discharged by the Petitioners, and this Court is not engaging in a fact-finding endeavor at this stage. We are, therefore, bound to uphold the presumption of constitutionality and assume that the legislature has duly applied its mind and has taken into consideration relevant circumstances.

200. Further, the implementation of the Assam Accord and Section 6A brought quietus to the then-ongoing discord while concurrently enabling India to uphold its diplomatic commitments to Bangladesh and address humanitarian concerns. Although there is merit in the concern surrounding Assam alone having to shoulder the burden of these immigrants, it must be noted that this is not attributable to Section 6A alone. It is well documented, both by historians and by previous decisions of this Court, that incessant migration from Bangladesh has continued post-1971. It was neither the intention nor the effect of Section 6A to give shelter to this latter class of immigrants. Indeed, a large cause of the Petitioners' grievance is the government's failure to give effect to this latter part of the Assam Accord and our citizenship regime–

which envisages timely detection and deportation of these post-1971 immigrants.

201. However, even if it is assumed that other States are similarly placed and should have been included thereunder, this alone would not render Section 6A unconstitutional.

Under-inclusiveness and unconstitutionality of Section 6A

202. As was discussed previously in paragraphs 180 to 182 of this judgement, Courts are generally tolerant of marginally under-inclusive legislations and recognize that similar cases may fall on both sides of the dividing line, provided that there is a broad discernible classification based on intelligible differentia.[153] While analyzing validity under Article 14, the Court has to be cognizant of the fact that any division done by a classification cannot be mathematically precise and accurate. As long as the broad purpose of the law is being fulfilled, a classification cannot be deemed unreasonable.

203. We are thus of the considered opinion that even if there are States that could share similar characteristics with Assam, the comparison should be between two broad classes: Assam and the rest of India, rather than each individual constituent of these two classes. Since other States, in general, were not facing similar issues, the differentiation in classes was reasonable. Hence, even if some States like West Bengal were placed similarly to Assam, that in and of itself would not lead to holding Section 6A unconstitutional. Accepting the Petitioners' contention and striking down Section 6A on the grounds of non-inclusion only of West

[153] Basheer, *supra* note 141.

Bengal would amount to allowing an under-inclusivity challenge in disguise, which, as discussed before, is not generally permitted by this Court.

204. Instead of comparing borderline cases such as West Bengal with Assam, the comparison ought to be between Assam and an average constituent of the other class, i.e. the rest of India. As analysed in previous sections, Assam and the rest of India are distinguishable on the basis of the unique political situation created in Assam by the influx of immigrants. The classification under Section 6A, therefore, is not violative of Article 14 simply because it is applicable to the State of Assam alone.

205. On the basis of the aforesaid reasoning, it is held that Section 6A is not *ultra vires* Article 14 of the Constitution of India.

vi. Manifest arbitrariness

206. Citing ***Shayara Bano v. Union of India***,[154] the Petitioners argued that a provision can be struck down as unconstitutional if it is manifestly arbitrary. To prove that Section 6A is manifestly arbitrary, the Petitioners contended that:

(a) Section 6A is against the overarching principles of democracy, federalism and the rule of law and is liable to be struck down on the grounds of manifest arbitrariness.

(b) The cut-off dates in Section 6A, namely 01.01.1966 and 25.03.1971, have no rationale and have been set arbitrarily.

[154] Shayara Bano v. Union of India, (2017) 9 SCC 1.

(c) There is no machinery for evaluating, assessing and determining the grant of citizenship under Section 6A (2), thus allowing anyone above the age of 57 years in Assam to claim citizenship without claiming ancestry or provenance.

207. The Petitioners also contended that the expression 'ordinarily resident' is vague as it does not prescribe any yardstick for the number of days required to qualify the same. In this light, the Petitioners have cited this Court's decision in ***Harakchand Ratanchand Banthia v. Union of India***[155] to contend that when key concepts in a provision are vague, the same ought to be struck down.

208. *Per contra*, the Respondents contended that the challenge to Section 6A under Article 14 on the grounds of being 'manifestly arbitrary' is untenable as there is an underlying rationale for the cut-off dates. It was submitted that the validity of 01.01.1966 as the cut-off date is severable from the validity of 25.03.1971. Hence, even if it is held to be arbitrary, Section 6A as a whole cannot be held to be unconstitutional. The Respondents also contended that the very objective behind Section 6A and the Assam Accord, as a whole, reflect a constitutional tradition of accommodating differences within Indian polity through asymmetric federal arrangements. Lastly, the Respondents have submitted that the term 'ordinarily resident' has been defined by this Court in ***Arunachal Pradesh v. Khudiram Chakma***[156] and hence is not vague.

209. The issues that fall for our consideration are four-fold:

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[155] Harakchand Ratanchand Banthia v. Union of India, (1969) 2 SCC 166.
[156] Arunachal Pradesh v. Khudiram Chakma, 1994 Supp (1) SCC 615.

i. Is there any rationale for the cut-off dates, i.e., 01.01.1966 and 25.03.1971? Whether they are manifestly arbitrary?

ii. Whether the process envisaged under Section 6A and the Citizenship Rules, 2009 for the migrants is unreasonable and suffers from the vice of 'manifest arbitrariness'?

iii. Is Section 6A is so 'manifestly arbitrary' that it offends Part II of the Constitution?

iv. Is the term 'ordinarily resident' in Section 6A undefined and vague? If yes, does Section 6A deserve to be struck down on the grounds of being manifestly arbitrary?

(a) Relation between Article 14 and arbitrariness

210. At the outset, it is pertinent to address that apart from the reasonable classification aspect of non-discrimination discussed in the preceding section, Article 14 also prohibits manifestly arbitrary actions. The principle underlying the same is that if an act is arbitrary and no rational basis exists for its application, it may lead to differential application on similarly situated persons. Hence, such arbitrariness is not only antithetical to the notion of equality, it is also prohibited under Article 14.

211. The absence of arbitrariness, or non-arbitrariness, as an essential component of the rule of law and a concomitant need in Article 14 is sufficiently evident. The relation between rule of law and arbitrariness was also traced in ***Indira Nehru Gandhi v. Shri Raj Narain***[157] and thereafter, in ***E. P. Royappa v. State of Tamil Nadu***,[158] wherein equality was observed to be antithetical to

[157] Indira Nehru Gandhi v. Shri Raj Narain, 1975 Supp SCC 1.
[158] E. P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.

arbitrariness. Furthermore, it was underscored that when an act is arbitrary, it inherently embodies inequality in political logic and constitutional jurisprudence, thus contravening the principles enshrined in Article 14. It is imperative to understand the significance of logic as one of the critical facets behind state action, the absence of which would render such action susceptible to arbitrariness.

212. This Court further elaborated upon the relationship between Article 14 and the conception of non-arbitrariness in the seminal case of ***Maneka Gandhi v. Union of India***,[159] wherein after emphasizing the dynamic nature of 'equality' and citing the 'arbitrariness' doctrine as formalized through ***EP Royappa (supra)***, it was observed by PN Bhagwati, J. (as His Lordship then was) that:

> *"7. […] Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. […]"*

(b) Constituents of manifest arbitrariness

213. The test of 'manifest arbitrariness' itself was crystallized in the authoritative precedent set out in ***Shayara Bano v. Union of India (supra)***, where this Court dealt with the challenge to the practice of 'triple talaq' as recognized in the Muslim Personal Law (Shariat) Application Act, 1937. In that case, this Court over-ruled its previous decision in ***State of AP v. McDowell & Co.***,[160] wherein

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[159] Maneka Gandhi v. Union of India, (1978) 1 SCC 248, para 7.
[160] State of Andhra Pradesh v. McDowell & Co., (1996) 3 SCC 709.

it held that an enactment cannot be struck down on the grounds of it being arbitrary or unreasonable and that some constitutional infirmity has to be found before invalidating an Act.

214. Thus, the test of 'manifest arbitrariness' was set out in ***Shayara Bano (supra)*** as follows:

> *"101. […] Manifest arbitrariness, therefore, must be something done by the legislature* ***capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary."***
>
> [Emphasis supplied]

215. The test of 'manifest arbitrariness, as propounded in ***Shayara Bano (supra)***, was eventually relied on in a catena of decisions including ***Joseph Shine v. Union of India***,[161] and is the prevailing law on this issue.

(c) Facets of the test of manifest arbitrariness

216. The term 'irrationality' refers to the lack of reason or logic. While highlighting the need for the presence of clear reason or logic, this Court in ***Cellular Operators Assn. of India v. TRAI***,[162] determined that the legislation, statute or provision being challenged must be supported by a rationale. The rationale demonstrates the application of intelligent care and observation in the enactment of such laws or provisions. To this end, it was held that:

> *"48. (…) We cannot forget that when viewed from the angle of manifest arbitrariness or reasonable restriction, sounding in*

[161] Joseph Shine v. Union of India, (2019) 3 SCC 39.
[162] Cellular Operators Assn. of India v. TRAI, (2016) 7 SCC 703.

Article 14 and Article 19(1)(g) respectively, the Regulation must, in order to pass constitutional muster, ***be as a result of intelligent care and deliberation, that is, the choice of a course which reason dictates****. Any arbitrary invasion of a fundamental right cannot be said to contain this quality. (…)"*

[Emphasis applied]

217. Further, in ***Joseph Shine (supra)***, this Court emphasized the underlying logic while striking down the provision prohibiting adultery:

"30. […] The offence and the deeming definition of an aggrieved person, as we find, ***is absolutely and manifestly arbitrary as it does not even appear to be rational*** *and it can be stated with emphasis that it confers a licence on the husband to deal with the wife as he likes which is* ***extremely excessive and disproportionate****. We are constrained to think so, as it does not treat a woman as an abettor but protects a woman and simultaneously, it does not enable the wife to file any criminal prosecution against the husband. Indubitably, she can take civil action but the husband is also entitled to take civil action. However, that does not save the provision as being manifestly arbitrary. That is one aspect of the matter. If the entire provision is scanned being Argus-eyed, we notice that on the one hand, it protects a woman and on the other, it does not protect the other woman.* ***The rationale of the provision suffers from the absence of logicality of approach and, therefore, we have no hesitation in saying that it suffers from the vice of Article 14 of the Constitution being manifestly arbitrary****."*

[Emphasis supplied]

218. Still further, while the test of manifest arbitrariness requires the presence of logicality, such reasoning does not have to be stated explicitly and can be discernable from the facts and circumstances.[163] However, it should be noted that the converse may not hold. In other words, even if the reason or rationale behind

[163] J.S. Luthra Academy v. State of Jammu and Kashmir, (2018) 18 SCC 65.

the impugned provision is expressly stated, it does not automatically guarantee non-arbitrariness. Such reason also needs to align with constitutional morality and public interest, and must bear a nexus with the object of the statute. The aspect of irrationality, as found in the test for 'manifest arbitrariness', thus, does not solely imply the absence of reason but also requires alignment with constitutional morality. Hence, the legitimacy of the reason or logic behind the impugned legislation should be viewed from the lens of constitutional ideals. This was so observed by this Court in ***Joseph Shine (supra)***, wherein it was clarified that irrationality does not merely denote the absence of reason but also requires that such reasoning be in harmony with constitutionalism.

219. We may hasten to add that, the legitimacy of the reason behind the legislation that has been impugned must be viewed from the lens of public interest also. This Court, in ***Hindustan Construction Co. Ltd. v. Union of India,***[164] struck down Section 87 of the Arbitration and Conciliation Act, 1996, on the ground of manifest arbitrariness by observing that it was against public interest. This was also observed in ***Manish Kumar v. Union of India (supra),*** that the golden thread running through this ground, making up the doctrine of manifest arbitrariness, is the absence of public interest.

(d) Extent of review under manifest arbitrariness

220. The standard for applying the test of 'manifest arbitrariness' is reflected in the word 'manifest', which signifies that the arbitrariness should be palpable and visible on the face of it.[165]

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[164] Hindustan Construction Co. Ltd. v. Union of India, (2020) 17 SCC 324.
[165] Vivek Narayan Sharma (Demonetisation Case-5 J.) v. Union of India, (2023) 3 SCC 1, para 255.

Hence, while examining whether a provision is manifestly arbitrary, Courts should practice judicial restraint and must not substitute their will against that of lawmakers.[166] Using this test, Courts cannot question the wisdom of the policy but can only test its legality in terms of the aforementioned grounds.

221. Such judicial restraint becomes all the more necessary while testing the arbitrariness behind a bright-line test. In law, the bright-line test is a clearly defined norm that does not leave a scope of interpretation. For instance, consider a legal requirement stipulating that individuals must be 18 years old to marry. Such a rule leaves no room for interpretation. In this context, it could be argued that if maturity is the rationale behind marriageable age, the use of the bright-line test introduces arbitrariness into legal standards, as a person aged 17.5 years old may in theory be more mature and suitable for marriage than someone aged 18.5 years old.

222. The fallacy in this argument can be elucidated by the Sorites paradox, a logical quandary generated by vague terms, with blurred boundaries of application. To give an oft-quoted example, consider defining the term 'heap of wheat' based on the number of wheat grains. If a collection of N number of grains is called a heap, removing one grain would not alter the assessment because the difference between a heap and non-heap cannot be of one single grain. By the same reasoning, removing two wheat grains would not change the classification. Extending this logic incrementally, by deducting one wheat grain at a time, one could argue that even a

[166] K.S. Puttaswamy (Privacy-9J) v. Union of India, (2017) 10 SCC 1, para 310.

heap with N minus N grains would not be a heap, leading to a fallacious conclusion.

