

CASE NOTE

STATELESSNESS AS AN ACADEMIC CONCERN: THE INDIAN SUPREME COURT'S ENGAGEMENT WITH CITIZENSHIP POLICY IN *IN RE: SECTION 6A OF THE CITIZENSHIP ACT, 1955*

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I INTRODUCTION

In October 2024, the Supreme Court of India ('Court') made a significant ruling regarding citizenship laws in Assam, a state in the north-east of the country. The case *In Re: Section 6A of the Citizenship Act, 1955* ('*In Re: s 6A*')¹ centred on s 6A of the *Citizenship Act 1955* ('*Citizenship Act*'), which pertains to granting citizenship to a specific class of migrants who entered Assam before 'the 1st day of January, 1966'.² The Supreme Court upheld the constitutional validity of s 6A in a 4:1 majority.³ In doing so, the Court also engaged with a multitude of important issues for constitutional law and citizenship in the country. This included discussion of the capacity of the Indian Parliament ('Parliament') to legislate on citizenship, the constitutional values of fraternity, equality and the right to culture, and lastly but importantly, the role of the Court in engaging with matters of citizenship policy.

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¹ *In Re: Section 6A of the Citizenship Act, 1955* (2024) INSC 789 ('*In Re: s 6A*').

² *Citizenship Act 1955*, s 6A (India) ('*Citizenship Act*').

³ *In Re: s 6A* (n 1).

II BACKGROUND AND FACTS – THE ASSAM EXCEPTION AND BEYOND

Under the mandate of the East India Company in the early 1800s colonial era, the prolific growth of tea plantations and subsequent demand for labour in Assam led to an influx of Bangla-speaking populations, who acted as both labour and administration.⁴ The sparsely populated Assam was thus flooded with Bangla-speaking populations from what was then East Bengal (formerly a part of undivided India that then became East Pakistan and finally Bangladesh).⁵ Upon gaining independence, erstwhile undivided India was partitioned into India and Pakistan.⁶ The exodus of migration that resulted from partition was met with a slew of legislation that put in place a permit system.⁷ This was not extended to East India given the long history of migration shared between East Bengal and Assam.⁸ In 1955, the *Citizenship Act* came into force, which governs citizenship in the country.⁹ In 1964, the *Foreigners (Tribunals) Order* was issued to bring the process of detection, prosecution and deportation of illegal immigrants in Assam under judicial scrutiny, a process that until then was solely tackled by police forces.¹⁰

In 1971, the Bangladesh Liberation War led to the creation of Bangladesh, resulting in a mass influx of refugees into Assam from Bangladesh.¹¹ The influx of Bangla-speaking migrants began to allegedly change the cultural atmosphere in Assam, resulting in conflicts between Assamese and Bangla speakers. These tensions took the form of student protests and demands for State support of

⁴ *The Government of India Act 1833* (UK) 3 & 4 Will 4, c 85; Myron Weiner, 'The Political Demography of Assam's Anti-Immigrant Movement' (1983) 9(2) *Population and Development Review* 279.

⁵ Weiner (n 4).

⁶ *Indian Independence Act 1947* (India).

⁷ *Influx from West Pakistan (Control) Ordinance 1948* (India); *Influx from Pakistan (Control) Ordinance 1948* (India); *Influx from Pakistan (Control) Act 1949* (India).

