

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

TRANSCRIPT OF HEARING

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10:35 AM IST

1 **RESPONDENTS COUNSEL:** Before Your Lordships start, may I request one small
2 [UNCLEAR] point. Along with this matter where there is breaching of Section 6A, Your
3 Lordships will also referring [UNCLEAR] 2015. Where the question regarding the
4 Constitutional [UNCLEAR] Section 3(1)(a), My Lord, may consider taking a question
5 regarding that also.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** I think, let's confine it to what we have right now.
8 We'll conclude this exercise. And then we will see if there's some other thing we can have
9 another setting, another sitting, another matter. I hope that's also consensus between this side
10 and this side, right? Because.... All right.

11

12 **SHYAM DIVAN:** Yes, so I'll just indicate in a line that, I appear for the petitioners in writ
13 petition 876 of 2014. This is a matter of 'how long we will take?' Since I anticipate that
14 question.... because I'll try and substantially complete today, but there may be some spillover.
15 By lunch tomorrow, I'll complete. And then there's Mr. Chowdhury and Mr. Hansaria. So, we
16 are going to complete on, within the three working days for sure on our side.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Actually, if you all compete... 3 of you by lunch
19 tomorrow, I think then we can call upon them to start tomorrow in the afternoon.

20

21 **SHYAM DIVAN:** My Lord, lunch tomorrow, may be difficult.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Okay. let's see. At least, let's start.

24

25 **SHYAM DIVAN:** We'll start. So, My Lords, this is, this one. I thought, I'll just open by
26 placing the reference court judgment, which I'll read quite substantially. So, that Your
27 Lordships will find in Volume 4-A. I'm sorry, it's Volume 5-A and Your Lordship may go to
28 page 1372 with *Justice Nariman's Judgment*, beginning at page 1377, Volume 5-A.

29

30 **JUSTICE SURYA KANT:** 1372?

31

32 **SHYAM DIVAN:** 1372, (2015) 3 SCC. Page 1 and in the index, it is at serial number 59.
33 Your Lordships have it?

34

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

1
2 **SHAYMA DIVAN:** May I request you to go to page 1377. There are 3 or 4 aspects which are
3 covered by the reference court judgment. So I'll just indicate them. It has a chronology of
4 events which we had placed before the Bench at the time of hearing, and that's been captured
5 here. So that will give you a sequence with regard to the buildup. Then the Court also
6 articulates and sets out various questions which it seeks to refer. Your Lordships have, of
7 course, compressed it and focused it on Section 6, the constitutional validity of Section 6A.
8 The Court also indicates as to why because there was an objection which was raised with regard
9 to delay and laches. And it responds by saying that, no, we are not going to start out this
10 petition on the ground of delay and laches. It sets out reasons for that and thereafter, it also
11 explains that, of course, when it comes to holding of relief, if the petitioners are entitled to any,
12 then this aspect can be considered at that point of time. So this is broadly where we are. So
13 may I just request Your Lordships to now turn to Interpolation, which begins at page 1377.
14 The opening line - 'A prophet is without honour in his own country substitute citizens for
15 prophet and you will get the gist of the various writ petitions filed under Article 32 of the
16 Constitution of India, assailing, Section 6A of the Citizenship Act. It all began when the
17 Burmese ceded Assam to the British on 24th February 1826, as per the Treaty of Yandabo thus
18 bringing to an end a home rule in Assam, which had begun sometime in the 13th century. The
19 British annexed Assam and placed it as an administrative unit of the Bengal Province as early
20 as 1931, C. S. Mulan, the Census Superintendent in the Census Report, stated. Probably the
21 most important event in the Province during the last 25 years an event, moreover, which
22 seems likely to alter permanently the whole feature of Assam, and to destroy the whole
23 structure of Assamese culture and civilization, has been the invasion of a vast horde of land
24 hungry immigrants, mostly Muslim, from the districts of East Bengal. Wheresoever carcass
25 these vultures will gather together.' - and then the source is indicated. - 'In 1935 the
26 Government of India Act was promulgated. Assam was under Section 46(1), stated to be a
27 Governor's province. It was in this scenario that the Foreigners Act of 1946 was enacted, under
28 which the burden of proving whether a person is or is not a foreigner lies upon such person.
29 At the commencement of the Constitution of India, Article 5 stated that every person who has
30 his domicile in the territory of India and was either born in the territory of India, or either of
31 whose parents were born in the territory of India, or who has been ordinarily resident in the
32 territory of India for not less than five years immediately preceding such commencement shall
33 be a citizen of India. As an exception, Article 6, which is important for the determination of
34 some of the questions arising in these writ petition states as follows. - Rights of Citizenship of
35 certain persons who have migrated to India from Pakistan, notwithstanding anything in
36 Article 5, a person who has migrated to the territory of India from the territory now included
37 in Pakistan, shall be deemed to be a citizen of India at the commencement of this Constitution,

1 if a) he or either of his parents or any of the grandparents were born in India as defined in the
2 Government of India Act, 1935, as originally enacted, and b)(1) in the case where such person
3 has so migrated before the 19th day of July 1948, he has been ordinarily resident in the
4 territory of India since the date of his migration, or (2) in the case of such person has so
5 migrated all or after the 19th day of July 1948, he has been registered as a citizen of India by
6 an officer appointed in that behalf by the Government of the dominion of India on an
7 application made by him, therefore to such officer before the commencement of the
8 Constitution, in the form and manner prescribed by the Government, provided that no person
9 shall be so registered unless he has been resident in the territory of India or at least six months
10 immediately preceding to the date of the application. 19th July 1948, therefore, became the
11 baseline for such persons, as were referred to in Article 6, for being citizens of India. At this
12 stage, the Immigrants (Expulsions from Assam) Act, 1950 was enacted to protect the
13 indigenous inhabitants of Assam. The statement of objects and reasons of this Act says,
14 'During the last few months, a serious situation has arisen from the immigration of a very large
15 number of East Bengal residents into Assam. Such large migration is disturbing the economy
16 of the Province, besides giving rise to a serious law and order problem. The Bill seeks to confer
17 necessary power on the Central Government to deal with the situation.' In pursuance of this
18 object, Sections 2 and 4 of this Act, which also have a bearing on the issues raised in the
19 petition state as follows. 'Power to order expulsion of certain immigrants - If the Central
20 Government is of the opinion, that any person or class of persons having been ordinarily
21 resident in any place outside India, has or have, whether before or after the commencement
22 of this Act, come into Assam, and that the stay of such persons or class of persons in Assam is
23 detrimental to the interests of the general public of India, or of any section thereof, or of any
24 scheduled tribe in Assam, the Central Government may, by order (a) direct such persons or
25 class of persons to remove himself or themselves from India or Assam within such time, and
26 by such route as may be specified in the order, and (b) give such further directions in regards
27 to his or their removal from India or Assam, as it may consider necessary or expedient,
28 provided that nothing in this Section shall apply to any person who, on account of civil
29 disturbance or the fear of such disturbance in any area now forming part of Pakistan, has been
30 displaced from, or has left his place of residence in such area, and who has been subsequently
31 residing in Assam.

32 (4) Power to give effect... to give effect to orders, etc. - Any authority empowered by or in
33 pursuance of the provisions of this Act to exercise any power, may, in addition to other action
34 expressly provided for in this Act, take, or cause to be taken such steps, and use, or cause to be
35 used such force, as may in its opinion, be reasonably necessary for the effective exercise of
36 such power.

1 It was during the census of 1951 that a National Register of Citizens was prepared under the
2 directive of the Ministry of Home Affairs, containing information, village-wise, of each and
3 every person enumerated therein. Details such as the number and names of persons, the
4 houses or holding belonging to them, father's name or husband's name, nationality, age, the
5 means of livelihood, were all indicated therein. Between 1948 and 1971, there were large scale
6 migrations from East Pakistan to Assam. As is well known, West Pakistan commenced
7 hostilities against East Pakistan on 25th March 1971, culminating in the war which
8 dismembered the two parts of Pakistan, and in which a new nation, Bangladesh, was born. It's
9 interesting to note, that immediately after the successful culmination of the war in Bangladesh
10 on 19th March 1972, a treaty for friendship, cooperation, and peace was signed between India
11 and Bangladesh. Article 8 of the said treaty is in the following terms - In accordance with the
12 ties of friendship existing between the two countries, each of the High Contracting Parties,
13 solemnly declares, that it shall not enter into or participate in any military alliance directed
14 against the other Party. Each of the High Contracting Parties shall refrain from any aggression
15 against the other Party and shall not allow the use of its territory for committing any act that
16 may cause military damage or to constitute a threat to the security of the other high contracting
17 parties. Given all the continuing influx of illegal migrants from Bangladesh into Assam, the All
18 Assam Students Union first submitted a memorandum to the then Prime Minister of India in
19 1980, inviting her urgent attention to this issue. As a result of such representations, Parliament
20 enacted the Illegal Migrants (Determination by Tribunals) Act, 1983. This Act was made
21 applicable only to Assam and was expected to be a measure which speeded up the
22 determination of illegal migrants in the State of Assam with a view to their deportation. Not
23 being satisfied with the Parliamentary measure and in view of large scale agitation in the State
24 of Assam, an Accord was signed known as the Assam Accord on 15th August 1985 between
25 AASU, AAGSP and the Central and State Government. The Accord is worth quoting in extenso.
26 Assam Accord, 15th August 1985, Accord between so and so. Memorandum of Settlement. "The
27 Government have all along been most anxious to find the satisfactory solution to the problem
28 of foreigners in Assam. The AASU and the AAGSP have also expressed their keenness to find
29 such a solution. The AASU through their Memorandum dated 2nd February 1980, presented
30 to the late Prime Minister Shrimati Indira Gandhi, conveyed their profound sense of
31 apprehensions regarding the continuing influx of foreign nationals into Assam and the fear
32 about adverse effects upon their political, social cultural and economic life of the State. Being
33 fully alive to the genuine apprehensions of the people of Assam, the then Prime Minister
34 initiated the dialogue with the AASU, AAGSP. Subsequently, talks were held at the Prime
35 Ministers and Home Minister's level during the period 1980-`83. Several rounds of informal
36 talks were held during 1984. Formal discussions were resumed in March 1985. Keeping all
37 aspects of the problem, including Constitutional and legal provisions, international

1 agreements, national commitment and humanitarian considerations, it has been decided to
2 proceed as follows - Foreigners Issue : the purpose of detection and deletion of foreigners, 01-
3 01-1966 shall be the base date and year. All persons who came to Assam prior to 01-01-66,
4 including those amongst them whose name appeared in the electoral rolls used in 1967
5 elections shall be regularized. Foreigners who came to Assam after 01-01-1966 inclusive and
6 up to 24th March 1971 shall be detected in accordance with the provisions of the Foreigners
7 Act, 1946 and the Foreigners Tribunal's Order, 1939. Names of foreigners so detected will be
8 deleted from the electoral rolls in force. Such persons will be required to register themselves
9 before the registration officers of the respective districts in accordance with the Provisions of
10 the Registration and Foreigners Act, 1939 and the Registration of Foreigners Rules 1939. For
11 this purpose, the Government of India will undertake suitable strengthening of Government
12 machinery. On the expiry of the period of ten years following the date of detection, the names
13 of all such persons which have been deleted from the electoral rolls shall be restored. All
14 persons who are expelled earlier, but have since re-entered illegally into Assam, shall be
15 expelled. Foreigners who came to Assam on or after 25th March 1971, shall continue to be
16 detected, deleted, and expelled in accordance with law. Immediate and practical steps shall be
17 taken to expel such foreigners.

18 Emphasis Supply : The Government will give due consideration to certain difficulties
19 expressed by AASU, AAGSP regarding the implementation of Illegal Migrants (Determination
20 of Tribunals) Act, 1983.

21 Safeguards and Economic Development: Clause 6. Constitutional, Legislative and
22 Administrative safeguards, as may be appropriate, shall be provided to protect, preserve, and
23 promote the cultural, social, linguistic identity and heritage of the Assamese people. The
24 Government takes this opportunity to renew their commitment for the speedy all round
25 economic development of Assam, so as to improve the standard of living of the people. Special
26 emphasis will be placed on the education and the science and technology through
27 establishment of national institutions.

28 Other Issues : The Government will arrange for the issue of Citizenship Certificate in future
29 only by authorities of the Central Government. Specific complaints that may be made by AASU
30 and AAGSP about irregular issuance of Indian Citizenship Certificates, ICC will be looked into.
31 9.1 -The international border shall be made secure against future infiltration by erection of
32 physical barriers like walls, barbed wire fencing and other obstacles at appropriate places.
33 Patrolling by security forces on land and riverine routes all along the international border shall
34 be adequately intensified in order to further strengthen the security arrangements. To prevent
35 effectively future infiltration, adequate number of check posts shall be set up. Besides the
36 arrangement mentioned above and keeping in view security considerations, a road all along
37 the international border shall be constructed so as to facilitate patrolling by the security forces.

1 Land between border and roads should be kept free of human habitation wherever possible.
2 Riverine patrolling along with international border would be intensified. All effective
3 measures would be adopted to prevent infiltrators crossing or attempting to cross the
4 international border. It will be ensured that relevant laws for the prevention of encroachment
5 of Government lands and lands of tribal belts and blocks are strictly enforced and
6 unauthorized encroachers evicted, as laid down under such laws. It will be ensured that the
7 law restricting acquisition of immovable property by foreigners in Assam is strictly enforced.
8 It will be ensured that birth and death registers are duly maintained.

9 Restoration of normalcy: The AASU and the AAGSP call off the agitation, assure full
10 cooperation and dedicate themselves to the development of the country. The Central and State
11 Governments have agreed to review with sympathy, and withdraw cases of disciplinary action
12 taken against employees in the context of the agitation and to ensure that there is no
13 victimization. Frame a scheme for *ex gratia* payments to next to kin of those who were killed
14 in the course of agitation. Give sympathetic consideration to proposals for relaxation of upper
15 age limit for employment in public service in Assam, having regard to exceptional situations
16 that prevail in the holding of academic and competitive examinations, etc in the context of the
17 agitation in Assam. Undertake review of detention cases, if any, as well as cases against
18 persons charged with criminal offenses in connection with the agitation, except those charged
19 with the commission of heinous offenses. Consider withdrawal of prohibitory orders and
20 notifications enforce, if any. The Ministry of Home Affairs will be the nodal Ministry for the
21 implementation of the above.'

22 And thereafter, Your Lordship will see that there are the signatures of the various persons,
23 including and in the presence of the Prime Minister of India, 15th August 1985, at New Delhi.
24 'It was in pursuance of this Accord that Section 6A was inserted in the Citizenship Act in 1985.
25 The Statement of Objects and Reasons of the Act specifically states that the legislation required
26 to give effect to the Assam Accord. Section 6A states as follows.' My Lords, with your
27 permission, I'll just read through Section 6A as well.

28 'Special provisions as to citizenship of persons covered by the Assam accord. For the purposes
29 of this section, 'Assam' means the territories included in the State of Assam immediately before
30 the commencement of the Citizenship (Amendment) Act, 1985. 'Detected to be a foreigner'
31 means detected to be a foreigner in accordance with the provisions of the Foreigners Act and
32 the Foreigners Tribunal Order, 1964 by a Tribunal constituted under the said order. 'Specified
33 territory' means the territories included in Bangladesh immediately before the
34 commencement of the Citizenship (Amendment) Act, 1985. (d) A Person shall be deemed to
35 be of Indian origin if he or either of his parents or any of his grandparents, was born in
36 undivided India.