223. Applying this paradox to the above illustration, if an individual of 18 years is deemed mature enough for marriage, then logically, someone who is 18 years minus one day should also be considered mature. Following the same reasoning, one could argue that a person who is 18 years minus 365 days, effectively 17 years old, would also meet the maturity criterion and therefore, the stipulation of 18 years as the minimum age appears arbitrary, as it fails to account for the potential maturity of individuals who are younger. As already explained, there exists an inherent fallacy in this argument, and hence, it ought to be rejected.

224. In that sense, every bright-line test, to some extent, is arbitrary. However, not every arbitrariness crosses permissible limits inherent in law. Indeed, the law sometimes prescribes these heuristic devices because the cost of arbitrariness is less than the gains received by prescribing a clear standard instead of keeping it vague. To put it differently, where arbitrariness is necessitated for a legislative distinction, the object of such a legislative act is also to prevent manifest arbitrariness.

225. To explain using another analogy, let us consider the context of setting speed limits. Juxtapose two scenarios: one, where a sign is posted saying "do not drive faster than 60 kmph"; and second, where the sign says, "do not drive fast". Following the logic discussed earlier, the 60 kmph standard appears arbitrary because if 60 kmph is deemed fast, then 59 kmph should also be considered fast, yet it would not be restricted. However, if the standard is left vague as "fast", the consequences could be unjust and manifestly arbitrary. Some cars might exceed 80 kmph, leading to potential

legal disputes when stopped. The lack of precise regulation could result in ineffective traffic control and costly litigation for public institutions. Conversely, if law enforcement clamps down to limit fast driving, it could create a chilling effect, slowing traffic even below the optimal speeds. Thus, while a 60 kmph limit may appear arbitrary, yet implementing that as a bright-line test would be more reasonable overall.

226. Therefore, while testing the arbitrariness of bright-line tests, the Courts must be mindful of the inherent limitations in such norms and therefore a microscopic review should be avoided. Instead, as discussed above, the effort should be to determine if the bright-line norm crosses the prescribed limit of 'manifest arbitrariness' and is irrational and capricious enough to be struck down. If the norm is backed by a policy reason, the Court must refrain from excessively questioning the specific standard and should exercise judicial review cautiously.

(e) Cut-off dates in Section 6A

227. The Petitioners vehemently challenged the cut-off dates and argue that those dates are arbitrary. As explained above, a bright-line test given by cut-off dates cannot be arbitrary unless it is shown to be unreasonable. This Court has, in a catena of decisions, maintained that the determination of cut-off dates falls within the domain of the Executive and the Court should not interfere with the fixation of the same, unless it appears to be, on the face of it, blatantly discriminatory and arbitrary.[167] To this effect, this Court has even held that the choice of a cut-off date cannot always be dubbed as arbitrary, even if no particular reason is forthcoming for the choice,

[167] State of Punjab v. Amar Nath Goyal, (2005) 6 SCC 754.

unless it is demonstrated to be capricious or whimsical.[168] This stance aligns with the understanding of the inherent arbitrariness of bright-line tests, as discussed above in paragraphs 221 to 224.

228. Adverting to the rationale behind the cut-off date of 01.01.1966, it seems there are historical circumstances, and the said date appears to be based on two significant policy reasons:

(a) Humanitarian grounds: As discussed in paragraph 185 of this judgement, Section 6A was predicated on humanitarian grounds, where citizenship was granted to the people displaced by wars and political turmoil. Between 1964 and 1965, a significant influx of refugees prompted the Union to issue instructions to register such persons as citizens.[169] The humanitarian grounds for the grant of citizenship apparently influenced the rationale for choosing this cut-off date.

(b) Administrative convenience: Further, the immigrants who migrated before 1966 were added to the electoral rolls prepared as on 01.01.1966. These rolls served as the nearest definite document that could be drawn upon to determine citizenship, especially with a view to desist from disturbing the *status quo* amidst the large-scale migration and consequent settlement of people before 01.01.1966.[170] It was also administratively convenient to select this cut-off date because of the impracticality of requesting documents from individuals who migrated much earlier, such as in 1951. Although 1961 was initially proposed as the cut-off date, but after due deliberations, eventually, the cut-off date of 01.01.1966 was

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[168] Union of India v. Parameswaran Match Works, (1975) 1 SCC 305.
[169] T. S. MURTY, *Assam, The Difficult Years: A Study of Political Developments in 1979-83*, Himalayan Books, 1983.
[170] *Id.*

agreed to, and thus, the period before and after 1966 was dealt with in a differential manner.

229. It can thus be concluded that the date of 01.01.1966 was not set arbitrarily but based on proper application of mind.

230. As regards to the reasoning behind the cut-off date of 25.03.1971, the same can be traced to the launch of Operation Searchlight by Pakistan, an event which also marked the onset of the Bangladesh Liberation War. Subsequently, on the very next day, on 26.03.1971, Bangladesh officially declared independence. In response to these developments, the Prime Minister of Bangladesh committed to "*by every means, the return of all the refugees who had taken shelter in India since March 25, 1971, and to strive, by every means to safeguard their safety, human dignity and livelihood*".[171]

231. Soon thereafter, the President of Bangladesh promulgated the Bangladesh Citizenship (Temporary Provisions) Order, 1972, on 15.12.1972, with retrospective validity from 26.03.1971. The 1972 Order essentially introduced a framework of constituent citizenship, signifying the initial acquisition of citizenship through the operation of the law. The 1972 Order put forth a discernible distinction and provided citizenship from 25.03.1971, ameliorating the issue of statelessness. Since the war had ended and a new nation was formed on 25.03.1971, the concern regarding providing citizenship based on humanitarian grounds was also assuaged. This appears to be the rationale behind prescribing the date of 25.03.1971 as a cut-off for obtaining citizenship in India.

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[171] Joint Communique issued at the end of the visit of the Prime Minister of Bangladesh, Sheikh Mujibur Rahman, to India, 08.02.1972.

232. This background indicates that the cut-off dates in Section 6A were not incorporated in a vacuous manner but were a result of considerable deliberation and discussion, and were also backed by a well-considered rationale. Furthermore, keeping in mind the humanitarian considerations that would have gone into the grant of citizenship under Section 6A, we cannot hold that the rationale behind the cut-off dates militates against any constitutional values or the concept of constitutional morality. Instead, Section 6A acknowledged the political and social realities of that period along with the impracticability of reversing the changes that had occurred.

233. Nevertheless, and as noted earlier, the determination of a cut-off date falls within the ambit of the policy makers and the Court would be reluctant to impinge into such fixation, save and except when the assigned date is vitiated with discriminatory and arbitrary considerations. Since the cut-off dates in Section 6A have been found not to offend the aforementioned principles, we are not inclined to interfere in the prescription of such cut-off dates.

234. We may hasten to add here that Section 6A does not operate perpetually and since it does not rescue those immigrants who entered the State of Assam on or after 25.03.1971 and has become redundant *qua* them, the cut-off dates prescribed therein cannot be said to be tainted with the element of manifest arbitrariness.

(f) Process prescribed under Section 6A

235. The Petitioners also claimed that the process as prescribed under Section 6A is also manifestly arbitrary. Let us now proceed to consider whether the process in built in Section 6A suffers with the

vice of manifest arbitrariness, regardless of the number of conditions prescribed therein for claiming citizenship.

236. The conditions for an individual who migrated prior to 01.01.1966 are such that *first,* the person must be of Indian origin; *second*, they should have migrated to Assam from the specified territory before 01.01.1966; and *third*, the person must have been ordinarily resident in Assam since the date of their entry into Assam. Additionally, the persons whose names were included in the electoral rolls for the 1967 elections were also to be conferred deemed citizenship. Section 6A (1) further defines the meaning of the terms contained in Section 6A (2). Section 6A (1) (a) explains 'Assam' to mean "*territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985"*. Section 6A (1) (c) defines 'specified territory' to mean "*territories included in Bangladesh immediately before the commencement of the Citizenship Act, 1985"*. Further, the person is deemed to be of 'Indian origin', as per Section 6A (1) (d), if "*he, or either of his parents or any of his grandparents was born in undivided India"*. The meaning of 'ordinarily resident in Assam' is also clear and has been discussed in the succeeding paragraphs. Hence, conferring deemed citizenship under Section 6A (2) is not arbitrary but subject to the abovementioned conditions.

237. Further, the migrants who came to Assam on or after 01.01.1966 and before 25.03.1971, will have to be subjected to the following conditions and processes, in addition to the conditions stipulated above:

i. Such persons should have been detected to be foreigners. Section 6A (1) (e) makes it clear that a person is deemed to have been a foreigner on the date on which a Tribunal

constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

ii. Such persons, thereafter, should register themselves in accordance with the provisions of the Citizenship Rules, 2009, with a registering authority as specified therein. Rule 19 of the Citizenship Rules, 2009 deals with the Registering Authority, who would be an officer not below the rank of the Additional District Magistrate.

iii. Thereafter, per Rule 19 (2), an application for registration under Form XVIII would have to be made by the persons so detected by the Tribunals, before the Registering Authority within 30 days of such detection. Such application must be made within 30 days of the appointment of the Registering Authority.

iv. The Registering Authority would thereafter enter the particulars of the application in Form XIX and return a copy of the application under his seal to the applicant.

v. The Authority would send such a copy of the application to the Central and State governments with a quarterly return in Form XX.

vi. Further, as per Section 6A (4), a person registered under the process mentioned above would be entitled from the date of his detection as a foreigner and till the expiry of ten years from that date, the same rights and obligations as an Indian citizen except for the right to vote.

vii. Rule 20 of the Citizenship Rules, 2009 also allows the Registering Authority to make a fresh reference to the Tribunals upon receipt of an application from an applicant when any question arises whether such person fulfils the necessary criteria or the Tribunal has not recorded a finding to that effect.

238. From the above, it is clear that there are legibly delineated conditions and a reasonable process envisaged under Section 6A and the Citizenship Rules, 2009 for migrants who came before 01.01.1966, as well as for those who came on or after 01.01.1966 and before 25.03.1971.

239. Still further, apart from these conditions prescribed within Section 6A itself, various other statutes supplement the issue of migrants in Assam. As will be detailed in the later part of this judgement under ***Issue xi (Citizenship Act vis- à-vis the IEAA) (infra)***, these statutes include the Immigrants (Expulsion from Assam) Act, 1950, Foreigners Act, 1946, the Foreigners (Tribunals) Order, 1964, the Passport (Entry into India) Act, 1920 and the Passport Act, 1967. In these statutes, the Immigrants (Expulsion from Assam) Act, 1950 prescribes the mechanism for the expulsion of immigrants acting against the public interest, and the Foreigners Act, 1946 as well as the Foreigners (Tribunals) Order, 1964 prescribe, *inter alia*, the mechanism for detection of foreigners, the norms regarding their stay in India before they are granted citizenship, and deportation of illegal immigrants post-1971. Additionally, the Passport (Entry into India) Act, 1920 can also be used to penalize illegal immigrants who entered India without a valid passport. The Passport Act, 1967 can be used for penalizing immigrants travelling out of India without such a passport.

240. The above statutes, for the reasons assigned in the later part, supplement Section 6A and are to be read together to create a harmonious code. The process which runs through all of these legislations does not appear to be capricious or irrational. We cannot therefore approve the Petitioners' approach of singularly reading Section 6A in isolation, calling it incomplete and terming it manifestly arbitrary for not prescribing all conditions exhaustively.

241. There also appears to be an explicit and legitimate reason behind the process of segregating migrants into different classes, as provided in Section 6A. This is so, since the over-arching objective of Section 6A and the Assam Accord was to achieve a comprehensive and lasting solution to the complex issue of migration in Assam; balancing legal, political, and humanitarian considerations.

242. At this juncture, it is crucial to distinguish between the prescribed process under the provision and its actual implementation. While the legislature had anticipated that the procedure outlined in Section 6A, along with other complementary statutes mentioned in paragraph 239 above, would suffice to address the issue of immigration into Assam, this intention has not been realized. Instead of adequately addressing the immigrants who entered the state before 1971 and timely identifying and deporting those who entered illegally post-1971, the Respondents have not properly implemented this legal regime, leading to a scenario where the latter category of immigrants have been residing in Assam like ordinary citizens. However, this failure is not attributable to Section 6A but rather to its inadequate implementation.

243. Certainly, had the law granted Indian citizenship to undocumented immigrants from another country on an ongoing basis without any intelligible criteria or discernible principle, it could have been susceptible to challenge. However, this is not the case here. As previously analyzed, Section 6A conferred citizenship only upon certain immigrants who met certain specified conditions up to a particular cut-off date. Functioning alongside other statutes, its aim was not only to legitimize the stay of a particular class of immigrants but also to facilitate the detection and deportation of others. Section 6A is clearly not manifestly arbitrary.

(g) Section 6A and Part II of the Constitution

244. The Petitioners further argued that individuals declared as citizens in Part II of the Constitution, along with successive generations, constitute the basic structure of the Constitution, and any statute or statutory provision which interferes with this basic structure, without reasonable care and fairness, should be deemed 'manifestly arbitrary' thus rendering Section 6A as liable to be struck down.

245. Since we have already dealt with Part II of the Constitution in the preceding parts, this issue need not be iterated again. It would be sufficient to observe that Section 6A does not go against the notion of citizens under Part II of the Constitution, and the same does not sustain a challenge based on either the 'basic structure' theory or 'manifest arbitrariness'.