⁸ There were multiple conflicts beginning from 1817 between the Burmese and the British due to the Burmese invasions into Assam: see Nicholas Tarling, *The Cambridge History of Southeast Asia* (Cambridge University Press 1993) vol 2, 34–6; Maung Htin Aung, *The Stricken Peacock: Anglo-Burmese Relations 1752–1948* (Springer 1965). Several treaty negotiations followed, resulting in the annexing of Assam among other north-eastern states to the British, as well as integrating the Ahom Kingdom into the Bengal Presidency in what was eventually formed as the province of Assam in 1873: Sir Edward Gait, *A History of Assam* (Thacker, Spink & Company 1906); *Treaty of Yandaboo 1826*, opened for signature 24 February 1826. In 1836, Bangla was declared to be the official language of the Bengal province, thus also applying to its constituent Assam: Paramananda Majumdar, 'Introduction of the Bengali Language in 19th Century Assam: Role of the British' (2006) 67 *Proceedings of the Indian History Congress* 787–92. However, given the uncontrolled migration Assam saw, India enacted the *Immigrants (Expulsion from Assam) Act 1950*: 'Assam History', *Assam Government* (Web Page, 12 January 2020) <<https://assam.gov.in/about-us/assam-history>>, archived at <perma.cc/JC98-A8KU>.

⁹ *Citizenship Act* (n 2).

¹⁰ *The Foreigners (Tribunals) Order 1964* (India).

¹¹ On 26 March 1971, Bangabandhu Sheikh Mujibur Rahman proclaimed Bangladesh's independence from Pakistan, initiating the Bangladesh Liberation War. This declaration was a pivotal moment in the struggle for Bangladesh's sovereignty, following a brutal crackdown by Pakistani forces known as Operation Searchlight. The war continued until 16 December 1971 when Pakistan surrendered and Bangladesh officially became an independent nation: 'Declaration of Independence of Bangladesh' *Centre for Bangladesh Genocide Research* (Web Page, 2025) <<https://cbgr1971.org/history/historical-milestones/declaration-of-independence-of-bangladesh/>>, archived at <perma.cc/SQ7A-HFKP>. See also, Chandrashekhara Dasgupta, *India and the Bangladesh Liberation War* (Juggernaut 2024).

Bangla populations, led by unions including the All Assam Students' Union.¹² These conflicts came to a head in 1978–9, when the issue of the inclusion of foreigners in the electoral rolls of Assam captured the state's political and media discourse.¹³ However, agreement on the definition and cut-off date to decide who was a foreigner and ought to be deported remained elusive in negotiations between the union and movement leaders.¹⁴ These discussions took place within the context of ongoing state elections, which proceeded despite student demands for a revision of the electoral rolls remaining unfulfilled. This omission culminated in the bloody Nellie Massacre of 1983, in which thousands of Bengali Muslim migrants were killed.¹⁵

After decades of conflict, the Assam Accord ('Accord') was signed in 1985 between the Central Indian Government and the movement leaders in Assam.¹⁶ The Accord promised to disenfranchise those who entered Assam after 1965 and deport those who entered after 24 March 1971, thus accepting the date of the beginning of the Bangladesh Independence War as the cut-off date.¹⁷ S 6A of the *Citizenship Act*¹⁸ codified the negotiations and promises within the Assam Accord.¹⁹

The Petitioners in *In Re: s 6A* argued that the scheme of citizenship as contemplated by s 6A has fundamentally altered the demographics in Assam, having marginalised the original, indigenous and ethnic Assamese citizens along with the reduction in the share of Assamese speaking population. The acute illegal immigration was also argued to pose a threat to India's unity, integrity and national security.

¹² See Sanjib Baruah, 'Immigration, Ethnic Conflict, and Political Turmoil--Assam, 1979-1985' (1986) 26(11) *Asian Survey* 1184–1206 ; See also Sangeeta Barooah Pisharoty, *Assam: The Accord, The Discord* (Penguin Random House India 2019) ch 1–2.

¹³ *Report of the Non-Official Judicial Inquiry Commission on the Holocaust of Assam Before During and After Election 1983*, Order of R K Trivedi, Chief Election Commissioner, India, Annexure F, 201 (7 January 1983) 201; *Report of the Non-Official Judicial Inquiry Commission on the Holocaust of Assam Before During and After Election 1983*, Note Submitted by S L Khosla, Chief Electoral Officer, Assam to R V Subramaniam, Advisor to Governor, Assam, Annexure E, 193 (29 September 1982) 197–200; Arupjyoti Saikia, *The Quest for Modern Assam: A History: 1942–2000* (Penguin Random House 2023) ch 12.

