Himachal Pradesh National Law University, Shimla (India)

A UGC CARE Indexed Law Journal

Journal Articles | *ISSN:2582-1903* | *Shimla Law Review*

Volume: VII (2024)

IN RE: SECTION 6A OF THE CITIZENSHIP AMENDMENT ACT, 1955: A Comment

Muskan & Prachi

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Recommended Citation:
Muskan & Prachi, *In Re: Section 6A of the Citizenship Amendment Act, 1955: A Comment* VII SML. L. REV. 370 (2024).
DoI: https://doi.org/10.70556/hpnlu-slr-v7-I1-2024-12

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IN RE: SECTION 6A OF THE CITIZENSHIP AMENDMENT ACT, 1955, (2024 INSC 789): A Comment

***Muskan**[*] & Prachi**[**]*

I

Introduction

The Assam movement was a six-year long socio-political storm that rocked Assam's heart. In 1970s, the growing influx of uncontrolled immigration played a key role in igniting this movement.[1] During that time, there was widespread civil upheaval and instability, and the entire movement was focused to find a constitutional answer to the question, what constitutes genuine citizenship? The movement focused on determining a final, non-negotiable deadline for providing citizenship to migrants who had arrived from the former East Pakistan, now Bangladesh.[2]

After multiple rounds of discussion and negotiations, on August 15, 1985, the Assam Accord was signed, marking an end to this student-led conflict between state and the citizens. This accord was concretely crafted to provide the exhausted state with finality and to offer a vigorous legislative barrier to protect Assamese cultural and linguistic uniqueness. According to the Accord, everyone who arrived prior to January 1, 1966, would be granted citizenship in general. In contrast, the Accord designated a special and challenging route for migrants who entered the state between 1966 and March 24, 1971. It required their detection and disenfranchisement for ten years before granting citizenship.[3] The Citizenship (Amendment) Act, 1985, (the Act) was swiftly passed the Parliament, in order to

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[*] Ms. Muskan is a student of 5th Year, B.A.LL.B. (Hons.) at the Himachal Pradesh National Law University, Shimla (India). Email: muskanba2126@hpnlu.ac.in

[**] Ms. Prachi is a student of 5th Year, B.A.LL.B. (Hons.) at the Himachal Pradesh National Law University, Shimla (India). Email: prachiba2071@hpnlu.ac.in

[1] M. Weiner, *The Political Demography of Assam's Anti-Immigrant Movement* 9(2) POPULATION AND DEVELOPMENT REVIEW 279–292 (1983).

[2] N. Das & K. Dowarah, *Assam Movement: Its Demographic Context and Consequences,* 5(1) JOURNAL OF VISUAL AND PERFORMING ARTS 104–111 (2024).

[3] Assam Accord, *available at*: https://assamaccord.assam.gov.in/sites/default/files/swf_utility_folder/departments/assamaccord_medhassu_in_oid_3/portlet/level_1/files/The%20Assam%20Accord%20-%20English.pdf (last visited Nov. 10, 2025).

codify this high-stakes political compromise into the rule of law. The amendment gave the Accord, by inserting section 6A a statutory backing.

Multiple petitions were filed in the Supreme Court of India challenging the constitutional validity of Section 6A[4] of the Act. These cases were originally heard by a two-judge bench, but due to the complex nature of constitutional questions involved, it was referred to the Constitution bench under the cause title "*In Re: Section 6A of the Citizenship Amendment Act, 1955*,"[5]. The main question posed by the constitutional bench was, "whether section 6A of the Act suffers from any constitutional infirmity". Due to the nation's endeavor to formulate a definitive framework following years of social and political unrest, as well as its history of highly contentious political compromise, this subject was profoundly delicate. Section 6A was a crucial turning point for Assam's future. The unchecked flow of migrants from what was once East Pakistan (now Bangladesh) across the border had rigorously damaged the state's demographic composition and its delicate culture, which threatened the Republic's stability and political unity.

