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IN RE: SECTION 6A OF THE CITIZENSHIP ACT, 1955: PARLIAMENT'S POWER, EQUALITY AND ASSAM'S EXCEPTIONALISM

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I. ABSTRACT

The Supreme Court's judgment in the case In Re: Section 6A of The Citizenship Act, 1955 marks a defining moment in Indian citizenship jurisprudence especially at a time when citizenship as concept is one of the most important topics discussed around the world. The judgment puts to the end the long-standing controversy around the legitimacy of Section 6A of The Citizenship Act, 1955 since 1985. The judgment addresses major question related to parliament's power under Article 11 of the constitution especially relating to whether any exercise under Article 11 would require altering other provisions of the constitution within part II of the constitution. The judgment further evaluated the scope of Article 14, 29 and 355 in context of parliamentary legislative authority on citizenship laws. This case commentary examines the factual background, constitutional issues, arguments advanced by the parties, and the reasoning adopted by both the majority and the dissent. It critically evaluates the Court's interpretation of Articles 11, 14, 29(1), and 355, as well as Justice Pardiwala's dissent questioning the validity of Section 6A. The commentary reinforces Parliament's legislative discretion in enacting laws on citizenship while accepting that constitutional validity does not mean effective implementation. The commentary reinstates that the decision will definitely shape future debates on citizenship, illegal immigration, federalism, and migration governance on citizenship in contemporary India.

II. KEYWORDS

Citizenship, equality, illegal immigration, culture, Assam accord

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III. INTRODUCTION

The question of who belongs to a nation state has occupied constitutional discourse for years both in India and abroad. Section 6A of the Citizenship Act, 1955 was inserted by the Citizenship (Amendment) Act, 1985² to implement the Assam Accord³ to create a distinct and time bound adjudication of citizenship questions in Assam which was facing severe illegal immigration from bordering Bangladesh. The provision has been politically and legally contested owing to its establishing a framework distinct to the citizenship structure applicable in rest of India. On October 17, 2024, a five judge constitutional bench of the Supreme Court of India upheld the constitutionality of Section 6A of the Citizenship Act, 1955 with a 4:1 majority⁴. The significance of the case cannot be stressed any further as its interpretation will shape the trajectory of citizenship jurisprudence, refugee and statelessness discourse and Centre-State relations on migration for years to come.

IV. FACTS OF THE CASE

The case concerns the constitutional validity of Section 6A of the Citizenship Act, 1955. Its historical background lies in the Assam agitation of the 1970s and 1980s against large-scale migration into Assam, which culminated in the Assam Accord of 15 August 1985 and the insertion of Section 6A by the Citizenship (Amendment) Act, 1985. Procedurally, the controversy reached the Supreme Court through writ petitions challenging the constitutionality of Section 6A; in particular, Assam Sanmilita Mahasangha and other organisations challenged the provision in 2012 on grounds of arbitrariness, discrimination and inconsistency with the constitutional citizenship scheme. A two-judge Bench, by its order dated 17 December 2014, framed thirteen constitutional questions and referred the matter to a Constitution Bench. The final Constitution Bench hearings took place in December 2023, and judgment was reserved on 12 December 2023 before being delivered on 17 October 2024.

² The Citizenship (Amendment) Act, No. 65 of 1985, Acts of Parliament, 1985 (India) (inserting Section 6A into the Citizenship Act, 1955).

³ Memorandum of Settlement (Assam Accord), Gov't of India-All Assam Students' Union-All Assam Gana Sangram Parishad, Aug. 15, 1985, https://www.nrcassam.nic.in/assam_accord.html.

⁴ In re Section 6A of the Citizenship Act, 1955, 2024 SCC OnLine SC 2880 (India).