(h) 'Ordinarily resident' in Section 6A

246. The Petitioners submitted that the expression 'ordinarily resident', as contained in Section 6A, is vague as it does not prescribe any yardstick for the number of days required to qualify the same. In

this light, the Petitioners cited this Court's holding in ***Harakchand Ratanchand Banthia v. Union of India (supra)***, to contend that when key concepts in a provision are vague, the same ought to be struck down.

247. Vagueness as one of the grounds for striking down a provision under Article 14 can be understood through judicial pronouncements made by this Court. In the ***Indian Social Action Forum v. Union of India***,[172] a 2-judge Bench of this Court dealt with a challenge to certain provisions of the Foreign Contribution (Regulation) Act, 2010 and the Foreign Contribution (Regulation) Rules, 2011. While particularly analyzing the words 'activity, ideology and programme' in Section 5 (1) of the above enactment, this Court affirmed the High Court's view that the abovementioned words do not suffer from the vice of vagueness, and would not invite the wrath of Article 14. This Court observed as follows:

> *"16. […] The High Court held that the words "activities of the organisation, the ideology propagated by the organisation and the programme of the organisation" having nexus with the activities of a political nature are expansive but cannot be termed as vague or uncertain. Sufficient guidance is provided by Parliament in Section 5 and it is for the rule-making authority to lay down the specific grounds.* ***We are in agreement with the High Court that Section 5(1) does not suffer from the vice of vagueness inviting the wrath of Article 14****. […]"*
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> [Emphasis supplied]

248. The vagueness doctrine was further developed in ***Nisha Priya Bhatia v. Union of India***[173] which observed that a duly enacted law cannot be struck down merely on the grounds of vagueness,

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[172] Indian Social Action Forum v. Union of India, (2021) 15 SCC 60.
[173] Nisha Priya Bhatia v. Union of India, (2020) 13 SCC 56.

unless such vagueness transcends into arbitrariness. With this background, we shall now examine the test for assessing vagueness and whether Section 6A falls foul of the same.

Vagueness in law

249. Vagueness is an inherent feature of language. The same intention can be expressed with a variety of words and expressions, and any given choice of words can relate to multiple different intentions. This problem is particularly exacerbated with vague terms, which often have a wide variety of referents, leading to comparatively greater open-endedness and variability. It is well known that unless the law prescribes a bright-line test, which too has its own set of interpretative problems as discussed before, most standards in law have some degree of open texture, and inevitably harbor some vagueness or multiple meanings.

250. The following example may be considered to understand the import of a word with an open texture. Suppose a statute uses the term 'tall' instead of prescribing a particular numerical test for height. Now, the meaning of this term can vary depending on the context and the purpose of the statute. The standard of tallness might differ for a ride at an amusement park and perhaps in discerning the maximum height of vehicles on motorways. Hence, in that sense, the term is vague and open to wide interpretation.

251. Vagueness in law, however, exists on a spectrum, and different scenarios necessitate different degrees of tolerance towards vagueness. Excessive vagueness in law can make the statute overbroad and might make the exercise of discretion a capricious exercise. At the same time, it might sometimes be desirable in the interest of justice to retain some open texture in statutes, to cover

future eventualities that the legislature might not have anticipated but intended to address based on the overarching purpose of the law. In that sense, the sliding scale of vagueness in law determines whether the law is just and inclusive, or unjust and capricious.

252. To instantiate, consider Section 5 of the Limitation Act, 1963, which allows the condonation of delay if 'sufficient cause' has been delineated by such applicant. In this context, instead of prescribing a mathematically precise formula in regards to what is a sufficient cause, it was considered necessary to use words that provide a broad spectrum and enable a fact-based analysis for each case. Since lawmakers could not possibly envisage all potential situations that may arise in the future at the time of legislating, it was therefore considered prudent to leave it to the facts and circumstances of each individual case.

253. Apart from enabling individualized application of the broad legal directive, a certain degree of vagueness is also necessary to address evolving societal needs. An excellent example of this is reflected in the jurisprudence of Article 21. In this scenario, if the framers of the Constitution had sought to include a laundry list encompassing a myriad of conditions to which Article 21 would be applicable, the ramifications would have been substantial. Any interpretation of the right to privacy would have required a constitutional amendment. Therefore, it may often be beneficial to prescribe a broad standard and allow enough flexibility to address changing needs of the society. Judicial discretion in that sense is often wedded unto the law and cannot be eliminated by invoking excessive formalism.

254. This takes us to the question that if vagueness is inherent in law and may even be desirable on some level, then what ought to be the

test and standard for striking down a law on grounds of being vague. In this regard, we will now analyze the test and standard for vagueness, which would make a statute or legislation liable to be struck down on that basis.

Test for void-for-vagueness

255. Vagueness needs to be viewed from the perspective of: (*a*) the authorities applying the impugned law; and (*b*) the persons being regulated by the impugned law, as was held in ***Shreya Singhal v Union of India***,[174] where this Court dealt with the constitutionality of Section 66A of the Information Technology Act, 2000. This Court, after referring to terms in Section 66A, such as 'grossly offensive' or 'menacing', observed the same to be very vague and held that neither the prospective offender under Section 66A nor the authorities who are to apply Section 66A would have any manageable standard to charge a person for an offence under Section 66A. It was observed as follows:

> *"85. […] Quite obviously, a* ***prospective offender of Section 66-A*** *and the* ***authorities who are to enforce Section 66-A*** *have absolutely no manageable standard by which to book a person for an offence under Section 66-A […]."*
>
> [Emphasis supplied]

256. With respect to the first limb, i.e., the perspective of the person applying the law, the standards are made clear in ***State of Madhya Pradesh v. Baldeo Prasad***,[175] where while dealing with a constitutional challenge to the validity of the Central Provinces and Berar Goondas Act, 1946, it was observed that the definition of the word '*goonda*' does not give necessary assistance to the District

[174] Shreya Singhal v Union of India, (2015) 5 SCC 1.
[175] State of Madhya Pradesh v. Baldeo Prasad, (1961) 1 SCR 970.

Magistrate, in deciding whether a particular citizen falls under the category of '*goonda*' or not. Further, in ***Maneka Gandhi (supra)***, a Constitution Bench of this Court, while trying to construe the import of the words 'in the interests of general public' in Section 10(3)(c) of the Passport Act, 1967, observed that the law is well settled to the effect that "*when a statute vests unguided and unrestricted power in any authority to affect the rights of a person without laying down any policy or principle which is to guide the authority in exercise of this power, it would be affected by the vice of discrimination…".* After noting that the impugned words in the provision are taken *ipsissima verba* from Article 19(5) of the Constitution, it was held as follows:

> *"16. (…)We are clearly of the view that* ***sufficient guidelines are provided by the words "in the interests of the general public" and the power conferred on the Passport Authority to impound a passport cannot be said to be unguided or unfettered****(…)."*
>
> [Emphasis supplied]

257. This view has also been endorsed in ***Harakchand Ratanchand Banthia (supra),*** where a Constitution Bench of this Court dealt with the constitutional validity of the Gold Control Act, 1968. The challenge made by the Petitioners therein, against Section 27 of the Act, mainly contended that the conditions imposed through the section for the grant or renewal of licenses were uncertain, vague and unintelligible, thus conferring broad and unfettered power upon the statutory authorities in the matter of grant or renewal of license.

258. Hence, to satisfy the first facet regarding the person applying the law, the impugned law must be clear enough to provide necessary

guidelines regarding application, and must not confer unfettered discretion.

259. When evaluating the issue from the second perspective, which focuses on the individuals affected by the law, it is essential to adopt an objective standard reflecting the viewpoint of a person of average intelligence within the affected group. Thus, it follows that a person of ordinary intelligence amongst such a class of persons on which the impugned law operates should be able to understand the scope or sphere of application of the law. This standard was observed by a Constitution Bench of this Court in ***Kartar Singh v. State of Punjab***,[176] where it dealt with the constitutionality of specific provisions in the Terrorist and Disruptive Activities (Prevention) Act, 1987, analyzed the term 'abet' and gave it a reasonable construction to avoid the vice of vagueness. It was observed that vague laws offend important values and reinforce the need for laws to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited.

260. ***Nisha Priya Bhatia (supra),*** was a case where a challenge to Rule 135 of the Research and Analysis Wing (Recruitment, Cadre and Services) Rules, 1975 was laid. This Court observed that such a challenge on the ground of vagueness could only be sustained if the Rule does not provide a person of ordinary intelligence with a reasonable opportunity to know the scope of the sphere in which the Rule would operate. This position was further developed, in line with the perspective of the persons upon which the provision operates, by observing that this standard is to be applied from the

[176] Kartar Singh v. State of Punjab, (1994) 3 SCC 569.

point of view of a member working in the organization as an intelligence officer, more particularly, a Class I intelligence officer.

261. Furthermore, this standard was also seen to have been applied in the ***Federation of Obstetrics & Gynaecological Societies of India (FOGSI) v. Union of India***,[177] wherein the constitutional validity of Sections 23 (1) and 23 (2) of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 was being challenged. While holding against such a challenge, it was observed by this Court that the provisions are not vague and that a responsible doctor is expected to know what they are undertaking and what their responsibilities are. In this light, the standard of a 'person of ordinary intelligence' was also seen to be employed and the Court went on to observe that a person of ordinary intelligence can comprehend the provisions of the Act and they can have fair notice of what is prohibited and what omission they should make. A nuanced understanding of the term 'ordinary intelligence' can be gained from this Court's ruling in ***Seksaria Cotton Mills Ltd. v. State of Bombay***,[178] where, albeit in a different context, while interpreting the meaning of the word 'possession', it was observed as follows:

> *"21. But we need not go into all this. Here is an order which is to affect the business of hundreds of persons, many of whom are small petty merchants and traders, the sort of men who would not have lawyers constantly at their elbow; and even if they did, the more learned their advisers were in the law the more puzzled they would be as to what advice to give, for it is not till one is learned in the law that subtleties of thought and bewilderment arise at the* ***meaning of plain English words which any ordinary man of average intelligence, not***

[177] Federation of Obstetrics & Gynaecological Societies of India (FOGSI) v. Union of India, (2019) 6 SCC 283.
[178] Seksaria Cotton Mills Ltd. v. State of Bombay, (1953) 1 SCC 561, para 21.

versed in the law, would have no difficulty in understanding *[...]"*

[Emphasis supplied]

262. To sum up this facet, the impugned law is to be tested from the perspective of a person of 'ordinary intelligence' from the class to which the law applies. We have also delineated cases where the impugned law operates on a specialized class of persons, such as a Class-I intelligence officer of the Research and Analysis Wing, as seen in ***Nisha Priya Bhatia (supra)***, and medical practitioners or doctors as seen in ***FOGSI (supra)***. In any case, even if the persons being regulated are not a specialized class of persons, the Court would adopt the standard of an ordinary man of average intelligence, who, though not well versed in law, would have no difficulty in understanding the plain meaning of the words contained in the impugned law, when confronted with it.

263. Given the above, it is observed that the test for striking down a law on the grounds of vagueness can be viewed through two perspectives, both of which are to be taken into account, and the standards for the same have to be satisfied to sustain a challenge on the grounds of a law or provision being void for vagueness. Thus, a statute or its provision can be struck down for vagueness if:

i. The authority interpreting and applying the impugned law or provision is not sufficiently guided by such law or provision and is conferred unfettered discretion by virtue of the same; and

ii. When confronted with the plain meaning, a person of ordinary intelligence, amongst the persons regulated by the impugned

law or provision, faces difficulty in understanding the sphere of their application.

The extent of review for the test of 'void for vagueness'

264. It is also well settled that ordinarily, courts should endeavour to draw a demarcating line and infer some reasonable meaning from an impugned provision, rather than hastening to intervene and striking down the entire provision on the grounds of vagueness. This view was also echoed in ***K.A. Abbas v. Union of India***,[179] where a Constitution Bench of this Court dealt with the constitutionality of Section 5B of the Cinematograph Act, 1952 and laid down the thresholds for applicability of the vagueness doctrine. It was held that if a law is vague, it should be accorded the interpretation which best suits the legislature's intention and advances the purpose of the legislation. If that was not possible, and the legislation was marred with uncertainty which *prima facie* appeared to take away a guaranteed freedom, it could be struck down. However, this Court also cautioned that such recourse be resorted to sparingly, and the Court should instead endeavor to draw the line of demarcation where possible.

265. Similarly, another important principle governing this doctrine is that vagueness ought to be inversely proportional to the gravity of the consequences involved—i.e., the more penal the consequences, the less vague the legislation should be. Vagueness, especially in criminal laws, ought to be used to protect the individual facing penalty.[180]

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[179] K.A. Abbas v. Union of India, (1970) 2 SCC 780.
[180] Shreya Singhal, *supra* note 174.

Whether Section 6A is void for being vague

266. Now turning to the issue at hand, the Petitioners' apprehension concerns the meaning of the phrase 'ordinarily resident in Assam', as provided in Section 6A, and more particularly in clauses (2) and (3) thereof.

267. At the very threshold, we must note that the consequences of Section 6A are relevant for our determination of vagueness, as discussed in paragraph 263 of this judgement. Section 6A confers citizenship upon a sub-class of immigrants into Assam, and can therefore not be classified as criminal or penal. Instead, by legitimizing the stay of certain immigrants in India, Section 6A is more akin to a beneficial legislation. Given this, we are inclined to extend greater laxity when testing the term 'ordinarily resident' for vagueness.

