

**CHIEF JUSTICE'S COURT**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SURYA KANT**  
**HON'BLE MR. JUSTICE M.M. SUNDRESH**  
**HON'BLE MR. JUSTICE J.B. PARDIWALA**  
**HON'BLE MR. JUSTICE MANOJ MISRA**

**COURT NO.1**  
**SUPREME COURT OF INDIA**  
**RECORD OF PROCEEDINGS**

**Writ Petition (C) No.274/2009**

**IN RE SECTION 6A OF THE CITIZENSHIP ACT 1955**

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TRANSCRIPT OF HEARING

06-December-2023  
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11:00 AM IST

1 **SHYAM DIVAN:** I will just quickly point out a few positions as submissions with respect to  
2 the Articles of the Constitution. I just completed Part 2. Before that just one point of correction.  
3 Mr. Sibal had interjected yesterday and suggested that the Nandita Saikia study had compared  
4 pre-reorganization Assam statistics with post re-organization. Now we've checked it up. I'll  
5 just give you two pages. This does not seem to be correct because the authors have been very  
6 careful. I'll just give you the pages, at pages 2956 and 2957 of Volume 4, below both tables 2.6  
7 and 2.7, the authors specifically indicate that they have considered the period consistent and  
8 the areas consistent with the 2011 census boundary of Assam. So that you may just note. There  
9 is a specific notation which has been made by the authors, below Tables 2.6 and 2.7. They've  
10 gone on the basis of the 2011 census by which re-organization took place, and they have  
11 compared as far as the earlier period, is concerned with those same districts, etc. So that's just  
12 a point. Now, if I may just , if Your Lordships could just take up the Constitution, please? Just  
13 a few articles that I want to place. So first is of course Article 13(2). The State shall not make  
14 any law which takes away or abridges the rights conferred in this part and any law made in  
15 contravention of this clause shall to the extent of the contravention be void. So I wish to just  
16 emphasize even an abridgement would not be ought not to be countenance, if Your Lordship  
17 finds that in fact there is such an abridgement. The other one, other couple of Articles that I  
18 wanted to point out was 29(1). We'll make our submissions on that. But 29(1), Protection of  
19 Interests of Minorities. So it comes under the heading Cultural and Educational Rights. And  
20 as far as 29(1) is concerned, any section of the citizens residing in the Territory of India, or any  
21 part thereof, having a distinct language, script or culture of its own shall have the right to  
22 conserve the same. And in our respectful submission, the impact which this impugned  
23 provision has directly impacts our ability to conserve broadly, our cultural rights, but  
24 specifically also aspects of distinct script, distinct language. Then please go to Articles 326 and  
25 327. 326, elections to the House of the People and to the Legislative Assemblies of States to be  
26 on the basis of adult suffrage. The elections to the House of the People and to the Legislative  
27 Assembly of every State shall be on the basis of adult suffrage. That is to say, every person who  
28 is a citizen of India, and who is not less than 18 years of age on such date as may be fixed in  
29 that behalf by or under any law made by the appropriate Legislature and is not otherwise  
30 disqualified under the Constitution or any law made by the appropriate Legislature on the  
31 ground of non-residence, unsoundness of mind, crime, or corrupt or illegal practice, shall be  
32 entitled to be registered as a voter at any such election. And 327, Power of Parliament to make  
33 provisions with respect to elections to Legislatures. Subject to the provisions of this  
34 Constitution, Parliament may, from time to time, by law, make provision with respect to all  
35 matters relating to or in connection with elections to either House of Parliament or to the

1 House or either House of the Legislature of a State, including the preparation of electoral roles,  
2 the delimitation of constituencies, and all other matters necessary for securing the due  
3 Constitution of such House or Houses. So here, as far as registration of voters is concerned,  
4 covered by Article 326, in our respectful submission this is specific to a citizen of India, and  
5 therefore there are two elements to this. One is, of course, strict scrutiny tests because our  
6 submission is going to be that this is really having an impact on the integrity of India. It's  
7 having an impact on the Sovereignty of India. This decision, which is, the impugned provision.  
8 And in as much as it so does impact a strict scrutiny would, ought to be applied while  
9 examining the validity of the law. But here, 326 as you have seen, citizenship is sought to be  
10 conferred. I'll just complete by making a reference to 355, which has two aspects to it. Duty of  
11 the Union to protect States against external aggression and internal disturbance. It shall be  
12 the duty of the Union to protect every State against external aggression and internal  
13 disturbance, and to ensure that the government of every State is carried out in accordance with  
14 the provisions of this Constitution. And here we have, of course, the advantage of a judgment  
15 in *Sonowal 1* with respect to the external aggression aspect. But here this is also, there is a  
16 notion also of internal disturbance. And in our respectful submission this statutory provision  
17 is such that it would lead to internal disturbance. It encourages and causes internal  
18 disturbance in parts of the Country and therefore, as far as 355 is concerned, Your Lordship  
19 will keep that facet in mind. Now, My Lords, may I request you to please take up the  
20 Citizenship Act. Now, here you will notice that 2(b), Your Lordships have it? Do you have it  
21 separately?

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

24

25 **SHYAM DIVAN:** So, I'm just indicating that illegal migrant is defined in 2(b) means, a  
26 foreigner who has entered into India without a valid passport or other travel document and  
27 such. Or with a valid passport or other travel document and such other document or other  
28 authority as may be prescribed, et cetera. And then, you will also find that there in 2(h), you  
29 have a definition of undivided India, means India, as defined in the Government of India Act  
30 1935. Now, just before placing Section 6A, you will notice that there is in Section 3 citizenship  
31 by birth, so that's one manner of obtaining citizenship. Citizenship by dissent, is covered under  
32 Section 4. Citizenship by registration. Now, here again, you will find that there is an exclusion.  
33 Not being an illegal migrant, under Section 5, Sub-section 1. Citizenship by naturalization.  
34 Here again, pursuant to an amendment in 2004, not being an illegal migrant has been  
35 recorded or inserted. And as far as Section 7 is concerned, citizenship by incorporation of  
36 territory. Now, I proceed to the impugned provision, which is 6A. So first, we see the marginal  
37 note itself.

- 1 a) Special provisions as to citizenship of persons covered by the Assam Accord. So, this is my  
2 first pointer. This is very, very specific, only to Assam. For the purposes of this section, Assam  
3 means the territories included in the State of Assam immediately before the commencement  
4 of the Citizenship Amendment Act, '85.
- 5 b) Detected to be a foreigner means detected to be a foreigner in accordance with the  
6 provisions of the Foreigners Act 1946, and the Foreigners Tribunal's Order 1964, by a Tribunal  
7 constituted under the said order. So, this is an expression which will come, 'detected to be a  
8 foreigner'.
- 9 c) Specified Territories means the territories included in Bangladesh, immediately before the  
10 1985 Act.
- 11 d) A person shall be deemed to be of Indian, this is very important. A person shall be deemed  
12 to be of Indian origin, if he or either of his parents, or any of his grandparents who are born  
13 in undivided India.
- 14 e) A person should be deemed to have been detected to be a foreigner on the date on which a  
15 Tribunal constituted under the Foreigners Tribunal's Order '64 submits its opinion to the  
16 effect that he is a foreigner to the officer or authority concerned. So here, you will find that the  
17 expression, 'opinion' is utilized. Then at some places, it's a form of a determination. Now look  
18 at Sub-section 2. Subject to the provisions of Sub-section 6 and 7, all persons of Indian origin  
19 who came before 1st January '66 to Assam from specified territory, including such of those  
20 whose names were included in the electoral rolls used for the purpose of the general election  
21 in the House of the People held in 1967 and who have been ordinarily resident in Assam since  
22 the dates of their entry into Assam shall be deemed to be citizens of India as from 1st January  
23 '66'. So, I want to make two or three points here. First, as far as 1st January, 1966, is concerned,  
24 it operates in a blanket manner. There is no determination, et cetera, which is involved at all.  
25 There's no process at all. 'Deemed to be a citizen of India as from the 1st day of January, 1966'.  
26 So, there is no process.
- 27
- 28 Now there's a second point I want to emphasize. Please see the expression 'has been ordinarily  
29 resident in Assam since the dates of their entry into Assam' and you will find this also in the  
30 next sub-section. This in our respectful submission, the effect and the impact of this particular  
31 provision is that people will continue to remain in Assam, one, and number two, it serves as a  
32 beacon to attract people to come to Assam and make whatever claim, false claim, etc.. etc.  
33 What you find is, it's not just that on a particular day there is some determination. By holding  
34 that the person should ordinarily be resident in Assam since the date of entry, you are creating  
35 a situation where, because you will find that there's no time limit which is prescribed for any  
36 of these determinations under Sub-section 2, Sub-section 3, etc. There's no outer time limit at  
37 all which is prescribed. It can be done today. There's no problem. I mean if this particular

1 section is valid, you can make an assertion today and that's it. So this is another feature in Sub-  
2 section 2, which you will notice. So three features. First, it's blanket, and there is no  
3 conditionality which is to be met. There is no process provided for, for the purposes of  
4 determination. And third, there is a very strong encouragement to people to remain ordinarily  
5 resident in Assam. Since the time that you enter and to make a claim.

6

7 Now please see Sub-section 3. 'Subject to the provisions of Sub-section 6 and 7, every person  
8 of Indian origin who came to Assam on or after the 1st day of January '66, but before the 25th  
9 day of March, 1971, from the specified territory and (b), has since the date of his entry into  
10 Assam, been ordinarily resident in Assam and (c) has been detected to be a foreigner shall so  
11 detected. So these three conditions. Actually, there are four conditions. Your Lordship may  
12 have noticed. It has to be first and foremost, a person of Indian origin. Please note that. It has  
13 to be of Indian origin. It can't be, as defined of course, came to Assam on or after 1st January  
14 that's, and before 25th March, third condition. And since the date of the entry into Assam,  
15 been ordinarily resident in Assam. Again, a huge encouragement to remain on over there and  
16 make whatever type of claim that you want, and has been detected to be a foreigner, fourth  
17 condition. Now, what is this person supposed to do? Shall register himself in accordance with  
18 the rules made by the Central Government in this behalf under Section 18, with such authority  
19 hereinafter in this sub-section referred to as a Registering Authority, as may be specified in  
20 such rules. And if the name is included in any electoral role for any Assembly or Parliamentary  
21 constituency in force on the date of such detection, his name shall be deleted therefrom. Now  
22 see the explanation. In the case of every person seeking registration under the sub-section, the  
23 opinion of the Tribunal constituted under the Foreigners Tribunal's Order '64, holding such  
24 person to be a foreigner shall be deemed to be sufficient proof of the requirement under Clause  
25 C of this sub-section. And if any question arises as to whether such person complies with any  
26 other requirements under this sub-section, the Registering Officer authority shall 1) if such  
27 opinion contains a finding with respect to such other requirement, decide the question in  
28 conformity with such finding. If such opinion does not contain a finding with respect to such  
29 other requirements, refer the question to a Tribunal constituted under the said order, having  
30 jurisdiction in accordance with such rules as the Central Government may in this behalf under  
31 Section 18 and decide the question in conformity with the opinion received on such reference.  
32 So now just pausing here and then I'll go to Sub-section 4. Our understanding of this  
33 submission is this. This is how it works.

34 (1) All determinations, those four points which I mentioned, whether you are a person of  
35 Indian origin, came to Assam during this period, have since been ordinary resident and have  
36 been detected to be a foreigner. Everything is to be done by the Tribunal alone. That's the first

1 point I want to make. That's the determining, the Registering Authority has to require an  
2 opinion of the Tribunal, that's one.

3 (2) Second feature I want to point out is, for the purposes of registering, the detection exercise  
4 has to be first complete. You cannot seek registration, without detection to be a foreigner, or  
5 to be declared as a foreigner.

6 (3) Third, there is no time on our understanding prescribed for this exercise at all, within  
7 which it is to be completed.

8

9 **JUSTICE M.M. SUNDRESH:** What is the second one?

10

11 **SHYAM DIVAN:** Sorry?

12

13 **JUSTICE M.M. SUNDRESH:** What is the second?

14

15 **SHYAM DIVAN:** The detection by the Tribunal of the foreigner is a condition precedent for  
16 applying for registration. Please just see, shall register himself. So it's an Indian origin and  
17 then you have A, B and C who has been detected to be a foreigner. Then shall register himself  
18 in accordance with the rules, et cetera, made by the Authority, as may be specified. And you  
19 will find in 6A(1)(b) the expression 'detected to be a foreigner' is defined. It means detected to  
20 be a foreigner in accordance with the provisions of Foreigners Act by a Tribunal constituted  
21 under that order. So what you have is and there's no time period prescribed for this. There's  
22 no time period at all which is prescribed for this particular exercise to be carried out. So no  
23 time period as far as 3 is concerned. No time period insofar as 4 is concerned. Now, please see  
24 Sub-section 4. A person registered under Sub-section 3 shall have as from the date on which  
25 he has been detected to be a foreigner. Please see the starting point for this. And till the expiry  
26 of a period of 10 years from that date, the same rights and obligations as a citizen of India,  
27 including the right to obtain a passport and the obligations connected therewith, but shall not  
28 be entitled to have the name included in any electoral roll for any Assembly or Parliamentary  
29 Constituency at any time before the expiry of the said period of 10 years. So this is post  
30 detection, I'm sorry this is post, yes detection and post registration. No, it'll be from detection.  
31 It will be from detection My Lord, not registration.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** 4 is not condition on registration. 4 is that you  
34 get the same rights.

35

36 **SHYAM DIVAN:** Sorry.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** 4 does not postulate registration.

2

3 **SHYAM DIVAN:** It does.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** 4. 4.

6

7 **SHYAM DIVAN:** Yeah. A person registered.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Right.

10

11 **SHYAM DIVAN:** Under Sub-section 3. Correct? So first, you'll have to have a detection.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Once detection, registration under the that  
14 section.

15

16 **SHYAM DIVAN:** Then he applies for it.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Then he applies for registration. And then 4 says  
19 will have the same rights and obligation.

20

21 **SHYAM DIVAN:** No, but shall not be entitled to have included in the electoral roll for a  
22 period of 10 years, correct?

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** For 10 years, they were knocked off the electoral  
25 rolls basically.

26

27 **SHYAM DIVAN:** But from what date is the question I ask myself. It's from the date of  
28 detection.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** From the date of detection. Seems to be like that.

31

32 **SHYAM DIVAN:** Yes. I will read it again. A person registered under Sub-section 3 shall have  
33 as from the date on which he has been detected to be a foreigner and till the expiry a period of  
34 10 years from that date. So detection...

35

36 **JUSTICE SURYA KANT:** From the date of detection.

37

1 **SHYAM DIVAN:** Correct. So no period prescribed for within what period the detection  
2 exercise has to be completed at all. Then from that detection exercise 10 years. All rights,  
3 except voting and after 10 years, you will have a voting right, but this is completely open ended,  
4 as Your Lordships have seen, it's an open ended exercise. It can go on independently.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** It can be at any point of time.

7

8 **SHYAM DIVAN:** It can according to be done today as well. It can be done today as well. And  
9 people will continue to assert for today. And it's bound to happen in that manner. Now, please  
10 see 5. A person registered under Sub-section 3 shall be deemed to be a citizen of India for all  
11 purposes as from the date of expiry of a period of 10 years from the date on which he has been  
12 detected to be a foreigner. So this is again open ended. 6 and 7 are narrow exceptions. I don't  
13 believe those really are particularly relevant to us. I'll place 8 though. 8. Save as otherwise  
14 expressly provided in this section, the provisions of this section shall...

15

16 **JUSTICE M.M. SUNDRESH:** Just a minute.

17

18 **SHYAM DIVAN:** Sorry. Yes, I just was placing Sub-section 8, which gives overriding effect.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Overriding effect?

21

22 **SHYAM DIVAN:** Yes. Save as otherwise expressly provided in this section, the provisions of  
23 this section...

24

25 **JUSTICE M.M. SUNDRESH:** Just of the curiosity, I want to know what is the position of  
26 the children born?

27

28 **SHYAM DIVAN:** So, I'll tell you my position. So, I'll just give you my position. But...

29

30 **JUSTICE M.M. SUNDRESH:** Legislature where the... like putting the cart before the horse.  
31 It is on the reversal side.

32

33 **SHYAM DIVAN:** No, I understand. So, I want to just respond by giving you what our position  
34 is, though that might be itself the subject matter of a separate exercise which has to take place.  
35 So as Your Lordships have seen that there is a notion of citizenship by birth. Correct? Our  
36 understanding is and even insofar as the manner of registration is concerned, as far as NRC  
37 process is concerned, if you are born to illegal immigrants according to us, it is implicit that



1 you cannot be registered or placed on the register of citizens. That's my respectful submission.  
2 That's my understanding of the law, and this will apply across the Country. So, there is a  
3 certain text, and there is a context also in terms of you will find in Section 3 of citizenship by  
4 birth. But our submission or our position. I shouldn't say my submission because I don't want  
5 to get into that separate section...

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** At least see Section 3, because...

8

9 **SHYAM DIVAN:** No, I understand. So, Section 3... that is going to be a matter of  
10 interpretation and construction, which will take place and at an appropriate stage. The  
11 authorities at this point...

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** 3 postulates that, any person, every person born  
14 in India we'll say... take Clause C... on or after 2003 Amendment Act, both of his parents are  
15 citizens of India, or one of whose parents is a citizen of India, and the other is not an illegal  
16 migrant at the time of the birth. So, if one of the parents is an illegal migrant at the time of the  
17 birth, then you don't get the benefit of citizenship by birth.

18

19 **SHYAM DIVAN:** Yes. So My Lord, that will be a whole separate [UNCLEAR] to a point. But  
20 since the question is being put to me, I'm just indicating... from what we understand, as far as  
21 on the ground, ground is concerned. Sorry?

22

23 **JUSTICE M.M. SUNDRESH:** We are only seeing the impact. The possible impact.

24

25 **SHYAM DIVAN:** Yes, the impact.

26

27 **JUSTICE M.M. SUNDRESH:** Now, those who have come in before 01-01-66, and  
28 thereafter, '66 to '71, see the grievance appears to be... practically if you see, with the  
29 generation who would have stationed here thereafter. Let's assume that they come in their  
30 early teens. They must be in their 70s or late 80s. But, what is the fall out of it? What is the  
31 consequence of it? That's what we have to see now.

32

33 **SHYAM DIVAN:** No, of course. So, the consequence... short of... so, there could be many,  
34 many consequences. Government is fully empowered. Sorry.

35

36 **JUSTICE M.M. SUNDRESH:** Interpretation section... under Section 3 also will have to be  
37 given.

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**CHIEF JUSTICE DY CHANDRACHUD:** Actually for Section 3, the Parliament has divided it into three time frames. Anybody who is born in India after 1950, after 26<sup>th</sup> January, 1950, but before 01 July, 1987, you become a citizen by birth, irrespective of parental status, whether parents are citizens.