¹⁴ Pisharoty (n 12) 13–22.

¹⁵ Harsh Mander, 'Nellie: India's Forgotten Massacre', *The Hindu* (online, 14 December 2008) <https://www.thehindu.com/opinion/columns/Harsh_Mander/assams-tragedy/article3820732.ece>, archived at <perma.cc/JQ37-TCH3>.

¹⁶ *Accord between AASU, AAGSP and the Central Government on the Foreign National Issue*, signed 15 August 1985 (New Delhi) ('Assam Accord').

¹⁷ *ibid* [5.8].

¹⁸ *Citizenship Act* (n 2) s 6A(3):

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

- (a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and
- (b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and
- (c) has been detected to be a foreigner; shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (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.

¹⁹ *In Re: s 6A* (n 1) 311 [73].

III ISSUES

The contentions of the Petitioners, the arguments of the State as the Respondents, and the Court's consideration of the constitutional validity of s 6A traverses the interplay between citizenship and relevant provisions in the *Constitution of India* ('*Constitution*').²⁰

The first set of arguments, seen here as institutional in nature, pertained to the scope of judicial review the Court could undertake in matters of policy and the ability of the Parliament to legislate on matters of citizenship. This first argument on judicial review was not asserted by the Petitioners but was put forth by the Respondents. Since citizenship, external aggression, migration and other issues raised here were matters of foreign policy best handled by the government, the Respondents argued they must be excluded from the Court's purview.²¹

The second institutional argument on parliamentary capacity was made in the context of s 6A being incompatible with arts 6 and 7 of the *Constitution*, which deals with the granting of citizenship to those migrating to or from Pakistan. The Petitioners argued that the Parliament ought to have put forth a constitutional amendment instead of legislating via statute to override these provisions of the *Constitution*.²² The Respondents argued that the Parliament did in fact have the power to legislate on citizenship, which overrides other provisions in Part II of the *Constitution* that deal with citizenship.²³

The second and largest set of arguments pertained to the constitutional validity of s 6A. To challenge its validity, the Petitioners invoked a range of constitutional provisions. The Petitioners argued that s 6A violates the value of fraternity as found in the Preamble of the *Constitution*.²⁴ Since the *Constitution* seeks to protect national fraternity as opposed to notions of global fraternity, the presence of illegal immigrants from Bangladesh was 'a threat to the unity and integrity of the country' in disturbing the demographic and peace in the region.²⁵ The Respondents countered that fraternity is best understood as equal regard on an individual level without creating societal divisions, and that s 6A is a reinforcement of this fraternity.²⁶

The Petitioners next claimed that s 6A violates art 14,²⁷ the equality provision of the *Constitution*, as this provision applied only to Assam with no 'intelligible differentia'.²⁸ The lack of rationale in the cut-off date also made good grounds for striking down the section as manifestly arbitrary.²⁹ The Respondents argued that under-inclusiveness could not be seen as a violation of art 14 and there did exist

²⁰ *Constitution of India* 1950 (India) ('*Constitution*').

²¹ *In Re: s 6A* (n 1) 133 [33(i)].

²² *ibid* 130 [32(ii)].

²³ *ibid* 133–4 [33(iv)].

²⁴ *ibid* 130 [32(i)].

²⁵ *ibid*.

²⁶ *ibid* 133 [33(iii)].

²⁷ *Constitution* (n 20) art 14: 'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'

²⁸ *In Re: s 6A* (n 1) 131 [32(v)]. Intelligible differentia is a legal principle used to justify classifications under equality laws, such as art 14 of the *Constitution* (n 20). It requires that any classification must be based on a clear and logical distinction that separates one group from another. Additionally, this distinction must have a rational connection to the law's objective. This ensures that legal distinctions are fair and not arbitrary.