37

1 (e) A person shall be deemed to be detected to be a foreigner on the date of which the Tribunal
2 constituted under the Foreigners (Tribunal) Order, 1964, submits its opinion to the effect that
3 he is a foreigner to the officer or the authority concerned. Sub-Section 2 - Subject to the
4 provisions of Sub-Section 6 and 7, all persons of Indian origin who came before 1st day of
5 January 1966 to Assam from the specified territory, including such of those whose names were
6 included in the electoral rolls used for the purposes of the General Election to the House of the
7 People held in 1967, and who have been ordinarily resident in Assam since their dates of their
8 entry into Assam, shall be deemed to be citizens of India from the 1st day of January, 1966.
9 Subject to the provisions of Sub-Section 6 and 7, every person of Indian origin who came to
10 Assam on or after the 1st day of January 1966, but before 25th day of March 1971 from the
11 specified territory and (b) has since the date of his entry into Assam been ordinarily resident
12 in Assam, and (c) has been detected to be a foreigner, shall register himself in accordance with
13 the rules made by the Central Government in this behalf under Section 18, and such authority
14 thereafter in this Sub-Section referred to as the Registering Authority, as may be specified in
15 such rules, and if his name is included in any electoral roll for any Assembly or Parliamentary
16 Constituency in force on the date of such detection, his name shall be deleted therefrom'. Then
17 the explanation. - 'In the case of every person seeking registration under the Sub-Section the
18 opinion of the Tribunal constituted under the Foreigners (Tribunal) Order, 1964, holding such
19 person to be a foreigner, shall be deemed to be sufficient proof of the requirement under
20 Clause C of this Sub-Section. And if any question arises as to whether such person complies
21 with any of the other requirements under this Sub-Section, the registering authority shall, (1)
22 if such opinion contains a finding with respect to such other requirement, decide the question
23 in conformity with such finding, and (2) if such opinion does not contain a finding with respect
24 to such other requirement, refer the questions to a Tribunal constituted under the said order,
25 having jurisdiction in accordance with such rules as the Central Government may make in this
26 behalf under Section 18, and decide the question in conformity with the opinion received on
27 such reference'.
28 Sub-Section 4 - 'A person registering under Sub-Section 3 shall have, as from the date on which
29 he has been detected to be a foreigner, and till the expiry of a period of 10 years from that date,
30 the same rights and obligations as a citizen of India, including the right to obtain a passport
31 under the Passports Act, and the obligations connected therewith, but shall not be entitled to
32 have his name included in any electoral roll for any Assembly or Parliamentary Constituency
33 at any time before the expiry of the period, of the set period of 10 years. A person registered
34 under Sub-Section 3, shall be deemed to be a citizen of India for all purposes as from the date
35 of expiry of the period of 10 years, from the date on which he has been detected to be a
36 foreigner. Without prejudice to the provisions of Section 8, a) if any person referred to in Sub-
37 Section 2, submits in the prescribed manner and form, to the prescribed authority within 60

1 days from the commencement of the Citizenship (Amendment) Act, 1985 a declaration, that
2 he does not wish to be a citizen of India, such person shall not be deemed to have become a
3 citizen of India under that Sub-Section. b) If any person referred to in Sub-Section 3, submits
4 in the prescribed manner and form, and to the prescribed authority within 60 days from the
5 date of the commencement of the 1985 Amendment, or from the date on which he has been
6 detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed
7 by the provisions of that Sub-Section and Sub-Section 4 and 5, it shall not be necessary for
8 such person to register himself under Sub-Section 3. Explanation - Where a person required
9 to file a declaration under this Sub-Section does not have the capacity to enter into a contract,
10 such declaration may be filed on his behalf by any person competent under the law for the time
11 being enforced, to act on his behalf. Nothing under Sub-Sections 2 to 6 shall apply in relation
12 to any person, (a) Who, immediately before the commencement of the Citizenship Act, 1985,
13 is a citizen of India. (b) Who was expelled from India before the commencement of the
14 Citizenship (Amendment) Act 1985, under the Foreigners Act, 1946, for a year. (8) Save as
15 otherwise provided in this section. the provisions of this section shall have effect
16 notwithstanding anything contained in any other law for the time being in force.

17 It will be seen that as part of the Assam Accord, a huge number of illegal migrants were made
18 deemed citizens of India. It is interesting to note that Parliament has not enacted any law
19 pertaining to refugees from other countries. Refugee status can be granted and has been
20 granted in India through executive orders passed by the Central Government. In any case,
21 Section 6A did not merely rest content upon granting refugee status to those who are illegal
22 migrants from East Pakistan, but went on to grant them the benefit of citizenship of India. So
23 that all persons who have migrated before 1966, and all persons who migrated before 25th
24 March 1971, respectively, were to become citizens of India, either immediately or as is
25 mentioned by the Act, after a period of ten years. once there has been a determination that
26 they have in fact settled in India between `66 and `71. On 8th November, 1998, Lt. Governor
27 S. K. Sinha, the then Governor of Assam, submitted an extensive report to the then President
28 of India on the grave threat posed by the influx of people from Bangladesh to Assam. He said
29 - 'The dangerous consequence of large scale illegal migration from Bangladesh, both for the
30 people of Assam and more for the nation as a whole need to be emphatically stressed. No
31 misconceived and mistaken notions of secularism should be allowed to come in the way of
32 doing so. As a result of population movement from Bangladesh, the spectre looms large of the
33 Indigenous people of Assam being reduced to a minority in their home state. Their cultural
34 survival will be in jeopardy. Their political control will be weakened, and their employment
35 opportunities will be undermined. The silent and invidious demographic invasion of Assam
36 may result in a loss of geo-strategically vital districts of lower Assam. The influx of illegal
37 migrants is turning these districts into a Muslim majority region. It will then only be a matter

1 of time where a demand for their merger with Bangladesh may be made. The rapid growth of
2 International Islamic Fundamentalism may provide the driving force for this demand. In this
3 context, it is pertinent that Bangladesh has long discarded secularism and has chosen to
4 become an Islamic State. Loss of lower Assam will sever the entire landmass of the Northeast
5 from the rest of India and the rich natural resources of that region will be lost to the nation.'
6 It was in this backdrop that a writ petition being writ petition number 131 of 2000 was filed
7 by Sarbananda Sonowal assailing the constitutional validity of the Illegal Migrants
8 (Determination of Tribunals) Act, 1983, and the rules made thereunder. In a judgment
9 reported in **(2005) 5 SCC 665**, this Court referred to the Assam Accord and to the huge
10 influx of illegal migrants into the State of Assam, and came to the conclusion that the 1983 Act
11 and the rules made thereunder, operated in the reverse direction. That is, instead of seeing
12 that illegal migrants are deported, it did the opposite. By placing the burden of proof on the
13 states to prove that a person happens to be an illegal migrant. The Court went on to hold that
14 Article 355 of the Constitution had been violated. In as much as the Union had failed to protect
15 the State of Assam against an external aggression and internal disturbance caused by the huge
16 influx of illegal migrants from Bangladesh to Assam and went on to hold the 1983 Act to be
17 violative of Article 14 as well.

18
19 In as much as the Act was struck down and the Immigrants (Expulsions from Assam) Act,
20 1950, together with the Foreigners Act and Foreigners Tribunal Order of 1964, were now to be
21 the tools in the hands of the Government to do the job of detecting illegal migrants who are
22 then to be deported. On 14th July 2004, in response to an unstarred question pertaining to the
23 deportation of the illegal Bangladeshi migrants, the Minister of State Home Affairs submitted
24 a statement to Parliament indicating therein that the estimated number of illegal Bangladeshi
25 migrants into India as on 31st December 2001 was 1.20 crores, out of which 50 lakhs were in
26 Assam. Given the magnitude of the problem a Foreigners Tribunal for Assam Order of 2006
27 was promulgated, which was again struck down, being found to be unreasonable and arbitrary
28 and which instead of expeditiously discovering the illegal migrants and deporting them again
29 did the opposite. It was in **Sarbananda Sonowal 2 versus Union of India**, in the second
30 **Sonowal** writ petition that the Supreme Court struck down this order. In the year 2012 and
31 2014 large scale riots took place in Assam resulting in the deaths of a large number of persons.
32 It is in this background that the present writ petitions have been filed.'

33 So now this was one of the narrative in terms of the sequence building up and some of the
34 statutory provisions. Now we go to the second part of the judgment.

35 'A preliminary submission was urged by the Learned Additional Solicitor General, Mr. Niraj
36 Kaul, that Section 6A having been enacted in 1985, a challenge made in 2012 would be barred
37 by delay and laches. We will first advert to the preliminary submissions in order to see whether

1 we will proceed further to determine the issues raised in these writ petitions. Then writ
2 petitions, My Lords, the prayers are set out. With your permission, I'll skip this part. Then
3 please go to para 21.

4 'Article 32 of the Constitution has been described as the heart and soul of the constitutional
5 guarantees and the rights to move the Supreme Court for enforcement of all or any of the
6 fundamental rights conferred by Part 3 of the Constitution. This article is therefore, itself a
7 fundamental right and it is in this backdrop that we need to address the preliminary
8 submissions. **Tilokchand Motichand**, a Constitution Bench, was asked to decide the
9 constitutional validity of Section 12A(4) of the Bombay Sales Tax Act. The precise ground for
10 challenge was a violation of Article 19(1) (f) of the Constitution. A majority of three out of five
11 judges held that the petition was hit by the doctrine of laches, and hence dismissed the
12 petition. In so holding, each of the judges arrived at a deferring reason as to why the petitions
13 under Article 32 ought to be dismissed from the ground of delay and laches. In paragraphs 9,
14 10 and 11. Our Chief Justice Hidayatullah held - 'In India we have a limitation act which
15 prescribes different periods of limitations for suits, petitions, and applications. There are also
16 residuary articles which prescribe limitation in those cases where no express period is
17 provided. If it were a matter of a suit or application, either an appropriate article or the
18 residuary article would have been applied. But a petition under Article 32 is not a suit, and it
19 is also not a petition or an application to which the Limitation Act applies. To put curbs on the
20 way of enforcement of fundamental rights through legislative actions might well be questioned
21 under Article 13(3). The reason is also quite clear. If a short period of limitation were
22 prescribed, the fundamental right might well be frustrated. Prescribing too long a period might
23 enable stale claims to be made to the detriment of other rights, which might emerge. If then
24 there is no period prescribed, what is the standard for the court to follow? I should say that
25 the utmost expedition is a *sine qua non* for such claims. The party aggrieved must move the
26 court at the earliest possible time and explain satisfactorily all semblance of delay. I'm not
27 indicating any period which may be regarded as the ultimate limit for the action, for that would
28 be taking upon myself legislative functions. In England, the period of six months has been
29 provided statutorily, but that could be because there is no guaranteed remedy, and the matter
30 is one entirely of discretion. In India, I will only say, that each case will have to be considered
31 on its own facts, where there is an appearance of avoidable delay, and this delay affects the
32 merits of the claim, the Court will consider it, and in an appropriate case, hold the party
33 disentitled to invoke the extraordinary jurisdiction. Therefore, the question is one of discretion
34 for the Court to follow from case to case. There's no lower limit and there is no upper limit. A
35 case may be brought within the Limitation Act by reason of some article, but this Court need
36 not necessarily give the same... give the total time to the Litigant to move this Court under
37 Article 32. Similarly, in a suitable case, this Court may entertain such a petition even after a

1 lapse of time. It will all depend on the breach of the fundamental right and the remedy claim
2 are when and how the delay arose. Justice Sikri held as follows.'

3 If Your Lordship permits, I'll skip this because Justice Bachawat etc., they all hold that this
4 discretion is retained. And then you may just go to page 1, internal page 19, print page 1390.
5 'The sole dissident was Justice Hegde, who decided that Article 32 itself being a fundamental
6 right, there's no question of delay being used to non-suit a petitioner at the threshold. His
7 minority view is as follows.' Thereafter, there's a quotation from Justice Hegde. May I take you
8 to paragraph 23, please, which is at page 1391. It will thus be seen, that Hidayatullah Chief
9 Justice, did not lay down any fixed term period... fixed period. According to him, there's no
10 lower limit or upper limit, except that utmost expedition is a *sine qua non* for moving the
11 petition under Article 32. The learned Chief Justice left it to be decided on the facts of each
12 case, depending on what the breach of the fundamental right is, what remedy claimed is and
13 when and how the delay arose. Justice Sikri, on the other hand, was in favour of an inflexible
14 time limit, that is, not beyond one year. Both Justice Bachawat and Mittal, would ask the
15 question as to whether time under the Limitation Act had run out, and if so, whether the writ
16 petition ought to be dismissed as a result? It is clear from a reading of these deferring
17 judgments, that the ratio of the Constitution Bench can be broadly stated to be, that a writ
18 petition filed under Article 32, can be dismissed on the ground of delay. Beyond that, there is
19 no discernible ratio as to the majority... as no majority can be cobbled up for deciding on what
20 basis such writ petition can be so dismissed. Close to the heels of the judgment in
21 ***Rabindranath Bose versus Union of India***, a fervent plea was made to reconsider the
22 judgment in ***Tilokchand***. This plea was turned down and it was held, that a stale claim of 15
23 years to a challenge... to challenge appointments and promotions already made without any
24 explanation for so moving after 15 years, would result in dismissal of an Article 32 petition,
25 more so, when rights had accrued to the Respondents in the case. The Court held...'

26 And thereafter My Lords, there is an excerpt. May I take Your Lordships to para 26 at the foot
27 of page 1393?

28 'In ***Ramchandra Deodhar versus State of Maharashtra***, a Constitution Bench was
29 invited to dismiss a petition under Article 32 on the ground of delay... of laches. The Petitioner,
30 having approached the Court after a delay of at least eight years, the Court held that barring a
31 writ petition containing stale claims, is not a Rule of Law, but a rule of practice based on sound
32 and proper discretion. There is no inviolable rule, that whenever there is delay, the Court must
33 necessarily refuse to entertain the petition. After referring to ***Tilokchand*** and
34 ***Rabindranath Bose***, the Court held, that the claim for enforcement of a fundamental right
35 of equal opportunity under Article 16, cannot be dismissed solely on the ground of delay and
36 laches etc. The Court also went on to hold, that promotion being provisional, no rights have
37 been conferred on those who are promoted, whose interests can therefore be defeated, if

1 ultimately it is found that such promotions are not warranted. In *Express Publications*, the
2 employer newspaper wished to challenge paragraph 80 of the Scheme of 1952, which came
3 into force in '56. The challenge was made in a writ petition under Article 32, 45 years later, in
4 2001. This was turned down by a bench of two judges with a caveat, that if the case of the
5 Petitioners, that the passage of time, a certain provision had become unconstitutional, then
6 obviously, the very passage of time would not amount to delay, for such a petition would not
7 be entertained. Similarly, in *Tridip*, a bench of two judges held, that there's no upper and no
8 lower limit when it comes to an Article 32 petition; It all depends on the breach of a particular
9 fundamental right, the remedy claimed, and how the delay arose. On facts the petition was
10 turned down as there was an unexplained delay of 10 years. In Bangalore city a two judge
11 bench understood the ratio of *Tilokchand* as follows.... ' Then there is an excerpt. Please go
12 to paragraph 30. 'It will be seen that in the present case, the petitioners in the various writ
13 petitions represent the entire people, the tribal and non-tribal population of the State of
14 Assam. In their petition they have raised a plea that the sovereignty and integrity of India is
15 itself at stake, as a massive influx of illegal migrants from a neighbouring country has affected
16 this core constitutional value. That in fact it has been held in *Sonowal's* case that such an
17 influx is external aggression within the meaning of Article 355 of the Constitution of India,
18 and that the Central Government has done precious little to stem the tide, thereby resulting in
19 a violation of Article 355. As a result of this huge influx, periodic clashes have taken place
20 between the Citizens of India and these migrants, resulting into loss of life and property
21 sounding in violation of Articles 21 and 29 of the Constitution of the Assamese people as a
22 whole. Not only is there an assault on life of the citizenry of the State of Assam, but there is an
23 assault on their way of life as well. The culture of an entire people is being eroded in such a
24 way that they will ultimately be swamped by persons who have no right to continue to live in
25 this country. The petitioners have also argued that this honourable Court in *Sonowal* has
26 specifically held in Para 79 thereof that Bangladeshi nationals who have illegally crossed the
27 border and have trespassed into Assam, who are living in other parts of the country have no
28 legal right of any kind to remain in India, and they are late liable to be deported. They have
29 also raised the fervent plea that Article 14 also continues to be violated as Section 6(a)(3) to
30 (5), are not time bound, but are ongoing. Given the contentions raised specifically with regard
31 to the pleas under Articles 21 and 29, as a whole, class of people, namely the tribal and non-
32 tribal Citizens of Assam, and given the fact that agitations on this score are ongoing. We do
33 not feel that petitions of this kind can be dismissed at the threshold, on the ground of delay
34 and laches. Indeed, if we were to do so, we would be guilty of shirking our constitutional duty
35 to protect the lives of our own citizens and their culture. In fact, the time has come to have a
36 relook at the doctrine of laches altogether when it comes to violations of Article 21 and 29.
37 *Tilokchand*, is a judgment involving property rights of individuals. *Ram Chandra*, also a

1 Constitution Bench of 5 judges, has held that the fundamental right under Article 16 cannot
2 be wished away solely on jejune grounds of delay. Since **Tilokchand** was decided, there have
3 been important strides made in the law. Property rights have been removed from Part 3 of the
4 Constitution altogether by the Constitution's 44th Amendment Act. The same amendment
5 made it clear that even during an emergency, the fundamental right under Article 21 can never
6 be suspended and amended Article 359(1) to give effect to this. In **Maneka Gandhi versus**
7 **Union of India**, decided nine years after **Tilokchand**, Article 21 has been given its new
8 dimension. And pursuant to the new dimension, a huge number of rights have come under the
9 umbrella of Article 21. For an enumeration of these rights, see **Kapila Hingorani versus**
10 **State of Bihar**. Further in **Olga Tellis**, it has been now been conclusively held that all
11 fundamental rights cannot be waived. Given these important developments in the law, the
12 time has come for this Court to say that at least when it comes to violations of fundamental
13 rights to life and personal liberty, delay or laches by itself without more would not be sufficient
14 to shut the doors of the Court on the petitioner. Coming now to the merits....' Now the third
15 part. 'Coming now to the merits, we have heard several counsels for the petitioners who have
16 raised a number of points which have been rebutted by the counsels for the Unit of India and
17 the State. We feel that the following questions need to be answered by an appropriate bench,
18 as most of them are substantial questions as to the interpretation of the Constitution and have
19 been decided by a minimum of five judges under Article 145(3). An enumeration of these
20 questions is as follows. Whether Articles 10 and 11 of the Constitution permit the enactment
21 of Section 6A of the Citizenship Act, in as much as Section 6A in prescribing a cutoff date
22 different from the cutoff date prescribed in Article 6, can do so without a 'variation' of Article
23 6 itself; regard, in particular, being had to the phraseology of Article 4(2), read with Article
24 368(1).

