

THE EVOLVING IDEA OF BELONGING: A CRITICAL ANALYSIS OF CITIZENSHIP LAWS IN GLOBAL AND INDIAN CONTEXTS

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ABSTRACT

Citizenship, the fundamental "right to have rights", is undergoing a profound global re-examination, caught between traditions of jus soli (right of soil) and jus sanguinis (right of blood) and the modern tensions of globalization and national security. This article provides a critical analysis of the evolution of citizenship law in India, arguing that its foundational, inclusive jus soli framework has been "significantly altered" by decades of political, demographic, and judicial pressures, moving toward a more "complex, contested, and restrictive framework".

The analysis traces this legal and ideological lineage, demonstrating how the unique political history of Assam has become the primary driver of national citizenship jurisprudence. The article examines a series of interconnected developments, beginning with the Supreme Court's "watershed" Sarbananda Sonowal (2005) judgment, which re-centered the "burden of proof" and framed large-scale illegal migration as a form of "external aggression". This decision created the "judicial mandate" for the National Register of Citizens (NRC) in Assam, a process that culminated in the exclusion of 1.9 million people and a "massive crisis of statelessness".

The article then analyzes the "fundamental ideological shift" signaled by the Citizenship (Amendment) Act, 2019 (CAA), which introduced religion as an explicit criterion for naturalization for the first time and faces constitutional challenges for allegedly violating Article 14 and the basic structure of secularism. This is contrasted with the Supreme Court's recent 2024 validation of Section 6A of the Citizenship Act, which upheld the Assam-specific cut-off dates as a "legislative solution" to a unique "political problem". Finally, the article incorporates the 2025 Rofiquel Hoque ruling, which affirmed the supremacy of judicial declarations by Foreigners Tribunals over administrative inclusions in the NRC.

The article concludes that this evolution has resulted in a "fragmented and deeply uncertain" legal landscape, caught in a "fundamental conflict" between region-specific compromises and a new, national-level ideological debate on religious identity and belonging..

Keywords: Indian Citizenship Law, Citizenship (Amendment) Act (CAA), 2019, National Register of Citizens (NRC), Assam Accord, Section 6A, Sarbananda Sonowal v. Union of India, Jus Soli, Jus Sanguinis

Introduction

Citizenship is far more than a mere legal document; it is the fundamental "right to have rights," an individual's link to a state and its protections. Historically, the concept of

citizenship was exclusive, tied to property, ethnicity, or gender. Globally, this evolved along two primary principles: jus soli (right of soil), granting citizenship by place of birth, and jus sanguinis (right of blood), granting it by descent. As nations formed and borders

solidified, these principles were codified, later supplemented by naturalization—the legal process for a foreigner to acquire citizenship.

In the 21st century, globalization has further complicated this framework. Modern trends include the widespread acceptance of dual citizenship, reflecting a transnational workforce, and the simultaneous rise of citizenship stripping as a counter-terrorism and national security tool. This global tug-of-war between inclusive, liberal citizenship and exclusive, security-focused nationalism provides the essential backdrop for understanding the complex, often contentious, evolution of citizenship in India.

India's journey began at its founding with a deeply inclusive vision. The Constitution, in Articles 5–11, established a framework based primarily on jus soli, granting citizenship to nearly everyone domiciled in India at its commencement. This was formalized by the Citizenship Act of 1955. However, over the past seven decades, and particularly in recent years, this inclusive foundation has been significantly altered by political, demographic, and judicial pressures. The law has shifted from a broad jus soli model to a more restrictive jus sanguinis model, and a series of judicial and legislative actions—most notably in the context of Assam—have fundamentally reshaped India's citizenship landscape. This article will critically analyze this evolution, tracing the legal lineage from the Supreme Court's landmark Sarbananda Sonowal judgment to the contentious Assam NRC, the 2019 Citizenship (Amendment) Act (CAA), and the Supreme Court's recent validation of Section 6A, arguing that these developments represent a profound and contested transformation of Indian citizenship.

A Critical Analysis of Citizenship Laws in Global and Indian Contexts

The story of modern Indian citizenship law is inextricably linked to the unique demographic and political history of Assam. The anxieties over large-scale migration from (then) East Pakistan, which culminated in the Assam

Agitation (1979–1985), created a legal fault line that has repeatedly forced the judiciary and legislature to confront the core meaning of Indian citizenship.