268. *First*, while examining the expression 'ordinarily resident' from the viewpoint of the authority interpreting and applying the law, it could be observed that there is little vagueness in this term, given that this Court has already dealt with the same and extracted its import, particularly within the context of its usage in Section 6A. ***Khudiram Chakma (supra)***, dealt with the case of the Chakmas, who were a group of people who had migrated to Assam in 1964 and had shifted to Arunachal Pradesh thereafter, and were claiming citizenship under Section 6A. It was held that 'ordinarily resident' within Section 6A meant "*ordinarily resident in Assam from the date of entry till the incorporation of Section 6-A, namely, 07.12.1985*". To further understand the nuanced import of 'ordinarily resident', this Court, after placing reliance on ***Smt.***

Shanno Devi v. Mangal Sain[181] observed the same to mean that "*it is not necessary that for every day of this period he should have resided in India. In the absence of the definition of the words 'ordinarily resident' in the Constitution it is reasonable to take the words to mean 'resident during this period without any serious break.'*" In ***Smt. Shanno Devi (supra)***, this Court was interpreting the term 'ordinarily resident' as appearing in Article 6 of the Constitution, which applies in the case of citizenship for persons who migrated to India from Pakistan. The term 'ordinarily resident' under Section 6A can thus hardly be said to be undefined or vague.

269. In addition, it must also be noted that the phrase 'ordinarily resident' is used in various Indian legislations, in contexts not too dissimilar from Section 6A. Besides the Indian Constitution, it finds mention in Sections 5 and 10 of the Citizenship Act, 1955, in the Representation of the People Act, 1950, in the Life Insurance Corporation Act, 1956, the Income Tax Act, 1961 and the Patents Act, 1970, among other statutes. Given such frequent usage, it would be difficult to term 'ordinarily resident' as vague. This Court has held the same in ***Premium Granites v. State of T.N.,***[182] where it was noted that the term 'public interest' had acquired the character of being a 'definitive concept' in Indian jurisprudence, owing to its widespread usage in the Constitution and other enactments, apart from its interpretation in several judicial pronouncements.

270. Hence, the words 'ordinarily resident in Assam', as contained in Section 6A (2) and (3), cannot be seen to suffer from the vice of vagueness, keeping in view the fact that the judicial officers

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[181] Smt. Shanno Devi v. Mangal Sain, (1961) 1 SCR 576.
[182] Premium Granites v. State of T.N., (1994) 2 SCC 691.

constitute the Foreigners Tribunals; their orders are subject to review by superior courts; and there are civil administration officers aiding the Tribunals, all of whom are well conversant with the nuances of the procedure contemplated under Section 6A.

271. When proceeding to apply the second limb of the test of vagueness, i.e., from the perspective of persons regulated by the impugned law, the relevant class of persons for consideration would be the immigrants who came to Assam from erstwhile East Pakistan before the cut-off date of 25.03.1971.

272. Such an analysis would indicate that an immigrant from East Pakistan of ordinary intelligence, who has come before 25.03.1971 to Assam and who is not versed in law, when confronted with the plain meaning of the words 'ordinarily resident since the date of his entry in Assam', would readily be able to understand the scope or sphere or application of the words. The emphasis here is whether a person of ordinary intelligence can understand the meaning *simpliciter* and gain a basic idea of the scope or sphere of application of the same within the context of the impugned law, and not a nuanced or exact legal understanding. On application of such a threshold with respect to the persons being regulated, it would be difficult to hold that such persons would be unable to understand the *simpliciter* contour and indicative meaning of the phrase 'ordinarily resident', and would find it so vague as to be unable to the meaning of the words. This observation is further bolstered by the fact that none from the affected class of immigrants has contended before us that they found the term 'ordinarily resident' to be vague or evasive.

273. We thus hold that Section 6A does not suffer from manifest arbitrariness because: (*a*) there is application of mind behind the incorporation of the cut-off dates; (*b*) the process under Section 6A is not arbitrary; (*c*) Section 6A does not violate Part II; and (*d*) the term 'ordinary residence' is not vague enough to be void.

vii. Article 29 and Section 6A

274. The Petitioners have attempted to claim endogamous community rights through the route of Article 29 of the Constitution. They contended that there has been a drastic demographic change in the State of Assam due to the influx of illegal migrants from erstwhile East Pakistan, which has resulted in Assamese culture being lost. They further argued that the right under Article 29(1) is absolute and provides a group the freedom to shape their cultural identity. This, they argue, gets jeopardized when there is a forcible imposition of a foreign culture, as is happening through the unchecked migration of Bangladeshi immigrants into Assam.

275. Countering the Petitioners' contentions, the Respondents submitted that demographic changes could not be a constitutionally valid metric for measuring cultural change. Changes to religious demographics could be traced to several different factors, including state reorganisation and internal migration. Further, they contended that the objective of Article 29(1) is to establish a multicultural society, and not an endogamous one. They argued that accepting the Petitioners' argument would lead to cultural exclusivity, which they felt was not constitutionally permissible. Further, they also urged that a constitutional culture exists in India, which ought not to be endangered on the basis of demographic change.

(a) Background of Article 29

276. Article 29(1) of the Constitution, which is included in Part III, confers upon any section of citizens residing in the territory of India, the right to conserve its language, script or culture. The text of the provision reads as follows:

> *"29. Protection of interests of minorities. — (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."*

277. Incorporated into the constitutional framework with a distinctive approach to bestowing rights upon a segment of the populace, this provision underwent extensive debate and scrutiny within the halls of the Constituent Assembly. The deliberations surrounding this provision serve as an invaluable resource for comprehensively understanding the significance of Article 29, affording us insight into the overarching intent of its framers during the formulation of this particular provision.

278. Article 29, which was then draft Article 23 prior to its inclusion into the Constitution, was the subject matter of intense debate, with respect to both the terms used in the provision itself and the import of the rights it conferred. Although draft Article 23 initially used the term 'minority', it was substituted for the words 'section of citizens'. This change was made keeping in mind the diversity of India and with the aim of ensuring that children received education in the language of their choice, while simultaneously making sure that they continued to learn the language of whichever State they may be a part of.[183] Thereafter, the term 'section of citizens' got

[183] Begum Aizaz Rasul, *Constituent Assembly Debates*, Volume 7, 08.12.1948.

crystallised to the extent that attempts to replace it with the term 'minority' were negatived by the Assembly.[184] With that, Article 29, as we are familiar with today, found its place as a part of the Constitution.

279. Provisions akin to Article 29(1), which establish a right to preserve culture, can be identified in numerous Constitutions across various jurisdictions. For instance, Article 20(2) of the Constitution of Albania grants the right to 'preserve and develop' ethnic, cultural, and linguistic identity. A similar right is articulated in Article 56 of the Armenian Constitution, Article 11 of the Georgian Constitution, Article 59 of the Kosovan Constitution, Article 114 of the Latvian Constitution, and Article 35(1) of the Polish Constitution. While these provisions share the common objective of cultural preservation, they vary slightly from Article 29(1) by incorporating the term 'develop'.

280. The Petitioners in the present case allege a violation of their right specifically under Article 29(1). This article aims to protect and guarantee the right conferred upon every citizen of India to conserve their language, script or culture. When read in conjunction with Article 30, the overarching objective of Article 29 is to allow minority communities to establish educational institutions to preserve and fortify their cultural, linguistic, or scriptural heritage. However, given the specific allegations presented by the Petitioners, our scrutiny will be confined exclusively to assessing a potential violation of Article 29(1).

[184] Z. H. Lari, *Constituent Assembly Debates*, Volume 7, 08.12.1948.

(b) Standing under Article 29(1)

281. Article 29(1) effectively has two key aspects that need to be determined: *first*, whether there is a 'section of citizens' seeking to conserve their language, script or culture and *second,* that such language, script or culture in question is 'distinct'.

282. Article 29(1) begins with the term 'any section of citizens'. Though the term 'minority' is used in the marginal heading, the scope of Article 29(1) is not restricted to minorities as understood in the technical sense.[185] It instead extends to any section of citizens residing in the territory of India. This was a conscious choice on the part of the framers of our Constitution,[186] as is apparent from the following words of Dr. B.R. Ambedkar:

> *"For instance, for the purposes of this article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities.* ***Similarly, if certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in the technical sense, they would be cultural and linguistic minorities in Bengal. The article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the terms as I have explained just now.*** *That is the reason why we dropped the word "minority" because we felt that the word might be interpreted in the narrow sense of the term, when the intention of this House, when it passed article 18, was* ***to use the word "minority" in a much wider sense, so as to give cultural protection to those who were technically not minorities but minorities nonetheless. It was felt that this protection was necessary for the simple reason that people who go from one province to another and settle there, do not settle there permanently. They do not***

[185] Dr. B.R. Ambedkar, *Constituent Assembly Debates*, Volume 7, 08.12.1948.
[186] *Id.*

uproot themselves from the province from which they have migrated, but they keep their connections. *They go back to their province for the purpose of marriage. They go back to their province for various other purposes, and* ***if this protection was not given to them when they were subject to the local Legislature and the local Legislature were to deny them the opportunity of conserving their culture, it would be very difficult for these cultural minorities to go back to their province and to get themselves assimilated to the original population to which they belonged.*** *In order to meet the situation of migration from one province to another, we felt it was desirable that such a provision should be incorporated in the Constitution."*

[Emphasis supplied]

283. Thus, Article 29(1), while conferring the right to conserve, does not restrict itself only to the notion of a minority as understood in the technical sense but includes any group that may seek to conserve a distinct language, script or culture.

284. This interpretation of Article 29(1) has also been established by a 9-judge bench of this Court in ***Ahmedabad St. Xavier's College Society v. State of Gujarat***,[187] wherein it held that:

"6. It will be wrong to read Article 30(1) as restricting the right of minorities to establish and administer educational institutions of their choice only to cases where such institutions are concerned with language, script or culture of the minorities. The reasons are these. ***First, Article 29 confers the fundamental right on any section of the citizens which will include the majority section whereas Article 30(1) confers the right on all minorities. Second, Article 29(1) is concerned with language, script or culture, whereas Article 30(1) deals with minorities of the nation based on religion or language. Third, Article 29(1) is concerned with the right to conserve language,***

[187] Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717, para 6.

script or culture, whereas Article 30(1) deals with the right to establish and administer educational institutions of the minorities of their choice. Fourth, the conservation of language, script or culture under Article 29(1) may be by means wholly unconnected with educational institutions and similarly establishment and administration of educational institutions by a minority under Article 30(1) may be unconnected with any motive to conserve language, script or culture. A minority may administer an institution for religious education which is wholly unconnected with any question of conserving a language, script or culture."

"238. [...] ***Article 29(1) gives security to an interest: Article 30(1) gives security to an activity.***"

[Emphasis supplied]

285. The Petitioners herein have sought to protect their 'culture'. While there is no single definition of the term, academicians and scholars have defined culture as "*that complex whole which includes knowledge, belief, arts, morals, law, custom and any other capabilities and habits* acquired *by a man as a member of society*"[188] or as "*the handiwork of man and as the medium through which he achieves his ends.*"[189] Hence, although a precise definition of the term 'culture' cannot explicitly be delineated, its comprehensive connotation is expansive, encompassing diverse elements inherent to a specific group or community.

286. Considering these aspects, the next point which arises for consideration is whether the right under Article 29(1) can be invoked by the entire section of citizens aiming to preserve their culture or language or if it can be invoked by a few individuals on behalf of the larger section of citizens. In this context, it becomes

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[188] PASCUAL GISBERT, *Fundamentals of Sociology*, Orient Longman, 1973 (3rd ed.), 342.
[189] BRONISLAW MALINOWSKI, *A Scientific Theory of Culture and Other Essays*, The University of North Carolina Press, 1944, 67.)

essential to examine previous decisions of this Court where a violation of Article 29(1) has been put forth to ascertain who the invoking party was.

287. In ***State of Karnataka v. Associated Management of English Medium Primary and Secondary Schools***,[190] the imposition of a particular language by the State in primary schools was under challenge. Rights under Article 29(1) were asserted by an association representing private schools. Similarly, in ***State of Bombay v. Bombay Education Society and others***,[191] the right of the Anglo-Indian community to conserve their culture and language under Article 29(1) was upheld. The parties invoking the right were the Bombay Society and its two directors, which sought to ensure value-based education for the underprivileged. Thus, notwithstanding the language of Article 29(1), it is not necessary that the right must be invoked by the entirety of the section of citizens belonging to a particular community, or that such community must collectively seek redressal.

288. In the instant case, the Petitioners include various Assamese student organisations like the Assam Sanmilita Mahasangha and All Assam Ahom Sabha; their invocation of Article 29(1) is, therefore, maintainable. Furthermore, it is not in dispute before us that there exists a distinct Assamese culture. Indeed, Assam proudly serves as a testament to our nation's rich culture and diversity, with various groups and sub-groups co-existing harmoniously, including the Koch-Rajbangsi, Bodo, Sonowal Kacharis, Dimasas, and more.[192] This cohabitation reflects a

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[190] State of Karnataka v. Associated Management of Medium Primary and Secondary Schools, (2014) 9 SCC 485.
[191] State of Bombay v. Bombay Education Society, (1954) 2 SCC 152.
[192] CULTURE OF ASSAM – ASSAM STATE PORTAL, https://static.mygov.in/saas/s3fs-saas/assam/mygov_149761430071181.pdf.

cooperative and peaceful integration of diverse cultures within the region. Furthermore, adding to the cultural mosaic, Assam also boasts of linguistic diversity, with over 13 million residents conversing in Assamese and Bengali while also embracing local languages like Karbi, Mishing, Rabha, Tiwa, Dimaca, and more.[193] Indeed, the crux of the matter at hand does not revolve around whether Article 29(1) applies to the Petitioners. Instead, the focal point is whether Section 6A by its operation has curtailed the Petitioners' rights under Article 29 to conserve their distinct culture.