25 2) Whether Section 6A violates Articles 325 and 326 of the Constitution of India, in that it has
26 diluted the political rights of the citizens of the State of Assam.

27 3) What is the scope of the fundamental right contained in Article 29(1)? Is the fundamental
28 right absolute in its terms? In particular what is the meaning of the expression 'culture' and
29 the expression 'conserve'? Whether Section 6A violates Article 29(1)?

30 4) Whether our Section 6A violates Article 355? What is the true interpretation of Article 355?
31 Would an influx of illegal migrants into a State of India constitute external aggression and/or
32 internal disturbance? Does the expression State occurring in this Article refer only to the
33 territorial region or does it also include the people living in the state, which would include
34 their culture and identity?

35 5) Whether Section 6A violates Article 14, in that it singles out Assam from other border states,
36 which comprise a distinct class and discriminates against it? Also, whether there is no rational

1 basis for having a separate cutoff date for regularizing illegal immigrants who enter Assam as
2 opposed to the rest of the country?

3 And 6) Whether Section 6A violates Article 21 in that the lives and personal liberty of the
4 citizens of Assam has been affected adversely by the massive influx of illegal migrants from
5 Bangladesh?

6 7) Whether delay is a factor that can be taken into account in moulding relief under a petition
7 filed under Article 32 of the Constitution? Whether after a large number of migrants from East
8 Pakistan have enjoyed rights as Citizens of India for over 40 years, any relief can be given in
9 the petitions filed in the present cases?

10 9) Whether Section 6A violates the basic premise of the Constitution and Citizenship Act in
11 that it permits the citizen who have allegedly not lost their citizenship of East Pakistan to
12 become deemed citizens of India thereby conferring dual citizenship on such persons?

13 10) Whether Section 6A violates the fundamental basis of Section 5(1), proviso and Section
14 5(2) of the Citizenship Act as it stood in 1985. In that it permits a class of migrants to become
15 deemed citizens of India without any reciprocity from Bangladesh and without taking the oath
16 of allegiance to the Indian Constitution?

17 11) Whether Immigrants (Expulsions from Assam) Act 1950, being a special enactment *qua*
18 immigrants into Assam alone can apply to migrants from East Pakistan and Bangladesh to the
19 exclusion of the General Foreigners Act and Foreigners Tribunal's Order 1964, made
20 thereunder?

21 12) Whether Section 6A violates the Rule of Law in that it gives way to political expediency
22 and not to the Government according to law?

23 13) Whether Section 6A, violates the fundamental right in that no mechanism is provided to
24 determine which persons are ordinarily resident in Assam, since the dates of their entry into
25 Assam, thus granting deemed citizenship to such persons arbitrarily?

26 These matters be placed before the Chief Justice for Constitution of an appropriate Bench to
27 answer the above questions. As notice is yet to be issued in 876, we direct that notice be given...
28 be issued and served, etc. on the petitioners.' Then there is a Statement of Objects and Reasons
29 for the enactment of Section 6A states...This is not on Your Lordship's record but we have a
30 separate document which we will show Your Lordship, but essentially the SOR for the Bill,
31 which eventually became the 1985 Act indicates the purposes, etc., with regard to the Act.

32

33 Now My Lords, may I just.. there are certain extracts here. Then My Lords, Court examines
34 further directions, because it says that at this point of time we must assume that the statute
35 itself is valid and constitutional, and therefore it proceeds to issue various directions with
36 regard to fencing, etc., and obligations which are there under the Act. So that's the structure
37 of this judgment, the Reference Order. Your Lordships are pleased to just go back to page 1398.

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CHIEF JUSTICE DY CHANDRACHUD: 1398?

SHYAM DIVAN: After para 35. In paragraph 35, as Your Lordship sees, 'As Section 6A of the Citizenship Act must be deemed to be valid, until a larger bench decides these matters, we will proceed, for the purposes of the order, on the footing that Section 6A is valid.' So, it makes a reference, etc. Your Lordships have seen... have now a very good sense of what our submissions are going to be as well, in terms of, there are elements of fundamental rights, there are elements of constitutional competence, elements as to whether this can really be contrary to citizenship provisions in the Constitution, including provisions with regard to right to vote, etc. So, on the magnitude of the problems, I'm going to address Your Lordships. But since it is here, since some part of what we are going to submit is in paragraph 36 onwards, may I just read a few more paragraphs here, and then I'll go to my petition and our grounds. So please see para 36, which is at page 1398. 'As the Statement of Objects and Reasons for the enactment of Section 6A states, the said section was inserted into the Statute Book in 1985 to implement one part of the Assam Accord, dated 15th August 1985. The Assam Accord contained various provisions providing for reciprocal obligations. These are largely contained in paragraphs 5, 6, 9 and 10, which read as under. The purpose of detection and deletion of foreigners, 01-01-66, shall be the base date and year. All persons who come into Assam prior to 01-01-66, including those amongst them whose names appear on the electoral rolls used in the '66 elections, shall be regularized. Foreigners who came to Assam after 01-01-66 inclusive, and up to 24-03-71, shall be deleted in accordance with the provisions of the Foreigners Act and the Foreigners (Tribunal) Order, 1939. Names of foreigners so detected, will be deleted from the electoral rolls in force. Such person will be required to register themselves before the registration officers of the respective districts in accordance with the provisions of the registration of Foreigners Act and the Registration of Foreigners Rules, 1939. For this purpose, the Government of India will undertake suitable strengthening of the Government machinery. On the expiry of a period of 10 years following the date of detection, the names of all such persons which have been deleted from the electoral roll, shall be restored. All persons who were expelled earlier, but have since re-entered illegally into Assam shall be expelled. Foreigners who came into Assam on or after 25th March '71, shall continue to be detected, deleted, and expelled in accordance with law. Immediate and practical steps shall be taken to expel such foreigners. The Government will...' Then please see Serial number 6. 'Constitutional, legislative and administrative safeguards, as may be appropriate, shall be provided to protect, preserve, and promote the cultural, social, linguistic identity and heritage of the Assamese people.' And 9.1 - 'The international border shall be made secure against future infiltration by erection of physical barriers like walls, barbed wire, fencing and other

1 obstacles at appropriate places. Patrolling by security forces on land and riverine routes all
2 along the international border, shall be adequately intensified in order to further strengthen
3 and secure the arrangements to prevent effectively, future infiltration, and adequate number
4 of check-posts shall be drawn.' Para 37. Yes, the **Sonowal**, My Lords. First, dealing with so
5 and so... please see the quotations from this judgment. And then I'll be reading certain other
6 paragraphs. But Your Lordships may just see the quoted portion which starts at the foot of
7 page 1399. 'As a result of students' movement and the ensuing negotiations, a Memorandum
8 of Settlement dated 15th August '85, was entered into between the All Assam Students Union
9 and the Union of India and the State of Assam, which is commonly known as the Assam
10 Accord. The terms of the Accord specifically provided that steps would be taken to detect and
11 deport illegal migrants from Assam, and it also contained a clause that the Government will
12 give due consideration to certain difficulties expressed by AASU, AAGSP regarding the
13 implementation of the Illegal Migrants (Determination of Tribunals) Act, '83. The Accord
14 further provided that foreigners who have entered into India after 25th March '71 will continue
15 to be detected, their names deleted from the electoral rolls, and they will be deported from
16 India. In pursuance of this provision, the Citizenship Act 1955 was amended by Act 65 of
17 1955.... 85 and Section 6A was inserted with the heading 'Special Provisions as to citizenship
18 covered by the Assam Accord'. It provides us the term detected to be a foreigner shall mean so
19 detected under the Foreigners Act and the Foreigners Tribunal's Order 64, frame there under.
20 Under the set provisions. A person of Indian origin, as defined under Section 6(a)(3), who
21 entered into Assam prior to 01-01-66 and has been a resident of Assam since then, is deemed
22 to be a citizen of India. However, if such a person entered into Assam between 1st January `66
23 and 25th March `71 and has been detected to be a foreigner under the Foreigners Act, then he
24 is not entitled to be included in the electoral list for a period of 10 years from the date of
25 detection. This Amendment of the Citizenship Act makes it clear that the question of
26 determination of detection of a foreigner is to be governed by the provisions of the existing
27 central legislation that's a Foreigners Act 46 and the Foreigners Tribunal's Order 1964. The
28 Union of India has filed a counter affidavit which has been sworn by so and so in paragraph 7
29 of the affidavit has been stated that a proposal to repeal the IMDT Act is under consideration.'
30 Yes. Then Your Lordships will go to.... There is a Status Report which is quoted on page 1401
31 from that counter affidavit. "Continuing influx of Bangladeshi nationals into India has been
32 on account of a variety of reasons, including religious and economic. There is a combination
33 of factors on both sides, which are responsible for a continuing influx of illegal immigration
34 from Bangladesh. The important push factors on the Bangladesh side include steep and
35 continuous increase in population, sharp deterioration in the land-man ratio, low rates of
36 economic growth, particularly poor performance in agriculture. The pull factors on the Indian
37 side include ethnic proximity and kinship, enabling easy shelter to the immigrants, porous and

1 easily negotiable border with Bangladesh, better economic opportunities, interested religious
2 and political elements encouraging Immigration. It's difficult to make a realistic estimate of
3 the number of illegal immigrants from Bangladesh because they enter surreptitiously and are
4 able to mingle easily with the local population due to ethnic and linguistic similarities. The
5 demographic composition of the district's bordering Bangladesh has altered with the illegal
6 immigration from Bangladesh. The districts of Assam and West Bengal bordering Bangladesh
7 have recorded growth of population higher than the national average. The States of
8 Meghalaya, Mizoram, and Tripura have also recorded high rates of population growth. Illegal
9 immigrants from Bangladesh have also been using West Bengal as a corridor to migrate to
10 other parts of the country. The large scale influx of illegal Bangladesh immigrants has led to
11 large tracts of sensitive International borders being occupied by foreigners. This has serious
12 implications for internal security. The types of illegal immigrants are as follows.

13 (a) Those who come with valid visa documents and overstay.

14 (b) Those who come with forged visa documents and

15 (c) Those who entered surreptitiously.

16 During the talks between the Prime Minister of India and Bangladesh.... Prime Ministers of
17 India and Bangladesh, in February `72, the Prime Minister of Bangladesh had assured the
18 return of all Bangladesh nationals who had taken shelter in India since 25th March 1971.
19 Accordingly, a circular was issued by the Government of India on 10th September 1972, setting
20 out guidelines for action to be taken in respect of persons who had come to India from
21 Bangladesh. According to the circular, those Bangladesh nationals who had come to India
22 before 25th March `71 were not to be sent back, and those who entered India in and after that
23 date were to be repatriated. In paragraph 12, of the counter affidavit, it has been stated that
24 the basic objection of the petitioner is under consideration of the Central Government, that
25 the IMDT Act and the rules made there under are not effective in comparison to the Foreigners
26 Act, which is applicable to the whole country except to the State of Assam. In paragraph 18 of
27 the counter affidavit, it is stated that the administrative powers in respect of IMDT Act have
28 been delegated to the Government of Assam under Section 21 of the aforesaid Act. The second
29 subparagraph Para 18 and 19 of the counter affidavit are important and are being reproduced
30 below.'

31 Then this is further on the IMDT Act, which eventually came to be struck down.

32 Now please go to page 1405. Para 38. The State of Assam has prepared a White Paper on
33 foreigners... foreigners' issue dated 20th October 2012. We proposed to extract large portions
34 of this paper only to show that even as on 20th October 2012, very little has been done to
35 implement paragraphs 5, part 6, 9, and 10 of the Assam accord.'

36 So these were the portions which were extracted, etc. And then Your Lordships will see that
37 there is a lengthy extract with regard to the various other promises and obligations which were

1 mentioned and extracted under the Assam Accord, have as such not been complied with. If
2 Your Lordship is pleased to just turn to page 1419...1412 para 39 -'It will be seen that a number
3 of tribunals set up is abysmally low resulting in an abysmally low number of decisions of these
4 Tribunals. What is interesting to know is that whereas almost 1, 50,000 persons were deported
5 between '61 to '65 under the Immigrants (Expulsions from Assam) Act, 1950. The number of
6 deportations from 1985 till date is slated to be a mere 2000 odd. Even those deportees are
7 mostly, if not all pushbacks, which results in the same deportees coming back post deportation
8 from a border which is completely porous. It will be seen that the Assam portion of the border
9 with Bangladesh is 267 km, out of which 44 km are riverine. We are given to understand, that
10 the entire border between India and Bangladesh is roughly 4000 kms. The White Paper shows
11 that large portions of the border with Assam are yet to be fenced with double coiled wire
12 fencing, making the border an easy place to cross. Also, we are given to understand that most
13 parts of the border with West Bengal and other North-Eastern States are also porous and very
14 easy to cross.'

15 Then My Lord, the Court periodically issued directions with regard to the border
16 strengthening. Now I might just mention over here, only just so that I'm done with these
17 orders, Your Lordships may just note that there is a further order, I'm just drawing Your
18 Lordship attention to it, passed by this Court on 1st December 2015. 1st December 2015. You
19 will find that order at page 6250, Volume 3. It's in the present batch of petitions. And may I
20 just request you to go to Page 6256, just for a moment? 6256, Volume 3.

21

22 **JUSTICE SURYA KANT:** Page?

23

24 **SHYAM DIVAN:** 6256. Volume 3. What's the index number? Your Lordships have it? So,
25 I'm going directly to page 6256 and you'll find a reference to our present writ petition 676 of
26 2014. I'm doing so only to mention that the Court records that - look, *prima facie* we don't feel
27 Rule 4(a) of the rules is violative. However, it refers this issue also to this bench. So I'll just
28 read that portion.

29

30 'Writ petition 876 of 2014 has already been referred to the Constitution Bench. Nevertheless,
31 we have considered the *vires* of Rule 4(a) of the Citizenship (Registration of Citizens and Issue
32 of National Identity Cards) Rules, 2003. In view of the insistence of learned counsel for the
33 Petitioners, who contends, that the authority engaged in the preparation of NRC, should not
34 take into account the cases of such persons included in the electoral rolls of '71, who belong to
35 the stream of migrants who came to India between '66 and '71, and who have been... who have
36 not been declared as a foreigner, and who have not registered themselves. *Prima facie* we find
37 that the provisions of Section 6A(3), read with the *proviso* to Rule 3(2) of the Schedule to the

1 Citizenship Rules, 2003, adequately take care of the situation. Rule 4(a), of the Citizenship
2 (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, does not *prima*
3 *facie* disclose any such infirmity which would require any orders to be passed at this stage i.e.
4 when the work of the NRC preparation has reached an advanced stage. It is on the aforesaid
5 basis, that we declined to pass any order, leaving the entire matter to be considered by the
6 Constitution Bench.' So, I'll just mention that this specific rule is relatable to 6A. I'm just
7 mentioning. If 6A goes, then this Rule, which is specific to Assam, may also fall, and it is before
8 Your Lordships. The Assam Accord, I have already referred to and I've read that. But you may
9 just note that it is also separately available. You may just note it, at page 460 of Volume 4. The
10 15th August 1985 Accord. It's separately... It's extracted at length in the judgment under
11 reference.

12

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

14

15 **SHYAM DIVAN:** Page 460, serial number 16 of Volume 4. Volume 4, Statutory Enactments.
16 Now, sorry...

17

18 **TUSHAR MEHTA:** Only one interjection. In the last order passed by this Bench, after noting
19 this My Lord...

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** You have formulated one question.

22

23 **TUSHAR MEHTA:** One question only. Since the NRC is not right now, My Lord, in scrutiny.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** It's actually 6A which we have...

26

27 **TUSHAR MEHTA:** The validity of 6A, that's the limitation.

28

29 **SHYAM DIVAN:** Our submissions will be around that as well. But we have....