Section 6A does not create a simple binary between lawful and unlawful entrants before or after 24 March 1971. It creates a two-tier citizenship mechanism for persons of Indian origin who entered Assam from Bangladesh. Under Section 6A (2), persons who entered Assam before 1 January 1966 and were ordinarily resident in Assam were deemed to be citizens of India. Under Section 6A (3), persons who entered Assam between 1 January 1966 and 24 March 1971 were not granted immediate full citizenship; they were required to be detected as foreigners, register themselves, and remain subject to a ten-year exclusion from electoral rolls, after which they would be deemed citizens. Persons entering after 24 March 1971 were treated as illegal migrants liable to be detected and deported. This distinction is central to the later discussion of Justice Pardiwala's dissent, which questioned the continuing reasonableness and workability of the Section 6A (3) mechanism.

V. LEGAL ISSUES INVOLVED IN THE CASE

The proceeding arose from constitutional challenges to Section 6A and was referred to a Constitution Bench after a two-judge Bench framed thirteen questions on 17 December 2014. The principal issues were whether Parliament could enact Section 6A under Article 11 without altering Articles 6 and 7 of the Constitution;⁵ whether the Assam-specific cut-off dates, including the distinction between pre-1966 entrants, 1966–1971 entrants and post-24 March 1971 entrants, satisfied Article 14;⁶ whether the conferment of citizenship under Section 6A diluted the cultural and linguistic rights protected by Article 29(1);⁷ whether continued migration into Assam could be treated as “external aggression” or “internal disturbance” under Article 355;⁸ and whether the mechanism under Section 6A(3), particularly its dependence on State-led detection and the absence of a terminal time-limit, suffered from manifest arbitrariness or temporal unreasonableness.

VI. ARGUMENTS BY PARTIES

⁵ India Const. arts. 6-7.

⁶ India Const. art. 14.

⁷ India Const. art. 29, cl. 1.

⁸ India Const. art. 355.

The petitioners, represented by Assam Public Works argued that Section 6A conferred citizenship through a mechanism inconsistent with Articles 6 and 7 of the constitution which govern the citizenship of migrants from Pakistan (Bangladesh was east Pakistan). If the union intended to depart from the process already envisaged under the constitution it had to amend article 6 and 7. They further contended based on the Supreme Court judgment in *Sarbananda Sonowal v. Union of India* (2005), that large scale illegal migration constituted "external aggression" under Article 355⁹, and that Section 6A was incentivizing such action through its structure. On the question of discrimination, the petitioner's argued that the cut-off date of 1971, applicable only to Assam was arbitrary when compared with the rest of the country where the cut-off was 1948. It was further argued that the resulting demographic change on account of immigration violated the right of the Assamese people under Article 29(1) to conserve their distinct language, script and culture.

The Union of India and the State of Assam, defended Section 6A as a legitimate and constitutionally sound political solution to a localized problem in Assam. The Union maintained that Section 6A did not violate Article 14, as Assam's exceptional demographic and historical context justified differential treatment and Article 11 of the constitution gives the parliament power to regulate matters relating to citizenship, including prescribing a different cut-off date for Assam in light of its unique historical circumstances. It was further argued that Article 355 imposed no judicially enforceable obligation compelling a particular legislative response to migration, and that Article 29(1) protected the affirmative right of communities to conserve their culture but does not give a right to exclude others.

VII. RESEARCH AND ANALYSIS

At the outset, it is important to note that the judgment did not speak through one undifferentiated judicial voice. CJI D.Y. Chandrachud delivered a separate concurring opinion upholding Section 6A, while Justice Surya Kant authored the principal majority opinion on behalf of himself, Justice M.M. Sundresh and Justice Manoj Misra.

⁹ *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665 (India); see also India Const. art. 355, *supra* note 8.

Justice J.B. Pardiwala dissented and held Section 6A unconstitutional prospectively on the ground of temporal unreasonableness and manifest arbitrariness. This distinction is doctrinally important because the concurring and principal majority opinions reached the same result, but not always through identical reasoning. The official judgment records Justice Surya Kant's opinion as being "on behalf of himself, M.M. Sundresh J. and Manoj Misra, J.", while Justice Pardiwala expressly states that he differs from Justice Kant and proposes to hold Section 6A invalid with prospective effect.