(c) Substance of Article 29(1)

289. As discussed previously, Article 29(1) aims to 'conserve' the language, culture or script of a section of citizens. Instead of obligating the State to make any special provisions for the development of such language, script, or culture, the ambit of the term 'conserve' is to prohibit state intervention in these aspects.[194] This intent to proscribe interference, though not apparent, has been explicitly emphasized in the discussions of the Constituent Assembly and has consistently been underscored by this Court in various decisions.

290. A dialogue between K. Santhanam and Hasrat Mohani during the Assembly debates notably encapsulates this dimension of non-intervention. It suggests that the objective of Article 29(1) was envisioned to forestall any potential harm to cultures by fascist regimes, should such a scenario arise.[195] K. Santhanam, in particular, had stated in this regard as follows:

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[193] CENSUS OF INDIA, 2011.
[194] Govind Ballabh Pant, *Constituent Assembly Debates*, Volume 7, 08.12.1948
[195] K. Santhanam, Constituent Assembly Debates, Volume 7, 08.12.1948.

"Sir, you will remember that throughout Europe, after the first World War, all that the minorities wanted was the right to have their own schools, ***and to conserve their own cultures which the Fascist and the Nazis refused them****. In fact, they did not want even the State schools. They did not want State aid, or State assistance.* ***They simply wanted that they should be allowed to pursue their own customs and to follow their own cultures and to establish and conduct their own schools. Therefore, I do not think it is right on the part of any minority to depreciate the rights given in article 23(1)****."*

[Emphasis supplied]

291. Likewise, Dr. B.R. Ambedkar gave his perspective on the matter, echoing the sentiment that the State should refrain from intervening and imposing any culture, whether local or otherwise, upon a community. Dr. B.R. Ambedkar further underscored that the provision does not levy any burden or obligation upon the State.[196] In this regard, he articulated the following:

"I think another thing which has to be borne in mind in reading article 23 is that it does not impose any obligation or burden upon the State. It does not say that, when for instance the Madras people come to Bombay, the Bombay Government shall be required by law to finance any project of giving education either in Tamil language or in Andhra language or any other language. There is no burden cast upon the State. ***The only limitation that is imposed by article 23 is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law impose upon it any other culture which may be either local or otherwise [...]****"*

"[…] The original article as it stood in the Fundamental Rights only cast a sort of duty upon the State that the State shall protect their culture, their script and their language. ***The original article had not given any Fundamental Right to these various communities. It only imposed the duty and***

[196] Dr. B.R. Ambedkar, *supra* note 185.

added a clause that while the State may have the right to impose limitations upon these rights of language, culture and script, the State shall not make any law which may be called oppressive, not that the State had no right to make a law affecting these matters, but that the law shall not be oppressive. *Now, I am sure about it that the protection granted in the original article was very insecure. It depended upon the goodwill of the State.* ***The present situation as you find it stated in article 23 is that we have converted that into a Fundamental Right, so that if a State made any law which was inconsistent with the provisions of this article, then that much of the law would be invalid by virtue of article 8 which we have already passed****."*

[Emphasis supplied]

292. The nature of the protection afforded by Article 29 also came up before this Court in ***D.A.V. College v. State of Punjab***,[197] which analysed a counterfactual and held that had the State intervened in compelling affiliated colleges, including minority institutions, to provide instruction in the Punjabi language, it would have impeded the right to conserve their language, script, and culture. It held that such an intervention would have amounted to stifling the language and script of other sections of citizens and encroaching on their right to conserve their own culture and language.

293. At this juncture, it is imperative to recognize that Article 29 does not advocate for absolute governmental abstention in matters involving culture, language or script. In fact, to some extent, government intervention is unavoidable as regulation is essential for the maintenance of public order and for upholding constitutionalism. State actions and regulations with an insignificant or merely incidental effect on a community's cultural

[197] D.A.V. College v. State of Punjab, (1971) 2 SCC 269.

rights might also not be caught in the crosshairs of Article 29(1). This is also seconded by various decisions of this Court, where some such regulatory interventions by the State were held to not constitute a curtailment of Article 29(1) rights.[198] In addition, although not germane to the controversy at hand, we must add a word of caution that not all cultural practices of a section of citizens—for example, those blatantly running against the spirit and grain of our Constitution, like casteism and gender discrimination—would be protected by Article 29(1).

294. A violation of Article 29, therefore hinges on the 'nature' and 'degree' of State intervention and not merely on the *simpliciter* fact of intervention. In other words, the violation of Article 29 is necessarily a question of law which requires adjudication of the circumstances, intention and effect of the state intervention on the aggrieved section of citizens, as well as the society at large.

295. To sum up our discussion, the rights conferred by Article 29(1) require that the State not take any steps to erode a community's culture, language or script; and concomitantly accords to such section of citizens the freedom and independence to preserve and conserve their culture, language and script, by themselves. At the same time, the right under Article 29(1) does not necessitate the Government to enact specific provisions for its enforcement and also does not altogether restrict the State from enacting regulations.

(d) Section 6A vis-à-vis Article 29

296. Having scrutinized the fundamental basis on which the applicability of Section 6A needs to be examined, it is imperative at

[198] S. P. Mittal v. Union of India, (1983) 1 SCC 51.

this juncture to systematically address each of the Petitioners' contentions.

297. The Petitioners contended that the presence of immigrants from Bangladesh has led to an erosion of their culture. However, it is not their contention, nor is it our opinion, that the scheme of Section 6A was intended to take away these cultural rights. Section 6A does not address culture at all; it focuses solely on establishing the criteria that migrants from the East Pakistan region must fulfil within specified dates to obtain citizenship upon entering Assam. The impact on Assamese culture, if any, would be only incidental and not direct or intentional.

298. In addition, the onus is on the Petitioners to not only show effect, but also demonstrate causation. The Petitioners need to establish both, that there has been an adverse impact on Assamese culture over time and that such impact is attributable to the legitimisation of the citizenship status of pre-1971 immigrants. The Petitioners have been unable to establish the latter. Indeed, the respondents have proffered various other plausible explanations, like internal migration, state reorganization and unchecked immigration post-1971 which fall outside the umbrella of Section 6A. Additionally, Section 6A does not compel pre-1971 immigrants to keep residing within the territory of Assam once they have obtained Indian citizenship, given that they would enjoy Article 19(1)(e) rights like any other citizen of India.

299. To substantiate the former limb on effect, the Petitioners have cited data showing changes in Assam's religious and linguistic demographics. These metrics by themselves are not 'culture' within the meaning of Article 29(1). Although significant changes to the demographics of a region can affect the interests of its original

inhabitants, the 'culture' of a region by itself is a far more complex and dynamic phenomenon—involving an interplay of various competing forces and interconnected elements.

300. Though we are not oblivious to the Petitioners' demographic anxiety, we must be cautious of the impact our findings would have on the greater national landscape. Accepting the Petitioners' assertion that a mere change in demographics is sufficiently actionable evidence of erosion of rights under Article 29(1) would have far reaching consequences. We say so, for the reason that it would undermine the idea of fraternity envisaged by our Constitutional drafters, and bring to life their fears by threatening the cohesion of our diverse nation. It would open the floodgates for similar challenges by residents of other states who might seek to undermine Article 19(1)(e) rights and inter-state migration under the guise of protecting their indigenous culture under Article 29(1). The Constitution of India, and indeed this Court as well, does not envision India as a union of endogamous-homogenous territories. The cascading ramifications of accepting the Petitioners' stand on federalism and national harmony would be significant, deleterious and not improbable.

301. The Petitioners further asserted that the influx of migrants from East Pakistan has led to a substantial acquisition of land and scarce resources by these immigrants, consequently resulting in the marginalization of the original Assamese inhabitants within their own territory. It was their specific contention that such acquisition not only poses a threat to Assamese people but specifically to the culture and heritage of endangered tribes in Assam.

302. Though the material on record does not substantiate such claim, regardless thereto, such a plea has no legally sustainable foundation. All citizens have the right to own property and, unless restricted by statute or other law, they are free to enter into private land transactions. Once such a transaction has taken place between two private individuals, this Court cannot set the clock back in the teeth of Article 300A of the Constitution merely because when seen collectively it results in a pattern of land ownership which is considered undesirable by some other groups. Simultaneously, individual allegations of involuntary land transactions are best not dealt with us, considering that we are examining a question of constitutional interpretation, while sitting in writ jurisdiction.

303. At this stage, and given the restricted ambit of the present proceedings, this Court cannot embark on a complex or microscopic fact-finding exercise to determine whether factually there has been any cultural erosion as alleged by the Petitioners.

304. We thus sum up our analysis of the Petitioners' claim under Article 29, holding that though they have the standing to make such a claim but on the facts of the present case, they have failed to show either an actionable impact on Assamese culture, or trace the cause of it to Section 6A. On the contrary, Section 6A when read along with the larger statutory regime surrounding citizenship and immigration, mandates timely detection and deportation of illegal immigrants, a large portion of whom entered Assam post-1971. Seen from this perspective, it is the non-implementation of the statutory regime which is the cause of the Petitioners' concerns; their attack on the constitutionality of Section 6A is misplaced.

viii. Article 21 and Section 6A

305. The Petitioners contended that Section 6A is violative of Article 21 because it infringes upon the rights of the 'indigenous' Assamese community. They argued that immigration has led to the marginalization and disruption of their socio-economic aspirations. Further, relying on Article 1 of ICCPR, they urged that their right of self-governance is being violated by Section 6A. Lastly, the Petitioners claimed that the inclusion of an unidentified migrant population burdens the country's natural resources, particularly impacting the citizens residing in a State and hindering sustainable development, along with depriving the Assamese community from enjoying the full spectrum of socio-economic rights.

306. *Per contra*, the Respondents argued that instead of contravening Article 21, Section 6A enforces the same because foreigners' rights are also protected thereunder. Additionally, they contend that Section 6A, in fact, gives quietus to a long-standing dispute. According to the Respondents, the provision does not violate Article 21 as Section 6A is to be construed as a "procedure established by law".

307. The issue that arises for consideration therefore is whether Section 6A is violative of Article 21. Though Article 21 needs no introduction, it provides that no person can be deprived of life and personal liberty except according to procedure established by law.

(a) 'Marginalization' of a community

308. In this regard, the Petitioners have put forth an argument akin to their claim under Article 29 and have argued that Section 6A violates Article 21 as it affects the way of life of original inhabitants.

309. Although the rights conferred by Article 21 differ from those under Article 29 of the Constitution; the burden to be discharged by the Petitioners to support their claims would remain broadly similar. It would be otiose for us to delineate the legal tests and the substance of the rights provided by Article 21 in the context of the Petitioners' cultural claims, given that the Petitioners have failed to provide material beyond mere averments.

310. As elaborated in paragraph 298 of this judgement, the Petitioners need to establish both a deleterious effect of Section 6A on their indigenous communities as well as trace the cause of such effect to Section 6A. In light of our conclusions in the preceding segment re: Article 29, namely, that the Petitioners have been not been able to show a constitutionally actionable impact on their communities, and if at all there is any such impact it can be attributed to several factors beyond Section 6A. The Petitioners' challenge on the ground of violation of Article 21, thus deserves to be closed at the threshold itself.

(b) Right of self-governance

311. In addition to asserting that their community is being marginalized, the Petitioners have also laid claim to the right of self-governance. In support of this assertion, they have referenced Article 1 of the ICCPR, which affirms that all "peoples" possess the right to self-governance. The expression 'peoples' has a wide connotation and it is nearly impossible to outline its exact constituents. It is however, a settled proposition that Article 1 referred to above, is a collective right, which cannot be claimed by an individual.

312. In any case, India has declared its reservation regarding this Article and has stated that:[199]

> *"The Government of the Republic of India declares that the words 'the right of self-determination' appearing in [this article] apply* ***only to the peoples under foreign domination*** *and that these words do not apply to sovereign independent States or* ***to a section of a people*** *or nation--which is the essence of national integrity."*
>
> [Emphasis supplied]

313. Further, we are of the considered opinion that the perceived right under Article 1 of the ICCPR is not enforceable through writ jurisdiction. Even otherwise, it cannot be invoked by the Petitioners, more so in light of India's explicit reservation against its application in India, and given that it generally is applicable only to people under foreign domination.

314. That apart, it is difficult to countenance the assertion that immigration has impacted the self-governance of the original inhabitants of Assam. The Petitioners have not demonstrated how Section 6A affects their right to govern themselves democratically. In India, the right of self-governance has to be understood within the contours of the Constitution and the laws framed under it, which provides self-governance at the level of political units such as Panchayats and District Councils, in addition to the national-level Parliament and various state-level Legislatures.[200] In addition, as discussed in ***Issue ix (Article 326 and Section 6a)*** **(*infra*)**,

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[199] PERMANENT MISSION OF INDIA, HUMAN RIGHTS COMMITTEE https://pmindiaun.gov.in/pageinfo/ODY3#:~:text=Article%201%3A%20The%20Government%20of,which%20is%20the%20essence%20of.

[200] Constitution, *supra* note 22, Part IX, IXA, Sixth Schedule.

India allows the opportunity for self-governance by providing the right to vote on the basis of adult franchise.

315. We must also note that the Petitioners' have not claimed that any of these Constitutional or other electoral legislations have been violated. We are therefore not inclined to entertain the Petitioners' claim on self-governance, which in a way amounts to a prayer for creation and recognition of an extra-Constitutional right. In any case, our analysis in this context would border on adjudicating the appropriateness and sufficiency of the electoral framework created by the Constitution.