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** In fact, the points which Justice Nariman had
32 formulated. The 11 points are really facets of the argument.

33

34 **SHYAM DIVAN:** They are facets of 6A.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** They are facets of what they will be arguing.
37 That's why when we met in January, this year, we thought we'd just bring it down to one...

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TUSHAR MEHTA: All compositions were compressed in one line, 'whether it is constitutionally valid or not?'

CHIEF JUSTICE DY CHANDRACHUD: And the ambit of the petitions is therefore 6A.

TUSHAR MEHTA: 6A, My Lord. Not NRC issue.

JUSTICE M.M. SUNDRESH: So, you have no issues on, you have no issues on the implementation of the Accord per se. Because, the act is in purported compliance of the Accord.

SHYAM DIVAN: That's correct.

JUSTICE M.M. SUNDRESH: But actually the Accord is much more comprehensive. Also, [UNCLEAR] about what is required, what is to be done and how to take care of the situation, what was the situation earlier? How remedial... and what? How to move forward?

SHYAM DIVAN: Correct.

JUSTICE M.M. SUNDRESH: You have no issues with the steps are required to be taken. Or is it taken, but not adequate?

SHYAM DIVAN: No. I would put it this way. I will just indicate to Your Lordships, the challenge is and I'll be taking through the prayers, etc. Is directed against 6A, and the constitutional vires of 6A. Is it valid or not? You may have a political settlement, but when you enact a law or you bring it in, it must comport with our Constitutional norms. That's going to be our basic crust. Now you also have situations where a statute which may be valid at a particular point of time may, if you do not, if the situation that continues to obtain because of non-implementation of other factors under the award, etc., render a provision which may otherwise be valid as Invalid because the bargain has not been completed, and the very rights which you are required to protect under the political accord have not been protected and the situation continues on the ground, including violence, which continues on the ground. Anyway, we'll deal with that, but I will remain focused on 6A. I think we have all agreed on that in terms of moulding the relief, etc. I'll come to that. So, My Lords, I'm done with that...

1 **CHIEF JUSTICE DY CHANDRACHUD:** Just to have an idea, how many people
2 benefited? So it's really two classes. Those who came before 1966 were regularized and they
3 were granted citizenship. Those who came between '66 and 25th March 1971 were removed
4 from the electoral rolls for ten years. After ten years...

5
6 **SHYAM DIVAN:** No, that is provided you register. Not automatic.

7
8 **CHIEF JUSTICE DY CHANDRACHUD:** Right, right. Provided you register.

9
10 **TUSHAR MEHTA:** It was not automatic but you have to fulfil...

11
12 **CHIEF JUSTICE DY CHANDRACHUD:** It was a two-step process. First, detection under
13 the 1946 order, following that deletion and after ten years restoration. Now what is the
14 quantum? How many people who have taken the benefit of this prior to '66 and what is the
15 quantum we are looking at of '66 to '71. Post '71 of course there is a cut off completely after.....

16
17 **TUSHAR MEHTA:** '71, there cannot be. Then all are illegal immigrants...

18
19 **CHIEF JUSTICE DY CHANDRACHUD:** Right. So what is the quantum we are looking
20 at? I mean, do we have figures, and how many people have been given pre '66 and '66 to '71.
21 Mr. Divan, one way of looking at it is what is the impact? Ultimately, we have to also look at it
22 in a broader perspective of the fact that there was Liberation War in Bangladesh.

23
24 **TUSHAR MEHTA:** This has to deal with the delay question also. This is some 40 years...

25
26 **SHYAM DIVAN:** My Lords, the fact is...

27
28 **TUSHAR MEHTA:** Apropos Your Lordship's question. My Lord, of course the official figures
29 we will try and get as soon as possible. If Your Lordships can come to Volume 4, page 2065.

30
31 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 4, page 2065?

32
33 **TUSHAR MEHTA:** This is one Honourable Member in the Rajya Sabha giving the details.
34 So, it is details provided by a Member. These are not official figures but... On the left hand side
35 column, somewhere My Lord, 10th or 15th line from the top, it says the number of entire lots,
36 Your Lordship would get somewhere in the middle, left hand side, middle 10th or 12th line.
37 Before '51 to 1966... does Your Lordships get that?

1 May I read? 'Those who came...' I'm sorry. 'Those who came before 1971, were citizens of East
2 Bengal, and so they cannot be deported.' So via media.... I'm sorry...The number of entire lot
3 who have come before 1951 to '66, we are not concerned with that My Lord, because we are
4 concerned with... '66 to '71. But this figure is 15,33,000. And between 1966 and '71 is 5,45,000.
5 These are approximate figures; there may be errors here and there, subject to correction. So,
6 the period in which Your Lordships are examining i.e. '66 to '71. According to the Honourable
7 Member, the figure was 5, 45,000.

8

9 **JUSTICE M.M. SUNDRESH:** What about their progeny, sir?

10

11 **TUSHAR MEHTA:** They would become citizens.

12

13 **KAPIL SIBAL:** The member was quite familiar, My Lords, with this area.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** He is from Assam?

16

17 **KAPIL SIBAL:** From Assam.

18

19 **CHANDER UDAY SINGH:** I may just point out. We have placed data of the decadal
20 population growth rates for the State, for all the States of India, including the official
21 Government...

22

23 **TUSHAR MEHTA:** That's not relevant. That's for CAA...

24

25 **CHANDER UDAY SINGH:** Not for CAA, for the point of view, because that is... which I will
26 be showing Your Lordships in my turn, which would corroborate these figures vis-à-vis the...
27 because there's a natural population growth, and then there's what would be deemed to be an
28 excess growth rate, which is highlighted in General Sinha's Report, and all that assumption
29 that there's a huge... So, all that we'll point out.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr. Divan, now, how do you formulate your
32 submissions? We'll go straight to the heart of the matter.

33

34 **SHYAM DIVAN:** Sure, I can formulate the submissions broadly, or I may take... because I
35 wanted to read some pleadings of mine, etc, and give you the background, and I'll formulate.
36 It's essentially going to be set... Let me formulate the submission. I'll just formulate them right
37 away, at least for my part. And then, My Lord, there are several supplementary submissions,

1 which are also being made. So, the first set of head of submissions, which I am going to project
2 is that as far as Section 6A is concerned, it violates the essential fabric of the Constitution, as
3 seen from the Preamble. So, this is one head of submissions. And here, you may just note, that
4 we are going to emphasize fraternity, citizenship and integrity of India. Unity and integrity of
5 India. So, these are Preambular values, and according to us, Section 6A, completely destroys
6 and undermines these absolutely fundamental values. That's one set. The second set of
7 submissions, is with regard to part 3. And here we will endeavour to persuade you, that 6A
8 violates 14, 21 and 29. The third set of... Sorry, the third set of submissions broadly, it will be
9 just the point that I make, and I'll take you to those statutory provisions, is that there are
10 political rights. And in that regard, insofar as Articles 325 and 326 of the Constitution are
11 concerned, these are political rights with respect to citizens. And there is a destruction
12 according to us, or an undermining of these rights as well... of these provisions. The fourth
13 head is, with regard to, what I will broadly describe as legislative competence, but there will
14 be several submissions which are made on that regard. But, there appear to us to be certain...
15 which Justice Nariman, in his order, has also referred to, that there's a scheme under the
16 Constitution with regard to citizenship, and whether you can have a legislation which is
17 contrary to... in terms of datelines and deadlines, contrary to what is already stated in the
18 Constitution as being the cutoff line for, either automatic or some modified... this thing...
19 without amending the Constitution.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** So, the legislation is contrary to the datelines...

22

23 **SHYAM DIVAN:** So, it's broadly under... Yes, quite right. So, it's broadly under the
24 competence issue.

25

26 **JUSTICE SURYA KANT:** Part 2?

27

28 **SHYAM DIVAN:** Yes, part 2, of shifting the deadline while retaining what is in the
29 Constitution. And finally, our submission would be that there are overarching principles of
30 democracy, federalism and Rule of Law being part of the basic structure and Section 6A, in the
31 manner in which it operates might undermine these core values as well. I'll try and put
32 everything into one of these five boxes, but there may be certain other refinements and
33 developments. So this is going to be our broad... Now, may I take you to Volume 3, page 2990.
34 I'll just tell you what I am doing next. I'm reading through certain averments of my petition
35 and the prayers and beliefs. So from the general which was with regard to the reference order,
36 etc., I'm now just moving to my particular set of problems with which is why I came before this

1 Court. So if Your Lordship is pleased to go to Volume 3, writ petition 876 of 2014, is at page
2 2990. It's Item 50 in the index.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** You want us to look at the prayers, Mr. Divan?

5

6 **SHYAM DIVAN:** So I'll just very quickly take you through a few portions of this. Now first,
7 please just have a look at the Course Title, just for a moment, very quickly. So these are a set
8 of bodies as the All Assam Ahom Association, the Sutiya Jati Sammilan etc. And there's a fuller
9 description which I'll come to because I want to read those paragraphs from the petition itself
10 and just have a look at the array of parties who were the Respondents. And you'll find those at
11 page 2992. So there's, of course, the Union of India, the Registrar General of Citizens
12 Registration, the Election Commission of India State of Assam, and AASU. Thereafter, you
13 may just note that we have also completed the various State Governments as well as the Union
14 Territories as Party Respondents of the petitions and notice has been served on them and
15 many of them have filed replies. And this is really with regard to another approach because
16 one of our contentions is going to be that- look, you cannot have a situation where your cultural
17 rights of one border state get completely undermined and destroyed. If ultimately this is
18 upheld, then there has to be a corresponding duty to ensure that the people are not completely
19 going to reduce persons who are living on a border just by coincidence on the border to a
20 minority or to lose or dilute, very, very, substantially their political and cultural rights. It then
21 becomes the responsibility of the Central Government and all the units in the Federation to
22 assume some part of this burden. If we are going to welcome people over there, allow them to
23 overstay not have any system at all by which the persons are required and mandated to be
24 removed the illegal migrants. So that's going to be one other set which is why we have put
25 these particular parties also as Party Respondents. Now, please go directly to page 3000, para
26 3.

27

28 **JUSTICE SURYA KANT:** Mr. Divan, you have included all the States and UTs. All the States
29 and UTs....

30

31 **SHYAM DIVAN:** We have. And they filed replies. Some of them have in fact gone so far as
32 to

33 say that - yes, we realize this problem. And if there is a direction from the court we will comply
34 with it in this regard. So anyway, now, if Your Lordship is just pleased to go directly, I'm. Just
35 giving you a little bit of a description of who I am. And for this purpose, go to page... Internal
36 page 11 of the petition, running page 3000 of Volume 3. I'll read a few of these so that you have
37 an idea, in a sense.

1 'Writ petitioner Number 1, All Assam Ahom Association was established in the year 1893. The
2 aim of the organization is to bring political awareness among Ahom community in the State of
3 Assam and to work for all around development of the Ahom community and to try and solve
4 all types of problems faced by the community. The Petitioner No. 1 organization, also works
5 for the preservation of old rituals and religious customs, monuments and historical sites. It is
6 especially working for socio-cultural economic development.

7 Writ Petitioner No. 2 was established in the year 1925, with registration number 1929. It's a
8 non-political, social, cultural community developing organization and works for the unity of
9 the Sutiya community in Assam. The Sutiya community is Scheduled Tribe in the State of
10 Assam. Writ Petitioner No. 2 is also working for the all-round welfare and development of the
11 community. It is also working for the protection and preservation of culture, rituals, customs,
12 land rights and political rights.

13 Writ Petitioner No. 3 was established in the year 1978. Its society registration number is so
14 and so. Writ Petitioner No. 3 was formed to preserve and develop the Garo language and
15 culture to work for research and development of Garo literature, to write and produce the Garo
16 medium textbooks for elementary and secondary education in Assam. It is working for all
17 round development of the Garo community which is a Scheduled Tribe in the State of Assam.
18 It is specially working for socio-cultural economic development and preservation of traditional
19 customs, rituals, old religious activities and beliefs of the community.

20 Writ Petitioner No.4, established in 1955 and is a Registered society. It's a non-political socio-
21 cultural organization. The Aims of an organization is to preserve and develop the Rabha
22 culture and tradition. Organized workshops and trading for the development of Rabha culture.
23 The Rabha community is a Scheduled Tribe in the State of Assam. With cultural troops, the
24 writ petitioners participate in the Republic day Parade in New Delhi on several occasions. Writ
25 petitioner No. 4 is working for the unity and integrity of all communities in the State of Assam.
26 Writ Petitioner No. 5 is the Koch-Rajbongshi Sangram Committee... Samiti. It is a socio-
27 political organization. The aims of an organization is to work for the all-round development of
28 the Koch-Rajbongshi Community, a Scheduled Tribe in the State of Assam, including the
29 preservation and protection of culture. Writ Petitioner demands self-determination of the
30 Koch-Rajbongshi community.

31 The Writ Petitioner No. 6 is so and so. The Samiti was established on 2nd February 2007 and
32 its head office is given. The aims of the Writ petitioner No. 6, especially working for socio-
33 cultural economic development and preservation of rituals, old religious activity of the Deori
34 Community, a Scheduled Tribe in the State of Assam.

35 The Writ Petitioner 7th, All Senior Missing Citizens Association. The Association was
36 established in 2008. This is... our registration number is given. Non-political social
37 organization, objectives to foster the spirit of unity and universal brotherhood among the

1 Missing community and to create awareness of importance of education, science, economics,
2 technology, industry, sanitation and literature, and further to preserve the Missing religious
3 beliefs and its culture so and so.... The Missing community. The Scheduled Tribe in the State
4 of Assam.

5 No. 8 is All Assam Tai-Khampti National Council, socio-political organization, working for the
6 all-round development of the Khampti Community, specifically working for socio-cultural
7 economic development, preserving traditions, customs, rituals.

8 No. 9 is All Assam Scheduled Caste Students Union. Organization was established on 15
9 February, '62. Non Political Students Organization and was formed to actively fight against
10 all kinds of discrimination, repression, and domination of Scheduled Caste in the State of
11 Assam and to work for the rights of the Scheduled Casts and to further create awareness for
12 Socio-political and Cultural Rights.

13 Writ Petitioner No. 10. The Sonowal Kachari Songram Samiti. It's a socio-political
14 organization. The Sonowal Community is a Scheduled Tribe in the State of Assam. To create
15 awareness about the social, political and cultural rights amongst members of the community.

16 The writ petitioners are various, Your Lordships, have seen registered and unregistered
17 societies and who have been demanding the determination and deportation of all migrants in
18 the State of Assam, who have illegally entered from the erstwhile East Pakistan after the year
19 1951. Writ petitioners strongly believe that the culture and identity of various ethnic
20 communities in Assam is at threat from the rapid demographic change caused by the
21 continuous and unabated illegal migration from erstwhile East Pakistan, and now Bangladesh,
22 ever since India's independence. The Writ Petitioners have, at various times, raised its
23 concerns through various Democratic and peaceful means, creating political awareness, and
24 holding various seminars, protest marches, political debates, and regularly interacting with
25 the administrative officers and political leaders. The writ petitioners reserve its right to furnish
26 other details, etc.' Now, this was the Petitioners. Respondents, I'm going to skip. Now please
27 go to paragraph 15... 16 actually. Para 16, on page 3006. I wish to just read para 16 through till
28 20.