The Assam Accord (1985) is essentially embodied in Section 6A, which turns the political compromise into an obligatory legislation. Section 6A is completely based upon on the date of entry, it prescribes a two-tiered system for granting Indian citizenship to particular categories of migrants:

a) *Migrants who arrived before January 1, 1966:* Individuals of Indian descent who came before this crucial date were granted Indian citizenship retroactively from 1966, assuring their status right away.[6]
b) *Migrants who arrived between January 1, 1966, and March 25, 1971:* Their citizenship was considerably more intricate. They had to register after being formally identified as foreigners. All citizenship rights would thereafter be given to them, with the consequential and short-term exception of suffrage. This time frame of ten years of disenfranchisement were required, following which they would immediately obtain plenary, unconditional citizenship.[7]

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[4] The Citizenship Act, 1955, S. 6 A.

[5] *See, In Re: Section 6A of the Citizenship Amendment Act, 1955*, (2024 INSC 789).

[6] The Citizenship Amendment Act, 1985, S. 6A 'Special provisions as to citizenship of persons covered by the Assam Accord.— (2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.'

[7] The Citizenship Amendment Act, 1985, "6A. Special provisions as to citizenship of persons covered by the Assam Accord.— (3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who— (a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and (b) has, since the date of his

Contd…

Section 6A of the Act, is based upon the principles of Jus Sanguinis (citizenship based on ancestry or ethnicity) which is contradictory to the principles of Jus Soli[8] (citizenship by birth within the territory) which is outlined in article 5 of the Constitution.[9] Section 6A uses date-based and conditional criteria and subtly concentrates on phrases like "deemed to be Indian origin " and setting up deadlines based on dates. Section 6A is a historical departure from Article 5 and its liberal and inclusive policy that is more influenced by populist opinions and political limits. Subsequent legislative actions, such as the Citizenship Amendment Act (CAA) 2019, and the discussions regarding the National Register of Citizens (NRC) process, have further intensified this underlying philosophical departure from article 5 of the Constitution.

II

Principles under Consideration and Resolution by the Court

The prolonged dispute involved judicial determination of whether Section 6A, is against the fundamental framework of the Constitution and, therefore, unconstitutional? The issues, specifically, came up before the Supreme Court relating to the law under challenge based upon on three premises:

a) Arbitrariness and Discrimination (Article 14):[10] It was contended that Section 6A infringed the concept of national uniformity and parity by singling out Assam for discriminatory treatment utilizing an arbitrary cut-off date (1971).

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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.

8 Niraja Gopal Jayal, CITIZENSHIP AND ITS DISCONTENTS 2 (2013).

9 B. Shiva Rao, THE FRAMING OF INDIA'S CONSTITUTION: SELECT DOCUMENTS (Part II) 683
'At the date of commencement of this Constitution, every person who:
(a) Who or whose parents or either of whose parents, was or were born in the territories of the Federation and subject to its jurisdiction, or
(b) who is domiciled in the territories subject to the jurisdiction of the federation.' The clause granting citizenship to those who have been ordinarily resident for five years was removed.

10 The Constitution of India, Art. 14.

b) Conflict with Founding Principles (Articles 6[11] and 7):[12] The petitioners also averred whether a later statute could supersede a Partition-era citizenship arrangement outlined in the constitution.
c) Protection of Cultural Rights (Article 29):[13] The petitioners claimed that the indigenous Assamese population's cultural and linguistic identity was in danger due to the legal accommodation of migrants.

Legislative Intent: National Homogeneity, and the Cohesion Crisis

The 1985 amendment[14] was an important intervention for political stabilization and dispute settlement rather than a standard legislative exercise. Its goal was to convert a contentious political agreement into legally binding rule in addition to granting citizenship.

The main demand of the Assam movement as a whole was the development of a plan to promote conformity in a state that was essentially and culturally diverse. The current State of Assam was under tremendous pressure to become a more homogenous state, principally defined by Assamese ethnic and linguistic identity,

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[11] The Constitution of India, Art. 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 grandparents 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.

[12] The Constitution of India, Art. 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.

[13] The Constitution of India, Art. 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.

[14] The Citizenship (Amendment) Act, 1985, S.2.

while having a diverse mix of indigenous population, legal residents, and undocumented migrants.