316. It is clarified that, the arguments surrounding dilution of the voting ability of the indigenous Assamese have been addressed in the next section. Without repeating our observations on demographic anxiety in paragraph 300 of this judgement, it would suffice to state that we are unable to agree with the Petitioners' argument that conferring citizenship to a subset of immigrants from East Pakistan with a different language or culture would amount to undermining the self-governance rights of the Assamese.

(c) Right of sustainable development

317. The Petitioners have contended that Article 21 has been infringed by Section 6A, as it permits immigrants to utilize natural resources, thereby contravening the public trust doctrine. They argued that had the immigrants been resettled in other States, the strain on natural resources in Assam would have been mitigated, and the government could have managed resources more effectively. The Petitioners have also contended that allowing increased access to Assam's natural resources contradicts the principles of sustainable development.

318. In this vein, the doctrine of public trust provides that the State holds the natural resources as the trustee of the general public, and as a consequence, bears a duty to protect them.[201] This doctrine mandates that resources should be used in a manner that does not efface other people's and subsequent generations' right to use such resources in the long term. A 5-judge bench of this Court has held that the task of adjudicating whether public trust has been violated or not, would not entail a comparative analysis of alternative deployments of such natural resources. The Court ought to only assess whether the deployment under challenge as implemented by the government, is fair or not.[202]

319. We therefore need to examine whether the Parliamentary enactment contravenes the constitutional principles for having expropriated natural resources in an unfair, wasteful or exploitative manner, such that larger collective or community rights have been undermined.

320. In our considered opinion, the mere fact that a sub-class of immigrants whose status has been legitimised by Section 6A also has access to these resources does not automatically imply a disruption of ecological balance or a violation of the original inhabitants' rights to resource usage. This argument conflates the idea of "unfair usage" with "more usage"—a premise that cannot be accepted.

321. Sustainable development and population growth can coexist harmoniously and need not be mutually exclusive. A nation can accommodate immigrants and refugees, while simultaneously

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[201] M. C. Mehta v. Kamal Nath, (1997) 1 SCC 388, para 34.
[202] Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1, para 146.

prioritizing sustainable development and equitable allocation of resources. By implementing policies that encourage environmental conservation, efficient resource management, and social integration, a country can effectively address the challenges posed by demographic changes while safeguarding its long-term prosperity. The logic underlying the Petitioners' argument, if allowed, can tomorrow be extended to seek controls on even domestic inter-state movement. The Petitioners' challenge on the basis of sustainable development under Article 21 therefore, must be rejected.

ix. Article 326 and Section 6A

322. The Petitioners contended that the application of Section 6A on the State of Assam violates the Assamese people's right to vote under Article 326 of the Constitution. It was asserted that the right to vote and the right to be registered on the electoral rolls is specific only to the citizens of India and not to illegal immigrants. They further contended that the process of Section 6A conferring political rights upon millions of Bangladeshi immigrants has resulted in the marginalisation of the political rights of the people of Assam, which, in turn, is not in the interest of the security and integrity of the State. They asserted that continuance of these immigrants on Indian soil poses severe threat to the identity of the indigenous people of Assam, as well as the security of the nation.

323. The Respondents argued that the contentions advanced by the Petitioners in the present case amount to a reverse reading of Article 326 of the Constitution. They submitted that considering the persons falling under Section 6A would be valid citizens, the right under Article 326 would therefore naturally follow to such 'citizens'. Additionally, they also urged that Section 6A is not

concerned with the preparation of the electoral roll and only deals with the grant of citizenship to the categories of persons covered thereunder.

324. Thus, in examining the purported violation of the Petitioners' rights, it is imperative to first delve into the historical progression of adult suffrage in India, given that Article 326 explicitly addresses the conferment of voting rights upon Indian citizens.

(a) Background and evolution of adult suffrage

325. In response to the clamour for adult suffrage, the issue of franchise in India was heavily deliberated upon in the Round Table Conference in 1931, and the Indian Franchise Committee was set up. However, the Committee's report, presented with an air of caution, vehemently discouraged the adoption of universal adult franchise in India, citing the widespread illiteracy rates. Instead, the Committee's proposal for franchise resulted in the enactment of the Government of India Act, 1935. The Act put forth several parameters regarding voter eligibility, including the extent of property owned, amount of taxes paid, residence, etc. Yet, despite these efforts, only a mere one-fifth of the adult population found themselves deemed worthy of the electoral badge of honour at that pivotal juncture in history.[203]

326. In any case, the 1935 Act was short-lived, with the onset of Indian independence and the subsequent establishment of the Constituent Assembly. The Constituent Assembly itself was constituted as a formal constitution-making body under the Cabinet Mission Plan, 1946. The provincial assemblies elected the

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[203] ORNIT SHANI, *How India Became Democratic: Citizenship and the Making of the Universal Franchise*, Cambridge University Press, 2017.

389 members that comprised the Constituent Assembly based on a single transferable vote system having proportional representation. These members were, thus, indirectly elected representatives tasked with the mammoth project of drafting a Constitution for India. The Constituent Assembly sat for a period of two years, eleven months and seventeen days, between 06.12.1946 and 24.01.1950, to write the Constitution of India.

327. On the issue of adult franchise, the notion was initially met with opposition by the likes of M. Thirumala Rao and Brajeshwara Prasad, who considered universal adult franchise to be a violation of the tenets of democracy on account of the largely illiterate populace of the country.[204] Other members, such as Hriday Nath Kunzru, believed that while franchise being bestowed based on parameters such as property was antithetical to the idea of a democracy, universal adult suffrage at such a nascent stage would prove troublesome. Instead, he recommended enfranchising approximately half the population and then extending it to the remaining population in a phased manner over a period of fifteen years.[205]

328. However, during the final days of the Assembly, several Assembly members began to express their views in favour of universal adult franchise, arguing that the inclusion of adult franchise into the Constitution would contribute towards the cause of nation-building and secure the betterment of the common man. Hence, universal adult franchise was incorporated into the Indian Constitution, as enshrined in Article 326. The inaugural general elections of Independent India were conducted between 25.10.1951 and

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[204] M. Thirumala Rao, *Constituent Assembly Debates*, Volume 11, 22.11.1949; Brajeshwar Prasad, *Constituent Assembly Debates*, Volume 8, 16.06.1949.
[205] Hriday Nath Kunzru, *Constituent Assembly Debates*, Volume 11, 22.11.1949.

21.02.1952. This monumental exercise witnessed the participation of a sixth of the world's population, rendering it the largest election globally at that juncture.

329. The historic inclusion of universal adult suffrage as a constitutional value in India was noteworthy for accommodating an unprecedented number of voters, and its revolutionary nature. What is now considered a matter of fact was, at that time, perceived as a daring and potentially risky endeavour. The embrace of universal adult suffrage in India, devoid of property, taxation, or literacy qualifications, was deemed a 'bold experiment', particularly given the country's vast geographical expanse and population. This stride was even monumental, especially when juxtaposed with the trajectory of more economically advanced nations, such as the United States of America, which achieved universal adult franchise only in 1965.[206] India's adoption of adult franchise also positioned it in close proximity to the timelines of countries like France and Britain, where universal adult suffrage commenced in 1945 and 1928, respectively.

330. This historical background, coupled with the Constituent Assembly deliberations, unmistakably signify that the incorporation of universal adult suffrage through Article 326 was undertaken with the avowed purpose of granting voting rights and empowerment to every adult citizen of India, devoid of any unjustifiable limitations or constraints. Thus, the drafters of the Constitution crystallized their vision of 'one man, one value, one vote' by enshrining it in Article 326.[207]

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[206] Voting Rights Act of 1965.
[207] Dr. B.R. Ambedkar, *Constituent Assembly Debates*, Volume 11, 25.11.1949.

(b) Aim of Article 326

331. The text of Article 326 provides that "*the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage*." Article 326 further lays down the qualifications for being a voter, subject to statutory limitations concerning disqualification, corrupt practices, detention, etc. As established previously, these Articles were encapsulated within the Constitution to provide the right to vote to large swathes of people, irrespective of their literacy or ownership of property. Nevertheless, it is imperative to delineate the nature of the right to vote. This analysis will serve as a crucial foundation in conclusively determining the validity of the contentions presented by the Petitioners regarding the alleged violation and adverse impact on their right to vote stemming from the influx of migrants from Bangladesh.

332. The right to vote has been the subject of considerable deliberation and judicial interpretation. This Court has evolved the notion of the right to vote, per constitutional and statutory principles, to empower voters further. One of the very first cases to discuss the issue pertaining to the nature of the right to vote was ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency***, where this Court categorically held that "*the right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to limitation imposed by it.*"[208] This view was upheld in the case of ***Jyoti Basu v. Debi Ghosal***, [209] holding that the right to elect is neither a fundamental

[208] N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, AIR 1952 SC 64.
[209] Jyoti Basu v. Debi Gosal, AIR 1982 SC 983.

nor a common law right but a statutory right. This was, thereafter, the consistent view that was laid down in a plethora of decisions.[210]

333. There were diverging views expressed in the case of the ***People's Union for Civil Liberties v. Union of India***, wherein this Court held that though the right to vote may not be construed as a fundamental right, it is nonetheless a constitutional right.[211] The debate on this issue was finally laid to rest by this Court in ***Rajbala v. State of Haryana***[212] in the course of adjudicating the constitutionality of the Haryana Panchayati Raj (Amendment) Act, 1935. The Court therein held that the right to vote under Article 326 was not merely a statutory right but was a constitutional right that conferred upon citizens the right to vote, subject to certain limitations. It may thus be seen that with the aid of judicial construction in the context of the nature of the right to vote, it has been upgraded from being a mere statutory right to a constitutional right. More recently, this view was once again affirmed by this Court in ***Anoop Baranwal v. Union of India***.[213]

334. It is also crucial to take into consideration that Articles 325 and 326 contained in Part XV of the Constitution, deal with rights and duties in the context of elections. These provisions broadly encompass the powers and duties conferred upon various bodies, with the objective of ensuring that elections are conducted in a free and fair manner. For instance, Article 324 vests the Election Commission with powers to supervise elections, thereby ensuring free and fair elections. Similarly, Article 329 limits the Supreme Court's jurisdiction in election matters. Any challenge to an election

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[210] Shyamdeo Prasad Singh v. Nawal Kishore Yadav, (2000) 8 SCC 46, para 25; Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467.
[211] People's Union for Civil Liberties v. Union of India, (2013) 10 SCC 1.
[212] Rajbala v. State of Haryana, (2016) 2 SCC 445.
[213] Anoop Baranwal v. Union of India, (2023) 6 SCC 161.

can be made after the election has been completed through an election petition under the Representation of People Act, 1951.[214] These provisions have been included with the intent of strengthening the political rights of the citizens of the country. It is trite law that provisions which pertain to the same subject matter must be read as a whole and in their entirety, each throwing light and illuminating the meaning of the other.

335. The objective of these provisions, and more specifically Article 326, is, therefore, to enfranchise people as opposed to disenfranchising them. As illuminated by the historical trajectory of adult suffrage in India and the meticulous deliberations of the framers in instating Article 326, the evident purpose of its inclusion was to bestow upon every individual citizen the right to exercise their vote and choose their elected representatives. Hence, in contemplating the contentions put forth by the Petitioners, the question which arises is whether the right under Article 326 can be invoked to exclude certain individuals.

(c) Right of exclusion and Article 326

336. Article 326, while conferring the right to vote, also broadly provides that this right would be subject to certain statutory limitations. A brief perusal of the Constituent Assembly Debates, along with contemporary jurisprudence, clearly indicates that Article 326 confers the right to vote upon individuals and does not elaborate on the procedure of exclusion of persons from this entitlement. In order to ascertain where the power of exclusion has been enumerated, we will analyse the following: *(i)* Constituent Assembly

[214] Inderjit Barua v. Election Commission of India, AIR 1984 SC 1911.

Debates; *(ii)* the practice in comparative jurisdictions; *(iii)* relevant statute; and *(iv)* contemporary jurisprudence.

337. Primarily, the considerations of the Constituent Assembly during the discourse on the right to vote emphasized that determinations regarding disqualifications and exclusions from the right to vote should be outlined by the legislature through suitable statutes. In this context, focused deliberations were conducted, particularly addressing the prescription of qualifications for the right to vote, with Dr. B.R. Ambedkar asserting that the establishment of such qualifications ought to be entrusted to the legislature.[215] Similar observations were articulated by other members of the Assembly during discussions on the qualifications and disqualifications to the right to vote and inclusion of individuals in the electoral rolls.[216]

338. Furthermore, an examination of practices in comparable jurisdictions underscores that the authority to exclude individuals from voting is usually entrusted to the legislature. For instance, in the United Kingdom, the rationale and procedure for the exclusion of any individual from voting are delineated in the Representation of the People Act, 1918. Similarly, in the USA, the power and discretion to enforce the right to vote of citizens are bestowed upon Congress.[217]

339. In India, too, the Representation of People Acts, 1950 and 1951 delineate provisions relating to the disqualification from voting, removal of disqualification, the right to vote, and prohibitions against seeking votes by appealing to divisive factors. In fact, the 1951 Act also elucidates the right to vote under Section 62 and

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[215] B.R. Ambedkar, *Constituent Assembly Debates*, Volume 8, 02.06.1949.
[216] Alladi Krishnaswamy Ayyar, *Constituent Assembly Debates*, Volume 11, 23.11.1949.
[217] South Carolina v. Katzenbach, 383 U.S. 301 (1966).

establishes limitations and disqualifications surrounding it. The Representation of People Act, 1950 has in place a scheme and procedure for effectuating changes onto the electoral roll if it is considered erroneous under Section 22. This provision states that if the electoral registration officer for a constituency, upon an application made to him or on his own motion, is satisfied that an entry in the electoral roll of a constituency is defective or erroneous, should be transposed to another place on account of the concerned person having changed his place of ordinary residence, or if the person is dead or is not entitled to be registered on that roll, then the officer may amend, transpose or delete such an entry. By virtue of the aforementioned sections, the Act thus clearly envisages mechanisms and procedures for disqualifying individuals from voting and removing the names of people from the electoral roll.