29 'The writ petitioners seek to highlight, the State of Assam has already witnessed several ethnic
30 clashes and violence, the scale of which are unparalleled in our history, in terms of the loss of
31 human life... lives and destruction of properties that is left. These ethnic clashes have occurred
32 due to the continuous conflicts and tensions between the indigenous and tribal citizens of the
33 State of Assam, and the migrants and refugees from Bangladesh who have migrated to the
34 State of Assam since India's independence, and have found shelter in the State of Assam due
35 to various factors, including vote bank politics of the political parties in the State of Assam. It
36 is apposite here, to refer to the Nellie massacre and the Bodoland riots of 2012. The Nellie
37 massacre took place in Assam during a six-hour period in the morning of 18th February 1983

1 by the Lalung tribes people. The massacre claimed lives of 2,191 people, though the unofficial
2 War II. In July 2012, riots in the Bodoland territorial autonomous districts consisting of Baksa,
3 Chirang, Kokrajhar and Udalguri districts, and neighbouring Dhubri district of Assam, have
4 claimed about 90 lives on 31st August 2012, and displaced over 400,000 people. This internal
5 displacement has been variedly described as the largest one since India's partition. A violent
6 demonstration was held at Azad Maidan at Mumbai on 11th August 2012 to protest against the
7 attacks on Muslims in Myanmar and Assam, both unrelated. Over 50,000 people hailing from
8 Northeast India, fled from various states of mainland India, due to the physical attacks and
9 direct and indirect threats through bulk mobile SMSs and social media platforms from
10 religious fundamentalists. In March 2014, Assam witnessed fresh riots in Kokrajhar, Chirang
11 and Baksa districts in Assam, which resulted to the death of many human lives. Due to the
12 recent turn of events, Assam now faces threats of religious fundamentalism as never seen
13 before. The writ petitioners state, that the escalatory spiral of ethnic conflicts flies out of
14 control, because one party perceives itself to be threatened and takes measures to protect
15 itself, thus threatening the other, and on it goes. The writ petitioners respectfully submit, that
16 the policies adopted by successive Central and State Governments and the inaction, has
17 encouraged migration and settlement of the large number of Bengali speaking people from
18 erstwhile East Pakistan into the State of Assam. There has been no attempts to ascertain the
19 actual number of the said migrants and the adverse impact which the migrant population is
20 likely to have on the local culture, traditions and heritage, scarce natural resources,
21 demography and livelihood and security of residents of Assam, who are citizens on the date of
22 adoption of the Constitution of India. The writ petitioners further submit, that unfortunately,
23 there's a complete policy paralysis and lack of determination to resolve the sensitivity of this
24 alarming situation that exists today on the ground. There's no clear policy of the Government
25 till date, and regards to the settlement of the vast migrant and refugee population of
26 Bangladesh who have illegally occupied the lands or acquired property rights in the State of
27 Assam, prior to the coming into the force of the impugned provisions of law i.e. Section 6A.
28 There is no measure taken till date to check the alarming population growth in the migrant
29 community, nor any steps are taken to see a gradual assimilation of the migrant community
30 into the mainstream Indian culture. The writ petitioners submit, that the inaction of the
31 government has put to jeopardy the very existence of Assamese's culture, religion, and
32 national identity. There is a simmering belief, that the vote bank politics would not allow a
33 permanent solution to the problem. The tribal population of Assam is increasingly feeling
34 more alienated as vested groups have given the ethnic clashes the colour of an anti-Muslim
35 propaganda, which is actually an ethnic and economic conflict.

36

1 Writ petitioners submit that insurrections and inter-communal violence in which religious,
2 linguistic or racial divisions are a significant factor, now form the majority of armed conflicts
3 in the world today. Since the fall of the Berlin Wall in '89, ethnic conflicts have grown and
4 proliferated in an alarming rate. Examples of ethnic wars, break up of multi ethnic states along
5 the lines and..."

6 Then there are several examples which are given. Now please go directly to paragraph 35. Now
7 these are the.... Sorry I should have given the page. It is 3022, internal page 33. Now these are
8 our averments and it will give Your Lordships a sense of our case as far as Assamese culture is
9 concerned. Para. 35. "The Assamese culture has developed due to cultural assimilation of
10 different ethno-cultural groups under various politico-economic systems in different periods
11 of history. The term Assamese is often used to refer to those who are citizens of Assam. The
12 Constitution of India has defined who shall be a citizen of India, and therefore the reference
13 point for determining the Assamese culture for recognition as a Constitutional right has to be
14 the date of adoption of the Constitution of India. It is relevant here to briefly delve into the
15 history of Assam in the earliest recorded times, Assam was part of the Kamarupa, a State that
16 has that had its capital. And so and so now Guwahati, King Narkasura and his son Bhagadutta
17 were famous rulers. And during the Mahabharata period approximately so and so... a Chinese
18 traveller.... And so you have to vivid account of the country and its period. Assam was ruled
19 by various dynasties and those are named and there was constant warfare amongst the Princes
20 until the coming of the Ahom people in the 13th century. Ahoms ruled much of Assam from
21 the 13th century until the establishment of British rule in 1838. Their power in Assam reached
22 its peak during the reign of King Rudra Singha. The Ahom dynasty managed to keep the
23 Kingdom independent from the Mughals. Though the Mughals attacked Assam 17 times.
24 Ahom in fact, scored a decisive victory against the Mughal Army in 1671. Due to the patronage
25 provided to Hinduism by later day Ahoms Kings, many tribes dotting the complex ethnic
26 landscape of Assam were subsumed into the larger Hindu framework which can concomitantly
27 and comfortably existed with a emerging Assamiya identity. The Burmese invaded Assam 3
28 times between 1817 and 1819, politically weakening the Ahom rulers of Assam. This set the
29 stage for a British campaign against the Burmese, whom they defeated, leadings of the Treaty
30 of Yandabo in 1825. By 1839, the Assam was completely annexed by the British, who included
31 it in a part of the Bengal Presidency. The Colonial Government then established its monopoly
32 over tea. In 1874, Assam was separated from the Bengal presidency and with silent, it became
33 the Chief Commissioner's Province, with its capital at Shillong. The British tea planters
34 imported labour from Central India, mostly from Orissa, Jharkhand, Bengal, and Bihar.
35 Adding to the demographic canvas. The inception of the Assam Province came into being after
36 the partition of Bengal in 1905 to 1911. At first it was carved as a newly joined Province of
37 Assam and East Bengal, headed under Lt. Governor Chief. But later in 1911, the East Bengal

1 was reunited with Bengal, and the new Province of East Bengal became... of the East became
2 Assam, Bengal, Bihar, and Orissa. 1905 again, the Democratic invasion from East Bengal had
3 started for cheap labour, encouraged by the Colonial Government. It is recorded that between
4 1905 till 1947, there was an unabated migration of population from East Bengal, continued to
5 spatially populated fertile lands of Assam. The 1951 census estimated the number of migrants
6 from East Bengal at around 1.5 million, between 1/10th to 1/6th of the total population of the
7 State. These immigrants and their descendants are neither illegal nor Bangladeshi. It's
8 worthwhile to mention here that in 1532 So and So invaded Assam with an army and was
9 defeated by the King of the Ahoms. Those taken prisoners were settled in the region and
10 married Assamese women losing all their culture, Islamic culture within a few generations and
11 adopting local customs. In the 1630s, the Muslim Saint Shah Milan, also known as Azan fakir
12 opened a way for Islamic missionaries by winning the patronage of the
13 Ahom Rulers. Between 1910 and 1931, thousands of Bengali Muslim peasants from Eastern
14 Bengal, now Bangladesh, came and settled in the State of Assam. Their descendants today have
15 adopted to the Assamiya language and identify themselves as Assamese. The Assamese
16 Muslims are well integrated with the rest of the Assamese Society. Assamese Muslims are often
17 been in positions of influence within society of Assam and even India. One of the most famous
18 individuals was Fakhruddin Ali Ahmed, President of the Indian Republic from Assam. The
19 petitioner states that the Assamese language is the principal language of the State and is
20 regarded as *lingua franca*. The population of Assam largely comprised of numerous Assam
21 Tribes with their varied customs, languages, tradition, culture, dresses an exotic way of life.
22 Some of the prominent tribes of Assam are Bodo, Singpho, Santhal, Dimasa people, Karbi,
23 Khamti, Khamyang, Missing, Mishi, Phake and Rabha. The tribal communities of Assam have
24 their individual languages, cultural traits, rights, rituals, festivals, folk music, dance,
25 contributing to the richness of the socio-cultural fabric of Assam. Assam, being a home to
26 many ethnic groups and different cultures, is rich in folk music. Painting is an ancient tradition
27 of Assam. Silk weaving and crafts is part of the rich Assamese culture. Institution of Satra is a
28 unique feature of Vaishnavism in Assam, founded by so and so, the father of Assamese culture.
29 Institutions like Satras, monasteries and village namghar, prayer houses had profound
30 influence in the evolution and social makeup of Assam society. Artistic [UNCLEAR] led to the
31 engendering of new forms of literature, music, theatre and dance. There are several important
32 traditions, festivals of Assam. Bihu is the most celebrated festival of Assam. The ethnic tribes
33 in Assam have their own festivals. Reference has been made to various studies and articles by
34 eminent scholars on the culture of the State of Assam. The writ petitioners will refer to and
35 rely on the same.' The last part, Your Lordship may see, is what you had mentioned, which is
36 at internal page 69, page 3058, which is the relief which we have sought.

1 So, our primary prayer is a declaration that Section 6A of the Citizenship Act as
2 unconstitutional, being violative of 14, 21 and 29. The second prayer is to declare Rule 4(A) of
3 the 2003 Rules, as well as the Notification dated 5th December 2013 issued under Respondent
4 No. 2, Registrar General of Citizenship as *ultra vires* 6A. So My Lords, assuming 6A is valid,
5 these rules, as you will see when we show you the cutoff date, goes beyond even 6A. Now please
6 see -(3) In the alternative to Prayers 1 and 2, issue a Writ Of Mandamus or any other
7 alternative writ or order or direction to the Respondent Union of India to forthwith frame a
8 policy in consultation with Respondents 6 to 50, which is the States and the Union Territories
9 for Settlement and Rehabilitation across all the States and the Union Territories of India
10 proportionally, all persons of Indian origin who came to Assam after 26th January 1951, from
11 the specified territory as defined under Section 6A of the Citizenship Act and further directed,
12 the set policy shall be implemented directly under the supervision and control of this
13 Honourable Court.' And then, there are various directions with regard to which we have
14 requested regarding complete fencing of the border, steps for process of identification,
15 detection and deportation of foreigners in the State of Assam in accordance with the provisions
16 of Foreigners Act 1946 and to constitute more Tribunals, issue Writ Of Mandamus, State of
17 Assam to immediately take steps to remove encroachers from the protected tribal land created
18 under the Assam Land and Revenue Regulations as amended in 1947, an Mandamus, or any
19 other alternative writ, set up an independent committee to suggest measures with regard to
20 these encroached lands as well as national forests, etc. So this, then is the frame of our writ
21 petitions. Now I want to just supplement, the portions which I have already read from **Justice**
22 **Nariman's judgment**, and the reference order on the magnitude of the problem with
23 certain independent material that we have placed before you and which is now on the record.
24 So to that end, may I request you to go, sorry...There is the Brahma Committee and that
25 notification of the Brahma Committee, Your Lordships will find in Volume 4... yeah. So, My
26 Lord, if Your Lordship is pleased to go for a moment to volume 4, page 2742. My mistake...
27 2742 I think. Just for a moment to 2742.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** That's internal page 21, I think.

30

31 **SHYAM DIVAN:** It's internal page 21.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** This is the Brahma Committee?

34

35 **SHYAM DIVAN:** Your Lordships have that? Sorry.

36

37 **CHIEF JUSTICE DY CHANDRACHUD:** Committee of 2017.

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SHYAM DIVAN: That's right. 6th February 2017.

CHIEF JUSTICE DY CHANDRACHUD: Or, 30th December '17, looks like. And this is actually Dr. Rohini Kumar Baruah, Anil Kumar Bhattacharya, Ajay Kumar Dutta, Ramesh Barpatra Gohain.

SHYAM DIVAN: Your Lordship has that? It's 6th February '17, or?

CHIEF JUSTICE DY CHANDRACHUD: 30th December '17?

SHYAM DIVAN: Sorry, which... ? Is Your Lordship on page 2742?

CHIEF JUSTICE DY CHANDRACHUD: Yes, but it begins at page 2722.

SHYAM DIVAN: Yes. So I'll come to that. But, I'll just... that's the report. You're absolutely right. That is the report. I'm taking you to the notification which set up this Committee first.

CHIEF JUSTICE DY CHANDRACHUD: So, that is not 2742. 2742 is internal page 21, I think.

SHYAM DIVAN: Correct, 21. At the foot of the page,

CHIEF JUSTICE DY CHANDRACHUD: Where does a notification begin actually?

SHYAM DIVAN: 1.17. Your Lordship has para 1.17?

CHIEF JUSTICE DY CHANDRACHUD: Yes.

SHYAM DIVAN: So just below that. Does para. 1.17 begin with 'A positive step of the State Government of Assam'?

JUSTICE J.B. PARDIWALA: That's correct.

SHYAM DIVAN: Chief Justice has that?

CHIEF JUSTICE DY CHANDRACHUD: Yes.

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SHYAM DIVAN: Your Lordship has that?

CHIEF JUSTICE DY CHANDRACHUD: Yes.

SHYAM DIVAN: Correct? So then, if I may just invite attention just a few lines below that.

CHIEF JUSTICE DY CHANDRACHUD: This was constituted by the Government of Assam?

SHYAM DIVAN: That's correct. I thought I'll just point that out. '6th February 2017. Orders of the Government of Assam. The Governor of Assam is pleased to constitute a committee with the following members for suggesting measures, including modifications in ALRR 1886, other land laws, Government circular and land policy, for ensuring protection of land rights of indigenous people in the State of Assam.' And, Your Lordships will notice that it's under the Chairmanship of Shri. Harishankar Brahma, IAS, former Chief Election Commissioner. And then, as Your Lordship correctly said, the members include Rohini Baruah, etc. So, this is the notification establishing it. Now, please go to that same report, which Your Lordship correctly noted, begins at 2722. Correct? Opens at 2722, the final report. And here, may I take you to page 2731? Your Lordships have para 1.5? Part of the report.

JUSTICE SURYA KANT: 1.5. Observations of Shri...

SHYAM DIVAN: Correct. So, I'll just read that. 'Observations of Shri. S.L. Shakhder, former Chief Election Commissioner of India. The basis for the anti-immigrant bias had been set by Shyam Lal Shakhder, the then Chief Election Commissioner of India, who told a conference of election commissioners across India in 1978, that he was alarmed by reports, especially from the Northeast, that foreigners were being included in the electoral rolls. Mr. S L. Shakhder commented that, in one state, Assam, the population in 1971 recorded an increase as high as 34.98% over the 1961 figures, and this increase was attributed to the influx of a very large number of persons from the neighbouring countries. The influx has become a regular feature. I think it may not be wrong assessment to make on the basis of the increase of 34.98% between the two censuses, that the increase that is likely to be recorded in the 1991 census would be more than 100% over the '61 census. In other words, a stage would be reached when the State would have to reckon with the foreign nationals, who may probably constitute a sizable percentage, if not a majority of the population of this State.' So this was a Chief Election

1 Commissioner who had made this observation. Now please have a look. If Your Lordships
2 would... yes. And here....

3

4 **SHYAM DIVAN:** At para 1.5, which was on page 2731. Correct?

5

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

7

8 **SHYAM DIVAN:** The observations of the former Chief Election Commissioner, Shri. S.L.
9 Shakhder. Now, may I request you to just go down to the next paragraph, 1.6. Memorandum
10 of Lt. Gen. (Retd) Shri. S.K. Sinha, then Governor of Assam, to the President of India. 'Lt. Gen.
11 Shri. S.K. Sinha, the then Governor of Assam, in a report on illegal migration of Assam
12 submitted to the President of India on 8th November 1998, mentioned that the unabated
13 influx of illegal migrants from Bangladesh into Assam, and the consequent perceptible change
14 in the demographic pattern of the state, has been a matter of grave concern, which threatened
15 to reduce the Assamese people to a minority in their own state, as happened in Tripura and
16 Sikkim. He further stated, that the Bangladeshi illegal migrants posed a much greater threat
17 in Assam than any other state, and if the infiltration was not effectively checked, the infiltrators
18 might swamp the Assamese people and might sever the Northeast landmass from the rest of
19 India. Some of its observations are as follows:

20 a) Bangladesh census records indicate a reduction of 39 lakh Hindus between 1971 and 1981,
21 and another 36 lakhs between '81 and '89. These 75 lakhs (39+36) Hindus, have been
22 obviously coming to India. In 1970, the total population of East Pakistan was 7.5 crores, but in
23 1974 it had come down to 7.14 crores. On the basis of a 3.1% annual population growth of that
24 period, the population of 1974 should have been 7.7 crores. The shortfall of 6 million people
25 can be explained by the largescale migration. Muslim population of Assam has shown a rise of
26 77.42% in 1991 from what it was in 1971. Hindu population has risen by nearly 41.89% in this
27 period. Muslim population of Assam has risen from 24.68% in 1951 to 28.42% in 1991. The
28 much higher percentage of growth of Assam from 1911 to 1971 over the all India and
29 Bangladesh figures, indicate migration into Assam.' Then please go to paragraph 1.8.1.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Divan, the only thing caveat which we may
32 have to have is that, these were inputs to the Committee. I'm not sure whether these are
33 authentic figures, whether they are accepted by the Government. Because of the Government
34 of India, our census we can safely go by; there's no difficulty. But, something which is an input
35 to the Committee for us to proceed as a Constitutional Court on those... we might... somebody
36 may say these figures were not right. Obviously...

37

1 **SHYAM DIVAN:** No, I understand.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Lt. Gen. Sinha submitted it, so he sent it with a
4 great deal of responsibility. But accuracy, we don't know. I mean... a broad trend, yes. It may
5 convey a broad trend, but the specific figures, I'm not sure whether that... it would be safe to
6 rely on that.