**SHYAM DIVAN:** That My lord... I understand....

**CHIEF JUSTICE DY CHANDRACHUD:** Then between '87 and 2003, any one parent, if he is a citizen, the child becomes a citizen, if you are born in India. After 2003, it is more stringent. Either both your parents have to be a citizen, or one person is a citizen, but the other should not be an illegal migrant. So, they've tightened it up. Before 1987, it was nothing. I mean irrespective of parental status, you became a [UNCLEAR].

**SHYAM DIVAN:** My Lord, that is probably on a textual... that is probably on first blush. Probably on first blush, Your Lordships may come to that conclusion. But in our respectful submission, because I don't want to get into that the whole thicket of rules, etc., which they have framed, and there's a process and a protocol being followed for the purpose of NRC.

**CHIEF JUSTICE DY CHANDRACHUD:** That calls for our determination.

**SHYAM DIVAN:** I don't believe it does, because according to us, it's implicit, that where you have a situation where you have... where you have illegal migrants, they are to be prosecuted. There are a whole range of options which are available to the Government as to what they can do if there is a breach and violation of the Passport's Act, which people have entered overstayed, etc., etc., come in without appropriate documents. The whole range of responses which they may have. They may require you to be in a particular area. We are not getting into that. So therefore, I just responded very broadly. Our understanding is there's no automatic citizenship which is allowed insofar as children of illegal migrants are concerned. But that's a position. I don't want to go any further than that. Now, I want to just summarize, sorry. I want to just.... there is some separate writ petition, I understand. etc. Anyway. So now I want to just summarize three or four impacts. What are the impacts of 6A, as we understand it. So I'll just summarize it. So one, according to us, illegal migrants in Assam who are required to be identified and processed under Section 3 of the Foreigners Act '46 are rewarded with citizenship. This is one element.

**CHIEF JUSTICE DY CHANDRACHUD:** Just one second.

1  
2 **SHYAM DIVAN:** So, illegal migrants, who ordinarily should have been identified and  
3 processed in terms of Section 3 of the Foreigners Act, 1946, they are rewarded with citizenship.  
4 That's my first point. Insofar as prior to 01-01-66 is concerned, there is no scrutiny envisaged  
5 at all. Next point, insofar as 6A(2) is concerned, it is with respect to persons of Indian origin.  
6 But there is no machinery under 6A(2) for making such a determination. My next point is that  
7 illegal migrants are encouraged to remain ordinarily resident in Assam since this would entitle  
8 them to claim citizenship in terms of 6A(3)(b). So you are required to be, since the date of  
9 entry has been ordinarily resident in Assam. So just imagine if there's no time frame which is  
10 provided, you're going to continue to remain ordinarily resident in Assam. This whole notion  
11 of ordinarily resident in Assam, binds down the person to Assam, and it impinges upon my all  
12 those other rights which I have already mentioned to the Court. So this is in our respectful  
13 submission, it nails the person down over there. It causes him and to remain over there, him  
14 or her. So this person just continues to linger and remain over here. Now the next point. Absent  
15 any time frame to complete the detection and registration. Any time frame, to complete  
16 detection and registration. These are separate of course. Illegal migrants are incentivized to  
17 stay on in Assam in violation of law. And my final point is, the sequitur of ordinarily resident  
18 is people who have come are not even going to move elsewhere in the Country. That's what I  
19 intended to convey. And the final point is that the very existence of Section 6A continuing on  
20 the statute book, operates even today as a beacon to persons to migrate illegally into Assam,  
21 and then perhaps game the system in whatever manner they want and make a claim for  
22 citizenship. This is not there anywhere else in respect of any other part of the Country, so it's  
23 open ended. So even today if somebody is whatever may happen may not happen as to which  
24 where should I cross over the border from? This is a huge incentive, just as it stands on the  
25 statute book, because there's no time frame which is provided. Anyway My Lord, these are  
26 now, having said submitted this, I want to just give you 2 citations. Just if I may, they are on  
27 record, I'll give you the paragraphs as well. Now what Your Lordships have held is that one has  
28 to examine ultimately, the effect of the law. So what is the direct effect? And this test has been  
29 laid down in **Bennett Coleman**. So I'll just give you the citation, please. It is **1972, Volume**  
30 **2, SCC 788** it is at Serial number 50 of Volume 5, from your Index. The report begins at page  
31 1563 and the relevant paragraph in this regard is paragraph 39.

32  
33 **CHIEF JUSTICE DY CHANDRACHUD:** 1563 right? 1563?

34  
35 **SHYAM DIVAN:** 1563, at 1587, para. 39

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37 **CHIEF JUSTICE DY CHANDRACHUD:** What volume is that?

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**SHYAM DIVAN:** Volume 5, My Lords. Serial Number 50 of the Index and also in *IR Coelho*, Justice Sabharwal's judgment. I'll just give you again the citation. **2007, Volume 2, SCC, page 1.** In the index of Volume 5, it is at Serial Number 132. The report begins at page 7586 and the relevant paragraph, that concluding paragraph of Justice Sabharwal is, paragraph 150 of the report.

**CHIEF JUSTICE DY CHANDRACHUD:** Page?

**SHYAM DIVAN:** I will just give that to Your Lordships. It's at 7696.

**CHIEF JUSTICE DY CHANDRACHUD:** It is well settled actually.

**SHYAM DIVAN:** I think it's well settled. So when you when you're looking at the...

**CHIEF JUSTICE DY CHANDRACHUD:** You don't look at the object of the law, but...

**SHYAM DIVAN:** Exactly, to say, absolutely. Now My Lords, I'm on Article 14. So I'll just make my points on Article 14. So my first point is, I endeavour to attack the classification itself so that's the first point. So my respectful submission, the classification is not based on any rational criteria and here I make two points. Assam is singled out here but there is a severe problem not just in Assam, but also in respect of other border States with respect to illegal migrants from Bangladesh, including *inter alia*, West Bengal, Meghalaya, Tripura, etc. I go further and submit on the basis of the materials which I've already read yesterday that there are other non-border States also. So two of them which were mentioned, for example, was Maharashtra, was mentioned, Rajasthan, NCT of Delhi, Your Lordship may recall from those studies, etc. where this problem is there. So my submission is first Assam and the other immediate neighbouring border States form a single, homogeneous class. My second alternative submission is that surely all the States affected by illegal migrants whether at the border or elsewhere, for example, Bihar also has a huge problem, etc., face... West Bengal has a huge problem, form a single homogeneous class. And to single out Assam, in our respectful submission, is impermissible. Particularly, having regard to the enormous adverse consequences on the community and on individuals as far as Assam is concerned. So, this is one part of my Article 14 submission. The next point which we wish to make is, that a violent or indeed any type of political agitation resulting in a political settlement is not a sufficient basis for classification.

1 **JUSTICE J.B. PARDIWALA:** Just repeat it Mr. Divan.

2

3 **SHYAM DIVAN:** Yes. I would respectfully submit that, look, nobody has disputed the fact  
4 that there was a political settlement. So, there was a political, the Assam Accord, correct? That  
5 in our respectful submission is not a sufficient rational basis for the present classification  
6 which is singling out and isolating Assam. For the purposes of your political accord if the  
7 problem was in Assam, yes, you have an Assam Accord. But when you are making the law, the  
8 law has to be something which meets the constitutional test. That's essentially it. So, this by  
9 itself can't be in the facts of our case and having regard to the impacts which are going to...

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Divan, your argument would be still the  
12 same, if the benefit of Section 6A were to be given in all the other border States affected by  
13 illegal immigration.

14

15 **SHYAM DIVAN:** Yes.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Suppose, they were to extend 6A, not just to  
18 Assam, if 6A were to apply to West Bengal or Tripura.

19

20 **SHYAM DIVAN:** Yes. Then, this part of my argument may not be available there.

21 Sorry.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Then... you're right. It may not be available there.

24

25 **SHYAM DIVAN:** I may have other arguments, but not this one. I mean, I am trying to go...  
26 I am trying to present a case on all three footings. Number one, classification.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** The reason I asked you this is that 6A is a  
29 beneficial provision. Right?

30

31 **SHYAM DIVAN:** But for whom?

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Obviously, for a group of persons, it's a beneficial  
34 provision.

35

36 **SHYAM DIVAN:** But, benefits has to be for your citizens, My Lord. That's the point.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** But therefore, I asked you, is Parliament, was  
2 Parliament bound to make that beneficial provision for all persons similarly circumstanced in  
3 order for it to be valid? Or, can Parliament not say that in the interest of maintaining peace in  
4 a state which was riven by strife, we have arrived at... obviously every compromise... it's not  
5 perfect.

6  
7 **SHYAM DIVAN:** We have a compromise.

8  
9 **CHIEF JUSTICE DY CHANDRACHUD:** It is never a perfect compromise. But can  
10 Parliament say that to bring about peace in a strife ridden state, or should we continue that  
11 strife merely because we will be discriminating between states? Because, these are sometimes  
12 very vexed issues.

13

14 **SHYAM DIVAN:** I agree.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** At that point, we have to put ourselves in the  
17 position in which the then Government of India was in 1985. The then Parliament was in 1985.  
18 The situation of Assam, where there was so much of violence at that time. So, any solution  
19 which they were finding is bound to be inexact solution. You cannot have a mathematical  
20 solution in these cases.

21

22 **SHYAM DIVAN:** But the issue... we don't need to be.....

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** So suppose... therefore, I asked you. Suppose,  
25 they had given 6A generally. Suppose they said 6A will apply to any State, any person coming  
26 to India.

27

28 **SHYAM DIVAN:** Yes, but then the impact would not have been on me. You see, this person  
29 ordinary resident in Assam, right... which nails people down over there, which encourages  
30 people over there.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** That point you've made.

33

34 **SHYAM DIVAN:** I've made the... So therefore, Your Lordship is right, that if it has been  
35 across the board dilution or whatever, 6A was applied across the country, then many of these  
36 arguments may not have survived. Your Lordship is correct. I concede that. But that doesn't  
37 mean, that however noble your cause might be, or whatever your objective at that point in

1 time, you have to do it in some manner which is constitutionally sustainable, and which  
2 doesn't have an impact on one set of communities, which are in one state. So anyway I have  
3 made that point. Now, sorry.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** All right. That's the second type. Any type of  
6 political agitation resulting in a political settlement is not a valid basis for the present  
7 [UNCLEAR].

8

9 **SHYAM DIVAN:** Yeah. Surely. It can't be just held up that look, we had this thing. It will  
10 have to pass various constitutional tests. Now singling out. Now, the next aspect is, that  
11 rewarding illegal migration in one part of India, that is the State of Assam, that is into the State  
12 of Assam, this is a separate point... is and by itself a discriminatory object. So what Your  
13 Lordships have held is that look, you may have a very clear classification. Your classification  
14 may be linked to the object which you want to receive, but if the object itself is discriminatory,  
15 then the law falls foul of Article 14. So here we have that seven Judge Bench in *Nagpur*  
16 *Improvement Trust*.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Just one second.

19

20 **SHYAM DIVAN:** May I continue?

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

23

24 **SHYAM DIVAN:** So may I just state the point and then the point is that I'll read from the  
25 Seven Judge Bench in *Nagpur Improvement Trust*, just one passage, and then I'll give  
26 Your Lordship the citation. The law recognizes that you may have certain situations where  
27 your classification is clear. It may have a reasonable or rational nexus to the object which is  
28 sought to be achieved. But if your object itself is discriminated, then the law will fall foul of  
29 Article 14. Now, I'll just read that passage and I'll explain why the object itself is discriminatory  
30 in my case. So the passage, sorry.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** so if we formulate it like that? If the law in itself  
33 is discriminatory with the...

34

35 **SHYAM DIVAN:** With the object and effect of the law, is itself discriminatory, then merely  
36 because your classification is on intelligible differentia and it has a rational relation with your  
37 object, it would not save the law. So I'm now just reading one passage from *Nagpur*

1 **Improvement Trust**, which is the seven Judge Bench Judgment versus **Vithal Rao**. I'll  
2 give you the citation, but I'll read the passage. It's para 26, ' It is now well settled that the state  
3 can make a reasonable classification for the purpose of legislation. It is equally well settled  
4 that the classification, in order to be reasonable, must satisfy two tests. One, the classification  
5 must be founded on intelligible differentia, and two, the differentia must have a rational  
6 relation with the object sought to be achieved by the legislation in question. In this connection  
7 it must be borne in mind that the object itself should be lawful. The object itself cannot be  
8 discriminatory. Or otherwise for instance, if the object is to discriminate against one section  
9 of the minority, the discrimination cannot be justified on the ground that there is a reasonable  
10 classification because it has a rational relation to the object sought to be achieved. Now this is  
11 Your Lordship's language. So I'll just give the citation and then I'll link it up to our facts. So  
12 the citation is **Nagpur Improvement Trust**. It is **1973, 1 SCC page 50**. It's a Seven Judge  
13 Bench of our Court. It is at Serial number 52 of the Index in Volume 5. It begins at page 1644  
14 and the relevant paragraph is paragraph 26, which is at page 1650. And this judgment I might  
15 just indicate is followed in **Subramanyam Swami versus CBI** which is a Five Judge  
16 Bench, **2014, 8 SCC, page 682**. Sorry, 2014, Volume 8, Supreme Court case is 682. Yes, at  
17 Serial number 154 of Volume 5, in the Index and the report itself begins at page 9323. The  
18 relevant paragraphs being paras 44, 9359. 58 at 9366 and 68 at 9371. Now, just let me explain  
19 in a moment as to what would happen to an illegal immigrant outside of Assam. So just let me  
20 summarize that very briefly. Appropriate orders can be passed for arrest and detention under  
21 Section 3(2)(g) of the Foreigners Act 1946.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** One second.

24

25 **SHYAM DIVAN:** So there's Section 3(2)(g) of the Foreigners Act 1946 and the Government  
26 can pass appropriate orders for arrest and detention of a foreigner who has entered without  
27 proper documentation.

28

29 **JUSTICE SURYA KANT:** Mr. Divan under which section?

30

31 **SHYAM DIVAN:** Section 3(2)(g) of Foreigners Act 1946. Another, I'm not giving you an  
32 exhaustive list, but I'm just giving you 3. Another, action against an illegal immigrant outside  
33 of Assam could be that the Government can remove or deport the person who has entered  
34 without a passport under Section 5 of The Passport Entry Into India Act 1920. And there is a  
35 criminal prosecution, the person would be exposed to, including imprisonment up to 5 years  
36 under Rule 6 and Rule 3 of The Passport Entry Into India Rules, 1950, read with Section 3 of  
37 the 1920 Passports Entry into India Act. So the submission is that how do you draw out? I



1 mean, the illegal immigrants are a single class in a sense. And this particular category of illegal  
2 immigrants, you confer citizenship, etc. on otherwise, these persons would have all been  
3 visited with these penalties. Then I just want to indicate that perhaps this provision also  
4 suffers from the vice of being palpably arbitrary and I'll indicate why. You see, just consider a  
5 situation. You have two persons who cross over the border without their documentation, etc.  
6 One lands in Assam the other lands 50 yards away in one of the neighbouring States, say  
7 Meghalaya, or something like that. The question is that is this not palpably arbitrary that a  
8 person who chooses an Assam route receives these type of benefits with all the points which I  
9 mentioned regarding remaining there, remaining there because you have to be ordinarily  
10 resident, and you continue to remain there, and no time period within which you have to  
11 register, no time period within which a determination is to be made. So we would respectfully  
12 submit that this results in palpable arbitrariness. And the Assam Accord, My Lords, Your  
13 Lordship is right at that particular point of time, yes, of course why a political accord, there's  
14 no embargo against it. So no problem with that at all. But then when you're translating it into  
15 a law, having regard to the promises such promises as you may have made when you're  
16 translating it into a law, it must, in our respectful submission, meet these various tests,  
17 including Article 14.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Because Mr. Divan you must actually also give  
20 the Government that latitude even today. Today there are parts of the North-East, which we  
21 know... I mean, we need not name the states, but there are states which are affected by  
22 insurgency, which are affected by violence. So I mean, we have to give the Government that  
23 leeway even today to make the sort of adjustments which are necessary to save the nation.  
24 Maybe 25 years later, it may appear well, why did you make this concession, when the nation  
25 is stable? But at that moment, sometimes these are compromises which the Government has  
26 to make to save the overall... to save the overall well- being of the nation. You know, that is...

27

28 **SHYAM DIVAN:** I think that's a very sound rationale for entering, possibly for justifying the  
29 Assam Accord. I mean, I'm not for a moment and I'm not... we are not receding the Assam  
30 Accord. The Assam Accord may be perfectly kosher and there may be perfect justification for  
31 that. After that, the question is 6A and the manner in which you have coined and drafted 6A.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** That you have made.

34

35 **SHYAM DIVAN:** I think the latitude, I appreciate My Lords, the latitude... Legislature has  
36 that...

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** The problem is it doesn't go beyond that latitude  
2 because of the 14 violation. [UNCLEAR]

3

4 **SHYAM DIVAN:** Now, I want to go into one other aspect. As Your Lordships may put  
5 because, at least we've done as much of research. Because these volumes are also... There  
6 doesn't seem to be any... this is I think, important for this kind of a statutory provision which  
7 you insert... there doesn't appear to be any study because that was Your Lordship's question  
8 on any material with the Government at that point of time by which they knew what the impact  
9 of this particular statutory provision is going to be. So, when you have... when you are testing  
10 the provision now... all right, you can test it at that particular point of time, but you keep these  
11 open ended provisions, which I'm not going to repeat. You keep them open for all time. You  
12 can come and register whenever you like. You can come and make a claim and people will just  
13 linger on. Having regard to all of that....

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** That point you've made, Mr. Divan.

16

17 **SHYAM DIVAN:** Having regard to all of that. My Lords, in our respectful submission, no  
18 study, no material, estimates My Lord. Some estimates, that look, these are the number of  
19 people who, we feel will benefit from this 1st January '66 deadline. The second is, these are the  
20 number who will benefit between '66 and '71. There is no such material that at least that we  
21 have seen. So, sorry.

22

23 So My Lords 2.... Sorry, just two. I'll just state the points. Two aspects with regard to Article  
24 14, which remain. Please consider also the principle of unequals being treated equally and  
25 being violated. Here full-fledged citizens on the one hand, illegal migrants on the other hand.  
26 And illegal migrants are being according to us, completely unequal. They are unequal in the  
27 eye of the law for the rest of the Country and they are being treated here by this impugned  
28 provision as equal to citizens. So that I would respectfully submit fails the Article 14 test as  
29 well, or at least one dimension of it. We also believe in conclusion on Article 14, that we have  
30 discharged our primary burden. And now it's really for the State to defend. Now I come to  
31 Article 21. I'll go very rapidly with your permission because I've already stated the essential  
32 elements. So in Article 21 I want to simply emphasize three or four aspects, as you may then  
33 consider it, because it's very widely interpreted. Please consider the community rights  
34 dimensions of Article 21. Apart from my cultural rights, living in a community, ensuring that  
35 your community is not disrupted, that your community is not marginalized, that your  
36 community itself is able to continue to interact, hold its land, these are very important facets  
37 of 21. Please keep that in mind. The second element of 21, My Lords, for a moment keeping

1 aside rights with respect to voting, et cetera. But just think of self-governance aspects. Self-  
2 governance is also according to us a facet of 21, which elsewhere in the Constitution, as well.  
3 And here what we find is that apart from community this whole element of self-governance  
4 within a region, within a village, within a town is being severely compromised as a direct  
5 impact and effect. And we have those studies which we referred to yesterday. The third element  
6 of 21 is meeting aspirations - economic, social, and political. And by allowing this type of huge,  
7 illegal immigrant, regularization with potentially future generations also making a claim,  
8 without any time frame, it severely undermines economic, social, and political aspirations,  
9 which are facets of Article 21.