340. These deliberations and instances further strengthen the assertion that the aspect of exclusion from the right to vote cannot be invoked merely by alleging the violation of Article 326. In absence of any such right guaranteed under Article 326, and in light of there being such provision under the Representation of People Acts of 1950 and 1951, the question of exclusion of individuals from the right to vote needs to be viewed from the lens of the aforementioned two statutes.[218]

341. This leads us to the contention raised by the Petitioners that the inclusion of individuals in the electoral rolls by virtue of Section 6A has resulted in a violation of Article 326. To summarise our foregoing analysis, Article 326 bestows upon individuals the right to vote and the right to be included in electoral rolls unless disqualified by the legislature or other constitutional provisions.

[218] Lakshmi Charan Sen v. A.K.M. Hassam Uzzaman, (1985) 4 SCC 689, para 22.

However, the crucial question that arises is the nature of the right conferred by Article 326—particularly, whether it allows the Petitioners to seek an *en masse* removal of an entire block of people based upon generalised assertions surrounding their impact on another group of citizens and their voting rights.

342. We cannot answer this in the affirmative, not only because allowing such a plea would militate against the spirit of Article 326 and the centuries-old struggle for enfranchisement that it embodies, but also because the language of Article 326 unambiguously devolves the power to set out the mechanism for excluding people from the voter list to the legislature. If there is an inclusion of ineligible migrants in the voter list, persons aggrieved are free to invoke the existing provisions under the Representation of the People Acts of 1950 and 1951, to seek the removal of such individual voters from the voter list. Upon receipt of such an application, if the electoral Registration Officer, after due consideration, determined that an error existed in the inclusion of these individuals, the officer would have rectified the situation by amending, transposing, or deleting the relevant entries as per the prevailing legal provisions. We are unable to persuade ourselves to read an additional ground for disqualification and removal of voters directly into Article 326.

343. Additionally, the Petitioners' arguments on this count demonstrate a fundamental misreading of Article 326. They fail to note that once deemed citizens by operation of Section 6A, the erstwhile-immigrants would enjoy equal rights as any other Indian citizen, including the right to vote, irrespective of the mode or time of acquisition of citizenship. Such constitutional rights cannot be summarily revoked or infringed upon.

344. We are, therefore, not inclined to accept the Petitioners' contention that the influx of immigrants in the State of Assam has affected the right of the Assamese people to vote. Moreover, there has been no violation of the right of the Petitioners under Article 326 as it merely grants them the right to vote and be included in the electoral rolls, which continues to subsist to this day devoid of any interruption. As stated earlier, the Petitioners have not claimed any violation of their statutory rights and have failed to demonstrate the violation of any rights under Article 326 of the Constitution.

x. Article 355 and Section 6A

345. The Petitioners contended that Section 6A is violative of Article 355 of the Constitution on account of the continued presence of millions of illegal Bangladeshi immigrants in Assam, purportedly, leading to a transformation in the demographic composition of the State. They contended that the continuing influx has resulted in a scenario where the indigenous population of Assam finds themselves effectively reduced to a minority in their own State.

346. Drawing upon the precedent in ***Sarbananda Sonowal (supra)***, the Petitioners posit that Assam is currently grappling with a state of 'external aggression' and 'internal disturbance' due to the said influx of immigrants. Consequently, they argue that it becomes the duty of the Union, as provided in Article 355, to undertake necessary measures for the protection of Assam. In such circumstances, the Petitioners contend that Section 6A, in its current form, contravenes Article 355 and should, therefore, be deemed unconstitutional and struck down.

347. The Petitioners further argued that the Union's obligation, as outlined in Article 355, to safeguard a 'State' from 'external

aggression' encompasses not only a responsibility towards the territorial integrity but also extends to the inhabitants of the State, encompassing their culture and identity. According to the Petitioners, this duty mandates the State to shield itself from cultural aggression arising from extensive migration.

348. *Au contraire*, the Respondents maintained that the conclusions drawn in ***Sarbananda Sonowal (supra)*** are distinguishable, as that case primarily focused on the inadequate detection and deportation of illegal migrants entering after the year 1971, without delving into the provisions related to the grant of citizenship under Section 6A. Moreover, it is asserted that the prerequisite for 'external aggression' is the principle of '*animus belligerendi',* and since the migration in question was distress-driven, intending to seek refuge in India, it should not fall within the purview of Article 355.

349. The Respondents also contend that Article 355 should not be considered an independent and standalone basis for challenging Section 6A. They argue that any challenge to Section 6A based on the alleged violation of Article 355 would be unsuccessful unless the claimed deprivation of rights can be directly linked to Part III of the Constitution. Additionally, the Respondents assert that the primary objective of Section 6A was to provide a lasting solution to the disturbances in Assam and to facilitate the governance of the state in conformity with the constitutional provisions. According to the Respondents, Section 6A therefore does not contravene the provisions of Article 355; instead, it strengthens and reinforces the principles enshrined therein.

350. Against this backdrop, the Court is confronted with deciding whether Section 6A is unconstitutional for being violative of Article 355.

(a) Intention behind Article 355

351. In order to comprehend the reason behind the inclusion of Article 355, it is vital to understand its intended objective. Article 355 states that it is the duty of the Union to protect every State against 'external aggression' and 'internal disturbance' and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution. Article 355, expounded in Part XVIII of the Indian Constitution, which pertains to 'Emergency Provisions,' was initially not present in the Draft Constitution of 1948. However, it was subsequently introduced in 1949 by the Chairman of the Drafting Committee in the Constituent Assembly.[219] At that time, Article 355 was denoted as Article 277A and was presented for discussion in the Constituent Assembly along with draft Articles 278 and 278A, now recognized as Articles 356 and 357 of the Indian Constitution.

352. In the context of the introduction of draft Article 277A, later designated as Article 355, Dr. B.R. Ambedkar elucidated its underlying purpose. He emphasized that despite the numerous provisions conferring overriding powers on the Center, the Indian Constitution was fundamentally federal, with States having primacy in legislating over their designated domains. Accordingly, if the Centre was to interfere in the administration of provincial affairs through Article 356 and 357 (draft Articles 278 and 278A of the Indian Constitution), there ought to be some obligation which

[219] Dr. B.R. Ambedkar, *Constituent Assembly Debates*, Volume 9, 03.08.1949 and 04.08.1949.

the Constitution imposes upon the Center. It was emphasized that such an 'invasion' by the Centre of the Provincial field "*must not be an invasion which is wanton, arbitrary and unauthorized by law*." Thus, it was succinctly stated that "*in order to make it quite clear that Draft Arts. 278 and 278A are not deemed as a wanton invasion by the Centre upon the authority of the provision, we propose to introduce Article 277A*."

353. Similar clauses appear in the Australian and American Constitutions. Dr. Ambedkar stated that Article 355 incorporated an additional clause to the principle enunciated in these other constitutions, namely, that it shall also be the duty of the Union to protect the Constitutional mandate in the Provinces. For context, Article 355 is seen to be borrowed from Article IV, Section 4 of the Constitution of the United States and Section 119 of the Australian Constitution. Article IV, Section 4 of the Constitution of the United States provides as follows:

> *"The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence."*

354. Similarly, Section 119 of the Australian Constitution provides as follows:

> *"The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence."*

355. The key differentiation, evident from the aforementioned provisions of the American and Australian Constitutions, as opposed to Article 355, lies in the terminology employed—specifically, the use of

'invasion' and 'domestic violence' in contrast to 'external aggression' and 'internal disturbance' as outlined in Article 355. Another notable distinction is that, in the corresponding provisions of the American and Australian Constitutions, it is mandated that the State must apply to the Centre for protection against domestic violence. In contrast, no such condition is stipulated in India under Article 355.

(b) Sarbananda Sonowal v. Union of India

356. In ***Sarbananda Sonawal (supra)***, the petitioner, a citizen of Assam, filed a writ petition challenging the constitutional validity of the Illegal Migrants (Determination by Tribunals) Act, 1983 (**IMDT Act**), which was made applicable to the state of Assam for the detection and deportation of illegal immigrants entering into India, on or after 25.03.1971. The petitioner therein alleged, *inter alia*, that the IMDT Act had failed to effectuate the detection and deportation of such illegal immigrants. In comparison, the Foreigners Act, 1946, which was applicable to the rest of the country, was asserted to be more effective in deporting illegal immigrants. The petitioner therein argued that since the unabated illegal immigration posed a threat to the security of the State, the IMDT Act would be violative of Article 355 of the Constitution.

357. The Court analyzed the provisions of the IMDT Act and noted that it laid down a high threshold for establishing an individual as an illegal immigrant. Moreover, if a citizen of India wanted to inform the authorities regarding the whereabouts of an illegal immigrant, such a citizen needed to be a resident of the same police station where the immigrant was purportedly residing. Since the immigrants were constantly on the move, this condition was held to be arbitrary. In essence, the Court held that the IMDT Act had

been purposefully enacted to provide shelter to the immigrants who entered Assam from Bangladesh after 25.03.1971.

358. The Court thereafter held that the Union has the duty to protect its citizens. While interpreting Article 355, the Court held that the term 'aggression' is of wide import and is different from the term 'war', which involves a contest between two nations for the purpose of vanquishing each other. On the contrary, the term 'aggression' is a broader term that may include complex situations depending on the fact situation and its impact. Accordingly, illegal immigration was held to be included in 'external aggression'. Consequently, the Court held as follows:

> "62. *[…] The Governor of Assam in his report dated 8-11-1998 sent to the President of India has clearly said that* ***unabated influx of illegal migrants of Bangladesh into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State. It is a contributory factor behind the outbreak of insurgency in the State and illegal migration not only affects the people of Assam but has more dangerous dimensions of greatly undermining our national security.*** *Pakistan's ISI is very active in Bangladesh supporting militants in Assam. Muslim militant organisations have mushroomed in Assam. The report also says that this can lead to the severing of the entire landmass of the North-East with all its resources from the rest of the country which will have disastrous strategic and economic consequences. The report is by a person who has held the high and responsible position of the Deputy Chief of the Army Staff and is very well equipped to recognise the* ***potential danger or threat to the security of the nation by the unabated influx and continued presence of Bangladeshi nationals in India****. Bangladesh is one of the world's most populous countries having very few industries. The economic prospects of the people in that country being extremely grim, they are too keen to cross over the border and occupy the land wherever it is possible to do so. The report of the Governor, the affidavits and other material on record show that* ***millions of Bangladeshi nationals have illegally crossed the international border and have occupied vast tracts of land like "Char land" barren or cultivable***

land, forest area and have taken possession of the same in the State of Assam*. Their willingness to work at low wages has deprived Indian citizens and specially people of Assam of employment opportunities. This, as stated in the Governor's report, has led to insurgency in Assam****. Insurgency is undoubtedly a serious form of internal disturbance which causes grave threat to the life of people, creates panic situation and also hampers the growth and economic prosperity of the State of Assam though it possesses vast natural resources.***"

"*63.* ***This being the situation there can be no manner of doubt that the State of Assam is facing "external aggression and internal disturbance" on account of large-scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of the Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution****. Having regard to this constitutional mandate, the question arises whether the Union of India has taken any measures for that purpose.*"

[Emphasis supplied]

359. Thereafter, the Court held that as compared to the Foreigners Act, 1946, the IMDT Act was not as effective in the detection and deportation of illegal immigrants and created insurmountable hurdles regarding the same. Hence, this Act was held to be beneficial for illegal immigrants, whose numbers ran into the millions and who were creating a scenario of insurgency in the State of Assam. Accordingly, the Act was held to be violative of Article 355.

360. We respectfully agree with ***Sarbananda Sonowal (supra)*** in its holding that the term aggression in Article 355 is of a wide import and can include unabated migration if it poses a threat to the security of the state. Therefore, in such cases, the Union indeed bears a duty to protect the State from such unabated immigration

that it amounts to external aggression or internal disturbance; and those statutes which violate this duty can be held unconstitutional.

361. Having established that, we shall now consider whether Section 6A falls flat because of being violative of Article 355.

(c) Section 6A vis-à-vis Article 355

362. In this regard, the Respondents have argued that the claim under Article 355 is not maintainable since migration cannot be termed as external aggression, and because a statute cannot be held unconstitutional for being violative of Article 355 *simpliciter*. However, as seen above, this contention has already been negatived in ***Sarbananda Sonowal (supra)***, to which we profoundly agree. Therefore, their objection against the maintainability of Petitioners' claim is rejected.