7

8 **SHYAM DIVAN:** Yes. He is.. I think, Your Lordship may take it as a trend. Your Lordship
9 may take this as a trend. But it's an important trend. Now, please see for our purposes... if Your
10 Lordship is pleased to go to para. 1.8.1 on the next page. 'Open Indo-Bangladesh border,
11 unrestricted infiltration and encroachment on Char and other lands of adjoining districts. The
12 most serious threats to the land rights of indigenous people of Assam, more precisely to the
13 very identity of indigenous people of Assam comes from the unabated mass infiltration from
14 the landmass now comprised in Bangladesh, through the wide open Indo-Bangladesh
15 international border versus Assam, Meghalaya, Tripura, and Mizoram. The fact is that a
16 predominant majority of people of doubtful origin occupied the vast char areas. under the
17 explosive growth rate of population. There are few other districts like Barpeta, Bongaigaon,
18 Darrang, Dhubri, Goalpara, Hailakandi, Karimganj, Morigaon and Nagaon, which are most
19 seriously affected and have contributed largely to changing the demographic pattern of Assam.
20 In this background, the land rights of Indigenous people has also their identity are at stake.
21 The conclusion is obvious that in case no effective constitutional, legal and administrative
22 steps, including sealing off of the Indo-Bangladesh border and detection and deportation of
23 illegal immigrants are taken, the indigenous people are bound to be reduced to a landless class
24 of people and to become foreigners in their own home.'

25 Then please see para. 1.9. 'Graphic depiction of the decadal population growth of Assam in
26 India. It will be seen from the table given below that the population growth rates of Assam
27 have consistently been higher than those in India as a whole since 1901, up to 2011. Further,
28 the index of density of population of Assam has been consistently higher than that of India
29 since 1971, up to 2011, except that of 1981, which was at a level 230:230. As this figure was not
30 based on decadal census, but was only interpolated. What must be remembered is that the
31 relatively lower population density of Assam prior to 1971, compared to India, had later, not
32 only caught up with but excelled those of the Indian average density. The higher density of
33 Assam's population can be attributed to the higher growth rate of the Muslim population,
34 particularly in the immigrant dominated districts. Tables 1, 2 and 3 below respectively show
35 the population trends in Assam and India. Religion wise population growth as per the Census
36 Report of 2011 and the districts with religion wise majority of population.' So there are further

1 inputs on the basis of the census figures which are available. And if Your Lordships would
2 now move further down to 1.14.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** How many Districts does the State have?

5

6 **SHYAM DIVAN:** How many districts does the State have?

7

8 **TUSHAR MEHTA:** Present 34.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** 34?

11

12 **TUSHAR MEHTA:** Presently. There is some reduction last month bringing it down to 31.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** 31.

15

16 **TUSHAR MEHTA:** 31. [UNCLEAR]

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** They might have been merged etc. Right?

19

20 **TUSHAR MEHTA:** Yes.

21

22 **DEVAJIT SAIKIA:** Amalgamation of the Districts.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Amalgamation of the Districts.

25

26 **SHYAM DIVAN:** 1.1, on page 2733.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** 1. ?

29

30 **SHYAM DIVAN:** 1. So you'll find the years which are given in 1901 onwards, census years.
31 Then please see the population of Assam and as against that the population of India. And the
32 percentage decadal variation is indicated in the next column. And then please see the density.
33 Now in 1901, you will find the density as far as Assam is concerned, is 42 per person...
34 person/km², whereas the national density was 77 persons/ km². Then please have a look at
35 1951, by now it is 102, but it is still below the all India density, which is, 117. And then if you
36 see the 2011 figure, the density per person has now gone up to 398 persons/ km² and exceeded
37 the national figure of 368 persons/ km². So from being well below in 1901, there has been a

1 considerable increase. And as we saw from the Committee Report, they have said that please
2 ignore 1981, because that was an extrapolation. But for all the other years, Your Lordships will
3 find that '91, 2001 and 2011, the density far exceeds the national figure. Yes. And Your
4 Lordships will see that the source at the foot of page Table 1.1, is Census of India, 2011. Your
5 Lordship may just see the foot of... Sorry, not foot, but page 2733 just below foot of Table 1.1.
6 The source for those figures is indicated as being the Census of India, 2011.
7 If Your Lordship would go to 1.14, paragraph. On page 2741.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Actually, just to analyse that table since based on
10 the census..

11

12 **SHYAM DIVAN:** 1.1.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Yes 1.1. Something very interesting emerges from
15 that. If you see, the population... we will not go by the percentage increase. We don't know it.
16 We have only the percentage decadal variation. 1901, the total population is 33. '11, it becomes
17 38. Look at the rate of growth. 5. '21-46. '31-56, '41-67 slight is about 10 lakh increase. Then
18 again '51-80. Between '51 to '61, the population really jumps from 80 to 108, almost a 28 lakh
19 increase over 80 lakhs, which is almost a 25% increase. Then see what happens between '61 to
20 '71. It increases from 108 to 146. That is a 38 lakh increase over 108, which is again almost
21 33% increase. Then '71 to '81. This is a crucial period for our purposes, because that's when the
22 liberation takes place... the war...the 25th March cut off. So '71 it is 146 right? And then '81. So
23 '61 to '71, it increases from 108 lakhs to 146 lakhs.

24

25 **SHYAM DIVAN:** That's the crucial period, My Lords.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** And '71 to '81.

28

29 **SHYAM DIVAN:** That's a projection.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** It increases to. It's a projection is it?
32 Interpolation. It is roughly. It increases again by 34 lakhs to 180. '81 to '91, it goes to 224. That
33 is a 44 lakh increase. Again '91 to 2001, it increases by 40 lakhs, and then 2001 to 2011 it
34 increases to 312, which is almost like a 44 + 12, a 56 lakh increase. At the same time, Mr. Divan,
35 we have to be very careful. We are not in this case, I mean, as a reference to the Constitution
36 Bench, we are not really looking at what is happening today or post the 1985 Amendments...

1 post the Accord and the Amendment to the of Section 6A, we are looking specifically at a
2 period which is frozen in time. Right?

3

4 **SHYAM DIVAN:** I would say you look at both because if I....

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** We can't... well, we cannot adjudicate upon the
7 validity of that section 6A on what has happened subsequently because assuming you're right,
8 we'll put it in your favour...

9

10 **SHYAM DIVAN:** Effect of the Statute.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** We will put it in your favour that there has been
13 a sudden increase in the infiltration according to you, according to you, post the amendment
14 as well. Will that have an impact on the validity of the amendments itself?

15

16 **SHYAM DIVAN:** No, I am not for a moment, suggesting that. It is not my submission. My
17 submission, essentially is, that according to us, the Amendment doesn't stand for the reasons
18 which I have broadly indicated.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** You have now shown us the cultural identity.
21 That you have formulated your... we will have to hear the other side on it.

22

23 **SHYAM DIVAN:** This aspect... I think this is... sorry. This maybe a facet with regard to our
24 arguments on identity, on cultural rights, on indigenous people etc., and the dilution... because
25 ultimately it will translate into a complete dilution of your political rights as well. So, what we
26 are saying, and eventually Your Lordship sees, that this report is with regard to land and what
27 is happening with regard to the extensive encroachments. Sorry.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Suppose the amendment by the Legislature
30 was... we're giving you a hypothetical. Suppose the amendment of the Legislature was, that
31 anybody who has entered into Assam after 25th March 1971, will for 10 years, not be deleted
32 from the electoral roll. After 10 years, they'll get citizenship. Then perhaps, it would have been
33 a completely different scenario, because then you are encouraging illegal infiltration by saying
34 that, look, you come here for 10 years, you'll not be in the electoral roll, and thereafter you get
35 citizenship. That's not the amendment to the Legislature.

36

1 **SHYAM DIVAN:** But, this is what the amendment which the Legislature has done. We'll see
2 the provision, of course.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** What it does it freeze it at '71.

5

6 **SHYAM DIVAN:** It freezes it at '71 and incentivizes people to remain.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** It's a one-time measure.

9

10 **SHYAM DIVAN:** I'm not saying it's not a one-time measure. But, look what's happened over
11 here. What's happened over here is twofold. First of all, there has been nothing subsequent to
12 that, because we've seen the figures, etc. Even post 1985, the influx continues. But today, as a
13 result of not enforcing the law, which was that illegal immigrants have to be identified and
14 appropriate action taken in accordance with law, that has been completely given a go by, and
15 this is being used as some sort of a shield. The results of... My primary point is that this
16 provision itself is bad. You could not have... having regard to the Constitutional mandate and
17 your obligation as the State, to protect my cultural rights, to allow a continuous dilution all the
18 way up to 19th... when this statutory provision was introduced in the first instance, because
19 that itself resulted in a tremendous dilution. And then, it has a multiplier effect, because by
20 recognizing these people, one, by not taking any action which you are required and obliged to
21 do because they are completely in default, as noticed by this Court in the Reference Order
22 Judgment itself, what is left of my cultural rights? What's left of my land? What's left of my
23 economic rights? And you are issuing electoral cards over here and giving people the right to
24 vote? So how is that to be countenance? I mean, this is the essence of demo... this kind of
25 demographic invasion... And therefore, we say that, look, if you're so welcoming, please don't
26 burden the State of Assam. You have so many border states. Where is the question of having a
27 special regime only for Assam? Then you have this regime for everybody. You may have some
28 historical justification for the Accord; well and good, but my... I'm sorry.

29

30 **JUSTICE M.M. SUNDRESH:** According to you, consequence does matter.

31

32 **SHYAM DIVAN:** Yes, it does matter, effect of the order, effect of the law.

33

34 **JUSTICE M.M. SUNDRESH:** On two broader grounds. One is, according to you, it will
35 facilitate another set of illegal migrants to come. Number one.

36

37 **SHYAM DIVAN:** Yes.

1

2 **JUSTICE M.M. SUNDRESH:** Number two, the consequence is that, that group becomes
3 larger. It affects.

4

5 **SHYAM DIVAN:** Yes.

6

7 **JUSTICE M.M. SUNDRESH:** So to that extent you say, that consequence will have to be
8 written to the statute...

9

10 **SHYAM DIVAN:** For future generations. You see it's very... If you absent a machinery... let's
11 just keep my... suspend submission with regard to... that this datum line is bad. Keep that
12 aside. The moment you have a situation where you are recognizing a particular set of people
13 and conferring upon them citizenship automatically, which according to us, ought not to be
14 done, what happens as far as the next generation is concerned? So, you are actually cementing
15 something which has happened in an illegal manner.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** One more thing which we will have to bear in
18 mind Mr. Divan, is that if the Legislature, if the Parliament were to merely grant amnesty to a
19 group of illegal immigrants, that would be a very different situation.

20

21 **SHYAM DIVAN:** It would be a different...

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** It would be a very different situation. But, we
24 can't deny the fact, that 6A we have enacted at a point of time which is deeply connected to our
25 history, namely, that India had a very 'vital role', if I may use that expression, in the creation
26 of Bangladesh, because we were part of the war as much as Bangladesh was.

27

28 **SHYAM DIVAN:** We were.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** The immigration which took place, Parliament,
31 seems to have proceeded on the basis, that the immigration which took place, cannot be
32 regarded purely on the footing of an illegal immigration, but it was something which was really
33 a humanitarian aspect of what the atrocities which were being committed on the population
34 in, the then East Pakistan, which is why India intervened. The war took place, there was
35 liberation, Bangladesh was created. And therefore, this was not just looked at by Parliament
36 from the perspective of an illegal immigration, but something which is deeply interwoven in

1 our own history of conflict and liberation of Bangladesh. So it seems to have been on that
2 ground. Therefore we are not saying....

3

4 **SHYAM DIVAN:** That submission of Your Lordships falls completely in my favour. And I'm
5 obliged for this observation, because when we examine the cutoff date, as far as people who
6 have come after the atrocities, as far as Bangladesh is concerned, this extends no protection to
7 them at all. At all. That's why... Sorry.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Undoubtedly. Therefore, there are two parts of
10 your petition. One is Section 6A, and the second is that Brother Surya Kant, Brother Sundresh
11 also said is the failure to implement the law post the 6A.

12

13 **SHYAM DIVAN:** Yes.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** That's a separate issue. But what has been
16 referred to the Constitution Bench is the first, namely, 'the validity of 6A.' You see?

17

18 **SHYAM DIVAN:** No. But of course, the validity of 6A, but you're assuming 6A is valid.
19 Assuming 6A is valid and has been held to be reasonable, etc it survives the Constitution....

20

21 **JUSTICE M.M. SUNDRESH:** Your first challenge is that 6A as a whole should go.

22

23 **SHYAM DIVAN:** Yeah, that's my primary....

24

25 **JUSTICE M.M. SUNDRESH:** The Chief is trying to tell you that could it be
26 compartmentalised in a particular way? Is it your case or let us assume that we uphold 6A,
27 what extent the rights can be conferred?

28

29 **SHYAM DIVAN:** Yes.

30

31 **JUSTICE M.M. SUNDRESH:** It can be now... can we? That's why the question has put you
32 whether that can be taken as a citizen per se, giving all rights to them to much the detriment
33 of others. Or it could be a curtailed right? Just think aloud that is what I want to say.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Let's discharge for the day because this matter
36 now is completely on board.

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CHIEF JUSTICE DY CHANDRACHUD: Yes Mr. Divan.

SHYAM DIVAN: My Lords, I was on the last part....

CHIEF JUSTICE DY CHANDRACHUD: Population trends in Assam and India.

SHYAM DIVAN: Brahma Committee Report.

CHIEF JUSTICE DY CHANDRACHUD: Yes. Now, we are on the Brahma Committee Report.

SHYAM DIVAN: I am just about to conclude that with the last para, which I wish to place is on page 2741 of Volume 4. And it is para 1.14.

CHIEF JUSTICE DY CHANDRACHUD: Yes. What is the date of the Brahma Committee Report? 2017 right?

SHYAM DIVAN: 30th December 2017. So, para 1.14. Protection of Indigenous People's Land Rights, is linked to solution of the foreigner's issue of Assam, implementation of the Assam Accord '85. At the moment, the gravest threat perceptions of the indigenous people of Assam to the safety and security of their land rights and in fact of their very identity comes from the surging unchecked infiltration from across the Bangladesh borders. Protection of land rights of the indigenous people of Assam is in fact inextricably linked to the protection of their identity and the solution of the problem of foreign nationals issue gripping Assam for the last seven decades of independence. The Committee feels and recommends that protection of land rights of indigenous people of Assam pre-envisages implementation of the Assam Accord 1985. That is one. Ceiling of the Indo Bangladesh international borders via Assam, Meghalaya, Tripura and Mizoram for checking fresh arrivals of illegal immigrants as also for number two, detection and deportation of the existing foreign nationals by signing a repatriation treaty with Bangladesh government and further for correction of voters list by deleting the names of the foreigners. In other words, full implementation of the Assam Accord has inescapably to be put on the priority card. So I have relied on this essentially to again indicate the background facts which have been noticed by this particular committee, in so far as the various infiltrations etc. are concerned. Now the next document that I wish to point out is the 175th Report of the Law Commission of India which you will find in Volume 4, at serial number 52, page 3092. So please have a look at the context. Your Lordship is pleased to go to page 3093. This is the cover

1 letter by the Chairman Justice B. P. Jeevan Reddy on 21st September 2000. I am forwarding
2 here with the 175th Report on the Foreigner's Amendment Bill 2000. This subject was taken
3 up in pursuance of a reference made by the Government of India on 16th February '99. Prior
4 to it certain amendments were mooted, Foreigners Amendment Bill 1998, introduced by the
5 Rajya Sabha by Home Minister Sri L. K. Advani. The Parliamentary Standing Committee on
6 Home Affairs felt that the Government should undertake an in depth study regarding the
7 efficacy of the proposed amendment in checking infiltration of foreigners from across borders.
8 The Committee favoured a holistic approach in dealing with the acute problem of infiltration.
9 Various suggestions were made before it and included *inter alia*, the desirability of summary
10 trials, setting up of special courts, making grant of bail more difficult, etc. The matter was
11 referred to the Law Commission. The Commission has considered the relevant material,
12 including the reports and views of the States and Union Territories regarding their experience
13 in the implementation of the provisions of the Foreigners Act 1946 and other cognate statutory
14 enactments. While dealing with the issue, the Commission had to choose between two options
15 which were available. The first was to recommend a comprehensive Act repealing the existing
16 legislations and rules and orders, etc. The second option was to recommend amendments to
17 the existing legislative framework. Instead of codifying the entire law concerning the
18 foreigners the Commission chose the second option of recommending incorporation of new
19 provisions in the Foreigners Act so that it may make it more effective enough to meet the main
20 problem confronted by the country today, namely, illegal migration without interfering with
21 the existing legal framework. The Commission is of the view that the problem of illegal
22 migration from neighbouring countries has to be tackled seriously by providing a machinery
23 for the effective and speedy detection of illegal entrants. The function for determination
24 whether the person is an illegal entrant or not is proposed to be entrusted to immigration
25 officers, whose order shall be appealable, etc, etc. Now here My Lords, the point which we are
26 emphasizing and here Your Lordship may go straight away to paragraph 3.2 which you will
27 find at page 3100. Since the liberation of erstwhile East Pakistan, the influx ..sorry.....May I
28 just take Your Lordships back to paragraph 2.2 for a moment? Okay. 2.2 on page 3097. The
29 problem has attained gigantic proportions, as is evident from an estimated population of about
30 18 million foreigners living unauthorizedly in India. This has aggravated the employment
31 situation and has distorted the Electoral Rolls in some States. The undesirable activities of
32 foreigners, including smuggling of narcotic drugs, spreading terrorism and other such
33 activities. It is therefore of utmost importance to devise foolproof administrative measures
34 such as border fencing, modernized electronic surveillance system as well as effective
35 legislation to deal with the menace. The present study is aimed at examining the existing
36 legislation and suggesting appropriate revision to deal with the issue more effectively. Then
37 para 3.2 on page 3100. Since the liberation of erstwhile East Pakistan, the influx of migrants

1 from Bangladesh has remained unabated and has acquired frightening proportions. There is
2 no realistic estimate of these migrants in India. In fact, no census has been carried out to
3 determine their number. According to the Ministry of Home Affairs, the total number of
4 Bangladeshis illegally residing in India is estimated at 15 to 18 million and every year at least
5 3.5 lakhs or more people are infiltrating into the country.