Section 6A of the Act is an attempt to impose legal reason on this intrinsically cultural notion, who "belongs" to Assam, through procedures like required registration and specific cut-off dates. A severe social cohesiveness crisis made the entire process worse. Years of widespread violence and political instability were directly caused by threat to the demographic danger posed by immigration, which severely damaged the social cohesion and trust between the indigenous population and the state authority.

The Imagined Community and Dichotomy

According to Benedict Anderson's theory, the "Assamese Nation" is an imagined community in which individuals who may never have met have a strong sense of horizontal camaraderie. [15] The limits and integrity of this imaginary community were seen as being threatened by the immigration wave. The concept of "indigenous" *verses* "foreigner" appears to be influenced the Act. By establishing a particular cut-off date. A friend/enemy dichotomy was legally created for the state by the legislature, that is, individuals who arrived before 1971[16] were gradually recognized as "friends" (future citizens), while those who arrived later were legally classified as "enemies" (illegal immigrants or migrants). By doing this, the law aimed to address, both, the deep concerns of the indigenous population and clearly define the limits of the imagined community.

The Parliament, it is clear, pursued multiple goals at the same time when it passed the amendment and inserted section 6A. *First*, by formally enshrining the terms of the 1985 Assam Accord into law, the Act endeavored to codify a controversial political compromise. This action was designated to put a definite licit end to the protracted and pernicious Assam movement and depoliticize the unstable immigration issue.

Second, it sought to establish and resolve the status of innumerable inhabitants. The clause addressed the paramount electoral and demographic quandaries that drove the conflict by establishing a distinct, if sultrily debated, legitimate substratum for differentiating between Assamese denizens and foreigners.

And *lastly*, a paramount humanitarian accommodation was included in the Act. It appraised the authenticity of migrants who arrived prior to the Bangladesh Liberation War by setting the deadline of 1971. In lieu of putting people in hazard of being deported in astronomically immense numbers, the Act ensured that their

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[15] Benedict Anderson, IMAGINED COMMUNITIES 7 (1991).

[16] Abul Mal A. Muhith, HISTORY OF BANGLADESH, A SUB-CONTINENTAL CIVILIZATION 56 (2016).

status was resolved, even if conditionally (as visually perceived by the ten-year disenfranchisement), offering a route to citizenship.

III

The Judicial Stand

The leading opinion, in the reference case, decided by the Constitution Bench, was written by the CJI, Hon'ble Justice Chandrachud. The majority Court held, that, if the 1971 date were to be struck down, the Accord's entire structure and goal would fall apart, resulting in a resurgence of the agitation it was intended to put to a quietus end. The court's position suggests that political harmony is more vulnerably susceptible than constitutional ideals. Since the deadline was a prerequisite for the state's acceptance of the citizenship and residence, the Court acknowledged that it was undeniably linked to the objects of the Act.[17] By allowing the 1971 date, the Court implicitly approved the denial of '*Jus Soli*' (citizenship by birth) for a group of Assamese people, enabling a citizenship regime completely based upon the date of entry, '*Jus Sanguinis*', to take effect for a predetermined duration. This is a consequentially justifiable concession. The explanation of how this compromise has engendered a multi-tiered citizenship structure invites further investigations.

The Court's main justification was predicated on article 11,[18] which gives Parliament the sole and plenary power to make laws pertaining to citizenship.[19] The Court unequivocally ruled that, the ephemeral and narrow scope of articles 5 to 10 does not restrict this power. As a result, it was decided that section 6A was a legitimate utilization of this ultimate legislative potency, demonstrating Parliament's faculty to transmute the citizenship ideology from the early Constitution's pristine *jus soli*.

The petitioners contended that Parliament's ascendancy is constrained by the Constitution and that citizenship is exclusively addressed by article 11.[20] Nonetheless, the Court upheld the illimitable ascendancy, of Parliament, to enact laws pertaining to citizenship, which is derived from entry 17[21] of the Union List and the residuary power under entry 97 of the Constitution.[22] This is crucial because

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17 *Re: Section 6A of the Citizenship Amendment Act, 1955*, (2024 INSC 789), Para. 189 .