²⁹ *In Re: s 6A* (n 1) 131 [32(v)].

justifications for the cut-off dates, as s 6A reflected the Assam Accord and the constitutional arrangement of asymmetric federalism.³⁰

The Petitioners also argued that s 6A violated art 21 of the *Constitution*, which guarantees the right to life, by impinging on the rights of indigenous Assamese peoples.³¹ Here, art 1 of the *International Covenant on Civil and Political Rights* ('*ICCPR*')³² was also invoked in their right of self-governance.³³ The burden on resources by the immigrant influx was also a violation of sustainable development under art 21 of the *Constitution*.³⁴ Further, the Petitioners alleged a violation of art 29 of the *Constitution*, which protects cultural rights given the demographic shift and imbalance in the wake of the operation of s 6A.³⁵ In rebuttal, the Respondents contended that since the procedure under s 6A was lawfully established, it was not a violation of art 21.³⁶ Further, art 21 protection extends to both the Assamese community and those foreigners affected by s 6A. The Respondents therefore argued that the cultural rights argument had no relation to the functioning of s 6A, and that the protection under art 29 was geared towards multiculturalism and not cultural exclusivity.³⁷

Under art 355, it is 'the duty of the Union [of India]... to protect the state of Assam' from threats of external aggression and internal disturbance.³⁸ The Respondents argued that the duty under art 355 justified enacting s 6A in order to address 'internal disturbance'.³⁹

IV HOLDING

The majority opinion held that s 6A is constitutional and does not violate the principle of fraternity, nor does it violate arts 6, 7, 9, 14, 21, 29, 326 or 355 of the *Constitution*.⁴⁰ However, in acknowledgement of the persistent immigration into Assam since 25 March 1971, the Court noted that there was inadequate enforcement of s 6A leading to illegal immigration and widespread injustice.⁴¹ Thus, it was recommended that a constitutional bench be constituted to monitor the implementation of immigration and citizenship legislations.⁴²

³⁰ *ibid* 134 [33(vi)].

³¹ *ibid* 131 [32(vi)].

³² *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 1 ('*ICCPR*').

³³ *In Re: s 6A* (n 1) 131 [32(vi)].

³⁴ *ibid*; *Constitution* (n 20) art 21.

³⁵ *In Re: s 6A* (n 1) 132 [32(vii)]; *Constitution* (n 20) art 29:

1. Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
2. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

³⁶ *In Re: s 6A* (n 1) 134 [33(vii)].

³⁷ *ibid* 134 [33(viii)].

³⁸ *ibid* 132 [32(ix)]; *Constitution* (n 20) art 355: 'It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution.'

³⁹ *In Re: s 6A* (n 1) 135 [33(x)].

⁴⁰ *ibid* 276 [387].

⁴¹ *ibid* 277 [388].

⁴² *ibid* 279 [392].

The Court dealt with the maintainability of the petition, holding that while the Court could not engage with matters of policy, judicial review of a limited extent may be permissible where constitutional rights are involved with due regard to the power of the Parliament to legislate in legitimate public interest.⁴³

The Court endorsed a broader view of fraternity, holding that fraternity is to foster interconnectedness and not control the homogeneity of residents in one's state.⁴⁴ The Court also did not accept the Petitioners' arguments under these grounds as they were unable to provide any evidence of s 6A causing harmful effects on Assamese citizens in terms of their cultural rights or the right to life.⁴⁵

In upholding the provision, the Court held that arts 6 and 7 dealt with citizenship applications prior to the *Constitution* coming into force, and that '[Art] 11 confers overriding powers upon the Parliament to make laws even when they are against other provisions'.⁴⁶ S 6A conferred citizenship at a later date to those not covered under arts 6 and 7,⁴⁷ aligning with the purpose of these constitutional provisions in extending the right to citizenship to those affected by partition.⁴⁸ The Court decided that on this basis, the provision was not 'manifestly arbitrary'.⁴⁹ S 6A was drafted to give legal effect to the political settlement reached through the Assam Accord and addressed the influx of migrants, with Assam sheltering an immigrant population with a proportionately smaller land area and population compared to neighbouring states.⁵⁰ The cut-off date also had a rational nexus with reducing migration flows while giving citizenship to migrants of Indian origin.⁵¹