363. That being said, the Respondents are seemingly right to contend that the cited decision is not applicable to the facts at hand presently. As may be seen from the reproduction of the analysis in ***Sarbananda Sonowal (supra)*** at paragraph 358 above, this Court held that migration could constitute 'external aggression'. Although the present situation is similar in nature to ***Sarabananda Sonowal (supra)***, but it differs in degree. There, this Court was dealing with a situation where millions of illegal immigrants had been coming into the State of Assam incessantly post-1971 and were posing a security threat for the country. This understanding of 'external aggression' is also in tune with the case of ***Extra-Judicial Execution Victim Families Assn. v. Union of India***,[220] wherein this Court interpreted the term and held that it threatens

[220] Extra-Judicial Execution Victim Families Assn. v. Union of India, (2016) 14 SCC 536, para 169.

the security of the country. In Constituent Assembly Debates as well, the term 'external aggression' was interpreted to include situations similar to war, without its actual declaration.[221]

364. However, in the present case, Section 6A is limited in its ambit and does not by itself create unabated migration or legitimize its continuance. As was seen in paragraph 25 of this judgement, Section 6A segregates immigrants from East Pakistan to Assam into three classes. It grants deemed citizenship only to the immigrants who migrated before 01.01.1966, and citizenship by registration to immigrants between 01.01.1966 and 25.03.1971. Further, when read along with other legislations on immigration and citizenship, it declares by implication, immigration into the State post-1971, as illegal. In fact, Section 6A adopts a practical solution for the problem of incessant illegal immigration into Assam by devising an implementable solution keeping in mind India's commitments, international relations and administrative realities.

365. Not only this, as was deliberated in the section on 'manifest arbitrariness', the migrants also need to satisfy certain conditions for invoking Section 6A, apart from being persons of Indian origin and ordinary residents in India. Hence, unlike the immigration scrutinized in ***Sarbananda Sonowal (supra)***, Section 6A addresses a controlled and regulated form of immigration that in our opinion would fall short of 'external aggression'.

366. Along similar lines, the migration legitimized by Section 6A also does not constitute internal disturbance. As was discussed before, Section 6A was a crucial step in bringing quietus to the political upheaval in Assam and marked the culmination of various

[221] H.V. Kamath, *Constituent Assembly Debates*, Volume 9, 02.08.1949

agitations surrounding illegal immigration and the rights of indigenous communities. Given this background, it is difficult to accede to the proposition that Section 6A caused 'internal disturbance'.

367. Hence, the claim of the Petitioners regarding Section 6A being contrary to Article 355 cannot be accepted. However, that being said, upholding the constitutionality of Section 6A should not be construed as an impediment in implementing existing citizenship and immigration legislations, or giving effect to other judicial decisions controlling the field.

xi. Citizenship Act vis-à-vis the IEAA

368. The Petitioners have finally contended that the Immigrants (Expulsion from Assam) Act, 1950 (**IEAA**), being a special statute *qua* the immigrants in Assam, alone can apply to the exclusion of the Foreigners Act, 1946. Accordingly, the Petitioners assailed the phrase 'detected to be a foreigner' in Section 6A, in so far as it applies to the Foreigners Act, 1946 and not the IEAA. In addition to this, the Petitioners contended that the IEAA, is a Parliamentary Statute, and its main purpose being that of expulsion, should apply exclusively to the immigrants in Assam.

369. The Respondents have not made any particular submissions in this regard. However, for the sake of the comprehensiveness of analysis, we shall address this issue as well.

370. Having taken into account these contentions, the issues that arise for our consideration are twofold–*(i)* whether the IEAA should apply to the immigrants in Assam, to the exclusion of the Foreigners Act, 1946; and *(ii)* whether the IEAA is in conflict with the intent and aim of Section 6A.

371. We must note here that the Petitioners have argued that the IEAA should override the provisions of other enactments like the Foreigners Act, 1946 or Section 6A, as they presume some conflict between these legislations. However, we find that this fundamental assumption made by the Petitioners, as to the existence of a conflict, is misplaced. Indeed, it is not only possible but also our endeavor to read all the enactments controlling the field harmoniously, supplementing and complementing each other.

372. The intent behind the IEAA can be understood from its Statement of Objects and Reasons stipulating that:

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

373. This intention is manifested in Section 2 of IEAA, which grants Central Government the power to direct the removal of immigrants who are detrimental to the interests of India.

374. Similar to this, the preamble of Foreigners Act, 1946 reads:

> *"Whereas it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into India, their presence therein and their departure therefrom."*

375. In light of this objective, Section 3 (1) of the Foreigners Act, 1946 empowers the Central Government to make provisions concerning foreigners' entry, departure, presence, or continued presence in India. Without diminishing the expansive authority granted by Section 3 (1), Section 3 (2) confers upon the Central Government the power to issue comprehensive orders regarding foreigners,

which include directives such as prohibiting a foreigner from remaining in India or any specified area, requiring the individual to meet the cost of removal from India, or compliance with specified conditions, etc.

376. We find from a perusal of both, the IEAA and the Foreigners Act, 1946, that these legislations seek to regulate the residence and departure of foreigners in India. To that extent, there is thus no conflict between the Statutes and both of them supplement and complement each other within the framework of Section 6A. This is also seconded by ***Sarbananda Sonawal (supra)***, which held:

> *"83. To sum up our conclusions, the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 are ultra vires the Constitution and are accordingly struck down. The Illegal Migrants (Determination by Tribunals) Rules, 1984 are also ultra vires and are struck down. As a result, the Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease to function.* ***The Passport (Entry into India) Act, 1920, the Foreigners Act, 1946, the Immigrants (Expulsion from Assam) Act, 1950 and the Passport Act, 1967 shall apply to the State of Assam*** *[…]"*
>
> [Emphasis supplied]

377. That apart, and as held by the Court in ***Sarbanda Sonawal (supra)***, apart from the IEAA, there are various other statutes—including the Passport (Entry into India) Act, 1920, the Foreigners Act, 1946, the Immigrants (Expulsion from Assam) Act, 1950 and the Passport Act, 1967—which are applicable to the State of Assam.

378. In light of the brief foregoing analysis of various statutes, we are of the considered opinion that Section 6A need not be construed in a restrictive manner to mean that a person shall be detected and deported only under the Foreigners Act, 1946. If there is any other

piece of legislation such as the IEAA, under which the status of an immigrant can be determined, we see no reason as to why such statutory detection shall also not be given effect to, for the purposes of deportation. We thus hold that the provisions of IEAA shall also be read into Section 6A and be applied along with the Foreigners Act, 1946 for the purpose of detection and deportation of foreigners.

379. Similarly, in light of this, we find it difficult to accept the second contention of the Petitioners that the IEAA is a complete code in dealing with the situation of immigrants in Assam, and that Section 6A cannot prescribe contrary norms by granting immigrants citizenship. As discussed above, IEAA is only one of the statutes that addressed a specific problem that existed in 1950. The issue of undesirable immigration in 1950 necessitated the promulgation of the IEAA and the granting of power to the Central government to expel such immigrants. On the contrary, the provisions of Section 6A have to be viewed from the focal point of 1971, when Bangladesh was formed as a new nation and an understanding was reached to grant citizenship to certain classes of immigrants who had migrated from erstwhile East Pakistan, as has been detailed in paragraphs 230 and 231 of this judgement. Hence, Section 6A, when examined from this perspective, is seen to have a different objective—one of granting citizenship to certain classes of immigrants, particularly deemed citizenship to those immigrants who came to India before 01.01.1966 and qualified citizenship, to those who came on or after 01.01.1966 and before 25.03.1971.

380. Since the two statutes operate in different spheres, we find no conflict existing between them. The Parliament was fully conversant with the dynamics and realities, while enacting both the Statutes. The field of operation of the two enactments being distinct

and different and there being a presumption of the Legislature having informed knowledge about their consequences, we decline to hold that Section 6A is in conflict with a differently situated statute, namely the IEAA.

381. Instead, we are satisfied that IEAA and Section 6A can be read harmoniously along with other statutes. As held in ***Sarbananda Sonawal (supra)***, none of these Statutes exist as a standalone code but rather supplement each other.

382. We may also hasten to add that the present reference is restricted and limited to the constitutional validity of Section 6A, and the extent of applicability of IEAA is not the subject matter of reference. As discussed earlier, there are multiple statutory enactments to address the influx of immigrants in Assam, namely Section 6A of the Citizenship Act, the Foreigners Act, 1946, the Foreigners (Tribunals) Order, 1964, the Passport (Entry into India) Act, 1920 and the Passport Act, 1967. Hence, in our view, the IEAA must be effectively applied along with all other Statutes which occupy similar or related fields and are, in a way, complementary to each other.

xii. Interface with international law

383. In support of the constitutionality of Section 6A, the Respondents have argued that an international norm against statelessness exists, and thus, the Court should harmonize the interpretation of domestic law with international law. They contend that holding Section 6A unconstitutional would potentially render these immigrants stateless, and therefore, the Court should refrain from invalidating this provision.

384. In light of the discussion in the foregoing sections, since we have not been able to persuade ourselves to strike down Section 6A on the strength of the contentions of Petitioners, the need to examine the issue of statelessness does not arise and is rendered academic.

385. The Petitioners too have invoked Article 27 of the ICCPR, to argue that since Section 6A impacts the culture of original inhabitants, it therefore violates Article 27.

386. Similar to Article 29 of the Constitution of India, Article 27 of the ICCPR also restricts intervention in one's culture.[222] In this regard, since we have already analysed in detail that Section 6A *per se* does not intervene in culture of Assamese people, we see no need to re-agitate the issue here. In any case, it is an established principle that international law cannot trump domestic law.[223] Therefore, Section 6A cannot be assailed on the ground of the perceived violation of Article 27 of the ICCPR as well.

F. CONCLUSIONS AND DIRECTIONS

387. Drawing upon the comprehensive analysis presented in the preceding sections, we thus hold that Section 6A falls within the bounds of the Constitution and does not contravene the foundational principles of fraternity, nor does it infringe upon Articles 6 and 7, Article 9, Article 14, Article 21, Article 29, Article 326, or Article 355 of the Constitution of India. Furthermore, Section 6A does not clash with the IEAA or established principles

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[222] Länsman v Finland (511/92); Diergaardt et al. v. Namibia, Communication No. 760/1997 (25 July 2000); Lubicon Lake Band v. Canada, Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990); Rakhim Mavlonov and Shansiy Sa'di case (Mavlonov v. Uzbekistan), Communication No. 1334/2004, UN Doc. CCPR/C/95/D/1334/2004 (2009)

[223] Kesavananda Bharati v. State of Kerala, *supra* note 98.

of international law. Hence, the constitutional validity of Section 6A, as contested before us, is resolved accordingly.

388. Nevertheless, it is imperative to acknowledge and address the valid concerns raised by the Petitioners regarding the persistent immigration in the State of Assam post 25.03.1971. Although Section 6A conferred citizenship rights exclusively to immigrants arriving before this cut-off date, there seems to still be an ongoing influx of migrants through various border States of India. Due to porous borders and incomplete fencing, this unceasing migration imposes a significant challenge.

389. On account of these concerns, we passed an order on 07.12.2023 and directed the Respondent Union of India to provide data, *inter alia*, the estimated inflow of illegal migrants into India after 25.03.1971, the number of cases presently pending before the Foreigner Tribunals for such immigrants and the extent to which border fencing has been carried out.

390. Regarding the inquiry into the estimated influx of illegal migrants post 25.03.1971, the Union of India was unable to provide precise figures due to the clandestine nature of such inflows. This underscores the necessity for more robust policy measures to curb illicit movements and enhance border regulation. Additionally, it was disclosed that approximately 97,714 cases are pending before the Foreigner Tribunals, and nearly 850 kilometres of border remain unfenced or inadequately monitored.

391. We hold that while the statutory scheme of Section 6A is constitutionally valid, there is inadequate enforcement of the same—leading to the possibility of widespread injustice. Further, the intention of Section 6A, i.e., to restrict illegal immigration post-

1971 has also not been given proper effect. Accordingly, we deem it fit to issue following directions:

(a) In view of the conclusion drawn in paragraph 387, it is held that Section 6A of the Citizenship Act, 1955 falls within the bounds of the Constitution and is a valid piece of legislation;

(b) As a necessary corollary thereto, *(i)* immigrants who entered the State of Assam prior to 1966 are deemed citizens; *(ii)* immigrants who entered between the cut off dates of 01.01.1966 and 25.03.1971 can seek citizenship subject to the eligibility conditions prescribed in Section 6A (3); and *(iii)* immigrants who entered the State of Assam on or after 25.03.1971 are not entitled to the protection conferred *vide* Section 6A and consequently, they are declared to be illegal immigrants. Accordingly, Section 6A has become redundant *qua* those immigrants who have entered the State of Assam on or after 25.03.1971;

(c) The directions issued in ***Sarbananda Sonowal (supra)*** are required to be given effect to for the purpose of deporting the illegal immigrants falling in the category of direction (b) (iii) above;

(d) The provisions of the Immigrants (Expulsion from Assam) Act, 1950 shall also be read into Section 6A and shall be effectively employed for the purpose of identification of illegal immigrants;

(e) The statutory machinery and Tribunals tasked with the identification and detection of illegal immigrants or foreigners in Assam are inadequate and not proportionate to the requirement of giving time-bound effect to the legislative object of Section 6A read with the Immigrants (Expulsion from

Assam) Act, 1950, the Foreigners Act, 1946, the Foreigners (Tribunals) Order, 1964, the Passport (Entry into India) Act, 1920 and the Passport Act, 1967; and

(f) The implementation of immigration and citizenship legislations cannot be left to the mere wish and discretion of the authorities, necessitating constant monitoring by this Court.

392. For this purpose, let this matter be placed before Hon'ble the Chief Justice of India for constituting a bench to monitor the implementation of the directions issued hereinabove.

393. These writ petitions are accordingly disposed of in terms of this judgment.

394. Pending applications (if any) are also disposed of.

..... J.
[SURYA KANT]

..... J.
[M.M. SUNDRESH]

..... J.
[MANOJ MISRA]

NEW DELHI
DATED: 17.10.2024