Citizenship Act of 1955

This Act, enacted by Parliament, established the primary legal framework for acquiring and losing Indian citizenship. It primarily followed the principle of jus soli (citizenship by place of birth).

Acquisition of citizenship

The Act laid out five main methods for acquiring citizenship:

By birth: Initially, anyone born in India became a citizen. This was later amended to include conditions related to the parents' citizenship.

By descent: Granted citizenship to people born outside India whose father was an Indian citizen at the time of their birth. This was later amended to be gender-neutral.

By registration: Allowed persons of Indian origin, or those married to an Indian citizen, to apply for citizenship after residing in India for a specific period.

By naturalization: Provided a pathway for foreign nationals to become citizens after meeting certain residency and eligibility requirements.

By incorporation of territory: Gave the government the power to grant citizenship to residents of any territory that became part of India.

Loss of citizenship

The Act specified three ways to lose citizenship:

Renunciation: A citizen voluntarily gives up their citizenship.

Termination: A citizen's Indian citizenship is automatically terminated upon acquiring citizenship of another country.

Deprivation: The government can compulsorily terminate the citizenship of a person who

acquired it through registration or naturalization, under certain conditions.

Major amendments and shifts

The 1955 Act was amended several times, reflecting a gradual shift away from *jus soli* towards *jus sanguinis* (citizenship by blood) and addressing specific socio-political issues.

1986 Amendment: Changed the "by birth" rule, requiring at least one parent to be an Indian citizen for a child born in India to be a citizen.

2003 Amendment: Further tightened the "by birth" rule, requiring that both parents be Indian citizens, or that one parent be a citizen and the other not an illegal immigrant. This was prompted by concerns over illegal migration from Bangladesh and led to the formal definition of "illegal migrant".

2005 Amendment: Introduced the Overseas Citizen of India (OCI) scheme, providing some privileges to persons of Indian origin while maintaining the single citizenship model.

2019 Amendment (CAA): This controversial amendment provided an expedited path to citizenship for non-Muslim migrants from Pakistan, Bangladesh, and Afghanistan who entered India before December 31, 2014.

Reduced residency: It reduced the residency requirement for naturalization for these specific religious groups from 11 to 5 years.

Exclusion of Muslims: The exclusion of Muslim communities from this provision led to widespread protests and accusations that the law violated India's secular constitutional principles.

Special provisions and complexities

Assam Accord (1985): Section 6A was added to the Citizenship Act following the Assam Accord, creating special provisions for residents in Assam concerning the issue of illegal migrants from Bangladesh.

Judicial interpretations: The Supreme Court of India has played a crucial role in interpreting

and shaping citizenship laws through various landmark judgments.

1. The Turning Point: Sarbananda Sonowal v. Union of India (2005)

The first major judicial intervention came in 2005, profoundly setting the stage for all subsequent developments.

Facts: The case was a challenge to the Illegal Migrants (Determination by Tribunals) Act, 1983 (IMDT Act). This Act, applicable only to Assam, created a separate and more difficult legal process for identifying and deporting illegal migrants than the Foreigners Act, 1946, which applied to the rest of India. Under the IMDT Act, the burden of proof lay on the accuser, not the person accused of being a foreigner, making deportation extremely difficult.

Issues: The core legal questions were twofold:

Did the IMDT Act (Illegal Migrants (Determination by Tribunals) Act, 1983) violate Article 14 (Right to Equality) by creating a separate, less effective law for Assam compared to the rest of India?

Did the Act's failure to effectively deport illegal migrants constitute a violation of Article 355 of the Constitution, which mandates the Union to protect states from "external aggression and internal disturbance"?

Judgment: The Supreme Court delivered a resounding judgment, striking down the IMDT Act as unconstitutional. It held that the Act was discriminatory under Article 14 as its classification of Assam was not reasonable. Most significantly, the Court interpreted "external aggression" under Article 355 to include the "silent aggression" of large-scale illegal migration, ruling that the Union had failed in its constitutional duty to protect Assam.