The Court held that s 6A was enacted to quell internal disturbances and hence had no conflict with art 355 of the *Constitution*.⁵² Further, legislation could not be challenged under art 355 as the provision 'deals with emergency powers'.⁵³ These emergency powers take the nature of a duty to be fulfilled by the State and not a right that can be claimed and subsequently challenged before the Courts as requiring justification to pass judicial review.⁵⁴

V ANALYSIS – FROM S 6A TO CAA

In Re: s 6A while progressive in many ways is silent on a few issues. The Respondents argued for the harmonisation of domestic laws with international norms, asserting the internationally recognised norm prohibiting the creation of statelessness. To hold s 6A as unconstitutional would have resulted in the statelessness of a significant portion of the immigrant population.⁵⁵ The Court

⁴³ *ibid* 144 [53]–[54].

⁴⁴ *ibid* 169–70 [115]–[117].

⁴⁵ *ibid* 73 [99]–[100], 245 [301], 252 [321].

⁴⁶ *ibid* 176 [137].

⁴⁷ *Constitution* (n 20) art 6(b)(i): 'before the nineteenth day of July, 1948'; *ibid* art 7: 'after the first day of March, 1947'.

⁴⁸ *In Re: s 6A* (n 1) 57–60 [72]–[78].

⁴⁹ *ibid* 219–220 [240]–[243].

⁵⁰ *ibid* 201–2 [200]–[201].

⁵¹ *ibid* 212–15 [227]–[234].

⁵² *ibid* 60–8 [79]–[90], 263–72 [349]–[367].

⁵³ *ibid* 67–8 [89].

⁵⁴ *ibid* 68 [90].

⁵⁵ Joyston D'Souza, 'What Does Section 6A of the Citizenship Act Have to Do with the NRC Exercise in Assam?' *SCObserver* (online, 5 October 2023) <<https://www.scobserver.in/journal/what-does-section-6a-of-the-citizenship-act-have-to-do-with-the-nrc-exercise-in-assam/>>, archived at <perma.cc/4XYL-2W4P>.

held that since they upheld s 6A, engaging with this argument would be an academic exercise and hence did not investigate this further.⁵⁶ However, this means that those who are affected by the application of laws like s 6A find insufficient scope in the imagination of the apex court. Refugees and stateless persons, who have lived and continue to live in uncertainty and often fall through the gaps in the Indian legal framework, remain unacknowledged due to the Court's heavy emphasis on institutional questions over human rights-based framings.⁵⁷

The claim that domestic laws trump international laws is also an interesting one. Judicial decisions and scholarship may be read to tell a different story.⁵⁸ While it is true that domestic laws prevail in the case of conflict with international norms, there must be an effort to harmonise them, and international law may be relied on to interpret fundamental domestic rights.⁵⁹ These two arguments show that statelessness is not just an academic concern and that international norms can be referred to harmoniously. The references to international treaties in *In Re: s 6A* such as the *ICCPR* (albeit in different contexts)⁶⁰ shows the possibility to rely on a stronger reading and application of these international norms. Since India is a signatory to such instruments, their principles may strengthen domestic obligations to protect migrants and stateless persons.⁶¹

Another notable and worrying aspect of *In Re: s 6A* is the treatment of precedent. The Petitioners, Respondents and the Court heavily relied on the case

⁵⁶ *In Re: s 6A* (n 1) 276 [386].

⁵⁷ Mohsin Alam Bhat, 'After Section 6A Verdict, an Opportunity for the Supreme Court to Centre Refugee Rights' *The Indian Express* (online, 24 October 2024) <<https://indianexpress.com/article/opinion/columns/section-6a-verdict-opportunity-for-the-supreme-court-to-centre-refugee-rights-9631855/>>, archived at <perma.cc/C6DV-ULJQ>; Vincent Chetail, 'Moving Towards an Integrated Approach of Refugee Law and Human Rights Law' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021) 202–220.