1. Issue 1 – whether Section 6A is ultra vires Articles 6 and 7?

The Court held that Articles 5–9 of the Constitution were transitional provisions dealing with citizenship at the commencement of the Constitution, while Article 11 preserved Parliament's continuing power to legislate on citizenship. CJI Chandrachud's concurrence emphasized that Section 6A does not amend Articles 6 and 7, but operates in a field left open by Article 11 for future legislative regulation. Justice Kant's majority opinion similarly treated Section 6A as a valid exercise of Parliament's power to address a historically specific migration problem in Assam. Therefore, Section 6A was held not to be ultra vires Articles 6 and 7.

2. Issue 2 – Article 14 and the Assam-specific classification

The majority applied the traditional Article 14 test of intelligible differentia and rational nexus. CJI Chandrachud held that the two yardsticks under Section 6A – migration into Assam and the cut-off date linked to 24/25 March 1971 – were reasonable because Assam faced a distinct impact of migration in terms of population and resources, and the date was historically connected with the Bangladesh Liberation War. Justice Kant's opinion also treated the Assam Accord as a constitutionally relevant political settlement responding to exceptional conditions in Assam. Justice Pardiwala did not reject Assam's distinct historical position, but disagreed on the continued reasonableness of Section 6A(3), particularly because the detection mechanism had no effective temporal limit.

3. Issue 3 – Article 29(1) and cultural rights

The majority held that Article 29(1) protects the right of a section of citizens to conserve their language, script and culture, but it does not create a constitutional right to exclude others from citizenship. CJI Chandrachud's concurrence emphasized that the petitioners had not proved that Section 6A prevented Assamese citizens from taking steps to protect their culture. Justice Kant's opinion similarly required a demonstrable constitutional injury and not merely an assertion of demographic change. Therefore, Section 6A was held not to violate Article 29(1).

4. Issue 4 – Article 21 and the alleged impact on life, liberty and self-governance

The judgment also considered Article 21, which the present manuscript currently omits. The petitioners argued that large-scale migration adversely affected the life, personal liberty and way of life of the people of Assam. Justice Kant's majority opinion rejected this challenge at the threshold, holding that the petitioners had not produced sufficient material to show that Section 6A itself caused a constitutionally actionable deprivation under Article 21. The Court treated this argument as closely connected with the Article 29(1) cultural-rights claim and held that broad assertions of marginalisation, without evidence linking the harm directly to Section 6A, could not invalidate the provision.

5. Issue 5 – Article 326 and voting rights

The Court's treatment of Article 326 is directly relevant to the themes of equality, citizenship and political membership. The petitioners contended that Section 6A diluted the political rights of Assamese citizens by enabling migrants to enter electoral rolls. Justice Kant's majority opinion rejected this argument, holding that Article 326 is primarily enfranchising in character and cannot be used to seek an en masse exclusion of a class of persons who have become citizens by operation of law. Once persons are deemed citizens under Section 6A, they enjoy equal political rights, including the right to vote, subject only to constitutionally or statutorily recognised disqualifications. If particular names are wrongly included in electoral rolls, the remedy lies under the Representation of the People Acts, 1950 and 1951, and not by reading a new exclusionary ground into Article 326.

6. Issue 6 – Article 355 and external aggression

On Article 355, CJI Chandrachud's concurrence held that the constitutional validity of legislation cannot be tested directly on the ground of Article 355, which was framed as part of the Union's emergency-related obligations toward States. Justice Kant's opinion also rejected the argument that Section 6A could be invalidated merely by characterising migration as external aggression or internal disturbance. Thus, while the Court recognised the seriousness of illegal migration, it did not treat Article 355 as an independent ground for striking down Section 6A.