6
7 On the basis of theoretical extrapolations, the number of illegal migrants in border state has
8 been estimated to be 5.4 million in West Bengal, 4 million in Assam and 0.8 million in Tripura.
9 It is evident that the number of such migrants is highest in the State of West Bengal. These
10 migrants have spread out to other parts of the country. In Maharashtra, their number is
11 estimated at 0.5 million, in Rajasthan 0.5 million and in Delhi, 0.3 million. These figures are
12 mind boggling and alarming indeed. India, with its own unmanageable population is hardly
13 in possession... in a position I think, to take upon the additional burden. Then please go to
14 para 3.5. One of the major causes of the aggravation of the problem of illegal migration,
15 especially in the border states, has been the crisis of identity and absence of proper mechanism
16 for the identification of illegal migrants. The available legal framework has failed to curb the
17 illegal migration. That apart, the illegal migrants continue to stay in India with impunity on
18 account of rampant corruption in rank and file of the enforcement agencies. One of their
19 prominent destinations is Mumbai. Another cause of illegal migration is the clandestine cross
20 border trade between India and Bangladesh which is estimated at \$5 billion. This is three
21 times more than the official trade. The trade has created a network of agents and middlemen
22 working in connivance with authorities on both sides of the border. Thus, strong vested
23 interests also appear to be behind the illegal migration. Further, the trade between two
24 countries has the backdrop of cultural and ethnic ties. In most of the cases, the entry of
25 migrants is surreptitious and they easily mingle with the local population due to ethnic,
26 linguistic, religious and physical similarities. Their identification is extremely difficult. This
27 has resulted in alteration of demographic composition in the border districts of several states.
28 The bordering states have recorded a high rate of population growth. It has been reported that
29 in case of Assam, there is a higher percentage of rate of population growth in comparison to
30 the national average. There is evidence that many of the illegal migrants have acquired ration
31 cards, obtained various jobs, and got enlisted in Electoral Rolls by suppressing their identities
32 with the help of local touts, unscrupulous officials and politicians. Impact of illegal migration:
33 The illegal migration has strained the country's economy generally and especially of the border
34 states. The illegal influx has assumed dangerous dimensions affecting the security of the
35 nation as a whole and especially of the northeastern region, because of its proximity with
36 Bangladesh. There are reports of large scale clandestine movement and smuggling of all kinds
37 of articles by such migrants. Local inhabitants of these bordering areas are under constant fear

1 of losing their identity as they have been reduced to a minority in their own state. This has
2 given rise to various movements and violent agitations, especially in the northeastern areas.
3 The problem has economic implications for the local people and security implications for the
4 country as a whole.

5 Then Your Lordships may see... yes. So, these were essentially the paragraphs that I wanted to
6 highlight from the Law Commission's Report. Now, the next document is called... is a study
7 which is authored by Dr. Bhupendra Kumar Nath and Professor Dilip C. Nath. And Your
8 Lordships will find that again, in Volume 4. Index number is 48 and it is at page 2708.
9 Bhupendra Kumar Nath and Professor Dilip C. Nath. So, this is from the International Journal
10 of Scientific and Research Publications, Volume 2. The citation is at the top. The title of the
11 paper is - The Change of Religion and Language Composition in the State of Assam in
12 Northeast India - A Statistical Analysis since 1951 to 2001. Now, if we just first see the abstract
13 and then I'll read certain portions. The aim of this study is to examine the change of population
14 composition in terms of religion and language in the districts of State of Assam in Northeast
15 India during post-Independence period. The analysis is based on district level census data of
16 Assam during 1951 to 2001. The result shows that the proportion of Muslim population has
17 been rising rapidly in some districts, whereas the Hindu population is declining and losing
18 their share in all districts of Assam. The change of religious composition has been projected
19 by using polynomial curve fitting and it is found at Hindu and other religion may become a
20 minority in Assam after 2040, in comparison to the combined proportion of Muslim and
21 Christian population. The growth of various language speaking population is also analysed,
22 and it is observed that the proportion of Bengali speaking population is also rapidly rising, but
23 the proportion of Assamese speakers are declining in all the districts of Assam. To investigate
24 the impact of cross border migration, the growth of the Muslim population in Assam and
25 Bangladesh is also compared in this study.

26 Then My Lords, I'm reading the few paragraphs initially, the introduction. Religion is one of
27 the most basic sociocultural characteristics of our society. Different people understand and
28 express religious identity in their own way. The growth and decline of populations and changes
29 in the relative balance between various groups of religion within a population play a crucial
30 role in the rise and fall of nations and even civilization. On the other hand, language is the
31 most important medium of human interaction. The demands for more autonomy, separate
32 states based on language, not only challenge and threaten the political stability of a country
33 but also very often lead to ethnic conflicts. North-East India is surrounded by the border of
34 four countries, which are Bangladesh, Bhutan, China, and Myanmar. Though they are
35 separated by political boundary, but they have a cultural affinity in both sides of the border.
36 Therefore, it's important for us to know the changing demographic patterns, to make an
37 informed judgment about the cross border migration and strategic pressures that India is

1 likely to face from its neighbouring countries in the near future. This paper examined the
2 changing trend of population composition in terms of religion and language in Assam and all
3 districts during the post-Independence period. The change of religious composition has been
4 projected by using a polynomial curve fitting. Moreover, to investigate the impact of cross
5 border migration on religious change. The growth of the Muslim population of Assam and
6 Bangladesh is also compared in this study. The Census Organization of India is the only
7 instrument that collects the individual information of various religions and language. In this
8 study, the religion and language analysis based on District level census data of Assam during
9 1951 to 2001, the religion data of Bangladesh from '74 to 2001 has been collected from the
10 publication of the National Series, and those details are given. Now My Lords, down that same
11 column, about 15 or 12 lines from the bottom, right hand column. It is therefore important to
12 analyse the changing demography of different religious groups in Assam. According to the
13 2001 census, the various religious groups living in Assam and India, respectively are 64.9 and
14 80.5% Hindu, 30.9% and 13.4% Muslim, 3.7% and 2.3% Christian and 0.5 and 3.8% other
15 religions. It is seen that the proportion of Muslim population in Assam is significantly higher
16 than that of the country as a whole. Strikingly Assam occupies a second position after Jammu
17 and Kashmir in terms of the proportion of the Muslim population in the country. It is seen
18 from Table 1, that during '51 to 2001, the Muslim population increased by 6%, whereas the
19 Hindu population declined by 7.2%. The percentage change of Christians and other religion
20 during this period are 1.7 and -0.5% respectively. This significantly high growth of Muslim
21 population in the state may be due to the consequence of large scale Muslim migration from
22 Bangladesh and also the prevalence of high birth rate. As a consequence of the slow
23 improvement of socio-economic conditions amongst the Hindus, the natural growth rate of
24 the population amongst them has declined to a great extent in the state during this period.

25
26 So far as the growth of population during '51 to 2001 at the district level is concerned, all the
27 districts witnessed a very high growth of Muslim population than the growth of other religions.
28 The proportion of Muslim population in undivided District Kamrup, so and so, so and so and
29 so and so has increased by 6%, 8%, 10%, and 7%, respectively. But in Lakhimpur, Sibsagar and
30 U.M. and N.C. Hills District, this growth of the Muslim population during '51 to 2001 is only
31 2%, 1%, and 2%, respectively. The undivided District of Golpara, Kamrup, Darrang, and
32 Nagaon are in continuation of the Eastern border belt of high Muslim presence in growth. The
33 undivided Cachar District also falls near the border of Bangladesh and showing high Muslim
34 presence and growth. On the other hand in almost all districts of Assam and in the state as a
35 whole, the Hindu and other religions declined during 1951 to 2001. In a similar way, the
36 percentage decline of Hindu population in so and so, so and so are 6%, 11%, 10%, and 8%,
37 respectively. But in Lakhimpur, Sibsagar, and U.M. and N.C. Hills District this decline of the

1 Hindu population during '51 to 2001 is only 2%, 3% and 0.5%, respectively. The percentage
2 increase in the Christian population from 51 to 2001 in all the districts are 1% to 2% only except
3 undivided so and so Hill, which is 9.1%. A major reason behind the growth of the Christian
4 population in Assam is the intense movement of conversion towards Christianity. The high
5 growth of the Christian population in Assam is mainly due to conversion of Scheduled Caste
6 and Scheduled Tribes to Christianity. Table 2, represents the district wise percentage of
7 religion in all 23 districts of Assam during '71 to 2001, according, according to the 2001 census,
8 the percentage of Muslim population in some districts like Dhubri, 74.3, Barpeta 59.4, and so
9 on have occupied a dominant position. But out of 23 districts in Assam, the 17 districts are
10 Hindu dominant, where their proportion of Hindu population is more than 50%. Then My
11 Lords, I'm going to skip and please go to page 2711, just the right hand side.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Divan, this data in this article very
14 instructive. It covers the entirety of the period. It covers the period which is prior to the Section
15 6A operation which is prior to 1966. It covers '66 to '71, and it covers '71 and almost till 2011.
16 Now we are on the constitutional validity.

17

18 **SHYAM DIVAN:** Yes.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** We will have to see whether the impact of Section
21 6A was such that between 1966 and 1971 the operation of 6A, to test your argument, led to a
22 radical change in the demographics of the state so as to affect the cultural identity of the State
23 of Assam, because that's the core of the argument. Now post '70-'71, this Article seems to say
24 that the increase in, the rapid increase in the numbers of a particular community is suggestive
25 of increasing infiltration.

26

27 **SHYAM DIVAN:** Yes.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** That has to be dealt with of course by a very strict
30 enforcement of the law. Insofar as 6A is concerned, 6A is not a question of law enforcement.
31 6A, we're testing pure validity.

32

33 **SHYAM DIVAN:** Yes, I agree.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** So in that sense is there any material to indicate
36 that the impact between '66 and '71 because the migration took place between '66 and 1971

1 was directly impacted by a provision like Section 6A. Incidentally 6A comes in only post '85,
2 post Assam Accord.

3

4 **SHYAM DIVAN:** That's not really how it....

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Somebody who was coming in between '66 to '71
7 has no aspiration or expectation that they are going to be granted citizenship. They came in.
8 Now, where is there any material to indicate that this was really affected by 6A?

9

10 **SHYAM DIVAN:** I would just suggest...

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** So the Committee, the Second Committee, which
13 you had given us, the report which was the Brahma Committee Report.

14

15 **SHYAM DIVAN:** The Brahma Committee Report.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Para 1.14, the Brahma Committee report in fact
18 said that, 'please implement the Assam Accord completely'.

19

20 **SHYAM DIVAN:** Correct.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Because Brahma Committee said, Brahma
23 Committee didn't say go behind... go behind that part of the Assam Accord which conferred
24 citizenship on that group of people who came between '66 and '71. They are saying implement
25 the other provisions. Strict border fencing, detection of foreigners, deportation of foreigners,
26 their deletion from the Electoral Roll...

27

28 **JUSTICE SURYA KANT:** Establishment of more Tribunals.

29

30 **SHYAM DIVAN:** Establishment or more Tribunals. Giving teeth to the... giving teeth to the
31 purpose of the law to detect illegal infiltration from any other country and deportation of those
32 persons. That is what Brahma Committee... Brahma Committee also doesn't say that go back
33 on the Assam Accord. That was not really the...

34

35 **SHYAM DIVAN:** I'm not arguing that. It's a political settlement. If someone has a political
36 settlement, good luck to them. And let's hope that these get settled. But

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Statute... this statute is only implemented the
2 political settlement.

3

4 **SHYAM DIVAN:** But it must... the statute. The political settlement gives no immunity to the
5 statute. The statute must follow the test of the Constitution. If it is constitutional, Your
6 Lordships will uphold it. If it is unconstitutional, equally the Court will strike it down. And of
7 course... sorry.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** But to test your argument, there is no material
10 before us to indicate that the impact of granting certain benefits to citizens who came in
11 between '66 and '71 was so great that the demographics of the cultural identity of the state was
12 affected by that... the inflow in those five years.

13

14 **SHYAM DIVAN:** First, there is material. because all of this is that material. But I have
15 another point.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Post '71, you need not labour because there... in
18 fact that is your petition which will of course... that's a subject matter of the petition, that
19 shouldn't be dealt with by the regular bench. On whatever steps which the Government is
20 taking to curb illegal infiltration. That is the second...

21

22 **SHYAM DIVAN:** Why '66? Why before '66? What you find from these statistics is that there
23 is a huge number of people who are coming even prior to 1966. Now, the question I ask myself
24 because Your Lordships are obviously ahead of the curve. But I am asking myself, why should
25 Assam suffer in this manner? Do you have this for West Bengal? Do you have it for any of the
26 other border states? What is this type of provision in which you say, that in Assam, if you are
27 there and if you come and infiltrate through Assam, you settle down and you remain over
28 there. I can understand the uniform law which you have. So, keep this political settlement
29 alive. Of course, everyone must be encouraged to settle their disputes. And if you can have a
30 mediated settlement, nothing like it. But eventually, if you are engrafting a law, then the law
31 has to be first and foremost across the country applicable. Number one. Across the country for
32 all states. Number two, surely, if the border states form a separate class, then it must apply to
33 all border states. Here what you are doing and which I'm going to show Your Lordships, the
34 effect and impact is, you are encouraging people to stay on in Assam, remain there for a period
35 of ten years. And why Assam? Why '66 for Assam? Why not for other parts of the country? So,
36 what you are doing essentially, is invidious discrimination.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** There again the burden will lie on you to show
2 that the extent of the infiltration between '66 and '71 in Assam...

3

4 **SHYAM DIVAN:** I am saying '66 itself is bad.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** ...was comparable, was comparable to the
7 infiltration in other states.

8

9 **SHYAM DIVAN:** No, it's not for me to show. I'll just indicate. If I'm not... it's not for me to
10 show. The moment I show and that is apparent facially on the document on Section 6A,
11 because Section 6A is applicable only to Assam and no other part. See, this is very important.
12 You are singling out one unit from the federal... from the entire federation, and you are making
13 a special set of provisions over there, which are destroying my cultural rights and my identity,
14 by heaping me and by protecting people over there notionally, number one. And thereafter, as
15 Your Lordships have seen from these figures, on a practical ground reality where the
16 percentages are just soaring. And then, you have a second generation and a third generation.
17 Sorry. Yes, yes.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** The initial burden of proof lies on you because
20 you are challenging constitutional validity.

21

22 **SHYAM DIVAN:** So, the classification itself is bad. I agree.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** You must therefore, show two things.

25

26 **SHYAM DIVAN:** Yes.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** That insofar as Assam is concerned, for the
29 purpose of determining the quantum of illegal infiltration, Assam was similarly situated as
30 regards... as compared to other states like West Bengal, Tripura, other states, Mizoram, so on
31 and so forth. Second, you have to establish, that as a result of 6A....

32

33 **SHYAM DIVAN:** I read that Law Commission Report, which gave those figures on the basis
34 of census figures with regard to infiltration or whatever illegal migrants in other states as well.

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36 **CHIEF JUSTICE DY CHANDRACHUD:** Assam was much higher. Therefore, the
37 Parliament... if the quantum...

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SHYAM DIVAN: No, just have a look. I think West Bengal may be higher. Just have a look at that.

CHIEF JUSTICE DY CHANDRACHUD: If the impact is greater in a particular state, one can always choose degrees of evil [UNCLEAR] and then legislate. We have always allowed under inclusive legislation by Parliament.