Analysis and Development: The Sonowal judgment was a watershed moment. It re-centered the Foreigners Act, 1946 (which places the burden of proof on the individual to prove their citizenship) as the primary tool for deportation. More importantly, it gave

constitutional weight to the demographic anxieties in Assam and created a judicial mandate for action. This judgment is the direct legal and political precursor to the National Register of Citizens (NRC) in Assam, as the court, in subsequent orders, mandated the updating of the 1951 NRC to identify those who were not genuine citizens.

2. The Consequence: The National Register of Citizens (NRC) in Assam

The NRC was the bureaucratic and administrative consequence of the Sonowal judgment and the Assam Accord (1985).

Facts: The NRC was a Supreme Court-monitored process to update Assam's 1951 citizenship register. It used a unique cut-off date of March 24, 1971, as agreed upon in the Assam Accord. To be included, applicants had to prove that they or their ancestors were present in India before this date. When the final list was published on August 31, 2019, it excluded 1.9 million people, throwing them into a state of legal limbo.

Issues: The NRC process was fraught with legal and humanitarian issues. It created a massive crisis of statelessness, as those excluded were not automatically declared foreigners but were stripped of citizenship with no clear path forward. The process was criticized for its arbitrary nature, its immense bureaucratic burden on the poor and uneducated, and its tragic human cost, with families being torn apart and individuals (including "D-Voters" or Doubtful Voters) facing detention.

Analysis: The NRC was a direct attempt to "solve" the problem identified in Sonowal. However, its outcome satisfied almost no one. Many in Assam felt the exclusion number was too low, while human rights groups decried it as a humanitarian disaster. It created a new, complex problem: what to do with 1.9 million people who were now effectively stateless. This context is essential to understanding the timing and purpose of the next major legislative change.

3. The Legislative Shift: The Citizenship (Amendment) Act, 2019 (CAA)

Introduced just months after the final NRC list, the CAA represented a fundamental ideological shift in Indian citizenship law, moving explicitly from a secular jus soli framework to one based on religious identity.

Facts: The CAA fast-tracks Indian citizenship for specific non-Muslim religious minorities (Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians) from three specific countries (Pakistan, Bangladesh, and Afghanistan) who entered India on or before December 31, 2014. It reduces their residency requirement for naturalization from 11 years to 5 years.

Issues (The Pending Case: Indian Union Muslim League v. Union of India): The CAA was immediately challenged in the Supreme Court, and the case is pending. The primary legal arguments against it are:

Violation of Article 14: The challengers argue the law fails the "reasonable classification" test. The classification based on religion (by excluding Muslims, including persecuted sects like Ahmadiyyas) and geography (by excluding other neighbors like Sri Lanka or Myanmar) is argued to be arbitrary and lacking a "rational nexus" to the stated goal of protecting persecuted minorities.

Violation of Secularism: By making religion a criterion for citizenship, it is argued to violate the principle of Secularism, which is part of the "basic structure" of the Constitution.

Discriminatory in Conjunction with NRC: The most potent criticism is that the CAA, when combined with a potential nationwide NRC, creates a discriminatory system. Non-Muslims left off an NRC list could potentially regain citizenship via the CAA, while Muslims in the exact same position would be left stateless, facing deportation or detention.

Analysis: The CAA is a paradigm shift. It is the first time Indian citizenship law has explicitly used religion as a criterion. Its proponents argue it is a humanitarian act for persecuted

minorities. Its critics argue it is a discriminatory tool that, when paired with the NRC, re-engineers the very foundation of Indian citizenship from a secular to an ethno-religious one.

4. The Judicial Validation: In Re: Section 6A of the Citizenship Act (2024)

While the CAA challenge remains pending, the Supreme Court recently (in October 2024) delivered another crucial verdict concerning the Assam-specific citizenship law, adding another layer of complexity.

Facts: Section 6A is the special provision inserted into the 1955 Act to give legal effect to the Assam Accord. It dictates the special cut-off dates for Assam (Jan 1, 1966, and March 25, 1971) that were used in the NRC. Petitions challenged this provision's constitutionality.

Issues: The challengers argued that Section 6A was:

A violation of Article 14 (discriminatory against Assam's indigenous population by allowing a later cut-off date than the rest of India).

A violation of Article 29 (harming the cultural rights of the Assamese people).

"Temporally unreasonable," meaning its purpose was exhausted after the 1985 Accord.