18 The Constitution of India, 1950, Art.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.

19 *Re: Section 6A of the Citizenship Amendment Act, 1955*, (2024 INSC 789), Para. 140-141

20 *Re: Section 6A of the Citizenship Amendment Act, 1955*, (2024 INSC 789), Para. 122

21 The Constitution of India, 1950, Schedule 7(Union list) Entry 17.

22 The Constitution of India, 1950, Schedule 7(Union list) Entry 97.

it confutes the claim that the Accord was an *altra-vires* (beyond power) act of legislation by reiterating Parliament's plenary ascendancy over citizenship.[20]

The Court utilized the standard of plausible relegation to address the challenge and argument based on the provisions of article 14[23] of the Constitution. It maintained that Assam's distinct historical, geographic, and demographic characteristics offered a justification for treating the state differently.[24] The 1971 deadline was deemed by the Supreme Court to be an essential component of the Assam Accord rather than an arbitrary date.

The Court reasoned, that, if the 1971 date were to be abstracted (struck down), the Accord's entire structure and goal would fall apart, resulting in a resurgence of the bellicose agitation it was intended to resolve. This court's position implicatively insinuates that political harmony is more vulnerably susceptible than constitutional ideals. Since the deadline was a prerequisite for the state's acceptance of the settlement, the Court acknowledged that it was inextricably linked to the remnant of the Act.

By maintaining the 1971 date, the Court implicitly approved an *ad interim* suspension of *Jus Soli* (citizenship by birth) for a group of Assamese denizens, enabling a citizenship regime predicated on the date of ingress (*Jus Sanguinis hybrid*) to take effect for a predetermined duration. By explication, it can be seen that, a multi-tiered citizenship structure has engendered based on the compromise:

a) Citizenship by birth[25] (article 5)
b) Registration or attainment of citizenship (The Citizenship Act, 1955)[26]
c) Citizenship by special validation (based on the 1971 cut-off, section 6A for Assam).

On the other hand, a critical and sophisticated notion of temporal reasonableness[27] was propounded and presented in the dissenting opinion of Hon'ble Justice Pardiwala. This idea holds that a legislation may eventually become blatantly arbitrary and lose its constitutional legality, even if it was reasonable when it was passed (as in 1985, near the Accord). This occurs when its initial rationale (*raison d'état*) has disappeared or is now nearly difficult to carry out.

In contrast, the majority conclusion substantially upheld section 6A's continuing temporal reasonableness. The Justices reasoned that regardless of the years that have passed, the Assam Accord must be respected since it is a basic political solution

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[23] The Constitution of India, 1950, Art. 14.
[24] *Re: Section 6A of the Citizenship Amendment Act, 1955*, (2024 INSC 789), Para. 72
[25] *Supra*, note 9, *at 3.*
[26] The Citizenship Act,1955, S.5.
[27] *Re: Section 6A of the Citizenship Amendment Act, 1955*, (2024 INSC 789), Para 130.

to a problem and has constitutional efficacy. As a result, the March 25, 1971 deadline was maintained as an integral and legitimate part of that initial political agreement.

The Court's definite reasoning that overturning this law, after nearly forty years, would jeopardize the constitutional and social balance established by the Accord is reflected in the judgment of the majority. That the quashing section 6 A would put an impersonal concept of legislative or interpretational purity ahead of the concrete needs of public order, state stability, and the rights that millions of people have already earned. This period of loss of the universal adult franchise was permitted by the Supreme Court as the requirement quid pro quo.[28] In other words, it was the price these migrants had to pay for assured citizenship. Additionally, the Court acknowledged that it was an important way for the indigenous community to gradually assimilate with the migrant population minimizing the possibility of an instant political shock to the state's voting system. This particular view taken by the Supreme Court requires detailed assessment on whether transitory political disenfranchisement constitutes an inordinate constraint on a fundamental political right (suffrage) under the affectation of an executive agreement, or is it a legitimate constitutional implement for procuring greater good and managing demographic shifts? Consequently, the ruling upholds the State's extensive procedure to give citizenship through a unique framework. The judgment also upholds the restriction, therefore, on political rights. The loss of voting rights for ten years placed on immigrants who arrived between 1966 and 1971 is the most distinctive and distinguishing aspect of Section 6A.