10

11 And finally, Your Lordships will also consider the impact of the destructive or the negative  
12 impact. I will describe it as a negative impact, on future generations of Indian citizens in  
13 Assam, belonging to the communities who are here as petitioners before the Court. Your  
14 Lordships have already noted the *Sonowal* case. Would Your Lordships like me to just give  
15 the place where that is mentioned?

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Yes please.

18

19 **SHYAM DIVAN:** I'll just give you where it is located in the paper book. So, the *Sonowal*  
20 First Case, **2005, Volume 5, SCC 665.**

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** 2005?

23

24 **SHYAM DIVAN:** 5, SCC 665. You will find it at Serial number 122 in the Index of Volume 5.  
25 The report itself begins at page 7047. Sorry, Serial number 122, Volume 5, page 7047.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** At para?

28

29 **SHYAM DIVAN:** And the relevant paragraphs... My Lords, there's lots to read. But 62, 63 at  
30 7095. In the context of Article 355. Correct. So, that I have made the point. Now again, I will  
31 just make points as far as Article 29 is concerned. I'm endeavouring to link this up to the  
32 studies which were placed before this Court yesterday on cultural rights, language and script.  
33 Your Lordships saw those statistics and the dilutions etc. And according to us, 6A operates to  
34 severely abridge Article 29. And this type of abridgement of cultural rights, language, script,  
35 et cetera, falls foul of Part 3. Now, may I just take you to the next point where again, I wonder  
36 whether Your Lordships now have Volume 5(b). We gave it yesterday. It was that new... if Your  
37 Lordships have 5(b), or we have the physical also, if you...

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**CHIEF JUSTICE DY CHANDRACHUD:** No, we have it.

**SHYAM DIVAN:** Fine. So here, I want to... I'll just state the points and then My Lords... The fraternity I've indicated to Your Lordships, is a value, a high value which is mentioned and recorded in the Preamble itself. We understand it as being fraternity amongst citizens. And finally, I have made the point that this fraternity is used in the context of the integrity of India and the unity of India. Your Lordship recalls that?

**CHIEF JUSTICE DY CHANDRACHUD:** Yes.

**SHYAM DIVAN:** Now, we have the advantage of three Constitution... sorry... three judgments of our Court, including a Constitution bench. So please, just, if Your Lordships would go to the Constitution Bench Judgment. We are now concerned with Volume 5(b). The name of the case is Raghunathrao versus Ganpatrao. Sorry, **Raghunathrao Ganpatrao versus Union**. It's a Constitution Bench reported at **1994 Sub 1, SCC 191**. And it's at Serial number 3. Index Serial number 3 of this Volume 5(b). There are two relevant paragraphs. Page will be 79 and the two paragraphs, I wish to place are paras 109 and 111.

**CHIEF JUSTICE DY CHANDRACHUD:** Page?

**SHYAM DIVAN:** At pages 111 and 112.

**CHIEF JUSTICE DY CHANDRACHUD:** **Raghunathrao** was the case where they said... it was cited in 370 judgment... 370 hearings, which was post **Madhavrao Scindia**. Because **Madhavrao Scindia** struck down the abolition of privy purses on the ground that you could not, by an Executive Act, de-recognize the ruler. After that they introduced a constitutional amendment. Once the constitutional amendment came, they upheld the constitutional amendment because... on the ground that the absence of a law and you couldn't have done something contrary to the Constitution, was then substituted by a legislation which operated to abrogate the privy purses. 366. The definition of [UNCLEAR]. Yes. Justice LM Sharma's judgment.

**SHYAM DIVAN:** Yes. The one I am relying upon is Justice Pandian's judgement. But Your Lordship is right. Justice LM Sharma, Chief Justice presided over this Bench. So may I just place those two paragraphs? Because there's some discussion. I will just read.. they are page 111, 112. I'll read them. 'After carefully going through the above discussion which relates to

1 service matters, we are afraid that such an argument as one made by Mr. Nariman could be  
2 substantiated on the principles laid down in those two decisions that Article 14 will be violated,  
3 if unequals are treated as equals. In our considered opinion, this argument is misconceived  
4 and has no relevance to the facts of the present case. One of the objectives of the Preamble of  
5 our constitution is fraternity, assuring the dignity of the individual and the unity and integrity  
6 of the nation. It will be relevant to cite the explanation given by Dr. Ambedkar for the word  
7 fraternity, explaining that fraternity, means a sense of common brotherhood of all Indians. In  
8 a country like ours, with so many disruptive forces of regionalism, communalism and  
9 linguism, it is necessary to emphasize and reemphasize that the unity and integrity of India  
10 can be preserved only by a spirit of brotherhood. India has one common citizenship, and every  
11 citizen should feel that he is Indian first, irrespective of other bases. In this view, any measure  
12 of bringing.. at bringing about equality should be welcome. There is no legitimacy in the  
13 argument in favour of continuance of princely privileges. Since we have held that the abolition  
14 of privy purses is not violative of Article 14, it is unnecessary for us to deal with the case cited  
15 by Mr. Nariman, which according to him go to say that any law violating 14 is equally violative  
16 of the basic structure of the Constitution, in as much as Article 14 is held to be a basic postulate  
17 of the constitution. And then para 111 has repeatedly pointed out *Supra*. The only question is  
18 whether there is any change in the basic structure of the constitution by deletions of Article  
19 291, 362 and the insertion of Article 363(a), an Amendment of Clause 22 of Article 366. We  
20 have already answered the question in the negative, observing that the basic structure or  
21 essential features of the Constitution is or are in no way changed or altered by the impugned  
22 amendment. We cannot make surmises on 'ifs and buts' and arrive at a conclusion that Articles  
23 291 and 362 should have been kept intact as special provisions made for minorities in the  
24 Constitution. It is but a step in the historical evolution to achieve fraternity and unity of the  
25 nation, transcending all regional, linguistic, religious, and other diversities which are the  
26 bedrock on which the constitutional fabric has been raised. The distinction between the  
27 erstwhile rulers and the citizenry of India has to be put to an end so as to have a common  
28 brotherhood. So this is the context in which they mentioned fraternity, but clearly it is  
29 fraternity among citizens and therefore in our respectful submission. And the other two  
30 decisions, which are in the same volume are ***Prathvi Raj Chauhan***, which is versus Union  
31 that Your Lordships is a detailed discussion .... Yes, of Justice Ravindra Bhatt, and I'll just give  
32 you the paragraphs. It's a Three Judge Bench judgment. It is **2020, 4 SCC, page 727**. It's at  
33 Serial number 2 of Volume 5B and the relevant paragraphs are 15 to 18, 21 and 34. Justice  
34 Bhatt actually goes and explores this whole notion of fraternity, he traces it down to the, how  
35 it was introduced by Dr. Ambedkar etc. So that may be of some assistance to the Court. So  
36 these are then my submissions. And there's a third decision of ***Nandani Sundar***, it's in the

1 same compilation, where again Your Lordships will recall that there was an enlistment of  
2 certain person, citizens against citizens.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Salwa Judum.

5

6 **SHYAM DIVAN:** Salwa Judum. And there the Court said that no pinning part of its  
7 reasoning on the element of fraternity and recognizing, we can't really turn one against the  
8 other. So just please keep that in mind as well. So that is a Two Judge Bench decision, **2011,**  
9 **7 SCC, 547.**

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

12

13 **SHYAM DIVAN:** There is a passage here, My Lord, which says that political expediency, as  
14 Your Lordship rightly said Salwa Judum, so you can... There may be some reason for  
15 justification. But that in itself political expediency is no justification for, in terms of enacting  
16 a valid law. Then My Lords, on 326 and 327 I've made my submission when I read the  
17 provisions regarding dilution of voting rights, and Your Lordships have seen that impact again  
18 in terms of the material which we placed yesterday.

19

20 Now as far as my submission on Legislative Competence , it should be My Lords developed  
21 more fully by Mr. Choudhury, etc, but I'll just state the point . So Your Lordship were quick to  
22 point to us that look this citizenship is mentioned insofar as 7th Schedule is concerned, List 1.  
23 We are on another aspect , and the aspect that I want to just pinpoint is that the date given in  
24 the Constitution and which remains till this day for an automatic recognition of citizenship  
25 for migrants from Pakistan remains in the Constitution as 9th July, 1948. I'm sorry it's 19th.  
26 My mistake My Lord. It's 19th July, 1948. So until that provision stands in the Constitution as  
27 it does till this date one cannot have a legislation which runs contrary to an extant  
28 Constitutional provision. Now with regard to the points on Basic Structure which we have My  
29 Lords, amplified in our written submissions, etc. I'll again, just state the point, three values  
30 which according to us are central to Basic Structure, democracy, federalism and rule of law  
31 stand undermined. Your Lordships have now held that while ordinarily the Basic Structure  
32 Doctrine is invoked for the purposes of challenging a Constitutional amendment. It would also  
33 inform Your Lordship's decision making process in the context of, say, manifest arbitrariness  
34 or certain other infirmities. So these values in our respectful submission, 6A undermines  
35 these. I've explained it. I mean, Your Lordships will take it, it's in the context of the material  
36 which we placed on record yesterday. Now My Lords I now conclude on two aspects. One  
37 aspect is, my primary case is that as far, so I will make my short submissions on what ought to

1 happen. So first, in our respectful submission 6A ought to be declared. I think it's vital that  
2 this Court declares 6A as unconstitutional if you are persuaded eventually to do so. According  
3 to us, it really can't stand any constitutional scrutiny at all. That's one. However what is to be  
4 done thereafter, should 6A be struck down? Because obviously there will be a number of  
5 people involved. So we would respectfully submit that the course which would be open for the  
6 Government are several and those are the ones which apply with regard to illegal migrants  
7 outside Assam. So you could have directions which are passed in terms of a scheme that you  
8 must locate yourselves at places A, B, and C. That's one possibility. This is where you have to  
9 confine yourselves, that sort of dovetails in which that other alternative submission, which I'm  
10 also going to make.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** So in the second submission, what is the course  
13 open to the Government that...

14

15 **SHYAM DIVAN:** No what would happen supposing these were illegal migrants are  
16 detected...

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Deported?

19

20 **SHYAM DIVAN:** No. So that's one avenue. Which is you're absolutely right. There is a  
21 deportation machinery which is available, but there are also other powers which are available  
22 to the Government, which require that a person who's identified as an illegal migrant go and  
23 restrict his movements or place the person at a particular location. So this is My Lords.... Sorry.  
24 There are several persons, My Lords for example, Your Lordship recalls that passage from  
25 Justice Nariman's judgment, which says that as far as refugee law is concerned in our Country,  
26 we are dealing with it at an administrative level, the reference order which came up over here.  
27 So you have situations where certain communities, if they are found to be, say, refugees, or are  
28 recognized as having come, but they haven't come with the appropriate passports and  
29 appropriate documentation, then they may be required to remain at X place or Y place. So you  
30 can frame a complete scheme with respect to these. But it ought to be something less than  
31 citizenship, one. And number two, it ought to be a scheme that cannot visit the consequences  
32 of illegal migration only on the population of Assam and the people of Assam and the  
33 communities of Assam. Now this is, if it is to be held as invalid, relief may be moulded in this  
34 manner. These are suggestions. The Government may have others. The other aspect which I  
35 want to make, but certainly according to if you are right, it ought to be less than citizenship.  
36 Now supposing we are wrong, and we are unable to persuade Your Lordships to issue the  
37 declaration we seek. Even so, in our respectful submission, having regard to the enormous

1 impact this has and the manner in which 6A works by which you have to remain ordinarily  
2 resident over there, I believe there is an obligation on the Union Government to ensure that  
3 the full impact..... Now, this feeds into the observation made by the Chief Justice that, look,  
4 we have to preserve the integrity of India. Preserve. All right. If that eventually argument  
5 appeals to the Court, I don't believe it should then surely you can't just have one set of districts  
6 on a border of one State which takes the.... and those communities which take the entire brunt.  
7 Then, the national interest has to be dispersed in some manner by which the impact is not on  
8 me alone. Me as in the petitioners before the Court. So, you have to come up with a scheme  
9 nevertheless. Even if we are wrong, they will have to or ought to have... ought to be a set of  
10 directions so that we are not visited in perpetuity and for generations to come with these type  
11 of impacts. And some states My Lord, I must say some states on affidavit have recognized this  
12 problem. Maybe they have problems themselves. But they've said that yes, if there are issues  
13 and directions, we realize that Assam has a problem. We will, of course, extend our full co-  
14 operation. I'm very grateful.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you, Mr. Divan. You've really kept to your  
17 time we had given you. You started at 10:55 and to the dot, you have finished at 12:25. Thank  
18 you very much.

19

20 **SHYAM DIVAN:** I don't have a brief for my learned friends, but I don't think, having regard  
21 to the scope of this case, they should... I mean I was as a first batsman who didn't get out within  
22 the first five minutes or first five balls, I was able to continue. But I think this will require an  
23 exposition on their part, which may take more than the time which Your Lordships had  
24 initially contemplated. I'm very grateful. Thank you.

25

26 **KAMAL NAYAN CHOUDHURY:** May I please, Your Lordships?

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Choudhury, which petition are you  
29 appearing in?

30

31 **KAMAL NAYAN CHOUDHURY:** I am appearing in WPC 562 of 2012, My Lord. 562 of  
32 2012.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** And broadly, which is the ground which you are  
35 covering now, Mr. Choudhury?

36



1 **KAMAL NAYAN CHOUDHURY:** Actually, My Lord, I'll adopt the argument which my  
2 esteemed colleague Mr. Shyam Divan has done, but I'll supplement the argument on all the  
3 points, My Lord. If you will kindly give me that liberty.

4  
5 **CHIEF JUSTICE DY CHANDRACHUD:** So long as you are not repeating anything which  
6 Mr. Divan has said.

7  
8 **KAMAL NAYAN CHOUDHURY:** I will not repeat a single argument. I'll not even repeat  
9 the facts which my learned friend has referred. I'll, of course, refer to some facts which my  
10 learned friend has not referred, which we consider it's My Lord, I mean relevant for the  
11 adjudication of the case.

12  
13 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

14  
15 **KAMAL NAYAN CHOUDHURY:** The first aspect, which I would like to highlight is, My  
16 Lord the reference order itself recognizes what we have said. Of course, to a due deference to  
17 be given... extended by Your Lordships Bench. The reference Bench has taken note of the fact  
18 that entire people of this State, including the tribal people are before the Court and they are  
19 expressing a grievance which has got legitimacy, My Lord. Now, therefore, our duty is to satisfy  
20 Your Lordships that this legislation in the form of Section 6A was wholly misconstrued. My  
21 Lord, can I conceive of a situation, the Government of India wants to protect the immigrants  
22 at the cost of the indigenous people of the state? Can this be an object, My Lord? My friend,  
23 Mr. Divan, has referred to the judgment... he said that 1973, that just now he has referred to  
24 that judgment. *Nagpur Improvement Trust*.

25  
26 **CHIEF JUSTICE DY CHANDRACHUD:** Where the object itself was discriminated.

27  
28 **KAMAL NAYAN CHOUDHURY:** Yes. Now My Lord, kindly see in *Sonowal's* case the  
29 Honourable Supreme Court has went to the extent of... sorry, this Honourable Court has... we  
30 in the High Court, My Lord, we are used to saying Honourable Supreme Court. So, I forgot for  
31 a moment that I am in the Supreme Court, My Lord. So, there the Lordships have said that the  
32 object has to be lawful. Where is the difficulty in *en masse* deportation of aliens? Aliens, at  
33 will. These are all aliens at will. There is a distinction between an illegal migrant and a  
34 foreigner. I will satisfy Your Lordships why this legislation is bad. Kindly see, 'detected to be a  
35 foreigner', is an expression which is defined in Section 6A.

36  
37 **CHIEF JUSTICE DY CHANDRACHUD:** Right.

1

2 **KAMAL NAYAN CHOUDHURY:** Kindly see, My Lord, this does not take note of the  
3 legislation call My Lord, immigration expulsion from Assam Act 1950. Assam had this problem  
4 even post partition, My Lord. Assam had the problem on the eve of the partition. Post  
5 partition. '65 war. 1971 war. We are saturated. Today, My Lord, I may tell Your Lordships, out  
6 of 126 Assembly Constituencies, indigenous people can win election only in 57 constituencies.  
7 That is the state of affairs. Yesterday, Your Lordships wanted to know what is the extent of  
8 immigration which has taken place between 1951 and '61, I'll give the figures. There are figures.  
9 In fact, it is the Prime Minister of India at the relevant point of time, who made a statement in  
10 the Parliament. Those I'll place. So therefore what I propose to do, My Lord, my ground of  
11 challenge is, this is a legislation which was brought in by a regime who had a brute force of  
12 400 plus MPs. This is a legislation not at all called for, My Lord. It's, if Your Lordship kindly  
13 permits me, I would say it is a Parliamentary joke to have such a legislation. Can you conceive,  
14 My Lord of a situation where a Parliament has enacted a law, instead of protecting the,  
15 indigenous people or the people of the state or people of the Country living in that part of the  
16 state and come to the rescue of these immigrants, only for the sake of political expediency? I'll  
17 first refer to that article, where these figures are given. That Your Lordships, will get at page  
18 number 3224 of Volume 4.

19

20 **JUSTICE SURYA KANT:** What is the page number Mr. Choudhury?

21

22 **KAMAL NAYAN CHOUDHURY:** Page number 3224 of Volume 4. Your Lordships kind  
23 permission can I have some water? It's an article written in Oriental Times on July 7th on  
24 1999. I'll read the second sub para. In spite... has Your Lordships got it? 'In spite of these legal  
25 provisions, a steady flow of migrants from East Bengal to Assam continued unabated. So with  
26 a view to stopping illegal infiltration, Parliament enacted on December 24, 1949, Immigration  
27 Expulsion from Assam Act 1950. In the statement of objection and reasons of bill it was said,  
28 that stay of such person or class of person, is detrimental to the interest of the general public  
29 of India, or any section thereof. The tribal people of Assam, have been the major victim from  
30 the migration of infiltrators from East Bengal. Close on the heels of the bill being passed by  
31 the Parliament, Pakistan started complaining, whereupon discussions followed between  
32 Pandit Jawahar Lal Nehru, the Prime Minister of India, and Liaquat Ali Khan, the Prime  
33 Minister of Pakistan. On April 6, 1950, Nehru-Liaquat Pact was signed, which provided for  
34 return of East Pakistani Muslims. This was taken advantage of in full measure by the East  
35 Pakistani Muslims, who had earlier been pushed back from Assam. The whole purpose of 1950  
36 Act was defeated. Furthermore, the National Register of Citizens prepared in 1951, taking  
37 resort to the cover afforded by the Nehru-Liaquat Pact include a good citizen, those of East

1 Pakistani Muslim, whom the Act of '50 described as foreign infiltrator, and directed their  
2 expulsion but could not be expelled due to Nehru-Liaquat Pact. Nehru became a party to this  
3 pact, mainly for two reasons. He wanted to see India was so secular, that Muslims and other  
4 religious minorities preferred India, to their countries of origin, ostensibly created on the basis  
5 of the religion. Secondly, the Congress Party, of which Nehru was the Parliamentary leader,  
6 had in the meantime struck an understanding with the Muslim religious leaders that, Muslim  
7 community, would be a solid and stable vote bank for the Congress Party. Then My Lord may  
8 kindly skip that. Kindly to come to the sub para starting with, the 1961 census showed a 34.97%  
9 of increase of Assam's population against a national average of 21.64% in the decade 1951 - '61.