VIII. THE SUPREME COURT'S JUDGMENT: RATIO DECIDENDI AND OBITER DICTA

A. Ratio Decidendi

The Supreme Court delivered its judgment on 17 October 2024 and upheld the constitutionality of Section 6A of the Citizenship Act, 1955 by a 4:1 majority. The binding ratio of the majority was that Section 6A is a valid exercise of Parliament's power under Article 11 of the Constitution and does not amend or override Articles 6 and 7, which were transitional provisions dealing with citizenship at the commencement of the Constitution. The Court further held that the Assam-specific citizenship framework created by Section 6A satisfies Article 14 because Assam's distinct historical, political and demographic circumstances provided an intelligible differentia, and the cut-off date connected with 24/25 March 1971 had a rational nexus with the object of implementing the Assam Accord. The Supreme Court Observer's summary also records that the Court upheld Section 6A by a 4:1 majority on 17 October 2024.

The majority also held that Section 6A does not violate Article 29(1), since the right to conserve language, script and culture does not include a right to exclude persons who have acquired citizenship through a valid law. Similarly, the Court rejected the challenge based on Article 355, holding that allegations of migration or external aggression could not by themselves operate as an independent ground to invalidate Section 6A. On Article 326, the Court held that persons who are deemed citizens under

Section 6A cannot be excluded from electoral participation merely because their citizenship arises under a special Assam-specific framework; errors in electoral rolls must instead be addressed through the statutory election law mechanism.

Justice Pardiwala dissented. He held that Section 6A had become constitutionally infirm because the mechanism under Section 6A(3), particularly for detecting persons who entered Assam between 1 January 1966 and 24 March 1971, had become ineffective and temporally unreasonable. His dissent focused on the State-controlled detection process, the absence of an effective time-limit, and the resulting manifest arbitrariness. However, since the majority upheld Section 6A, Justice Pardiwala's view does not constitute the binding ratio of the Court.

B. Obiter Dicta and Supplementary Directions

Separate from the binding ratio, the Court made important observations and issued directions concerning implementation. These observations do not form the core legal basis for upholding Section 6A, but they are significant for understanding the Court's institutional concerns. The Court observed that constitutional validity cannot be equated with satisfactory governance, and that the implementation of Section 6A had suffered from serious administrative deficiencies. It therefore directed that the detection, identification and deportation machinery for post-24 March 1971 illegal migrants be strengthened and monitored more effectively.

The Court also adverted to the inadequacy of the existing Foreigners Tribunals framework and the need for better coordination between statutory mechanisms. In particular, it referred to the continued relevance of the Immigrants (Expulsion from Assam) Act, 1950 and indicated that the statutory scheme for detection and expulsion must operate in harmony with Section 6A and the Foreigners Act framework. These observations function as obiter dicta and implementation-oriented directions: they do not alter the Court's holding that Section 6A is constitutionally valid, but they clarify that the State and Union remain under a continuing obligation to ensure effective identification and deportation of persons who are not entitled to protection under Section 6A.

IX. SUPREME COURT'S JUDGMENT ON SECTION 6A: A CRITICAL ANALYSIS

The judgment acts as one of the most significant judgments in relation to constitutional law on citizenship. The Supreme Court recognized that Assam accord was political compromise negotiated by the Union Government to address the extraordinary political and social unrest that prevailed in Assam during the 1980s. As far as its constitutionality of section 6A regarding its conflict with article 6 and 7 goes the Court held that the language in Part II (Article 5-11) makes it clear that these provisions were transitional in nature, intended to determine citizenship only at the commencement of the Constitution. Also, the insertion of Article 11 in part II suggests that the constituent assembly knew that citizenship is a dynamic process and the Parliament will need some discretion to legislate on these matters. This interpretation reinforces the constitutional distinction between the original constitutional settlement on citizenship and Parliament's continuing legislative competence to respond to changing demographics and political realities.

