

SECTION 6A OF THE CITIZENSHIP ACT

Context:

In a landmark ruling, a Constitution Bench of the Supreme Court on October 18 upheld the constitutional validity of Section 6A of the Citizenship Act, 1955 (1955 Act) which laid out an exclusive regime for migrants in Assam from erstwhile East Pakistan (present Bangladesh) to obtain Indian citizenship as long as they entered India before March 25, 1971.

What does Section 6A stipulate?

- Section 6A originates from the **“Assam Accord”**, a **political settlement signed on August 15, 1985**, between the Rajiv Gandhi-led Congress government and Assam’s student groups, following a six-year-long agitation against the influx of undocumented migrants from Bangladesh into Assam.
- It established a framework for granting or denying Indian citizenship to migrants in Assam based on a **cut-off date —March 25, 1971**.
- The date marked the onset of the genocide in East Pakistan, leading to the Bangladesh Liberation War and the eventual creation of Bangladesh.
- The conflict drove millions of Bengalis to flee East Pakistan and seek refuge in Assam, which **shares a 263-km border with Bangladesh**.
- **Foreigners**: Accordingly, all those who entered the State **after March 25, 1971, would be treated as foreigners and deported in accordance with law**.
- **Ordinarily resident**: The provision also conferred Indian citizenship upon migrants of **“Indian origin” who entered Assam before January 1, 1966**, and had been **“ordinarily resident”** in the State since then.
- Meanwhile, those who arrived between January 1, 1966, and March 24, 1971, were granted the full rights of Indian citizens, except for voting rights, which were withheld for a decade.

Why was it challenged?

- The petitioners contended that setting a different cut-off date for citizenship in Assam is discriminatory and violates the right to equality enshrined in Article 14 of the Constitution.
- Concerns were also raised about the provision’s inconsistency with **Articles 6 and 7**, which regulate citizenship pertaining to Partition-era migration for the rest of the country.
- **Article 6** grants citizenship to individuals who migrated to India from Pakistan before July 19, 1948, provided they have resided in the country since then.

- Meanwhile, **Article 7 denies citizenship to those who moved to Pakistan after March 1, 1947**, while allowing it for those who returned to India under a permit for resettlement or permanent return.
- They also claimed the provision resulted in a “perceptible change in the demographic pattern of the State,” thereby violating the cultural and linguistic rights of the “**indigenous**” population of Assam, as **guaranteed under Article 29**.
- This, they argued, constituted both “**external aggression**” and “**internal disturbance**” under **Article 355 of the Constitution**, thereby imposing an obligation upon the Union government to protect the State.

What did the majority rule?

- Upheld the differentiated treatment of Assam under **Section 6A**, citing the region’s unique historical and political considerations.
- The provision does not violate the equality clause under Article 14, as it represents Parliament’s careful balancing act between its humanitarian approach toward Bangladeshi immigrants and the significant strain their mass exodus has imposed on Assam’s economic and cultural resources.
- **Section 6A** is not inconsistent with the citizenship provisions in **Articles 6 and 7 of the Constitution**.
- While these Articles establish a cut-off date for conferring citizenship at the commencement of the Constitution— January 26, 1950 — **Section 6A specifically addresses individuals not covered by these two provisions**.
- Section 6A aligns with the constitutional philosophy of Articles 6 and 7, as it is rooted in the “same underlying policy of granting citizenship to the people of Indian origin migrating from Pakistan due to political disturbances in a foreign territory”.
- **Article 11** of the Constitution grants Parliament substantial flexibility in formulating laws related to citizenship, including the authority to establish conditions for granting citizenship that may differ from those outlined in Articles 6 and 7.
- Adopting a multicultural and pluralistic interpretation of Article 29, the judges further observed that Section 6A does not violate the cultural rights of the “indigenous” Assamese people.
- They reasoned that while the Article aims to “conserve” the culture of a specific group, it does not preclude the coexistence of other cultures.
- Also noted that “**external aggression**” referred to military actions and did not cover within its ambit humanitarian migration driven by economic or other distress. Accordingly, they found no breach of the Union’s duty under Article 355.
- Allowing the Union to exercise such “**emergency powers**” would be detrimental to federalism and could undermine the constitutional status of States.

Why did Justice Pardiwala dissent?

- He declared Section 6A unconstitutional, effective only from the date of the judgment.
- While the provision may have been justifiable at the time of its enactment, its failure to curb illegal migration in Assam had rendered it inconsistent with constitutional principles over time.
- The lack of a sunset clause on the application of Section 6A incentivises illegal immigration and exacerbates demographic imbalances in the region.
- Section 6A does not allow for **self-declaration or voluntary identification as a foreigner** thereby leaving the detection process entirely reliant on state intervention.
- **Clear departure from the scheme of the Citizenship Act** and Articles 6 and 7 of the Constitution, which allow citizenship to be acquired through registration.

Significance of the Judgement:

➤ **The first significant aspect** of the judgment is its declaration that **Parliament's power to legislate on citizenship is not unlimited.**

✓ Like any other law, legislation on citizenship must adhere to constitutional limits, including fundamental rights

✓ It draws a clear line in the sand for the pending CAA case. In the CAA case, the government has argued that laws on citizenship are an expression of sovereignty and should be immune from judicial scrutiny, but this ruling rejects that notion entirely.

✓ Citizenship laws are subject to constitutional limitations and judicial review, providing a clear indication that the CAA will likely face similar scrutiny.

➤ **A second critical dimension** of the ruling is its discussion on **constitutional values, particularly the principle of fraternity.**

• The petitioners argued that the influx of migrants undermined Assamese culture and violated their **rights under Article 29** of the Constitution, which protects the cultural and educational rights of minority citizens.

• They claimed that the presence of these migrants was eroding their cultural identity, a violation of their rights.

• The Court, however, took a broader and more progressive view of fraternity, rejecting the argument that demographic change constituted a violation of culture.

• Fraternity, the judges held, is about **fostering "interconnectedness"** among citizens, not **the right to "choose one's neighbours."**

• This rejection of a narrow cultural protectionist view marked a serious blow to Assamese political claims.

➤ The judgment emphasized that demographic change does not inherently violate cultural rights—a significant step in the broader debate over how to **balance majority cultural concerns with broader democratic principles.**

- The judgment also delves in to the question of equality in citizenship laws. The petitioners argued that Assam was unfairly burdened by Section 6A, which imposed a different cut-off date for citizenship compared to the rest of India.
- The claim was that Assam was disproportionately carrying the weight of immigration while other border states were not subjected to the same rules.
- Relevant here was **the right to equality under Article 14**. The right requires that any divergent treatment —so-called “classification” among groups—must be rational and justified by the purpose of the law.
- The Court upheld Section 6A’s constitutionality, acknowledging the historical context of the Assam Accord and Assam’s unique challenges with migration.

What are the potential ramifications?

- The March 25, 1971, cut-off date endorsed by the majority serves as the foundation for the contentious National Register of Citizens which was prepared in 2019 following the top court’s directives.
- Although the register is yet to be implemented, it has identified 19 lakh residents (5.77% of Assam’s population) as potential non-citizens.
- Moreover, the ruling bolsters the long-standing demand of Assamese organisations to repeal the controversial Citizenship Amendment Act, 2019 (CAA), which sets December 31, 2014, as the cut-off date for granting citizenship to non-Muslim migrants who illegally entered India from Bangladesh, Afghanistan, and Pakistan.
- Critics argue that by prescribing a different timeline, the CAA creates a loophole that exempts Bengali Hindus who migrated to Assam from Bangladesh after 1971 from the application of Section 6A.