10

11 The census of '61 estimated that not less than 7,50,000 East Pakistani Muslim infiltrated into  
12 Assam within the decade of '51 and '61. In '65, Prime Minister of India made a statement on  
13 the floor of the Lok Sabha to this effect on the basis of the report of the Indian Intelligence  
14 Service. Late BP Chaliha, the then Chief Minister of Assam, however estimated the influx at  
15 3.5 lakhs only. However, 10 Tribunals were set up to hear the appeals. They appealed the  
16 confirmed infiltrators. Therefore, in the year 1967, '68 and '69, 1.2 lakh infiltrators were  
17 expelled, deported from Assam. Thereupon 33 Congress Legislators belonging to Muslim  
18 community led by Moinul Hoque Choudhury, Debokant Boruah, Sarat Chandra Sinha  
19 demonstrated against the Chief Minister and said if all expulsions of the alleged Muslim  
20 infiltrators did not stop forthwith, Muslim block of Congress vote would be lost for ever. Now  
21 it is in any case lost. The liberation struggle of East Pakistan and formation of Bangladesh  
22 State resulted in increased infiltration of Muslims from that region to Assam. Sheikh Mujibur  
23 Rahman openly said that Assam was the natural field for expansion of Bangladesh. During the  
24 period from March 25, 1971 to December 12, 1971, it is on record that more than 12 lakh people  
25 came over to Assam from East Pakistan and took shelter here with their relatives, friends,  
26 acquaintances who had come over earlier. Most of them did not return. This is very important.  
27 The Ministry of Home Affairs, Government of India vide memo, dated September 30, 1972,  
28 informed the Government of Assam that Indira Gandhi, Prime Minister of India, had arrived  
29 at an understanding with the Prime Minister of Bangladesh, Sheikh Mujibur Rahman, to the  
30 effect that such person as has come over to India from erstwhile East Pakistan before March  
31 25, 1971 shall not be deported. In case of person who had illegally entered India after March  
32 25, 1971, the State Government should prepare list and forward the same to the Branch  
33 Secretariat, External Affairs Government of India, Calcutta, in duplicate, which they should  
34 submit a list to the Deputy High Commissioner, Bangladesh at Calcutta to liaise with him for  
35 a deportation. But no such deportation took place. In substance this amounted to the  
36 proposition that Article 5 and 6 of the Constitution of India would have no relevance with  
37 regard to the infiltration. Such Bangladeshi infiltrators to Assam became thus well protected.

1 So My Lords, this is the background. Now My Lord will kindly appreciate, now there was an  
2 understanding between the then Prime Minister of India, and the then Prime Minister Mujibur  
3 Rahman, that people who illegally entered Assam prior to 25 March 1971, they will not be  
4 deported. My Lord that agreement is not the basis of this act or the amendment. At least the  
5 statements of objections reasons do not disclose them. Now ordinarily under the  
6 Constitutional scheme My Lord, under...

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** That agreement, was it was it recorded in writing  
9 that agreement? Between the then Prime Minister of India?

10

11 **KAMAL NAYAN CHOUDHURY:** We could not lay our hands to it. I think it exists. There's  
12 a friendship treaty where this proposition is not there. But it is widely acknowledged, My Lord,  
13 that there was an agreement to that effect. That's why this memo of the Government of India  
14 Ministry of Home Affairs. Now, my humble submission is, My Lord, if you want to give effect  
15 to that treaty, assuming it's a treaty between the then Government of Bangladesh, and the then  
16 Government of India, then, My Lord, in terms of Article 253, there ought to be a Parliamentary  
17 Legislation. There is none. Therefore, this date 25-03-71, loses all its significance. Assam  
18 Accord cannot... Assam Accord does not say 25-03-51. Assam Accord is a political settlement  
19 My Lord. Now, can a political settlement be the basis of an agreement? My Lord, for a moment  
20 we are not questioning the competence of the Union of India to make the Amendment. But the  
21 question is we are concerned with the subject matter. It's not the source of the power. There  
22 could be a source of power. Source of power is there. Article 11 read with Article 245, read with  
23 My Lord Entry 17 List 1. But the question is, what is the subject matter. Subject matter is  
24 acquisition of citizenship by a class of person who admittedly are illegal migrants. That is an  
25 aspect which needs Your Lordship's consideration. Now question is if you are an illegal  
26 migrant, and for which an Act was enacted way back in 1950, it was duty of the Government  
27 of India to stick to that Act and deport them. Instead of doing that, what they did, they came  
28 up with this amendment. I think the Article which I have shown, reflects the political  
29 expediency involved in the entire scheme of things. It's a vote bank politics. It is not only  
30 perceived, it is acknowledged. Now therefore, My Lord, since there is no Parliamentary  
31 Legislation in terms of Article 253, since Assam Accord, which is the premise on which My  
32 Lord, the amendment... impugned amendment was carried out, does not speak of 25-03-71,  
33 where from this date 25-03-71 has fallen? Has it fallen from the heaven? It couldn't have been.  
34 So, in the affidavit filed by the Government of India, other than a statement that foreigner,  
35 illegal migrants who came before 25-03-71, they are not to be deported, they have not given  
36 any... disclosed any reason, what is the sacrosanct-cy of this particular date 25-03-71? End of  
37 the day, Lordship is testing at the legitimacy of a parliamentary exercise. That too, where the

1 own people have been rendered, My Lord, I mean, minority in their own state. There are  
2 section of the citizens who cannot enjoy their pujas in the state of Assam. If we go to the old  
3 Goalpara District, it is almost 90% plus immigrants. We can't even move. We cannot venture  
4 into those areas. How do we enjoy our right under Article 21? How do we enjoy our right under  
5 Article 29? My Lord, Government of the day must create a situation where the citizens can  
6 enjoy their cultural right. They need not spend money to develop our culture. But they have a  
7 duty. Constitutional duty to create an atmosphere where citizens can enjoy their cultural  
8 rights. Where are those, My Lords? Now I'll refer to two, three paragraphs from this  
9 **Sonowal**. Then I will My Lord, refer to the legal submissions, which I propose to make.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Just give us the paras.

12

13 **KAMAL NAYAN CHOUDHURY:** Yes, My Lord. One second. **Sonowal** Judgment starts  
14 at page number 7090. Sorry.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** It is at 7047.

17

18 **KAMAL NAYAN CHOUDHURY:** Yes.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 5.

21

22 **KAMAL NAYAN CHOUDHURY:** Yes. I'll have Your Lordship's kind attention to page  
23 number 7090 onwards.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Just give us the paras and tell us what it says.  
26 Why you are relying on it?

27

28 **KAMAL NAYAN CHOUDHURY:** Yes. No, My Lord. There are one... para 70, I'll have to  
29 read, My Lord.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Para?

32

33 **KAMAL NAYAN CHOUDHURY:** 70. I will rely upon paragraph 51, 52, 53, 56, 57, 63, 70,  
34 73, 79, 80 and 83. But Lordships, will kindly permit me to read this para 70, page 7100.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** What does it say? You can just formulate it. You  
37 need not read the whole para. So, you can just formulate it, what does it say.

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**KAMAL NAYAN CHOUDHURY:** It speaks about the effect of the presence of this stream of illegal immigrants. Where it says, My Lord, Assamese people has been rendered minority in their own state. And it has set in, My Lord, demographic profile change, irreversibly. With Your Lordships kind permission, may I read it?

**CHIEF JUSTICE DY CHANDRACHUD:** Yes.

**KAMAL NAYAN CHOUDHURY:** As mentioned earlier, para 70, at page number 7100, 'influx of Bangladeshi nationals who illegally migrated into Assam pose a threat to the integrity and security of the North-Eastern region. Their presence has changed the demographic character of that region, and the local people of Assam have been rendered... reduced to a status of minority in certain district. In such circumstances, if Parliament had enacted a legislation, exclusively for the state of Assam, which was more stringent than the Foreigner's Act, which is applicable to the rest of India and also in the State of Assam for identification of such person who migrated from territory of the present Bangladesh between 01-01-66 and 24-03-71, such a legislation would have passed the test of Article 14, as the differentiation so made would have had the national nexus with the award policy and objective of the Act. But the mere making of a geographical classification cannot be sustained where the Act instead of achieving the object of the legislation, defeats the very purpose for which the legislation has been made. As discussed earlier, the provisions of the Foreigner's Act are far more effective in identification and deportation of foreigners who have illegally crossed the international border and have entered India without any authority of law and have no authority to continue to remain in India. For satisfying the test of Article 14, geographical factor alone in making the classification is not enough, but there must be nexus with the object sought to be achieved. And My Lords, there is one more paragraph. Now, if Your Lordships would kindly come to para 75 at 7102. Here, My Lord, I'll deal with that aspect of the scope of Foreigner's Act and the Act of 1950. Now International Covenant on Civil Rights to which India is a signatory, Article 13 thereof mandates that a person who enters another Country lawfully, he alone is entitled to the due process of law. A foreigner, an illegal migrant at will, he is not entitled to due process of law. My Lord will kindly appreciate if this is the legal position. If the legal position is, My Lord, in the international law as well as our Honourable Supreme Court, has said, My Lord, our this Honourable Court has said that *en masse* deportation is a course which is open to the Government of the day, what was the obligation? What was that compelling reason My Lord, why this legislation was made? This is very important, My Lord. On one hand, you had the option of deporting them, which you did not do. Now kindly appreciate My Lord, interpreting Article 355 of the Constitution of India, this Honourable Court, My Lord, while

1 upholding the Armed Forces Special Powers Act, had said that Article 355 enable the making  
2 of an legislation like Armed Forces Special Powers Act. If that is the position, My Lord, why  
3 355 should not be invoked in this case? Therefore, I'll submit, my Lord, we are before Your  
4 Lordships under Article 32, where this Honourable Court has said it is the duty of this  
5 Honourable Court to protect the interest of the citizens. We are before Your Lordships. Now,  
6 kindly see, My Lord, in **Sarbananda Sonowal** this aspect was taken note of at para 77. In  
7 introduction to International Law by JG Starke, the law on point has been stated thus. 'Most  
8 states claim in legal theory to exclude all aliens at will affirming that such unqualified right is  
9 an essential attribute of the sovereign Government. The Court of Great Britain and the United  
10 States have laid it down that right to exclude aliens at will is an incident of territorial  
11 sovereignty. Unless bound by international treaty to the Country, States are not subject to a  
12 duty under international law to admit aliens or any duty thereunder not to expel them. Nor  
13 does the international law impose any duty as to the period of stay and as admitted aliens. Like  
14 the power to refuse admission, this is regarded as an incident of the state's territorial  
15 sovereignty. International law does not prohibit the expulsion *en masse* of aliens. Reference  
16 has to be made to Article 13 of the International Covenant of 1966 on Civil and Political Right,  
17 which provides that An alien lawfully in the territory of a State Party to the present Covenant  
18 may be expelled only pursuant to a decision reached by law and except where compelling  
19 reasons of national security and otherwise required is to be allowed to submit the reasons  
20 against his expulsion and to have his case reviewed by, and to be represented for the purpose  
21 before the competent authority. It is important to note that this Covenant of '66 would apply  
22 provided an alien is lawfully in India, namely with valid passport, visa and not otherwise who  
23 have entered illegally unlawfully. Similar view has been expressed in so and so versus so and  
24 so. The author has said that reception of alien is a matter of discretion and every State by  
25 reason of its territorial supremacy competent to exclude aliens from the whole or any part of  
26 its territory in para so and so. It is said that right of States to expel alien is generally recognized  
27 in matters not whether the alien is only on a temporary visit or has settled down for  
28 professional business or any other purpose in its territory. Having established his domicile  
29 there, a belligerent may consider it convenient to expel all hostile nationals residing or  
30 temporarily staying within its territory, although such a measure may be very harsh on  
31 individual aliens. It is generally accepted that such expulsion is justifiable. Having regard to  
32 Article 13 of the International Covenant on Civil and Political Right, an alien lawfully in a  
33 State's territory may be expelled only in pursuance to a decision reached in accordance with  
34 law. So My Lord, there was no obligation on the part of the Government of India, even to admit  
35 them. I can appreciate My Lord, some people are seeking refugee status, though there is no  
36 legal regime of the Country as yet My Lord, from time to time, executive by executive fiat  
37 decisions are being taken. But question is, millions of people, My Lord, under Part 2 of the

1 Constitution, which is the premise on which the law of citizenship rests, does it conceive of a  
2 concept called deemed citizenship. It is only for political experience, nothing else My Lord.  
3 Lordship will certainly not give judicial imprimatur to such a legislation, My Lord. It's a  
4 legislation which is on the face of it, My Lord, expressing of, illegal, My Lord, is  
5 unconstitutional. As urged by my esteemed colleague, Mr. Divan My Lord, it can't be saved  
6 from whatever angle we view at it. Yes, we are not for a moment questioning the power of the  
7 Parliament to make the legislation. It is there. But question is when you make a law.... What is  
8 one more thing? When it comes to Article 14, of course we'll say, My Lord, there is no  
9 intelligible differentia. And the object sought to be achieved has no rationale etc., etc. Is it also  
10 not a case of a protective discrimination, My Lord? When you are making a classification qua  
11 a class of foreigners, that means you are extending a benefit of protective discrimination. If it  
12 is a case of protective discrimination, then, it's the burden of the Union of India to satisfy Your  
13 Lordships with empirical data. Unlike in the other case, where the burden is upon the citizen  
14 My Lord. Yes, there is a presumption in favour of the legislation, but the moment we discharge  
15 it, the burden shifts. In my humble submission, it's a case of protective discrimination. So you  
16 must have the data. Where are those data? My Lord, in **Jagadeswaran** case... I'm sorry, My  
17 Lord that judgment is not a part of the compilation where this Honourable Court had said,  
18 when it's a case of protective discrimination, then, My Lord the onus is on the state to the  
19 charge, which not only, it must not only be pleaded, it must be pleaded and it must be  
20 established. That's the language used. Can I hand over that copy? Sorry, this is not the part of  
21 the compilation. My Lord will kindly come to para 34 at page 783. Thus the Constitutional  
22 principles and limitations are clear and the norms are blighted by the precedence. But their  
23 application to this specific situation is an exacting task. Burden, when protective  
24 discrimination, promotional of equalization is pleaded, is on the party who seek to justify *ex*  
25 *facie* deviation from equality.

26

27 What Delhi University stated here, the learned Attorney General frankly admitted that student  
28 agitation without [UNCLEAR] could not validate reservation. And the excessive reservation  
29 was an obvious inequality. Nor indeed, it is a good plea that illegal reservation is being  
30 practiced by other universities, and Delhi University is forced to act illegally in self-defence.  
31 Lawlessness under our own system is corrected by law, not by counter lawlessness. So, it is  
32 strange for the Delhi University to say our disorderly behaviour is orderly because other  
33 universities behave similarly. Once, this misguided defence of direct action by students of  
34 reprisal against other universities are brushed aside, we come to the grip with the real issues.  
35 Is there circumstantial justification for constitutionalizing the reservation strategy, especially  
36 at 70% plus? Then My Lords will kindly come to paragraph 37. Para 37, My Lord. The  
37 argument asked in answer is that those for admission to the postgraduate medical courses are



1 almost completely closed for Delhi graduates by all other universities. So, protective  
2 reservation becomes necessary as the only hope of Delhi students for postgraduate studies.  
3 Those real life factors will show that Delhi graduates are denied *de facto* equality on a national  
4 scale by exclusionism of other universities and that therefore, they deserve sheltered, equal  
5 opportunity in actuality, by barriers of reservation of a high percentage of seats. Such being  
6 the University's defence, must be made out, not merely ascertained. I am on this. So, empirical  
7 data is required.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** What is the next point now?

10

11 **KAMAL NAYAN CHOUDHURY:** Yes. Now, if Your Lordships will kindly permit me, I  
12 would like to place the pleadings of the Government of India on this.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** What's the point that you're making?

15

16 **KAMAL NAYAN CHOUDHURY:** Yes. Point that I'm making was My Lord, actually, I was  
17 on facts. Incidentally, I made a submission regarding that protective discrimination. So, that  
18 is how I refer to this judgement. I was basically, referring to the factual aspects My Lord. First,  
19 I relied upon that article. Second, I relied upon my...

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Don't treat it as facts. God knows, what is the  
22 authenticity of that article? It's an article in some journal called Oriental Times. We don't know  
23 what the authenticity is.

24

25 **KAMAL NAYAN CHOUDHURY:** No My Lord, with all respect...

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** We didn't stop you from reading, but it's not a  
28 primary source.

29

30 **KAMAL NAYAN CHOUDHURY:** No, My Lord. It refers to the statement made by the  
31 Prime Minister of India.

32

33 **JUSTICE SURYA KANT:** Very sweeping statements are made.

34

35 **KAMAL NAYAN CHOUDHURY:** It can be verified My Lord, whether...

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** If you go to the Internet, you'll find plenty of  
2 invective on both sides. But, we can't just rely on some article and decide a constitutional case  
3 on that basis.

4

5 **KAMAL NAYAN CHOUDHURY:** My Lord, since this appeared in an article, we placed for  
6 Your Lordship's kind consideration. Your Lordships will take an appropriate view of the  
7 matter. We felt it is of some relevance.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** It's a point of view.

10

11 **KAMAL NAYAN CHOUDHURY:** Yes. No, My Lord. They are referring to facts. It's not a  
12 question of fact.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** What facts? It's not, footnote, there is not a single  
15 footnote in the article. How do we know that they are facts? How are they even ascertainable?

16

17 **KAMAL NAYAN CHOUDHURY:** Okay My Lord, we will try to come up with some more  
18 authentic materials to support those facts. By Rejoinder My Lord, we will place that.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Nothing new in Rejoinder. Whatever is  
21 concluded now is concluded. Otherwise, they will have a, it will be unfair to them.

22

23 **KAMAL NAYAN CHOUDHURY:** What I'm saying is My Lords, while giving our Rejoinder  
24 argument, we will try to have that by that time. I'm meaning that only. I am not asking for any  
25 time to...