Equally significant is the Court's interpretation of Article 14. Rejecting the challenge based on equality, the majority held that Assam's distinct experience of large-scale migration constituted an intelligible differentia warranting differential treatment. The judgment thus endorses the constitutional permissibility of a region-specific citizenship regime was justified by a unique historical settlement such as the Assam Accord.

Justice Pardiwala critiques the ineffectiveness of Section 6A in curbing illegal immigration. However, it must be noted that Section 6A was remedial measure from the state designed to regularize migrants already in India till 1971. While it may not have solved the problem of immigration, it provided a framework for addressing a politically sensitive issue. As far as Justice Pardiwala's concerns about the passage of time and state burden are valid in some respects, they do not account for the socio-political context within which Section 6A was drafted. The fact that 40 years have passed does not inherently invalidate the section's legal or moral underpinnings. It is

more appropriate to view the provision as a tool crafted for Assam's unique context, where the passage of time does not diminish its original purpose.

The other significant aspect of the judgment is that it does not treat constitutional validity as synonymous with satisfactory governance. Although Section 6A was upheld, the Court recognized glaring deficiencies in its implementation and issued directions to strengthen the identification and deportation of post 1971 illegal migrants. This is an important reflection that the validity of legislation does not absolve the State of its continuing obligation to enforce the law effectively and in accordance with the constitution.

X. CONCLUSION AND COMMENTS

The decision in *In Re: Section 6A of the Citizenship Act, 1955* is a landmark judgment in Indian citizenship jurisprudence because it settles, at least constitutionally, the long-contested validity of Assam's special citizenship framework. By upholding Section 6A, the Supreme Court affirmed that Parliament's power under Article 11 is not frozen by the transitional citizenship provisions contained in Articles 5 to 9, but remains sufficiently broad to respond to historically specific migration problems through ordinary legislation. This aspect of the ruling is likely to influence future disputes concerning Parliament's legislative competence over citizenship, especially where region-specific or group-specific citizenship arrangements are challenged on equality grounds.

The judgment is equally significant for the NRC and Assam Accord debates. By accepting 24/25 March 1971 as a constitutionally valid cut-off date, the Court gave finality to the legal foundation on which Assam's citizenship determination framework has rested since the Assam Accord. The Supreme Court Observer records that the Constitution Bench upheld Section 6A by a 4:1 majority on 17 October 2024, thereby confirming the validity of the provision that grants citizenship protection to migrants who entered Assam before the 1971 cut-off. At the same time, the judgment does not treat constitutional validity as equivalent to administrative success. The Court expressly recognised deficiencies in the enforcement of the statutory scheme and issued directions to strengthen the detection and deportation mechanism for post-

1971 illegal migrants. The judgment itself records that although Section 6A was held constitutionally valid, its inadequate enforcement had created the possibility of widespread injustice.

From a constitutional perspective, the case clarifies the relationship between equality, citizenship and political membership. The Court accepted that Assam's special historical circumstances justified differential treatment under Article 14, but it also rejected exclusionary readings of Article 29(1) and Article 326. In doing so, the judgment preserves a distinction between protecting indigenous cultural interests and denying legally conferred citizenship rights to persons who fall within a valid statutory framework. This balance is important because it prevents citizenship adjudication from becoming a tool of cultural exclusion, while still recognising that migration into Assam created a genuine constitutional and administrative problem.

The judgment will also remain relevant to the ongoing debate over Clause 6 of the Assam Accord, which concerns constitutional, legislative and administrative safeguards for protecting Assamese cultural, social and linguistic identity. Although Section 6A deals with citizenship and Clause 6 concerns protective safeguards, both arise from the same political settlement. The Court's reasoning indicates that the constitutional answer to Assam's migration question cannot rest solely on exclusion or deportation; it must also include effective implementation of statutory mechanisms and meaningful protection of Assamese identity within constitutional limits. Therefore, the case is not merely a decision on the validity of one statutory provision. It is a major constitutional statement on Parliament's power, regional exceptionalism, equality, migration governance and the future trajectory of Indian citizenship law.

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