⁵⁸ See *Shatrughan Chauhan v Union of India* (2014) 3 SCC 1; *Vishaka v State of Rajasthan* (1997) 6 SCC 241, [7], [10], [14]; *G Sundarajan v Union of India & ORS* (2013) 6 SCC 620; Aishwarya Birla, 'Evaluating the Indian Refugee Law Regime: How Has the Judiciary Responded to Refugee Claims in Light of International Law Obligations, and How Can It Do Better?' (2023) 35(1) *International Journal of Refugee Law* 81; Neha Jain, 'The Democratizing Force of International Law: Human Rights Adjudication by the Indian Supreme Court' in Anthea Roberts et al (eds), *Comparative International Law* (OUP 2018) 319.

⁵⁹ Birla (n 58).

⁶⁰ In the context of cultural and self-determination rights, see *In Re: s 6A* (n 1) 131 [32(vi)], 247 [305], 249 [313].

⁶¹ For instance, art 15 of the *Universal Declaration of Human Rights*, GA Res 217A (III), UN Doc A/810 (adopted 10 December 1948) ('*UDHR*') affirms that everyone has the right to a nationality and prohibits arbitrary deprivation of nationality. The *ICCPR* (n 32) protects the rights of all individuals, including stateless persons, regardless of nationality status, guaranteeing freedom from arbitrary detention, access to legal remedies and protection against discrimination. The *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ('*CEDAW*') addresses gender-based discrimination in nationality laws, which can contribute to statelessness. These instruments have been previously productively relied on by the Court in human rights cases, see, eg, *Vishaka v State of Rajasthan* (1997) 6 SCC 241; *NALSA v Union of India* (2014) 5 SCC 438. For discussion of international treaties in India, see Mike Sanderson, 'The Role of International Law in Defining the Protection of Refugees in India' (2015) 33 *Wisconsin International Law Journal* 46, 77. Other human rights treaties to which India is a signatory include the *UDHR* (n 61); *ICCPR* (n 32); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987); *CEDAW* (n 61).

of *Sarbananda Sonowal v Union of India* ('*Sonowal*')⁶² at various points in their argumentation.⁶³ The Supreme Court of India in *Sonowal* struck down the *Illegal Migrants (Determination by Tribunals) Act* 1983.⁶⁴ This legislation was passed in order to prevent harassment of minorities in Assam, which in essence made it difficult to deport migrants by placing the burden of proof on the State. This was in contradiction to the *Foreigners Act* 1946, which applies to the rest of the country and places the burden of proof to prove citizenship status on the 'foreigner'.⁶⁵ While the Court speaks of its unwillingness to engage with policy, it reaffirms the decision in *Sonowal* and does in fact delve into these matters.⁶⁶ In holding that art 355 may not be grounds for review, the Court in *In Re: s 6A* fails to recognise that this position was held in *Sonowal*, and in fact issues a direction to further work towards the implementation of the *Sonowal* judgement.⁶⁷ The reaffirmation of this case thus points to legal missteps as well as a quiet acceptance of previous views of migration as 'infiltration' and 'external aggression' which, to borrow Chief Justice Chandrachud's words, could lead to 'disastrous consequences'.⁶⁸

In holding that the Parliament could legislate in matters of citizenship as per art 11 of the *Constitution*, it also held that such legislation would be subject to fundamental rights review.⁶⁹ This would mean that any law pertaining to citizenship would have to meet art 14, and review for intelligible differentia and manifest arbitrariness.⁷⁰ This aspect of the case has clear relevance for the pending challenge to the constitutional validity of the *Citizenship Amendment Act* 2019 ('CAA'),⁷¹ currently before the Supreme Court in *Indian Union of Muslim League v Union of India*.⁷² The CAA and the National Register of Citizens ('NRC') are interconnected policies that have raised concerns about potential statelessness in India. The CAA, passed in December 2019, provides an expedited path to Indian citizenship for specific religious minorities from Afghanistan, Bangladesh and Pakistan who entered India before 31 December 2014, but notably excludes Muslims and other groups.⁷³ The NRC, first implemented in Assam, requires residents to prove their citizenship through documentary evidence of their ancestors' presence in India before 24 March 1971.⁷⁴ In Assam alone, about

⁶² *Sarbananda Sonowal v. Union of India* (2005) AIR 5 SC 2920 ('*Sonowal*').