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** But no new material in Rejoinder.

28

29 **KAMAL NAYAN CHOUDHURY:** Okay.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Everything is concluded when you reply.

32

33 **KAMAL NAYAN CHOUDHURY:** Yes.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** There'll be no ambush in a Rejoinder.

36

1 **KAMAL NAYAN CHOUDHURY:** Okay. Yes. If Your Lordships will kindly come to Volume  
2 3.

3  
4 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Choudhury, why don't you do this? It is  
5 about 1 o'clock. You formulate your submissions now. We've heard the matter almost for a day  
6 and a half. You can formulate your submission and then tell us briefly, what's under each head.  
7 So that...

8  
9 **KAMAL NAYAN CHOUDHURY:** Yes, at 2 o'clock, I'll do that, My Lord. I'll just refer to  
10 two facts, My Lord. One, a committee was constituted by the Government of India post Kargil  
11 War, where the committee was headed by the Defence Minister of the Country. They made  
12 some recommendations My Lord, which includes or rather deals with the insurgency and  
13 illegal immigrant issue of North-East. I'll refer to that. Then I'll formulate my legal points.

14  
15 **CHIEF JUSTICE DY CHANDRACHUD:** All right.

16  
17 **JUSTICE SURYA KANT:** And Mr. Choudhury, in that article, there is a reference to this  
18 Immigration Expulsion from Assam Act, 1950. That must have defined who are the people  
19 who were treated as migrants or immigrants under that Act. Is there any definition for it?

20  
21 **KAMAL NAYAN CHOUDHURY:** No My Lord, under the 1950 Act, this was an...

22  
23 **JUSTICE SURYA KANT:** Just find out during lunch.

24  
25 **KAMAL NAYAN CHOUDHURY:** Okay.

26  
27 **JUSTICE SURYA KANT:** What is defined there in that Act and is it inconsistent or in  
28 conflict with what is defined or what can be inferred now from Section 6A. The persons of  
29 Indian origin who were settled in Assam, does the definition, in these two statutes, are they  
30 referring to the same set of persons? Or they are varying?

31  
32 **KAMAL NAYAN CHOUDHURY:** Okay, I'll look into it and get back to Your Lordships at  
33 02:00.

34  
35 **INDIRA JAISING:** The Act itself is on the record of this case. It's in Volume 4, page 424. It  
36 is just a one page Act. And in fact it makes an exemption. It's called the Expulsion From Assam  
37 Act. The Act is specific to Assam, and it enables the Government to expel people from Assam,

1 but it makes an exemption within the Act for people who have come here on account of civil  
2 disturbance. So it doesn't confer citizenship on them, it certainly doesn't confer to citizenship  
3 on them. But it provides for expulsion. Your Lordship will find it at which page 424. It's a  
4 mechanism under which there is a provision for expulsion.

5

6 **JUSTICE SURYA KANT:** It is a 1950 Act. It must be referring to the [UNCLEAR]

7

8 **INDIRA JAISING:** 1950 Act is on record.

9

10 **KAMAL NAYAN CHOUDHURY:** I'll come to this aspect.

11

12 **INDIRA JAISING:** So there is a kind of tolerance of people who come on account of civil  
13 disobedience in that Act.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** So Mr. Choudhury, now we will give you about  
16 half an hour. 2 to 2:30.

17

18 **KAMAL NAYAN CHOUDHURY:** I cannot..

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** You will not make any headway for the next five  
21 days, but we are not going to give you five days because we don't see you making any headway  
22 in the last 35 minutes. You can't hijack the proceedings for the [UNCLEAR].

23

24 **KAMAL NAYAN CHOUDHURY:** I am not asking, My Lord. Initially..

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** You have to comply with the time schedule which  
27 I set for you.

28

29 **KAMAL NAYAN CHOUDHURY:** Your Lordships will kindly appreciate.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** We are very clear, we did that. Mr. Choudhury,  
32 we did that in something as sensitive as Article 370. If you can't make a point in 30 minutes,  
33 you're not going to make it in 300 minutes. You have to make your point, make your  
34 formulations and then we'll give you time. But half an hour and that's it. Thank you.

35

36 **KAMAL NAYAN CHOUDHURY:** Half an hour for formulation. That's great.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Half an hour for concluding your arguments.

2

3 **KAMAL NAYAN CHOUDHURY:** May I please Your Lordships?

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** So, Mr. Choudhury if you can just formulate your  
6 points.

7

8 **KAMAL NAYAN CHOUDHURY:** Yes, I am obliged. My Lord, the first point is, we have of  
9 course already argued, but Your Lordships may kindly take note of that... There was no  
10 compelling reasons for making that enactment.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** That point you made in the morning.

13

14 **KAMAL NAYAN CHOUDHURY:** Yes, It has gotten, My Lord, two sub-parts. First sub-  
15 part is, Assam Accord being a political settlement, it could not have been the basis and second  
16 part is My Lord, regarding the date of 25- 3-71. There is no Parliamentary Legislation...  
17 Assuming My Lord, there is an agreement between the Prime Ministers of the two country,  
18 but there is no... I mean, parliamentary enactment ratifying that agreement, as required under  
19 Article 253 of the Constitution of India. And the...

20

21 **JUSTICE SURYA KANT:** Just repeat the point.

22

23 **KAMAL NAYAN CHOUDHURY:** My Lord, first point was that Assam Accord...

24

25 **JUSTICE SURYA KANT:** That's fine next point.

26

27 **KAMAL NAYAN CHOUDHURY:** Next point is My Lord, regarding the date My  
28 Lord...sanctity of the Date. No sanctity of the date i.e. 25-3-71.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** All right. That section.... That's the first point.  
31 Then?

32

33 **KAMAL NAYAN CHOUDHURY:** Then another part limb of that point is My Lord, it is  
34 actuated by political expediency.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** That you have made. You've said that.

37

1 **KAMAL NAYAN CHOUDHURY:** Yes. Then second point is, My Lord, Section 6A is  
2 violative of Part 2 of the Constitution of India. There, I'll elaborate little bit My Lord.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Part 2. First you can...

5

6 **KAMAL NAYAN CHOUDHURY:** There I'll try to satisfy Your Lordships...

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** What is the third point?

9

10 **KAMAL NAYAN CHOUDHURY:** Third point is, My Lord, violative for Part 3 of the  
11 Constitution of India, including Article 13, My Lord, because I'll submit that... this is a stillborn  
12 legislation.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Why is it stillborn?

15

16 **KAMAL NAYAN CHOUDHURY:** My Lord, on the day the legislation came into being,  
17 IMDT Act was holding the field. Which makes detection of foreigner practically impossible. It  
18 was struck down by this Honourable Court only in May 2005. So, from '85 to 2005, that is, for  
19 two long decades, nothing moved My Lord; not a single foreigner was detected.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. Then fourth?

22

23 **KAMAL NAYAN CHOUDHURY:** Yes. Fourth, My Lord Section 6A, takes away the political  
24 right of the people of Assam, in as much as, it is violative of 326 and 327.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** That Mr. Divan has already argued on.

27

28 **KAMAL NAYAN CHOUDHURY:** Yes, yes. I'll just place two judgments on that, My Lord.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** And? That's it?

31

32 **KAMAL NAYAN CHOUDHURY:** Last but not the least, My Lord, I'll deal with certain  
33 aspect of the Citizenship Act.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** How do you formulate?

36

37 **KAMAL NAYAN CHOUDHURY:** For example My Lord...

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**CHIEF JUSTICE DY CHANDRACHUD:** Formulate...

**KAMAL NAYAN CHOUDHURY:** Yes. Violation of section... the provision could not have been inserted because of Section 52 of the Act, because a person of undivided...

**CHIEF JUSTICE DY CHANDRACHUD:** How you formulate? Formulate.

**KAMAL NAYAN CHOUDHURY:** Formulation would be My Lord, the Section 6A is *ultra vires*. The Act itself i.e. Section 52.

**CHIEF JUSTICE DY CHANDRACHUD:** How can a statutory provision be *ultra vires* of the Act?

**KAMAL NAYAN CHOUDHURY:** No, my Lord what I am saying...

**CHIEF JUSTICE DY CHANDRACHUD:** A subordinate legislation can be *ultra vires* of the statute. A statute can be *ultra vires* of the Constitution.

**KAMAL NAYAN CHOUDHURY:** It will be *ultra vires* the enabling provision i.e. the Constitution.

**CHIEF JUSTICE DY CHANDRACHUD:** *Ultra vires* what?

**KAMAL NAYAN CHOUDHURY:** The Constitution, My Lord.

**CHIEF JUSTICE DY CHANDRACHUD:** But that you have said in point number 3.

**KAMAL NAYAN CHOUDHURY:** What I'm trying to...

**CHIEF JUSTICE DY CHANDRACHUD:** *Ultra vires* which Constitution provision?

**KAMAL NAYAN CHOUDHURY:** Article 11 My Lord. By taking recourse to Article 11, this legislation could not have been framed.

**CHIEF JUSTICE DY CHANDRACHUD:** Alright. It is *ultra vires* Article 11. Alright.

1 **KAMAL NAYAN CHOUDHURY:** Without variation of Article 6.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Section 6A is *ultra vires* Article 6?

4

5 **KAMAL NAYAN CHOUDHURY:** Yes, My Lord, because without variation of Article 6.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** You said Article 11, that's why.

8

9 **KAMAL NAYAN CHOUDHURY:** Article 11 read with 6.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. Now you covered the first point. Now  
12 tell us on the second point, how is it violative of Part 2?

13

14 **KAMAL NAYAN CHOUDHURY:** Yes. Now, My Lord, will kindly have the Constitution for  
15 a moment, My Lord. Article 11. My Lord, my friend Mr. Divan has already referred to Article  
16 6 to contend, that as far as migration from Pakistan or present day Bangladesh is concerned,  
17 My Lord...

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

20

21 **KAMAL NAYAN CHOUDHURY:** ...there is a date already given in the Constitution i.e. 19  
22 July 1948. Our submission is My Lord, without variation of Article 6, Section 6A could not  
23 have been enacted.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Without the variation of Article 6?

26

27 **KAMAL NAYAN CHOUDHURY:** Article 6, because Article 6 provides the cutoff date i.e.  
28 19 July 1948. Now, My Lord, if Your Lordship kindly comes to Article 11. Nothing in the  
29 foregoing provisions of this part shall derogate from the power of the Parliament to make any  
30 provision with respect to acquisition and termination of citizenship.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** But Article 6 is for migration from Pakistan.

33

34 **KAMAL NAYAN CHOUDHURY:** No, this is My Lord...

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** A date which is adopted by the Constitution for  
37 the purpose of migration from Pakistan. 19th July 1948.



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**KAMAL NAYAN CHOUDHURY:** In fact, My Lord, this was not present day Bangladesh...

**CHIEF JUSTICE DY CHANDRACHUD:** If there's any person who has migrated into India as of 19th July 1948, shall be deemed to be a citizen.

**KAMAL NAYAN CHOUDHURY:** Yes. What I am trying to submit for Your Lordship's kind consideration is My Lord, present day Bangladesh, the then East Pakistan, is a part of the... was part of Pakistan.

**CHIEF JUSTICE DY CHANDRACHUD:** Right.

**KAMAL NAYAN CHOUDHURY:** Now, when the Constitution was adopted on that day My Lord, this provision was there. Anybody who wants to migrate from Pakistan to India, there is a cutoff day. Now it will definitely relate back to that date when Section 6A gives...

**CHIEF JUSTICE DY CHANDRACHUD:** So, according to you, Bangladesh as a successor state...

**KAMAL NAYAN CHOUDHURY:** Successor state...

**CHIEF JUSTICE DY CHANDRACHUD:** ...their citizens are also bound by the date of 19th July 1940s.

**KAMAL NAYAN CHOUDHURY:** Precisely.

**CHIEF JUSTICE DY CHANDRACHUD:** Alright we got the point. .

**KAMAL NAYAN CHOUDHURY:** Yes. Now, why I'm making this submission, My Lord Article 6 is a Constituent provision. Now, by exercising ordinary legislative power, Parliament cannot My Lord, tinker with the Constituent provision. Now in the Constitution My Lord, there are certain provisions where, without taking resort to Article 368, some provisions of the Constitution can be tinkered with, and it has been expressly provided. For example in Article 2, Article 3, Article 4(2), Article 169(3), Article 239A(2), Article 239AA (7)(b), Article 243(m) Sub-article 4(b),243(2)(c)(3) and 244A(4) proviso. So My Lord, wherever the Constitution maker intended, that any provision of the Constitution can be tinkered with, it can be done

1 without taking resort to 360. These are the provisions. Now, by giving a cutoff date which is  
2 different from what is given in Article 6....

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Article 6 is violated. Alright. We'll hear the other  
5 side, because you have made the point. You needn't labour the point. So that covers your point  
6 number two.

7

8 **KAMAL NAYAN CHOUDHURY:** Yes.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Now the point number three.

11

12 **KAMAL NAYAN CHOUDHURY:** Then, My Lord, article regarding Article 11, my point is  
13 Article 11 does not start with a *non obstante* clause. On the contrary, My Lord, it starts with  
14 the expression, "Nothing in the foregoing provision of this part". Article 11, vis-a-vis Article 6  
15 has never failed for consideration of this Honourable Court. This is the first time, My Lord,  
16 that issue is being raised. There are judgments on Article 11 vis-a-vis, Article 9. That is...

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Nothing in the foregoing provisions of this part,  
19 what is it but an *non obstante* clause.

20

21 **JUSTICE M.M. SUNDRESH:** We are concerned with Constitution vis-a-vis and a  
22 parliamentary legislature. We can't say it is not catered. *Non obstante* clause will not come  
23 there.

24

25 **KAMAL NAYAN CHOUDHURY:** My Lords, with utmost respect, I'll submit, My Lord. In  
26 my humble understanding, subject to Your Lordships may say, the meaning is, My Lord, by  
27 invoking Article 11, certainly power vests in the Parliament to make law with regard to  
28 acquisition and termination of citizenship. But in doing so, it cannot tinker with the provisions  
29 as contained in Part 2. That is my argument

30

31 **JUSTICE M.M. SUNDRESH:** We got it.

32

33 **KAMAL NAYAN CHOUDHURY:** So it has to be... that means the exercise of power has to  
34 be done, keeping in view, My Lord, the Part 2.

35

1 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. Now, we are left with your argument, the  
2 last argument on Part 3 now, where you are saying there's a stillborn. Tell us now, why is it  
3 stillborn now?

4

5 **KAMAL NAYAN CHOUDHURY:** My Lord, it is stillborn for the simple reason, it is  
6 violative of Part 3 of the Constitution. It is violative of Part 14...

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** But this is tautological. This is tautological.  
9 Anything which is violative of Article... you can't say it is... But then you have to still show us  
10 why it is violative of Part 3.

11

12 **KAMAL NAYAN CHOUDHURY:** It is violative of Part 3, because it is violative of Article  
13 14, as I have already submitted, My Lord. It is violative of Article 29, which my learned friend  
14 has already said. It is violative of Article 21, which my learned friend has already...

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Therefore, it is stillborn accordingly. It is void.

17

18 **KAMAL NAYAN CHOUDHURY:** Yes. To that direction it is void.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. Thank you, thank you, Mr. Choudhury.  
21 What is the next point, you tell us now? Next point. What is the next point?

22

23 **KAMAL NAYAN CHOUDHURY:** Yes. Next point is My Lord, that is most important.  
24 Article 355. Now, in *Sarbananda Sonowal's case*, My Lord, at para 63, at page 7096 of  
25 Part 4 My Lord... Volume 4,

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Para. 63?

28

29 **KAMAL NAYAN CHOUDHURY:** Para. 63, at page 7096. This Honourable Court has said,  
30 My Lord, that there is an external aggression/there is internal disturbance on account of  
31 inundated influx. Therefore, time has come for Government of India to invoke 355. Now My  
32 Lord, if 355 is to come to the rescue of the people of Assam, can we conceive of such a  
33 legislation? On the contrary, My Lord, this Honourable Court, while upholding Armed Forces  
34 Special Powers Act, has held My Lord, that such a legislation has become possible only because  
35 of provisions like 355. So, if 355 is supposed to protect the interest of the people, then the  
36 actions has also to be commensurate, not to make illegal immigrants foreigner, that too at the

1 cost of the indigenous people of the state. So, that is how My Lord, by invoking 355,  
2 Government of India should have made certain stringent provision...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Correct, that point Mr. Divan also made. We'll  
5 have to hear the other side. That point is already made.

6

7 **KAMAL NAYAN CHOUDHURY:** Then, My Lord, I'll come to My Lord, will kindly permit  
8 me to place Section 52 of the Citizenship Act.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** 52?

11

12 **KAMAL NAYAN CHOUDHURY:** Yes. Two, three aspects on Citizenship Act, within your  
13 half an hour time, My Lord, I'll conclude. Your Lordships said...

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** No, no. Fifteen minutes now. Yes.

16

17 **KAMAL NAYAN CHOUDHURY:** If Your Lordships, will kindly come to 5, My Lord,  
18 Section 5.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** The alternative benches will be discharged for  
21 the day. So, the members of the bar who are waiting for the alternative benches, need not wait.  
22 You're most welcome to hear the interesting arguments, but you're not compelled to. Yes.

23

24 **KAMAL NAYAN CHOUDHURY:** 5(1) My Lord. 'Subject to the provisions of this section,  
25 and such other conditions and restrictions, as may be prescribed, the Central Government  
26 may, on an application made in this behalf, register as a citizen of India, any person not being  
27 an illegal migrant, who is not already such citizen by virtue of the Constitution or any other  
28 provisions of this Act, if he belongs to any of the following categories....' Please come to B My  
29 Lord. 'A person of Indian origin who is ordinary resident in any country or place outside  
30 undivided India'. That means under the scheme of Section 5 of the Citizenship Act, My Lord,  
31 it is only people who is outside undivided India, he can be conferred citizenship by registration.  
32 Can we visualize a the situation under the same very statute, where My Lord, people from  
33 undivided India are being sought to be given deemed citizenship? They must have overlooked  
34 this aspect. So therefore, my humble submission is, My Lord, there's a total and non-  
35 application of mine on the authority, My Lord. Although My Lord, when it comes to challenge  
36 legislation, whether that ground is available, that is also another point. But kindly see, My

1 Lord, a person from undivided India, he cannot be conferred citizenship by registration. On  
2 the contrary, by the same Act by Section 6A, now a deemed citizenship is sought to be given.