Thus, by a 4:1 majority decision, the Court determined that section 6A does not violate article 29(1). The petitioners had contended that the unique language, script, and culture of the native Assamese people would be threatened if a large number of migrants from Bangladesh were granted citizenship. The Supreme Court dismissed this argument, ruling that a claim of a violation of cultural rights cannot be made based only on the existence of various ethnic groups. The petitioners had to demonstrate a "actionable impact" demonstrating that they could no longer defend their culture in order to invoke article 29(1)[29], but they were unable to do so. The ruling emphasized a pluralistic and inclusive interpretation of citizenship and the Preamble's value of fraternity, pointing out that the Assamese people's cultural interests are already protected by statutes and the constitution.

The judgment is significant for the reason also that it highlights the conflict between the judiciary's responsibility to forfend fundamental rights and its obligation to take into account perplexed political situations, especially when it deviates from the post-independence *jus soli* tradition. On the basis of finality and non-statelessness, the ruling is essentially solid. The Court preserved the decision of Parliament in a

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[28] *Re: Section 6A of the Citizenship Amendment Act, 1955*, (2024 INSC 789), Para 344.

[29] *Supra,* note 13 *at 4.*

matter of policy and prevented a humanitarian disaster by endorsing a political solution.

The Court's approval of the Accord is an essential step in easing the Indian State's crisis of legitimacy in Assam. The fundamental foundation of the Indian imagined community was threatened by the State's inability to control immigration and defend its borders, which resulted in a total collapse of confidence. The legal process for approving the political agreement that aimed to reinstate the state's functional legitimacy in the eyes of the indigenous people was upheld by section 6A. In order to safeguard previous acts of citizenship granting and maintain the social fabric, the law's ongoing temporal reasonableness was accepted.

The decision may be seen as an example of judges avoiding 'close' examination of statute. The Court failed to sufficiently examine the issue of evident arbitrariness and the critical question of temporal reasonableness in the contemporary context by accepting the "unique historical circumstances" as justification for differentiated treatment under article 14 of the Constitution. The constitutional requirement for national legal uniformity was, somehow, undermined and the initial crisis of social cohesion is made worse by the law's inherent creation of a permanent friend/enemy dichotomy within a single state, which is based on a political cut-off date rather than a universal principle of law, such as, *jus soli*. This effectively allows a regional strategy to enforce national homogeneity (the Assamese identity) to be enshrined into national law. It establishes a potentially dangerous precedent for the issues known as CAA/NRC system that the Country faces.

IV

Conclusion: Alternative Legislative and Judicial Routes

Given the socio-political, cultural and the legal complexities, involved in the case the legislature and the judiciary might have looked into alternative options for resolution. The options available includes, *temporal unreasonableness-based prospective overruling doctrine; mandatory implementation edict (Article 142);*[30] and *unified legislative reform (reaffirming Jus Soli)*.

The Court might have agreed with the minority and ruled that section 6A is unconstitutional because it is currently arbitrary and has been implemented poorly for decades, but only for the future. This would have upheld the equality mandate of article 14 for the future by requiring Parliament to enact a new, constitutionally sound, and nationally uniform law for future immigration while also preserving the settled citizenship rights of all individuals who had previously been granted such status.

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[30] The Constitution of India, Art. 142.

Rather than concentrating only on the legality of the law, the Court could have used its authority under Article 142 to impose a stringent, non-negotiable time-bound mandate on the Union Government, ensuring the prompt completion of the identification, verification, and registration procedures (*e.g.*, finalization of the National Register of Citizens, NRC). By ensuring that the Accord's promised procedure is carried out, this would have changed the Court's function to that of an administrative enforcer and possibly restored some of the social cohesion that was lost during the delay.

The most responsible course of action for the Parliament would been to review the Citizenship Act in its entirety, repeal section 6A, and enact a unified national policy based on ideas more in line with the original, inclusive article 5 and its vision of *Jus Soli*. This will resolve the long-standing "nation-state confusion" and prevent future regional legitimation crises by eliminating the Assamese-specific article 14 discrimination within a more comprehensive, globally applicable legal framework.