⁶³ Largely to do with art 355 and the duty of the State to protect against external aggression and internal disturbance: *In Re: s 6A* (n 1) 60 [79], 262–79 [345]–[392].

⁶⁴ *Sonowal* (n 62); *Illegal Migrants (Determination by Tribunals) Act* 1983 (India).

⁶⁵ *The Foreigners Act 1946*, s 9 (India).

⁶⁶ Padmini Baruah, Douglas McDonald-Norman, 'Entirely Transparent Policy and Prose in the Supreme Court's 6A Judgment' *The Leaflet* (online, 26 November 2024) <<https://theleaflet.in/leaflet-specials/constitution-day-special-2024/entirely-transparent-policy-and-prose-in-the-supreme-courts-6a-judgment>>, archived at <perma.cc/2QCG-RFBJ>.

⁶⁷ *In Re: s 6A* (n 1) 275–79 [381]–[394].

⁶⁸ *ibid* 67 [89].

⁶⁹ *ibid* 144–9 [53]–[64].

⁷⁰ *ibid* 57–60 [72]–[78], 219–20 [240]–[243].

⁷¹ *Citizenship Amendment Act* 2019 (India) ('CAA').

⁷² *Indian Union of Muslim League v Union of India* (Supreme Court of India, WPC 1470/2019, 15 March 2024).

⁷³ CAA (n 71) s 2 (India).

⁷⁴ Office of the State Coordinator of National Registration ('NRC'), Assam, 'National Register of Citizens (NRC)' *Government of Assam* (online, 20 July 2024) <<https://nrcassam.nic.in/faq01.html>>, archived at <perma.cc/VFH2-W87T>.

1.9 million people were excluded from the final NRC list in 2019.⁷⁵ The combination of these policies particularly affects poor and marginalised communities, who may lack historical documentation despite generations of residence in India.⁷⁶ In response to the challenge to its constitutionality in *Indian Union of Muslim League v Union of India*,⁷⁷ the government has responded that since this is a matter of sovereignty and national security, it should be immune to judicial scrutiny.⁷⁸ However, *In Re: s 6A* clearly dismisses such an argument and lays the basis for fundamental rights review of the CAA.⁷⁹ Scholarship has also engaged with the 1947–9 Constituent Assembly Legislative Debates,⁸⁰ demonstrating that there was in fact a vision of citizenship built on equality, secularism, non-discrimination, inclusivity and universality that was explicitly chosen over a narrower identity based on claims to Indian citizenship.⁸¹ Such arguments may further bolster this stance. It is interesting to note that in *In Re: s 6A*, the need to prevent statelessness was invoked by the State which is itself responsible for creating statelessness through the exercise of the CAA and NRC.⁸²

What is more contentious, however, is the degree of judicial scrutiny that must be paid to the Parliament's classification of groups. As per art 14 of the *Constitution*,⁸³ its jurisprudence that has evolved over decades requires that such classification be rational and justified with reference to the purpose of the law.⁸⁴ Here in *In Re: s 6A*, the classification was with respect to Assam having a different cut-off date under s 6A as compared to the rest of the country for citizenship, especially compared to other border states and the scale of immigration in Assam. There is divergence between the majority opinion and the concurring opinion on this issue, though both acknowledge s 6A because of Assam's unique history and challenges. While the majority opinion holds that any classification by the Parliament must be respected if there is a legitimate public-interest purpose,⁸⁵ the concurring opinion is a lot less deferential, prescribing judicial intervention when fundamental rights and important constitutional principles are involved.⁸⁶ This divergence leaves the fate of the CAA challenge uncertain, especially in the interpretation of the preambular value of secularism and its treatment as a core

⁷⁵ Amrita Hari and Sugandha Nagpal, 'The National Register of Citizens (NRC) in India and the Potential for Statelessness in Situ: A Cautionary Tale from Assam' (2022) 30(2) *Contemporary South Asia* 194, 197.