3  
4 **CHIEF JUSTICE DY CHANDRACHUD:** There's a little problem with this argument,  
5 because any legislature, forget it's Parliament, even the State Legislature... When the State  
6 Legislature enacts a law, it is not bound by the existing provisions of the law. It is subject to  
7 the constraints of the Constitution. So in the same law, the Legislature can make alternative  
8 provisions. They can make provisions for eventuality A, they may make provisions for  
9 eventuality B, and this applies across the board. Whether it's a tax law, it's a land law, it's a  
10 planning law, law on education, the Legislature is not bound. You know, we have already  
11 enacted this provision, namely, that registration by.... citizenship by registration can be only  
12 if you are a resident outside undivided India. This does not prevent Parliament from making  
13 a law which, in effect, grants citizenship by registration to a person even in undivided India.  
14 Of course, your point still is, that you can't therefore, confer citizenship on illegal immigrants;  
15 that point is a separate point. But I'm just telling you that, there is no such constraint in the  
16 power of Parliament or the State Legislatures within their dominion. State Legislatures can...  
17 they're not bound by a previous provision which they have enacted,

18  
19 **KAMAL NAYAN CHOUDHURY:** But still My Lord, the same act says, 'undivided India,  
20 out'.

21  
22 **CHIEF JUSTICE DY CHANDRACHUD:** I know. But this is not your best point.

23  
24 **KAMAL NAYAN CHOUDHURY:** Anyhow, I felt, My Lord, that this is the point, so, I  
25 pointed out.

26  
27 **CHIEF JUSTICE DY CHANDRACHUD:** You have made the point, we have made a note  
28 of it. But that's not your best point.

29  
30 **KAMAL NAYAN CHOUDHURY:** Now My Lord, my second point is, Article 9, envisages  
31 that there will be no dual citizenship.

32  
33 **CHIEF JUSTICE DY CHANDRACHUD:** Alright.

34  
35 **KAMAL NAYAN CHOUDHURY:** Now, none of this, My Lord, deems benefit... beneficiary  
36 of deemed citizenship, they have renounced their citizenship. At least there is nothing on

1 record. Government of India in the count has not brought on record anything to suggest that  
2 these people had renowned citizenship.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. You made the point.

5

6 **KAMAL NAYAN CHOUDHURY:** That is, My Lord, in terms of the Act, as it stood on 85,  
7 pre-amended Act.

8

9 **JUSTICE M.M. SUNDRESH:** Fortunately, they are not claiming dual citizenship. That's a  
10 different thing.

11

12 **KAMAL NAYAN CHOUDHURY:** No My Lord, the effect is there. Effect is, My Lord, today  
13 they are citizens of Bangladesh, they are citizens of India.

14

15 **JUSTICE M.M. SUNDRESH:** If you become a citizen then...

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

18

19 **JUSTICE M.M. SUNDRESH:** That bar will come only after being a Citizen of India, you  
20 [UNCLEAR] something, then the bar will come.

21

22 **KAMAL NAYAN CHOUDHURY:** Yes. Then, My Lord, the other aspect on the Citizenship  
23 Act is... that no mechanism has been provided, that my learned friend has argued, so I'll not  
24 make that argument. And My Lord, as prescribed by Section 5(2) of the old Act, My Lord, 6A  
25 permits deemed citizens to become citizen or acquire citizenship without taking oath of  
26 allegiance to the Constitution. Under the Act 5(2), as it....

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** I think Mr..... You've made your point. Now, let's  
29 hear Mr... Thank you.

30

31 **KAMAL NAYAN CHOUDHURY:** One more point. Finally. Now, My Lord, assuming My  
32 Lord, your process... Assuming in a given situation, Your Lordship is not inclined to, My Lord,  
33 interfere with Section 6A. Now, My Lord, I have an alternative prayer. Now Your Lordship  
34 knows, Government of India constituted a committee headed by Retired Judge of the  
35 Guwahati High Court, Justice B.K. Sharma Committee to provide measures for providing  
36 safeguards in terms of Clause 6 of the Assam Accord. The Committee has submitted its report.  
37 My Lord, we have brought on recorded that report. That report My Lord, where the Committee

1 has suggested certain measures, including, My Lord, for protection of the political right of the  
2 people of the... indigenous people of the State. Can I just take Your Lordships... Just two  
3 minutes time My Lord. Yes.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** Where is it? What is the page?

6

7 **KAMAL NAYAN CHOUDHURY:** My Lord, the report is at page 1400 of Volume 4, My  
8 Lord.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** 1400.

11

12 **KAMAL NAYAN CHOUDHURY:** 1400 My Lord. And if Your Lordship would kindly come  
13 to page number 1405, or if Your Lordships could kindly come to... yes, 1405.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. No 1405 of Volume 4, is it?

16

17 **KAMAL NAYAN CHOUDHURY:** 4 My Lord. Can I read it My Lord?

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

20

21 **KAMAL NAYAN CHOUDHURY:** The Committee was constituted by notification  
22 reproduced below in respect of Clauses 6 of the Assam Accord. The Committee initially  
23 consisted of 13 members, with Joint Secretary, Northeast Minister...

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Where you reading?

26

27 **KAMAL NAYAN CHOUDHURY:** Yes, page 1405, My Lord.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** That's the notification. Oh yes, okay.

30

31 **KAMAL NAYAN CHOUDHURY:** Yes. Introduction. My Lord on top.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** So what's the point that you're making? You  
34 don't need not read out the whole report, tell us what the point is.

35

36 **KAMAL NAYAN CHOUDHURY:** Now, the Committee has suggested, or rather suggested  
37 certain measures to be taken by the Government of India.

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**CHIEF JUSTICE DY CHANDRACHUD:** Show us those measures.

**KAMAL NAYAN CHOUDHURY:** Yes. My Lord will kindly come to page number 1412, My Lord.

**CHIEF JUSTICE DY CHANDRACHUD:** Take us right through to their conclusion, because that is in your favour. We'll put it to them.

**KAMAL NAYAN CHOUDHURY:** Yes.

**CHIEF JUSTICE DY CHANDRACHUD:** Mr. Choudhury, the reason we are rushing you is because these factors are already in our mind. We want to put it to the Government of India.

**KAMAL NAYAN CHOUDHURY:** Yes.

**CHIEF JUSTICE DY CHANDRACHUD:** This last point which you made, what measure are you taking? These are certainly a thing which we are going to place before the... we're going to ask the Government of India.

**KAMAL NAYAN CHOUDHURY:** Yes, please come to 1452. 7.4 on top, My Lord. 'Measures to protect Assamese and other Indigenous languages'. So for protection of the language My Lord, under this heading, some measures has been given.

**CHIEF JUSTICE DY CHANDRACHUD:** Then what else? On this very aspect what have they said?

**KAMAL NAYAN CHOUDHURY:** Yes. Kindly see, My Lord, page 1453.

**CHIEF JUSTICE DY CHANDRACHUD:** Go to till 1456. I mean if... Yes, 1456.

**KAMAL NAYAN CHOUDHURY:** ...3, My Lord regarding the language part. 1453. Assamese language shall continue to be the official language of Assam as per the provisions of the Assam Official Language Act...



1 **CHIEF JUSTICE DY CHANDRACHUD:** That does not fall under the purview of  
2 Constitution Bench reference. Go to page 1456. There is something in your favour.  
3 Implementation of Assam...

4

5 **KAMAL NAYAN CHOUDHURY:** Obligated, My lord.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Just go to 1456.

8

9 **KAMAL NAYAN CHOUDHURY:** Reservation in employment under the Central  
10 government...

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** This is not within our ambit. We can't direct the  
13 government to make reservations.

14

15 **KAMAL NAYAN CHOUDHURY:** Other measures to protect, preserve and promote the  
16 cultural, social and linguistic identity.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Go to 7.6.1, 'Implementation of the Assam  
19 Accord'.

20

21 **KAMAL NAYAN CHOUDHURY:** 'Committee noted that Assam Accord is yet to be fully  
22 and effectively implemented. And even after 35 years of its signing, it is felt that complete  
23 implementation of all clauses of Assam Accord, especially Clauses 5.1 to 5.9 and Clauses 7, 10  
24 and 11, are essential for the safeguards to be provided under Cause 6 of the Assam Accord'.  
25 Then My Lord, 7.6.2 My Lord, 'Reservation of seats in Parliament'.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** [UNCLEAR] That's not within the ambit of the  
28 reference. Let's skip it.

29

30 **KAMAL NAYAN CHOUDHURY:** No, My Lord. May I suggest that...

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** It might be critical talk but, it's not certainly  
33 constitutional talk for us to decide.

34

35 **KAMAL NAYAN CHOUDHURY:** They have also suggested measures for amendment of  
36 the Constitutional...

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** We cannot direct the Parliament to amend the  
2 Constitution. So what's the point in taking time on issues which don't fall within our ambit?  
3 Let's go to what we can do to really...

4

5 **KAMAL NAYAN CHOUDHURY:** Yes. Then My Lord will kindly... basically, My Lord, if  
6 I'm correct My Lord, they have suggested measures for protection of the language and culture.  
7 Then employment, then land rights, and My Lord, political right by request... I mean  
8 suggesting measures for reservation of seats in the Assembly and Parliament.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** All right. We will broadly... we will take that...

11

12 **KAMAL NAYAN CHOUDHURY:** As has been done in case of Sikkim and other states, My  
13 Lord. But there are special provisions...

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Fair enough. We got the point. Thank you, Mr.  
16 Choudhury.

17

18 **KAMAL NAYAN CHOUDHURY:** One last point, My Lord. Two minutes, My Lord.

19

20 **CLAIMANT COUNSEL:** This report, 1462. Your Lordship had only said that.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Just said that. In fact I'm also on 1462.

23

24 **KAMAL NAYAN CHOUDHURY:** One final point, My Lord. My Lord, Lordship has seen  
25 that expression, 'detected to be foreigner', means a foreigner detected under Foreigners Act  
26 and this Foreigners Order.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Right, right.

29

30 **KAMAL NAYAN CHOUDHURY:** Now, by referring to My Lord, Article 13 of the  
31 International Covenant on Civil Rights, which was referred by the Honourable Court in the  
32 *Sarbananda Sonowal-1*. I have already referred to paragraph 75, where Supreme Court  
33 has said, "The benefit of due process of law can be conferred only to a citizen who lawfully  
34 enters. An illegal migrant, he is not entitled to due process of law." Now kindly see My Lord,  
35 in *Sarbananda Sonowal* in paragraph 86, 3, after striking down My Lord, the IMDT Act,  
36 this Honourable Court gave a direction, that now onwards, all the acts... because by virtue of  
37 Section 4 of the IMDT Act which was given an overriding I mean power, My Lord, all other

1 acts were in limbo. So therefore, My Lord, it was ordered that now onwards, the detection of  
2 the foreigner will be done under Foreigners Act... Act 10 of 1950, etc. Meaning thereby, My  
3 Lord, when it comes to person who has entered lawfully, his case will be considered by the  
4 Foreigners Act. And when it comes to illegal migrants, his case would be considered under  
5 1950 Act. Now, by confining the class of persons only to be covered by Foreigners Act, the  
6 purpose of this Act has been taken away. How can that be done, My Lord?

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. We will consider that.

9

10 **KAMAL NAYAN CHOUDHURY:** So therefore, my submission is...

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** We got the point.

13

14 **KAMAL NAYAN CHOUDHURY:** Yes. Therefore...

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Choudhury, we have to get on now. Yes, Mr.  
17 Hansaria, please come.

18

19 **KAMAL NAYAN CHOUDHURY:** And, My Lord there is one judgment of the Supreme  
20 Court, which I wanted to show, My Lord, which I'm not doing, My Lord. What I have done, My  
21 Lord...

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** What is the citation, Mr. Choudhury? What  
24 judgment do you.. ?

25

26 **KAMAL NAYAN CHOUDHURY:** There is a judgment on Article 11, which other side will  
27 definitely rely upon, which I wanted to distinguish it, My Lord. In my written argument, My  
28 Lord, from page...

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Keep your powder dry for the rejoinder. If they  
31 cite it, you'll have to distinguish it. Let them cite it.

32

33 **KAMAL NAYAN CHOUDHURY:** My Lord, I thought...

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Okay, which is a judgment?

36

37 **KAMAL NAYAN CHOUDHURY:** *Izhar Ahmad's* case.

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**CHIEF JUSTICE DY CHANDRACHUD:** *Izhar Ahmad*? What does it say?

**KAMAL NAYAN CHOUDHURY:** My Lord, *Izhar Ahmad*, was a case, where it was in the context of Article 9, read with Section 9 of the Foreigners Act... Sorry, Citizenship Act. There is.... There is a case of cessation of citizenship.

**CHIEF JUSTICE DY CHANDRACHUD:** That takes the view, that Article 11 is untrammelled by the provisions of the earlier.

**KAMAL NAYAN CHOUDHURY:** Yes, but there was no occasion like... unlike in the present...

**CHIEF JUSTICE DY CHANDRACHUD:** Okay. Let them cite it...

**KAMAL NAYAN CHOUDHURY:** My Lord, will kindly in my written argument, My Lord, from page 3 to 43, I have dealt with all the 13 points formulated by the Referral Bench, My lord. Page 3 to 43 of my written argument of Volume 1. And in fact, all the case laws and all, I have dealt with, My Lord.

**CHIEF JUSTICE DY CHANDRACHUD:** Yes. Thank you, Mr. Choudhury.

**KAMAL NAYAN CHOUDHURY:** I'm deeply obliged.

**CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Yes, Mr. Hansaria.

**VIJAY HANSARIA:** My Lord, I am appearing in writ petition 68 of 2016, and Your Lordship would find my written submissions, My Lord, in Volume 1, page 143.

**JUSTICE SURYA KANT:** Volume?

**VIJAY HANSARIA:** Volume 1, page 143, My Lord, my written submissions are there with an index My Lord, with the points which are there My Lord, which I am going to...

**CHIEF JUSTICE DY CHANDRACHUD:** Mr. Choudhury, what are the page of your written submissions? Volume 1.... ?

1 **KAMAL NAYAN CHOUDHURY:** Page 3 to 43, My Lord. Page 3 to 43. There we've given  
2 details, My Lord, all the points have...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Shyam Divan's written submissions are  
5 Volume 1, page... ?

6

7 **SHYAM DIVAN:** I will just give that to Your Lordships. The numbers are sort of subsumed  
8 at the index, but I'll...

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** All right. Any junior can also tell us... on this one.  
11 So we'll just make it. so we don't....

12

13 **VIJAY HANSARIA:** Yes. Though My Lords....I'm so sorry.....

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Pages 44 to 142.

16

17 **VIJAY HANSARIA:** Yes.

18

19 **VIJAY HANSARIA:** It says on behalf of petitioner. It doesn't have the name. My Lord,  
20 though my written submissions are in writ petition 311 of 2015, it indicates that. But as  
21 [UNCLEAR] pointed out that, was mainly on NRC. So I'm not going there. That's why I said,  
22 My Lord, in 68 of 2016, the prayer of 6A has been there. Lordship may treat it as a written  
23 submissions on 68 of 2016. Let me my first formulate the points which I ...

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** That will be nice.

26

27 **VIJAY HANSARIA:** The first My Lord... or it's sort of an index My lord. 'The jurisprudence  
28 principles internationally recognized on Immigration Law, *vis-a-vis* citizens'. There are six  
29 principles which I'll just formulate... tell Your Lordship My Lord. That's the first principle  
30 which I'll be addressing Your Lordships, which is subject to Your Lordship's permission.  
31 Secondly, My Lord.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** One second. Jurisprudential principle...

34

35 **VIJAY HANSARIA:** Principle internationally recognized on Immigration Laws *vis-a-vis*  
36 citizens right. And they are all part of my written submissions. I'll give the para numbers also  
37 My lord. I'll develop each one of them, subject to Your Lordship's permission.

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**CHIEF JUSTICE DY CHANDRACHUD:** Alright.

**VIJAY HANSARIA:** Second My Lord, the Global Refugee Policy as declared in United Nations Refugee Policy 1951... Refugee Policy of 1951, to which 146 members are signatory (India is not a signatory), recognizes only right to abode, and not to right to citizenship.

**JUSTICE SURYA KANT:** Right to... ?

**VIJAY HANSARIA:** Right to abode, with basic human rights such as food, education, health. I'll develop that, My Lord.

**CHIEF JUSTICE DY CHANDRACHUD:** But Mr. Hansaria, what that means is, no individual can move a court relying on an International Covenant and say, you are bound to confer citizenship on me. No individual has the right. But this can never preclude the sovereign right of a nation...

**VIJAY HANSARIA:** I'm not saying Parliament is not sovereignly competent on this. I'm just broadly saying, what are the internationally recognized principles on that. I cannot get a mandamus or a [UNCLEAR] from Your Lordship that 6A must be stuck down on this. But these are the broad principles Your Lordship would keep in mind while interpreting. And I'm going to submit, these are part of our Preamble and Constitutional ethos. I will develop that.

**CHIEF JUSTICE DY CHANDRACHUD:** Alright. third point?

**VIJAY HANSARIA:** Three, My Lord, as Mr. Choudhury has said, I will demonstrate that with article there. At Section 6A , in effect, amends Article 6 of the Constitution, and I'll show that how. And it could not have been done without going through the process of 368.

**JUSTICE MM SUNDRESH:** Amends Article 6?

**VIJAY HANSARIA:** In effect, Article 6 of the Constitution... 6 and 7 of the Constitution My Lord. It amends Article 6 and 7 of the Constitution, in effect. I have got the chart by how it has been amended, in effect. Fourth... I'm so sorry.

**CHIEF JUSTICE DY CHANDRACHUD:** Yes.

1 **VIJAY HANSARIA:** Mr. Divan has said, you cannot discriminate within homogeneous  
2 group. I'll show some materials to show My Lord Assam, along with four border states of the  
3 eastern part of the country, are homogeneously placed, with materials to support that, that  
4 Assam has been singled out and discriminatory. This so far, if you're making it applicable only  
5 to Assam. The effect is not only that they are staying back, they are coming from the  
6 neighbouring states My Lords. If Your Lordship knows, from Guwahati to Shillong if Your  
7 Lordships go, one side is Assam, one side is Meghalaya. If you are in this part, you are Indian  
8 citizen, if you are in this part, you are an illegal migrant. So all that it requires is to cross that  
9 road and claim citizenship. And I will show from the materials on record, what is the extent of  
10 illegal migrants in those states, and what is the extent of illegal migrants in Assam, and what  
11 is the extent of border of the four states and us, to show they are homogeneously placed and  
12 you have discriminated only Assam for that. I will show that. Fifth, as Mr. Choudhury has said,  
13 I'll just develop that a little more, that subscribing an oath of allegiance to the Constitution of  
14 India, is a basic feature of the Constitution. And the persons who have come, they have not  
15 come from Bangladesh My Lord, because Bangladesh is not born on 26th March 1971.  
16 Bangladesh is born on 26th March 1971, not on 25th March 1971. And on that date, they are  
17 the citizens of Pakistan, in which their prophet says, 'Prophet Allah is the only person who has  
18 made the earth.' I'll show that word. I've quoted it. So, unless they renounce their citizenship  
19 of another country, which believes in a particular religion, you cannot become a citizen of the  
20 India, or which is a secular country, without subscribing an oath of allegiance. And that is what  
21 is required in Section 5 and 6, that wherever you become a citizen by naturalisation...

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** What's the next point?

24

25 **VIJAY HANSARIA:** Next point is My Lord, India has a refugee policy *qua* Tibetan, *qua*  
26 Chakmas, *qua* Tamils and *qua* Rohingyas. None of the refugee policies My Lord, confer an  
27 automatic deemed provision for conferring citizenship.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** India has a rebit...