Judgment: In a 4:1 majority, the Supreme Court upheld the constitutionality of Section 6A. The Court reasoned that it was a "legislative solution" to a unique "political problem" (the Assam Agitation) and that the classification of Assam was reasonable. It held the cut-off dates were rational and linked to the historical reality of the 1971 Bangladesh Liberation War.

Analysis: This judgment is a crucial piece of the puzzle. By validating Section 6A, the Court has ring-fenced the Assam Accord and the NRC process (which was based on it) as a constitutionally valid, one-time exception. This judgment effectively separates the "Assam problem" from the rest of India. However, it sits in fascinating tension with the pending CAA case. The Court has validated a special, region-

specific citizenship law (Sec 6A) while it is still deliberating on a special, religion-specific citizenship law (CAA).

5. In case of **Rofiquel Hoque vs Union of India 2025** case gained attention because it raised an important question about the legal value of inclusion in the draft NRC when weighed against a binding declaration by a Foreigners Tribunal. It drew attention due to the ongoing debates in Assam over citizenship, NRC and the rights of individuals declared as foreigners. The ruling of the Supreme Court explained that administrative inclusion in the NRC cannot override a judicial finding by a tribunal under the Foreigners Act, 1946.

The main issue in *Rofiquel Hoque vs Union of India* before the Supreme Court was whether the appellant's inclusion in the NRC could invalidate the Tribunal's earlier declaration. The Court referred to the precedent set in **Abdul Kuddus v. Union of India (2019)** and held that a person once declared a foreigner by a Tribunal continues to be irrespective of NRC inclusion. The judgment explained that the Tribunal's declaration carries legal weight and cannot be displaced by administrative entries like the NRC, especially when such entries were made after the declaration. Further, the Court in *Rofiquel Hoque vs Union of India* noted that the Appellant failed to discharge the burden of proof under Section 9 of the Foreigners Act, as he could not provide consistent and reliable documentary evidence, such as electoral rolls or educational certificates, to prove his Indian citizenship. The Supreme Court on Monday i.e., 19th May, 2025 ruled that a Foreigners Tribunal's declaration of a person as a foreigner remains valid and cannot be nullified by their inclusion in the draft NRC. Consequently, the appellant's name in the draft NRC does not confer citizenship. The Supreme Court dismissed the appeal and affirmed the tribunal's decision.

Citizenship law in global context

The evolution of citizenship law is a complex global history, moving from ancient, exclusionary systems toward the modern ideal

of universal rights, which is now being reshaped by the forces of globalization. Key turning points include the shift from localized city-state membership to the standardized nationality of the modern nation-state, and the 20th-century expansion of civil, political, and social rights.

Ancient and classical conceptions

Ancient Greece: In city-states like Athens, citizenship was an exclusive and often inherited privilege limited to free, native-born adult men. It was a status defined by active political participation in public life and military service, deliberately excluding women, slaves, and foreigners.

Roman Empire: The concept expanded beyond the city-state with the Romans, who used citizenship as a tool to consolidate their vast empire. Citizenship evolved from primarily political participation to a legal status that conferred rights and protections. While still a tiered system, the Edict of Caracalla in 212 AD granted citizenship to all free inhabitants of the empire, significantly broadening its reach.

Medieval to early modern period

Middle Ages: With the fall of Rome, citizenship largely receded in favor of feudal allegiances based on a subject's loyalty to a monarch or lord. True citizenship persisted only at the local level within self-governing towns and cities, where rights were often tied to guild membership or property ownership.

Renaissance and Enlightenment: The concept of individual rights re-emerged, influencing the development of modern citizenship. Thinkers like John Locke and Jean-Jacques Rousseau advanced the idea of a social contract, where governments derived their legitimacy from the consent of the governed.

Emergence of the nation-state: Following the 1648 Peace of Westphalia, citizenship became tied to the sovereign nation-state. This marked a shift from allegiance to a person (a monarch) to membership in an abstract political entity based on rights and duties. The American and

French Revolutions cemented the citizen as the central basis for popular sovereignty.

The modern nation-state and the rights revolution

Foundational principles: Modern citizenship law developed around two primary principles for granting citizenship at birth:

Jus soli ("right of the soil"): Citizenship is conferred on anyone born within a country's territory, regardless of their parents' nationality. This is common in the Americas.