⁷⁶ *ibid* 198–9.

⁷⁷ *Indian Union of Muslim League v Union of India* (n 72).

⁷⁸ Union of India, *Preliminary Counter Affidavit on Behalf of the Union of India in Indian Union of Muslim League v Union of India* (WPC 1470/2019, 2020) 45 [15].

⁷⁹ Mohsin Alam Bhat (n 57).

⁸⁰ 'Historical Debates: Constituent Assembly Legislative Debates', *Lok Sabha: House of the People* (Web Page, 2025) <<https://sansad.in/ls/debates/historical?2>>, archived at <perma.cc/PT8P-F6BB>.

⁸¹ Gautam Bhatia, 'Citizenship and the Constitution', *Independent: SSRN* (online, 31 March 2020) <<https://ssrn.com/abstract=3565551>>, archived at <perma.cc/H7AH-6R7T>.

⁸² *In Re: s 6A* (n 1) 135 [33(xi)]; Neha Jain, 'Manufacturing Statelessness' (2022) 116(2) *American Journal of International Law*, 237–88; Harsh Mander and Navsharan Singh (eds), *This Land is Mine, I Am Not of This Land: CAA-NRC and the Manufacture of Statelessness* (Speaking Tiger 2021).

⁸³ *Constitution* (n 20) art 14.

⁸⁴ *State of West Bengal v Anwar Ali Sarkar* (1952) 1 SCC 1, [7]; *State of Kerala v N. M. Thomas* (1976) 2 SCC 310.

⁸⁵ *In Re: s 6A* (n 1) 149 [65], 209 [219], 218 [239].

⁸⁶ *ibid* 139–40 [42]–[46], 144 [53].

principle of the *Constitution*.⁸⁷ The Court in *In Re: s 6A* opts for a more progressive interpretation of other constitutional values like fraternity in dismissing claims to a homogenous internal demographic. Along with the Court's holding on art 29 of the *Constitution*,⁸⁸ the right to culture aligning with multiculturalism, this allows for a more equitable approach to balancing majority cultural demands with democratic principles. It remains to be seen how this plays out in *Indian Union of Muslim League v Union of India*.⁸⁹

VI CONCLUSION

This ruling is an important one in four aspects: the framing of citizenship against the backdrop of constitutional values of fraternity and equality; institutional capacity; the interplay between domestic and international norms; and the implications of these factors beyond the judgement. In arriving at this ruling, the Supreme Court of India correctly engaged with most of the issues and arguments presented, but missed the opportunity to engage with the issue of statelessness at all despite it being raised in arguments. It is commendable however that the Court keenly engaged with the history of the region in arriving at its context sensitive decision. In the context of the State-created statelessness in Assam, and possibly across India, as well as India's status as a non-signatory of the 1954 *Convention relating to the Status of Stateless Persons* and the 1961 *Convention on the Reduction of Statelessness*,⁹⁰ the case holds importance with respect to its interpretation of precedent, Indian notions of citizenship, and the applicability of international norms. The impact of this decision on future cases, especially those that deal with the constitutional validity of the CAA, which controversially discriminates on the basis of religion in expediting citizenship pathways, remains to be seen.

⁸⁷ Mohsin Alam Bhat (n 57).

⁸⁸ *Constitution* (n 20) art 29.

⁸⁹ *Indian Union of Muslim League v Union of India* (n 72).

⁹⁰ *Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960); *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975).