30

31 **VIJAY HANSARIA:** All these are there on record. I'll show that, give the pages. Policies for  
32 Tibetan, for Chakmas, for Tamils and for Rohingyas. Sri Lanka, yes, of course. There are  
33 definite policies of rehabilitation for the refugees who are these four groups, My Lord. None  
34 of them confer an automatic citizenship, much less a citizenship by an application, and this is  
35 discriminated. Now My Lord, first and the finally B.K. Sharma Committee Report, Your  
36 Lordship has seen 1462, My Lord, what it says. And finally My Lord, it says, in case it is... in

1 the meantime what is to be happen. And I will give a case law to Your Lordships on  
2 Discrimination on the Article 14. I'll give a list...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Hansaria, can you go straight to your third  
5 point, that Section 6A, in effect, amends Article 6 and 7?

6

7 **VIJAY HANSARIA:** And I'm grateful to Your Lordships.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Then we'll come back to your earlier point.

10

11 **VIJAY HANSARIA:** Please, Your Lordships. I am extremely grateful.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** ... because, you will now be showing the material  
14 [UNCLEAR]

15

16 **VIJAY HANSARIA:** I've typed Article 6. I've engrafted 6A, how it is amended to just... it will  
17 be easier for me to demonstrate that. It has Article 6, and how Article 6A has been incorporated  
18 there.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** What are the track changes in this document?

21

22 **VIJAY HANSARIA:** This is Article 6 of the Constitution, which is there. What I've struck off  
23 is, what is the effect of Section 6A and how it has been... So Article 6, if Your Lordships kindly  
24 keep the Constitution side by side, I have typed Article 6, and whatever has been changed  
25 because of Section 6, I have struck off, and in italic I have put what has the Section 6A has  
26 superimposed on that. So Your Lordship may kindly keep side by side, Article 6 of the  
27 Constitution says, 'Right of Citizens of certain persons who have migrated to India from  
28 Pakistan'. What 6A says, who has migrated to Assam from Bangladesh. In effect, in effect, I'll  
29 show Section 6A also. 'Notwithstanding anything in Article 5, a person who has migrated to  
30 the territory of India from the territory now included in Pakistan, shall be deemed to be citizen  
31 of India at the commencement of...'. So, there's a deeming... by way of a deeming fiction, a  
32 person who would not become a citizen of India, is deemed to be Citizen of India in respect of  
33 those persons who have come from Pakistan. Now, these specified territory is a part of  
34 Pakistan. 25 March 1971 is the cutoff date, on which date it is a part of Pakistan being East  
35 Pakistan. Bangladesh is born on 26th of March 1971.

36

37 **CHIEF JUSTICE DY CHANDRACHUD:** Just one second.



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**VIJAY HANSARIA:** In paper, 26th March, in actuality 16th December 1971, after India won the war.

**CHIEF JUSTICE DY CHANDRACHUD:** What is the date on which India recognised Bangladesh?

**VIJAY HANSARIA:** 16th December 1971, when India won the war.

**CHIEF JUSTICE DY CHANDRACHUD:** But then what is the relevance of 26th... 25th March?

**VIJAY HANSARIA:** Because, My Lord, 26th.... Bangladesh declared itself to be a country.

**CHIEF JUSTICE DY CHANDRACHUD:** It declared its independence.

**VIJAY HANSARIA:** It declared itself to be independent on 26th March.

**CHIEF JUSTICE DY CHANDRACHUD:** But we recognised Bangladesh in December.

**VIJAY HANSARIA:** In December, because after Indo-Pak war, from 11th December to 16th December. And it declared its independence on 26th March.

**CHIEF JUSTICE DY CHANDRACHUD:** So on 25th March, according to you, Bangladesh was an integral part of Pakistan.

**VIJAY HANSARIA:** Of Pakistan. And I have...

**CHIEF JUSTICE DY CHANDRACHUD:** And if you are from Pakistan, then the only date was 19th July 1948.

**VIJAY HANSARIA:** Please, Your Lordships.

**CHIEF JUSTICE DY CHANDRACHUD:** But even there, there is a problem in your argument.

**VIJAY HANSARIA:** Yes. Let me understand.

1

2 **CHIEF JUSTICE DY CHANDRACHUD:** I mean theoretically. Parliament may not do it.  
3 But it was always open to Parliament to say what does Section 6 do... Sorry, what does Article  
4 6 do? Article 6 is qualified at the commencement of this Constitution. That is to say, persons  
5 who had already migrated from Pakistan...In fact this I must share, Brother Sundresh pointed  
6 this out to me a short while ago. Persons who had migrated from Pakistan prior to the birth of  
7 the Constitution on 26th January 1950, they would be conferred citizenship or they would be  
8 deemed to be, subject to certain conditions. One was, either of the parents was a citizen, or  
9 either the parents or grandparents were born in India. Then (b) in the case may such persons  
10 so migrated before 19 July 1948 and has been an ordinary resident of the territory since the  
11 date of the migration. Right? Because 19th July 1948, they probably took as the partition  
12 appeal.

13

14 **VIJAY HANSARIA:** Yes.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Therefore, what Article 6 does, is to confer  
17 citizenship on a class of citizens, on a class of persons who had migrated from Pakistan, prior  
18 to the date of the adoption of the Constitution. It freezes it at that. But that does not prevent  
19 or that does not dilute the power of Parliament under Article 245 and 246 and Entry 17, and  
20 particularly in the context of Article 11, even to confer an extended citizenship on persons  
21 coming from Pakistan itself. I'm saying... and forget Bangladesh, but test it, only for the  
22 purpose of a hypothesis, I'm not saying that they will do it. But there is nothing to stop  
23 Parliament from saying, that we are now, in exercise of our power on the Article 11, also  
24 conferring citizenship on a group of persons from Pakistan post 1948. In which case the fact  
25 that, technically, on 25th March 1971, Bangladesh was still a part of Pakistan, would not really  
26 affect the power of Parliament.

27

28 **VIJAY HANSARIA:** May I meet that? I'm extremely grateful to Your Lordship. What Article  
29 6 and 7 says, My Lord, by deeming fiction... It could have said, My Lord, before the  
30 commencement of the Constitution, as Article 3 has said... Article 5 has said, 'All persons born  
31 before the commencement of the Constitution'. It has chosen to fix a date My Lord, of 19th  
32 July 1948, who will be deemed to be citizen. Otherwise, they will not become a deemed citizen.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** So you are reading Article 6 as exhaustive.

35

36 **VIJAY HANSARIA:** Is exhaustive, so far a deeming fiction is concerned, My Lord, of people  
37 coming from Pakistan. In effect, My Lords, does it or does it not, Your Lordships would test

1 it, amend the Constitution to say, My Lord, that those who come before 1st July 1966 and  
2 come to Assam from Bangladesh, would be deemed to be citizens. I've no difficulty, My Lord.  
3 They can make an application [UNCLEAR], Parliament has makes Section 6, 7, etc. No  
4 difficulty. But can you make a deeming provision by saying... No, I'm so sorry. By... I'm so  
5 sorry... I'm so sorry. So, my submission. I'm so sorry...

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** If I've understood your argument right, we will  
8 phrase it in a proper way.

9

10 **VIJAY HANSARIA:** Yes.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Article 6 provides for a deeming fiction by virtue  
13 of which, persons who had originated in Pakistan were given conferred citizenship, provided  
14 they met the cutoff of 19th July 1948, or in some cases, even beyond. When Parliament  
15 legislates under Article 11, in respect of persons originating in Pakistan, you cannot introduce  
16 any other deeming fiction, because that deeming fiction is provided by the Constitution.

17

18 **VIJAY HANSARIA:** By the Constitution.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** And on that day, 25th, March, 1971 these areas  
21 in specified territories, were part of Pakistan, and therefore Parliament cannot really, by a  
22 deeming fiction, in exercise of its power in Article 11, introduce a contrary deeming fiction. So,  
23 that's the point. We will hear the other side.

24

25 **VIJAY HANSARIA:** Your Lordship could test my argument. Just one more sentence.  
26 Suppose, could the Parliament have said. 25th January 1950? 26th January because Article 5  
27 says commencement of the Constitution. Lordship would test my argument My Lord. Could  
28 the Parliament have said anybody who entered till 25th January 1950? It could not have, My  
29 Lord. If it could not have said 25th January 1950, which is 8 days prior to the commencement  
30 of the Constitution, it definitely cannot say, My Lord, on 1st January 1966. On what basis?  
31 Because it is in the teeth of Article 6. Article 6 completely encompasses the persons of deemed  
32 migration who has come to India from Pakistan.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** That... actually, what you said is right. Your  
35 argument would be correct, provided we accept the hypothesis that Article 6 is a complete code  
36 in respect of persons who are migrating from a territory which was in Pakistan.

37

1 **VIJAY HANSARIA:** By deeming fiction. Again, My Lord, I'm saying by application,  
2 different...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** If you are right that Article 6 is a complete code,  
5 then there may be some substance.

6

7 **VIJAY HANSARIA:** Yes.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** But the whole basis of your argument is, that  
10 Article 6 is a complete code.

11

12 **VIJAY HANSARIA:** Yes My Lord.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Therefore you can't... If somebody coming in  
15 from a territory in Pakistan, Parliament cannot legislate to the contrary by a deeming fiction.

16

17 **VIJAY HANSARIA:** By deeming fiction, that it's a complete code.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** We got the point. We will hear the other side.  
20 Let's go to the next point.

21

22 **VIJAY HANSARIA:** Very well My Lord, because if Your Lordship sees now Clause B also  
23 which, I have given it in chart because this is a matter of great great importance, especially for  
24 the people of Assam. Your Lordships are hearing very patiently. We're grateful to Your  
25 Lordship. Your Lordships heard 370 matter in the same way. Clause 2 also, Your Lordships  
26 would kindly see... I'm so sorry.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Technically, you may be right, that it was part of  
29 Pakistan on 25th March.

30

31 **VIJAY HANSARIA:** It is factual. On a sovereign principle it is right, My Lord.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** If you look at the history of the liberation of  
34 Bangladesh...

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36 **VIJAY HANSARIA:** That started thereafter. That's what I'm saying My Lord. It started... the  
37 war is in December... in December 1971, Indo-Pak war. People have flag...

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**CHIEF JUSTICE DY CHANDRACHUD:** Can you attribute to Parliament when they enacted Section 6A, that they wanted to confer citizenship on citizens of Pakistan?

**VIJAY HANSARIA:** I don't want to say that, My Lord. But they have. I'm not saying

**CHIEF JUSTICE DY CHANDRACHUD:** Conferring citizenship on persons who are coming from Bangladesh. They were conscious of the fact that... Article 6. Let's also... we can't look at Constitutional provisions in the abstract. Article 6 deals with the travails of partition. There are large number of persons who are fleeing Pakistan into India because of the sheer scale of violence which took place at partition. So, Article 6 therefore protected those people. It even extended it beyond 19th July 1948. Therefore, Article 6 was a complete....

**VIJAY HANSARIA:** No, it was not extended. 19th July 1948 was not extended at any point of time.

**CHIEF JUSTICE DY CHANDRACHUD:** ... and then Parliament enacted Section 6A. And the last thing which I think we can attribute to Parliament, is that they were conferring citizenship on citizens of Pakistan

**VIJAY HANSARIA:** No, we cannot question Parliament for malice for anything, My Lord. The question of malice doesn't come to Parliament at all.

**CHIEF JUSTICE DY CHANDRACHUD:** Obviously. So therefore, they're looking at... The Parliament was looking at the whole... the human suffering which was caused...

**VIJAY HANSARIA:** Human suffering is Rohingyas, My Lord, I'll show to you how they are opposing, and that's why Refugee Policy comes in. The human side of Tibetans, the human side of Tamils. And they are not giving citizenship, My Lords.

**JUSTICE M.M. SUNDRESH:** That's a different issue.

**VIJAY HANSARIA:** What I am saying, Your Lordships, are testing on Constitutional principles.

**TUSHAR MEHTA:** This is not the subject matter. India is not a signatory to it any convention. Let's not go into it...

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**VIJAY HANSARIA:** Very well, My Lord. I'm not going into it. I've said India is not a signatory to it. So they cannot seek... Whether they can make a law, Parliament can make a law My Lord in the teeth of Article 6 and 7... that's what... if Your Lordships permit me to show further My Lord, it will show further that, in effect, they have further...

**CHIEF JUSTICE DY CHANDRACHUD:** Also Mr. Hansaria, we have to make basic principles of Constitutional laws to be very clear in our mind. If Parliament has entitled to Legislature to confer citizenship...

**VIJAY HANSARIA:** It can.

**CHIEF JUSTICE DY CHANDRACHUD:** ... it is not bound to recognize the refugee status and confer citizenship on people of every hue and dimension. There may be people from different parts of the global south, who want to come in to India.

**VIJAY HANSARIA:** Yes My Lord, it's a human problem, globally... three and a half crores refugees.

**CHIEF JUSTICE DY CHANDRACHUD:** Right? Parliament is not bound to pick out everybody that, look, we will do it for everybody. Because, Parliament can certainly say that, look, we look at the impact on our resources, our public infrastructure.

**VIJAY HANSARIA:** That's what the principle is. I started saying, there are internationally recognized principles, and this is one of the principle, how much burden you can have? That's one of the international principles, because one of the principles, and which is globally accepted is, that the pre immigration and welfare state does not go together. It has an adverse impact on the welfare activity of the citizens. And it's a quotation, you cannot simultaneously have free immigration and welfare state from a Noble laureate, and which is... Your Lordship sees, this quotation is recognized everywhere. That's why five principles, I wanted to show to Your Lordship, after I complete this.

**CHIEF JUSTICE DY CHANDRACHUD:** Anyway, now we have dealt with this. This *ultra vires* argument we have understood. Now, we'll move on to that.

**VIJAY HANSARIA:** Just complete... just complete some part of it.

1 **JUSTICE MM SUNDRESH:** We have understood it. Alright.

2

3 **VIJAY HANSARIA:** The proviso is in effect, has been deleted. I've shown to Your Lordships.  
4 If Your Lordships just see this because this is very important. This is the very the main  
5 argument which I'll be developing to Your Lordships. Now, B Proviso further says, My Lord,  
6 B(2). May I read this My Lord? This Article 6 argument is my best argument, perhaps, Your  
7 Lordships of may consider. 'In the case where such persons so migrated on or after 19th July  
8 1948... ' then Your Lordship may ignore that italic part. '... he has been registered as a citizen  
9 by an appointed... so and so'. Now proviso. 'Provided no such person shall be so registered  
10 unless he has been a resident in the territory of India for six months immediately preceding  
11 the date of his application'. So what it requires, if you have come after 19 July '48..

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** You have to be there for a minimum...

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15 **VIJAY HANSARIA:** For six months. All these requirements are completely given, even if  
16 you are there on 24th of March 1971, in Assam, 24th of March.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** No requirement of...

19

20 **VIJAY HANSARIA:** Nothing. This is a mandatory requirement of Article 6. And these are  
21 very important fundamental principles which the Constitution has made. And similarly,  
22 Article 7. Article 7 is also breached, My Lord. And it's a complete... In war, My Lord, that the  
23 persons who have gone to Pakistan, shall not be deemed to be citizen of India. If Your  
24 Lordships see Article 7

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26 **CHIEF JUSTICE DY CHANDRACHUD:** Again there, there is a problem with the  
27 argument.

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29 **VIJAY HANSARIA:** Yes, My Lord.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** 6A was introduced in 1985. Right? By the time  
32 that it was introduce, when 6A(2) came into force, at the least, 14 years had gone by. The cutoff  
33 date for entry into India under 6A(2) is 25th March 1971. Between that date and the date on  
34 which Section 6(A) is enacted, 14 years have gone.

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36 **VIJAY HANSARIA:** 14 years, Yes, My Lord.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** 6A(2) Clause 6A(3), Clause B says, 'As since the  
2 date of his entry into Assam, been ordinarily resident in Assam'.  
3

4 **VIJAY HANSARIA:** Yes.  
5

6 **CHIEF JUSTICE DY CHANDRACHUD:** In other words, a person who had entered into  
7 Assam between that period '66 to '71, would have been ordinarily resident in Assam at the least  
8 for 14 years, at the highest for 19 years. So, [UNCLEAR] therefore, Parliament in that proviso,  
9 it is for 6 months. By enacting that legislation in 1985, they have ensured that somebody has  
10 been resident for, at the least, 14 years.  
11

12 **VIJAY HANSARIA:** My Lords. But what I'm saying this is... I quite see, what is falling from  
13 My Lord, the Chief Justice.... But, there is a specific requirement which is... Parliament 368  
14 route is possible. Whether 245 route is possible or not, that...  
15

16 **CHIEF JUSTICE DY CHANDRACHUD:** That we will have.... Now, we will go to....  
17

18 **VIJAY HANSARIA:** That Your Lordships. Now I'll take Your Lordships to Article 7 also.  
19 Article 7, My Lord, which is there in the same chart, My Lord. Article 7, for a minute. Article  
20 7. "Right of citizenship: Certain migrants to Pakistan, notwithstanding anything in 5 and 6, a  
21 person who has or after the 1st day of 1947, migrated from the territory of India to the territory  
22 now in Pakistan, shall not be deemed to be citizen of India". So My Lord, anybody who is in  
23 Pakistan on this date, after this date, he will not be deemed to be citizen of India. And all these  
24 persons who are there, were in Pakistan on the 25th of March 1971, the cutoff date. Now  
25 proviso: "Provided that nothing in this Article shall apply to a person after being so migrated  
26 to the territory now included in Pakistan, has returned to the territory of India..." Now My  
27 Lord, this is what the Article says. "... under a permit for resettlement or permanent return  
28 issued there under by authority of any law." Now what the Act does My Lord, return to Assam  
29 on or after 25th March 1971. This is in effect, the amendment. That's my submission, Your  
30 Lordship has to consider.  
31

32 **CHIEF JUSTICE DY CHANDRACHUD:** All right. Now let's go to the next one. Now rapid  
33 fire. We'll complete the next point.  
34

35 **VIJAY HANSARIA:** My first was My Lord, that there are certain internationally  
36 recognized....  
37



1 **CHIEF JUSTICE DY CHANDRACHUD:** You have put them in your submissions.

2

3 **VIJAY HANSARIA:** Would Your Lordships just permit me to say, formulate those five  
4 points....

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Are they in your submission?

7

8 **VIJAY HANSARIA:** Which are there in my submissions, but I just want to... there are  
9 submissions in two pages, I just want one-one sentence for each.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Alright.

12

13 **VIJAY HANSARIA:** First is, My Lord, you cannot simultaneously have immigration and....  
14 free immigration and welfare state. That the first principle My Lord, [UNCLEAR] recognized,  
15 which is there in para 38 of my written submission. Second, My Lord, admitting strangers  
16 should not significantly harm the current members of the community. That's the second  
17 principle, My Lord. If it significantly harm... and I'll show to Your Lordships, 18% are the  
18 immigrants, on the date of 2001. We have figures available for 2001. I'll demonstrate that.  
19 None of that bordering state, it has that much of immigrants. I'm not saying which caste and  
20 religion, etc. Illegal immigrants, as per the official figures given by the Home Minister on the  
21 floor of Parliament. Third... I'm so sorry. Third principle, unrestricted immigration threatens  
22 the continuity of identity of the members of the nation.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Unrestricted Immigration...