Jus sanguinis ("right of blood"): Citizenship is conferred based on the nationality of one's parents. This was historically prevalent in Europe and has since become globally dominant, though many countries now use a combination of both.

Expansion of rights: In the 20th century, British sociologist T.H. Marshall theorized citizenship's expansion in three stages, from civil rights (freedom of speech, right to justice), to political rights (right to vote), and finally to social rights (access to healthcare, education, and welfare). The growth of welfare states in many countries incorporated new groups into the state by expanding social rights.

International human rights: Following World War II and the Holocaust, international law established universal human rights standards through documents like the Universal Declaration of Human Rights (1948). This was a landmark development, reinforcing the idea that fundamental rights apply to every person, regardless of their national citizenship status.

Globalization and contemporary trends

Post-national and transnational citizenship: Globalization has challenged the traditional link between citizenship and a single nation-state, as increased mobility and interconnectedness have led to transnational identities and affiliations.

Rise of dual citizenship: Many countries that once restricted it now permit or tolerate multiple citizenships. The policy has been adopted by

many migrant-sending countries to retain ties with their diaspora and by receiving countries to better integrate immigrants.

New forms of membership: States have developed new categories of legal status that are different from traditional citizenship:

Quasi-citizenship (or denizenship): Involves granting long-term residents and legal migrants some rights, such as permanent residency and social benefits, without full citizenship.

Supranational citizenship: Embodied by the European Union, this grants citizens of member states additional rights, such as freedom of movement, across national borders.

The commodification of citizenship: A growing number of countries offer "citizenship by investment" or "golden visas" to wealthy individuals, effectively selling citizenship or residency. This practice, which grants greater mobility and opportunity to a privileged few, is criticized for devaluing the meaning of citizenship.

Politicization and restriction: In some areas, globalization has triggered nationalist and populist backlash, leading to more restrictive and exclusionary citizenship laws. India's Citizenship Amendment Act of 2019, for example, has been criticized for using religion as a criterion for citizenship, an unprecedented move under its laws.

The statelessness crisis: Discrepancies between different countries' nationality laws, discriminatory practices, and state dissolution continue to leave millions of people stateless, denying them fundamental rights.

Conclusion

The evolution of citizenship law in India reveals a nation grappling with its foundational identity. From the inclusive, secular vision of the Constitution, the law has been progressively altered by demographic anxieties, political imperatives, and judicial interventions. The journey from the Sonowal judgment to the

Assam NRC, the CAA, and the recent Section 6A verdict illustrates a clear trajectory: a move away from a simple jus soli principle toward a more complex, contested, and restrictive framework.

This evolution presents a fundamental conflict. On one hand, the Sonowal and Section 6A judgments represent the judiciary's attempt to manage a unique and volatile political situation in Assam, ultimately endorsing a region-specific compromise. On the other, the CAA and its pending legal challenge represent a new, national-level ideological debate, forcing India to confront whether citizenship should remain secular or be tied to religious and cultural identity.

The result is a legal landscape that is fragmented and deeply uncertain. The 1.9 million people excluded from the NRC remain in a state of suspended animation, and the constitutionality of the law that could "save" some of them (the CAA) is still in question. India's citizenship law, once a straightforward doctrine of belonging, has become a complex tapestry of exceptions, contentions, and profound questions about who truly belongs.

References

1. CaseMine. (n.d.). Sarbananda Sonowal (Ii) v. Union of India.
2. Dissent Magazine. (n.d.). T.H. Marshall's "Citizenship and Social Class".
3. Italian Citizenship Assistance. (n.d.). JUS SOLI VS JUS SANGUINIS.
4. PRS India. (2019). The Citizenship (Amendment) Bill, 2019.
5. Scroll.in. (2025, May 19). Inclusion in draft NRC does not override foreigners tribunal's declaration as non-citizen: SC.
6. Supreme Court Observer. (2024, October 17). Section 6A of the Citizenship Act | Judgement Summary.
7. Testbook. (2025). Rofiquel Hoque vs Union of India 2025: Case Summary.



8. Wikipedia. (n.d.). Citizenship (Amendment) Act, 2019.
9. Wikipedia. (n.d.). T. H. Marshall.