25

26 **VIJAY HANSARIA:** Unrestricted immigration threatens the continuity of identity shared  
27 by the members of a nation. My Lord, we have a continual identity. We are secularism. And  
28 I'll show to Your Lordships, persons who have come, have an oath of allegiance to a  
29 Constitution where they recognize Islam as the final arbitral. I'm not saying anybody cannot,  
30 but we do not share that, My Lord, as in Indian. Fourth, My Lord, human rights cannot be  
31 extended to include, within its ambit, the Right of Citizenship.

32

33 **JUSTICE SURYA KANT:** Just repeat.

34

35 **VIJAY HANSARIA:** Human right cannot be extended to include, within its ambit, the Right  
36 to Citizenship, as citizenship is a political right and not a basic human right. Thus, there cannot  
37 be any Immigration Policy which has an adverse impact on the domestic cohesiveness.

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**CHIEF JUSTICE DY CHANDRACHUD:** That's the fifth point?

**VIJAY HANSARIA:** That is the fifth. And there is one more, sixth.

**CHIEF JUSTICE DY CHANDRACHUD:** What was the fifth, Mr Hansaria?

**VIJAY HANSARIA:** That there cannot be any Immigration Policy. And, this is part of basic structure, I'll show to Your Lordship. Immigration policy which has adverse impact on domestic cohesiveness, which is the fraternity part My Lord, Mr. Shyam Divan has said, or a threat to national identity

**JUSTICE SURYA KANT:** Yes.

**VIJAY HANSARIA:** I'm so sorry.... or identity of a federal unit of the nation.

**CHIEF JUSTICE DY CHANDRACHUD:** Or threat to national unity, or

**VIJAY HANSARIA:** Or identity of federal unit of a nation, or is against national economic interest. My Lord, these all flows from the Preamble itself. We have a federal structure. We have fraternity amongst ourselves. And finally, I'm sorry... Finally, refugees under Article 21, because 21 is all person, any person who encompass...

**CHIEF JUSTICE DY CHANDRACHUD:** Article 14 also,

**VIJAY HANSARIA:** Article 21... to every person... applies to every person. Refugees have a right to abode with certain basic rights, such as education, food, health and not right of citizenship.

**CHIEF JUSTICE DY CHANDRACHUD:** Alright.

**VIJAY HANSARIA:** And I have given, My Lord, under the UN Convention....

**CHIEF JUSTICE DY CHANDRACHUD:** Actually, there can't be any dispute about these propositions which you have laid down.

1 **VIJAY HANSARIA:** Tested on these propositions, My Lord. You are giving citizenship to  
2 persons, which is affecting the welfare activities of the state, because there is huge burden. My  
3 Lord, immediately may I come to...

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** That Mr. Divan has made also.

6

7 **VIJAY HANSARIA:** Can I show... Would Your Lordship come to Volume 4A, page 3420.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Hansaria, there can't be any doubt about  
10 these principles which you have laid down.

11

12 **VIJAY HANSARIA:** I'm so sorry.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** There is absolutely no doubt about these  
15 principles. No person can claim that, look, I am a refugee, you shall give me citizenship. If you  
16 have to file a writ in a court under Article 226, that person would be turned out saying that,  
17 where is the right? You have to fall within the framework of Indian law to claim Indian  
18 citizenship. So these principles which you are formulating, they are absolutely  
19 unexceptionable. There's no doubt about it.

20

21 **VIJAY HANSARIA:** I'm grateful to Your Lordship. Would Your Lordship kindly come to  
22 Volume 4A, page 3420.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** What is that?

25

26 **VIJAY HANSARIA:** To show a map of the Northeast because... which... how many  
27 kilometres Assam has the border, My Lord, and how much population it has.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Official map or... ?

30

31 **VIJAY HANSARIA:** Official map, 3420, and I'll show the... The map is from the Map of  
32 India. The figures which I'm giving in my written submissions are from the Ministry of Home  
33 Affairs. 3420 of Volume 4A.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Just one. Let's all go to it.

36

1 **VIJAY HANSARIA:** This is just to show how the Assam is located with vis-a-vis the other  
2 four bordering states. 3420. If Your Lordships see, Bangladesh borders five different states.  
3 3420 I am so sorry, My Lord. Perhaps, My Lords... just to give a topography of the area.

4  
5 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

6  
7 **VIJAY HANSARIA:** It borders West Bengal, Meghalaya, Assam, Tripura, and Mizoram. And  
8 how much does it? It is in the MHA, in my submission. I've just prepared some sort of a chart,  
9 again for convenience. It is there in the... I've given the page numbers also here.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** So Bangladesh's the largest border is really with  
12 West Bengal?

13

14 **VIJAY HANSARIA:** Yes, My Lord. It has 2,216 kilometres with West Bengal, and these are  
15 from the My Lord... I've given this source also, and they are part of my submission also. These  
16 are part of my submissions also My Lord.

17

18 **JUSTICE SURYA KANT:** But border with Meghalaya, if you see, is larger than...

19

20 **VIJAY HANSARIA:** That's right that's why it's happening. People go to Meghalaya  
21 immediately, cross over the road, come to Assam, claim citizenship. That's a huge problem for  
22 Assam. Because, if Your Lordships travel from Guwahati to Shillong, one side is Assam road.  
23 One side, you have to only cross the road, and to say, claim citizenship of the country. If Your  
24 Lordships see this, Assam borders 263 kilometres with Bangladesh.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** In this map, where is Guwahati?

27

28 **VIJAY HANSARIA:** Guwahati is Dispur. It says Dispur, capital.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Right.

31

32 **VIJAY HANSARIA:** So it doesn't... Guwahati doesn't border Bangladesh. But it borders...  
33 when you travel from Dispur to Shillong... I'm sorry

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35 **JUSTICE MANOJ MISRA:** When was Meghalaya created?

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37 **VIJAY HANSARIA:** In 1971.

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**JUSTICE MANOJ MISRA:** No, before the cutoff date or after this cutoff date?

**VIJAY HANSARIA:** '69 it becomes an autonomous state. Your Lordships would give me minute. North-Eastern Areas (Reorganisation) Act.

**CHIEF JUSTICE DY CHANDRACHUD:** It became a UT for some...

**VIJAY HANSARIA:** My Lord, it is 196... it became an autonomous state within the state, and it had become, under the North-Eastern Areas (Reorganisation) Act, it became... 21st January 1972.

**JUSTICE MANOJ MISRA:** So, this must be the Assam border only.

**VIJAY HANSARIA:** Yes, My Lord.

**JUSTICE JB PARDIWALA:** Yes, it was an Assam border.

**VIJAY HANSARIA:** Page 154. All these figures, which I'm giving it here, are part of the... I've given the source, and it is in part of my written submissions in paragraph 15. It became an autonomous state in 1969. In '69 Assam... 'a state within a state'. It was a new concept which was developed, and then it became a full-fledged state in '71 Act, with effect from '72. So, Assam has 263 kilometre bordering, West Bengal has 2,216 kilometre bordering, Meghalaya has 443 kilometre bordering, Mizoram has 318 kilometre, Tripura has 856 kilometre. Now, Lordships will see the extent of illegal population in 2001, which is as per the statement of the Home Minister on the floor of Parliament, it is not from any individual studies. And these figures are there as part of My Lord, my submission and this is part of the statement of the Home Minister. Your Lordship would see, 50 lakhs are the population in 2001. Out of 266 lakhs is the total population for the census of '61, 18% are illegal immigrants. And you give citizenship to all. Where is that homogeneity? Article 14 has to have some meaning, not *qua* an individual, to a group of individuals staying in Assam claiming their ethnic rights. In West Bengal, 57 lakhs out of 801 lakhs, it is 7%. Meghalaya it has 30,000 out of 23 lakhs, it is 1%. Mizoram figures are not available. Tripura has 10%. So, you are not giving it to the person who has 1% or 7% or 10%, you are giving citizenship... What is the basis for giving citizens? Mainly because you want its political issue... you have issued Assam Accord. That does not satisfy the test of Constitutionalism. That may satisfy the test of your political expediency.

1 **CHIEF JUSTICE DY CHANDRACHUD:** You have taken the figures as of 2001?

2

3 **VIJAY HANSARIA:** Yes, My Lord. 2001, these figures I have...

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** What is the figures of 1971? How many people  
6 have actually... the way you have put it...

7

8 **VIJAY HANSARIA:** My learned friend has given about 5 lakhs. It was stated on the floor of  
9 the House by a Minister My Lord.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** No, but they are going to give us the official...

12

13 **VIJAY HANSARIA:** Mr. Solicitor pointed out on that day My Lord. It was during the  
14 debate, Mr. Baharul Islam said this is the figures My Lord. But officially, as Mr Divan has said  
15 nobody has come out with the figures . We have the figure only of 1971 from S.K. Sinha Report,  
16 who was the Governor of Assam. We have figure from the Law Commission of India, and we  
17 have figures from the Home Minister of India. These are the three figures which are available  
18 on record, which I have pointed out in my written submissions in paragraphs... in  
19 paragraphs... I have given those figures in paragraph 18 of my written submissions. These  
20 figures are given with the source and the links.

21

22 Kindly see My Lord now, the 2nd Schedule of the Citizenship Act, for a minute. For, every  
23 person who wants to be citizen of India, makes an application for registration under Section 5  
24 or by naturalization under Section 6. They cannot become a citizen of our country, without  
25 subscribing an oath of allegiance as prescribed under Second Schedule. This is Section 5 to...  
26 6. I'm so sorry. Citizenship Act, My Lord. Schedule to the Citizenship Act. Yes.

27

28 Oath of Allegiance, Section 5 and 6(2) are both application by registration of [UNCLEAR]..  
29 "Do hereby solemnly, affirm, or swear that I will be true faith and allegiance to the Constitution  
30 of India as by laws established, and that I will faithfully observe the laws of India, and fulfil  
31 my duties as a citizen of India". Now My Lord in contrast, would Your Lordship kindly come  
32 to my written submissions, page 161 of that compilation, Volume 1? None of the persons who  
33 are given deemed citizenship, subscribe any such oath. In fact, they are born, and subscribing  
34 an oath under the Constitution of Pakistan, which says... if Your Lordship kindly permit me to  
35 read para 19 and 20 My Lord.

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37 **JUSTICE M.M. SUNDRESH:** Same applies to Section 6 also.

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**VIJAY HANSARIA:** Same applies to.. ?

**JUSTICE M.M. SUNDRESH:** Section 6 also. If you say so, then the same applies to Section 6 also. Anybody who has got...

**VIJAY HANSARIA:** They have to make an application to subscribe oath. Thereafter... let them My Lord... this provision cannot stand scrutiny My Lord. At least they have to say, you have to subscribe oath to get a citizenship of my country. You do not subscribe oath and you give citizenship to lakhs of people by deeming fiction.

**JUSTICE SURYA KANT:** Mr. Hansaria, how it will impact the legality of the provision?

**VIJAY HANSARIA:** No, because we have a sovereignty of India. It's the basic feature of our Constitution. A person who believes, is bound by the Preamble of his parent Constitution, which says, My Lord, 'Sovereignty over the entire universe belongs to Allah alone, and the authority exercisable by the people within the limits prescribed by him in the sacred state thus, and whereas the founder of Pakistan, Quaid-e-Azam, Mohammed Ali Jinnah, expressing the will of the people, declared Pakistan should be Sovereign Republic of Islamic State'. Can a person who is subscribing this oath, become an Indian citizen without subscribing an oath of allegiance under Section... under Schedule 2?

**CHIEF JUSTICE DY CHANDRACHUD:** It all depends on what Parliament assumed. If Parliament assumed that these people were fleeing their motherland because of the atrocities in the motherland, for a variety of reasons, the violence, the atrocities...

**VIJAY HANSARIA:** My Lord, all refugees My Lord... let me be very candid. All refugees... people become refugees because they have to flee their home state. Nobody wants to leave their home for a good cause. Under compelling circumstances.

**CHIEF JUSTICE DY CHANDRACHUD:** Right. But then the last thing which the refugee wants to do, is to still plead allegiance to the motherland, because they have left the motherland because of the conditions in the motherland.

**VIJAY HANSARIA:** No, that's what I'm saying. No refugees, which are 3 and a half crores globally recognized under the UN figures... refugees leave their home without a compulsion. Anybody who becomes a refugee is under compulsion, My Lord. So can you give a... That's why

1 I said, you can give a right to abode, which is a humanitarian human right. We have given  
2 vaccines. Sri Lanka recent judgment recognizes that India helped them with billions of dollars  
3 to come over the crisis. But for that, My Lord, I'll give that citation to the Constitution Bench  
4 of five judges of the Sri Lanka Supreme Court. In the judgment recognized, it is but for the  
5 help of India during that financial crisis, the Sri Lankan position would have been much worse.  
6 All that I'm saying... no all that I am saying My Lord...

7

8 **JUSTICE M.M. SUNDRESH:** If it is individual case, if they are deciding individual case,  
9 they can do. If this is on a contingency basis. The logic which you apply basis upon which  
10 [UNCLEAR], the same thing has to be seen.

11

12 **VIJAY HANSARIA:** No, what I am saying My Lord is, if you cannot give it to individual, can  
13 you give to a lakhs of people, My Lord, Citizenship by fiction? Anybody who... I'm so sorry...  
14 My submission is, unless... you cannot become a citizen, you have to subscribe an oath of  
15 allegiance, which is basic fundamental of...

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** We got the point. Anything else, Mr. Hansaria  
18 now? I think you've wrapped up your submissions.

19

20 **VIJAY HANSARIA:** Yes My Lord. Just final, My Lord. As I... this Court has struck down  
21 various legislations on manifest arbitrariness. I have prepared a schedule, I just have to update  
22 it. I'll give all these parts of their compilation with....

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** *Shayara Bano* and others...

25

26 **VIJAY HANSARIA:** Starting from *Anwar Ali Sarkar* My Lord, Justice. Vivian Bose'  
27 judgement. It is a very, very...

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** But, that is not manifest arbitrariness.

30

31 **VIJAY HANSARIA:** It is ... it says , what will be the discrimination. Of course, manifest  
32 arbitrariness is *Shayara Bano* with relevant paragraphs and the compilation pages I am  
33 preparing just tomorrow morning. I'll give that one, two pages with the relevant judgments  
34 and with relevant paragraphs and the relevant compilation page numbers. So dual citizenship  
35 again, those persons who have been given my learned friend has dealt with it. Article 9 requires  
36 you denounce, without denouncing, how can you become? They have not given up, nobody  
37 has said give me a citizenship. Lordship may presume that it is presumed. But ultimately



1 somebody has to say, I don't want the citizenship of that country. I want the citizenship of your  
2 country. My Lord, I cannot get the citizenship of anywhere in the world, but you can by  
3 Parliament, by deeming fiction you give a citizenship of persons even you don't want. They can  
4 go back. They continue to have both ways. They stay here. They continue to stay here. So they  
5 can claim citizenship of that Pakistan also, or now Bangladesh, or claim citizenship of India  
6 My Lord. They can be... there cannot be any such law My Lord, you can choose citizenship at  
7 the same time. You have to denounce one and then to get another My Lord. And finally, as I  
8 said My Lord, if Your Lordships see, Mr. Solicitor doesn't want, but there are Refugee Policies  
9 of this country. I have given those paragraphs, Your Lordships may only make a note of this  
10 My Lord. That it has something to do, Mr. Solicitor, it has something to do with... a few persons  
11 who are in India from last 50 years, Tibetans etc., you have not given citizenship, Tamils, you  
12 have not given citizenship, the Rohingyas you have not given citizenship My Lord, Chakmas  
13 you have not given... Chakmas, there are judgments of this court My Lord, but against  
14 atrocities on them. But citizenships are not given My Lord to the people. So, country must have  
15 a consistent... refugee policy. You cannot just say people of so far as Assam is concerned, no  
16 policy matters.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** All right. Thank you Mr. Hansaria.

19

20 **VIJAY HANSARIA:** My Lord, I'm extremely grateful for such a patient hearing. And I'll just  
21 give this chart tomorrow morning.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you Mr. Hansaria.

24

25 **VIJAY HANSARIA:** I'm grateful Your Lordships.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Solicitor would you like to start tomorrow  
28 morning? Because now we are almost in the wrap. That would be you know a waste so ,that  
29 you will only barely open otherwise if you start today.

30

31 **TUSHAR MEHTA:** Yes, I will start tomorrow.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Start tomorrow. So Mr. Solicitor will argue first.  
34 Then after that....

35

36 **KAPIL SIBAL:** Thereafter, I will make my submissions.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Sibal, will like to argue.

2

3 **INDIRA JAISING:** Mr. Kapil Sibal will be following. Mr. Solicitor...

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** Then....

6

7 **INDIRA JAISING:** After Mr. Sibal, I will argue.

8

9 **MALVIKA TRIVEDI:** My Lords, I appear for AASU, which is Respondent number 6 in the  
10 petition. Whenever I can have five minutes, I can sum up my arguments

11

12 **RESPONDENT'S COUNSEL:** I would also require 5 minutes.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Sure.

15

16 **RESPONDENT'S COUNSEL:** I would also only be taking 5 or 10 minutes.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** If you can. All the others, apart from the  
19 Solicitor. They've already filed permission. Mr. Solicitor, Mr. Sibal, Ms. Jaising. The others, if  
20 you can just give us a page of this bullet point.

21

22 **MALVIKA TRIVEDI:** AASU is the party, in fact the others have given our submissions.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** No problem. Your submissions are filed? Shadan  
25 also? Mr. Singh also? No difficulty then. AG wants to argue. After you....

26

27 **TUSHAR MEHTA:** The learned AG may take some time My Lord. Not very long time My  
28 Lord. He's out of station. He's coming, returning today My Lord.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. But you can start tomorrow Mr.  
31 Solicitor.

32

33 **TUSHAR MEHTA:** I will start.

34

35 **VIJAY HANSARIA:** My Lord, two learned friends on this side have given submissions. I'll  
36 give the page numbers....

37

1 **MANISH GOSWAMI:** My Lord, my written submissions both the matters in which Mr.  
2 Divan has appeared and Mr. Hansaria, they are on record. Apropos what fell from Your  
3 Lordships on Expulsion Act, that is also there My Lords in my written submissions.

4  
5 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. Just give us a page tomorrow.

6  
7 **MANISH GOSWAMI:** I will give the page. On the strict scrutiny doctrine which Your  
8 Lordships have which fell from Your Lordships. That is also covered in my written  
9 submissions.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Alright.

12

13 **MANISH GOSWAMI:** I have given the judgements also.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you.

16

17 **TUSHAR MEHTA:** Grateful.

18

19

20

21

***END OF THIS PROCEEDING***