SHYAM DIVAN: It's not under inclusive, what you are doing... sorry. Let us see that way.

CHIEF JUSTICE DY CHANDRACHUD: You should have applied 6A to West Bengal, you should have applied to Tripura.

SHYAM DIVAN: That's not my argument at all. My argument is very simple. I mean, there are several arguments, but one amongst those arguments is with respect to Article 14 and my submission with respect to Article 14... we are people, we are living, that I'm in community. That's why I spent a little time reading the description of whom I represent. I represent a large number of communities which have been living in Assam and who are enjoying culture and want to develop and continue to enjoy their culture.

CHIEF JUSTICE DY CHANDRACHUD: Because when we deal with any matter challenging the constitutional validity of a [UNCLEAR], we begin with the presumption of constitutionality. I think that's very well settled.

SHYAM DIVAN: I think that's fair.

CHIEF JUSTICE DY CHANDRACHUD: We also give Parliament the latitude to recognize degrees of evil. Evil and sin, I'm using it not in a pejorative sense. The Parliament can identify the degrees of wrong doing, the degrees of people, the degree of the problem which it wants to.

SHYAM DIVAN: You're right.

CHIEF JUSTICE DY CHANDRACHUD: Parliament does not have to legislate with respect to everything, to legislate with respect to something.

SHYAM DIVAN: This is far more important. Let's just...

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CHIEF JUSTICE DY CHANDRACHUD: With respect to Assam.....

SHYAM DIVAN: We are not dealing over here with some classification under a taxing statute or something. We are dealing with citizenship. We are dealing with political rights. We are dealing with issues of tremendous importance, not only for the current generation, but for future generations, and therefore....

CHIEF JUSTICE DY CHANDRACHUD: Fair enough.

SHYAM DIVAN: I believe that there will have to be a very strong justification, which is furnished by the state, by the government in support of this particular stand. It's not enough to say that, look, I had an Assam. I saw the political settlement, and therefore, I've enacted a law. It's not enough to say that. Of course, you had a political that's a historical fact. We are not countering or disputing that basis. But thereafter, when you make a law, the law has to be, in our respectful submission and understanding, even handed. And it has to be even handed. It cannot oppress a certain community or set of communities in the states so as to obliterate their culture, whereas you ignore it, as Your Lordships correctly said, that of course, the Parliament may do things in grades, etc. But the effects when we go into this and when you see this, what's happening over here. You are having your entire demography, which is changing along the border states over there. That's number one. That has an economic impact. It has a political impact. It has a social impact. And this is enormous. This is not something which is happening just and this has this statutory provision is encouraging. So keep aside everything which is... I am first challenging '66 itself. Where is the question of suddenly sort of waving a wand and says, everyone before 1966 is fine without any scrutiny at all. Then yes....My learned friend is right. It's not some sort of exemption under a taxing statute or something like that. This is when we look at the preamble and when you see the value of fraternity, the fraternity is among citizens. Fraternity at some larger level may be some global fraternity, etc. But here the constitutional mandate in the preamble is about fraternity among citizens, and that fraternity among citizens is sought to be destroyed by a statute which steps in and which destroys my community. How is that to be countenanced?

CHIEF JUSTICE DY CHANDRACHUD: What is the impact of Section 6A, per se on the demographics? Unless you say... unless you indicate to the court that the impact of 6A on the demographics of the state...

SHYAM DIVAN: It encourages retention.

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CHIEF JUSTICE DY CHANDRACHUD: ... is to destroy the cultural demography.

SHYAM DIVAN: Yes, it does. But these are the facts.

CHIEF JUSTICE DY CHANDRACHUD: We have to have data.

SHYAM DIVAN: But this is the data.

CHIEF JUSTICE DY CHANDRACHUD: Data, as we said to you, is data which goes away, goes on right through to 2011 and 2020.

SHYAM DIVAN: But that's what I have.

CHIEF JUSTICE DY CHANDRACHUD: Assam undoubtedly has a problem. There's no doubt about the fact that there is infiltration but we are not testing here the constitutional validity issue is on the cut off which has been adopted.

SHYAM DIVAN: No the scheme. That's too narrow. It's on the full scheme of 6A.

CHIEF JUSTICE DY CHANDRACHUD: Assam Accord. What did the Assam Accord do? We must understand the Assam Accord?

SHYAM DIVAN: Yes.

CHIEF JUSTICE DY CHANDRACHUD: There was an agitation.

SHYAM DIVAN: Correct.

CHIEF JUSTICE DY CHANDRACHUD: By the All Asom Gana Sangram Parishad, by the All Assam Students Union. Their basic grievance was that Assam is being invaded by foreigners, by illegal infiltration. The is the Government of India is doing nothing about it. That was the core of the students' movement in Assam. And Accord has arrived that. We're not saying that it is sanctimonious. But what does the Accord really say? Even the agitators said, all right, what has happened up to now is fine. What happened until people who came in between '66 and '71 delete them from the electoral roll. We don't want them to vote for ten

1 years. After ten years, they will be restored broadly. This was a scheme, provided they are
2 identified.

3

4 **SHYAM DIVAN:** That was the bargaining that they agreed to.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** That's right. So that even the agitators who were
7 agitating then and that was not an isolated movement.

8

9 **SHYAM DIVAN:** But we are also agitators. We were also.... We mentioned.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** What was the agitation? The agitation essentially
12 was, curb the infiltration. The political compromise which was struck was this, those who came
13 before '71, '66 to '71, leave them alone. Now they have assimilated in India. '71 onwards, '71
14 onwards you have to be absolutely ruthless. Don't allow anybody post '71 to ... And Mr. Divan,
15 you are right. We're not saying your petition is wrong. Your petition highlights a very
16 significant problem that post '71, nothing has been done by successive Governments to curb
17 the infiltration. There you're right. But that's not what [UNCLEAR], that's not an area of
18 constitutional validity. That is about the enforcement of law.

19

20 **SHYAM DIVAN:** No, that's assuming the law is valid. That's my second argument. My first
21 and primary argument is this. Could you do..., that I've indicated in the morning, the broad
22 heads under which we are challenging it, etc., which I will come to. But what this is operating,
23 when we see the working of 6A as it stands, keep the implementation aside, just 6A as it stands
24 according to us, there is no justification for this. There may be some...

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** But by making a provision like 6A, you're
27 encouraging illegal people to come in, in the hope that one day we will also be given amnesty.
28 That is, you can say that. Up to that you can maybe say that look, by making an argument like
29 6A, by making a statute like 6A, you are holding out some sort of an expectation for people
30 that this will be extended in the future. But I don't think that has happened. After '86 has any
31 lobbying enacted by Parliament that '71 is extended to '81. It's not like those slumdweller who
32 constantly get an extension of the cutout date for regularization.

33

34 **SHYAM DIVAN:** No, you see the effect... I'll explain that effect. The effect is as, is absolutely
35 devastating, because what has essentially happened is that there's a notional statutory
36 provision, which is there. But the whole situation remains on the ground. That's why we read
37 those portions of the riots, etc., right until the filing of this petition. we have documented what

1 has happened over there. And the violence which is taking place is also because people are
2 finding.....

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** You're right. The impact is very severe. I mean
5 that, your data subject to hearing indicates that.

6

7 **SHYAM DIVAN:** Yes and we are going...

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** We're not, therefore please don't get it wrong.
10 We are not belittling what has been said in these reports by the Law Commission, the Brahma
11 Committee Report. These are official committees, no doubt about it. But we're only on this
12 that the answer is very different. The answer, in fact, perhaps your petition which has been
13 lying for the last eight years pending reference, if this reference was not made the court would
14 have passed a series of orders for enforcing the law in this petition. But this reference in fact
15 pre-empted the court from passing those orders by....

16

17 **SHYAM DIVAN:** No, it didn't pre-empt. The division bench retained session of the matter
18 and continued to pass directly. But anyway, so let me just lay... complete the groundwork now
19 because that's extremely important, because factually, as Your Lordship correctly said, that
20 this is really a pressing issue on the ground over there. Then as to whether I will, of course,
21 naturally, once I complete the groundwork, go to the statutory elements, I mean the
22 Constitutional elements. But please go to page 2711 for a moment. Yes, please just have a look
23 at the right hand column. Right hand column, My Lords about 6 or 7 lines from the foot of that
24 table you will find Table 3. It's talking now about languages. So please just see Table 3,
25 represents the details of language groups. Table 4 represents the district wise percentage of
26 language during '51 to 2001. The area considered, the area consider undivided nine districts
27 of Assam in 1951. It is observed from Table 4 that the percentage increase in Bengali speaking
28 population is inordinately high than all the other groups of language. During '51 to 2001, the
29 percentage of Bengali speaking population has increased by 6% from 21.2% to 27.5%. But
30 during these periods the proportion of Assamese speaking people in Assam had declined by
31 9%, from 69.3% to 60.8%. The percentage change of Hindi, Nepali and other language
32 speaking people is only 1% to 2%. Then it goes into further details. Now just please have a look
33 at the next page which is 2712, right hand column. Due to the historical links, geographical
34 and physical proximity of migrants of the Northeast India are mainly from Bangladesh. The
35 State of Assam has 262 kilometre border with Bangladesh. Out of the 92 kms is riverine.
36 Therefore, migration from Bangladesh to Assam is much easier. Since Bangladesh is a Muslim
37 dominant country, therefore, to know the impact of cross border migration on religious

1 change, it is essential for us to compare the growth of Muslim population on both sides of the
2 border. In Bangladesh, the average annual growth in per thousand Muslim population during
3 '74 to '91 and '91 to 2001, are 29.1%,... 29.1 and 18.7 respectively. But, corresponding Muslim..
4 sorry.

5

6 You see, I am just placing this thought. Sorry...

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Table 4 in that, there's something very
9 interesting in Table 4.

10

11 **SHYAM DIVAN:** Yes, Table 4. I have it here.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** You know if you see the... I'll thank my learned
14 brother Justice Manoj Misra for pointing it out to me actually. Manoj, with your permission,
15 I'll just share it? 1951, see, the Bengali population is 21.2. Dips to 18.561.

16

17 **SHYAM DIVAN:** Your Lordship is at Bengali population.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Bengali population.

20

21 **SHYAM DIVAN:** Right. 1951. 21.2.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Then dips to 18.5. 1971 increases to 19.7. And
24 then see what happens. 1991 becomes 21.7% and 2001, 27.5%. So it must be that that is the
25 critical part, the critical period where, the critical period where the demographics really
26 changed. On the other hand...

27

28 **SHYAM DIVAN:** This is a percentage.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Look at Assamese 1951, 69.3. Keeps on being
31 constant around the same. 70, 70, 69.4 and then 60.8 in 2001. So the problem which you are
32 referring to seems to have occurred between the decade of 1991 to 2001, if you really see the....

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34 **SHYAM DIVAN:** This is not necessarily...

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36 **CHIEF JUSTICE DY CHANDRACHUD:** Between 1991 and 2001, the Assamese
37 percentage of population has reduced from 69.4...

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SHYAM DIVAN: This is linguistic, My Lord.

CHIEF JUSTICE DY CHANDRACHUD: Linguistic.

SHYAM DIVAN: Language.

CHIEF JUSTICE DY CHANDRACHUD: Language. Assamese linguistic population in Assam has reduced from 69.4 to 60.8%. Over the same period, the Bengali speaking population increases from 21.7 to 27.5.

SHYAM DIVAN: Yes.

CHIEF JUSTICE DY CHANDRACHUD: So the critical decade, really, in that sense, has been 1991 to 2001.

SHYAM DIVAN: No but that is because of the impugned provision. And I'll tell you why because...

CHIEF JUSTICE DY CHANDRACHUD: Why do you say that? That is an area where I would, frankly I will be able to get your [UNCLEAR]. You may be right if you can just...

SHYAM DIVAN: I am indicating two points, and I'll develop them. But I'm just planting this. Just consider it because I think all these issues have to be rolled around in one's head and different thoughts will strike you. The first point I want to make is that if you are giving legitimacy or citizenship, this is a huge thing. Citizenship to somebody who has entered at a particular point of time. Then and you are recognizing and protecting. I think it's reasonable to expect that those people will also have children. And you will have a multiplier effect therefore, in subsequent decades, etc. So therefore, you are at inception, you are allowing somebody in, but the multiplier impact may take place subsequently. That's why Your Lordships have seen those other tables, which I've also referred to, where the population, not just language, because this is the linguistic thing, but the populations themselves increase. And it's likely...it's likely that the future decade, decadal language will be the language which is primarily spoken by the parents. It's possible. I think it's reasonable to infer that that's the normal cause, which is likely to happen. So that's one aspect. I want you to just consider. I'll then complete this table. The second point I want Your Lordships to just consider is that please look at it. We are concerned as writ petitioners with our rights, etc. for sure. However, look at

1 the manner in which the statute operates. If you are someone illegal who has entered into
2 another border state from the very same jurisdiction, you enjoy no protection at all. You enjoy
3 no protection. So because there's a historical fact which I am not disputing regarding an
4 agitation, there is a whole set of rights and entitlements all the way up to citizenship. I can
5 understand as was being suggested, that you have some intermediate right for people who
6 have come during a particular period, but it must then ought to fall short of citizenship is what
7 my primary concern is. Because otherwise my land will go and is going and has gone to a great
8 extent. Economic impacts, cultural impacts, and then eventually the political impacts are
9 going to be enormous. So therefore, I just leave you with these two thoughts. Number one, in
10 terms of as far as the future generations progeny etc. are concerned and how that might impact
11 as far as the numbers is concerned, the next generation and the generation after that and yes,
12 which is really part of the effect test. And the second element, which I want to point out is that
13 you ought not, I mean, you can of course, you have some flexibility or policy, etc. But the
14 situation her which is obtaining is from the very same village two people set out. One is an
15 illegal migrant who comes and crosses the Assam border. The other person is an illegal
16 migrant who crosses the West Bengal border. The person who comes into Bengal, is conferred
17 citizenship...I'm sorry, in Assam is conferred citizenship under the statute. And look at the
18 impact downstream and in for future generations. So anyway, I'm just leaving you with that
19 thought. Let me just complete these tables and some of these findings. So the last part of this
20 report, sorry, this paper or study is 2713. Left hand side. And then I'm done with this paper.
21 Then I go to the last set of documents I'm relying on. Please see Conclusion (IV), at page 2713,
22 left hand column. The empirical analysis based on district level census data shows that the
23 proportion of Muslim and Bengali speaking population are rapidly rising during '51 to 2001,
24 then other religions and language. This unusual high growth is not only for the natural is not...
25 I think it should be from the natural increase alone. The natural growth rate of Muslims should
26 not have been much difference between Bangladesh and Assam, but the difference in actual
27 rate clearly confirms the migration of Muslims to Assam. The unusual high growth of Muslims
28 and Bengali population in Assam may be due to cross border illegal Muslim migrants from
29 Bangladesh to Assam. It's a matter of grave concern because if the change of proportion of
30 religious population continues with this trend, then it is possible that the Assamese Hindu,
31 becomes a minority in their own State. In present study from the statistically projected trend,
32 it is found that the Hindu and other religion will become a minority in comparison to the
33 combined proportion of the Muslim and Christian population after 2040. The former
34 Governor of Assam S K Sinha expressed this in his report in 1998, that illegal migrants
35 threatened to reduce Assamese people to a minority to their own state as happened in Tripura
36 and Sikkim. So this was now, now I am done with this particular table.

1 Now the third and the final or the next and the final document which I want to refer to is a
2 report which Your Lordships will find is at serial number 51 of the same Report, page 2912.
3 The investigators are the principal...Sorry...Investigators for the Report are also indicated.
4 Cross border migration in Assam during... sorry.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Page 2912.

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8 **SHYAM DIVAN:** I'm suggesting 2912, of the very same Volume 4, and your Lordships have
9 a paper titled or a study titled 'Cross Border Migration in Assam during '51 to 2011'. Process,
10 magnitude and socio-economic consequences. Perhaps at page 2912. It's at I think in the
11 index, it's serial number 51

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, this is Dr. Nandita Saikia and Dr. William
14 Joe.

15

16 **SHYAM DIVAN:** Yes, yes, Dr. Nandita Saikia and Dr. William Joe. Now I'll just indicate
17 what I'm going to do here. I'm going to only point out certain sets of conclusions which are for
18 various, in various chapters of this particular study. So please turn first to page 2946. Chapter
19 2 page 2946. Same Report. The study itself My Lords I might just indicate begins at page 2912
20 and it goes on till 3091. I'm going to just read certain conclusions which they have got. Now
21 please see page 2946. This is the head of chapter 2, 'Demographic and Socioeconomic
22 composition of Assam'. Key Findings for chapter 2. The fertility rate is lower in Assam than in
23 India and the mortality rate is higher. But the population growth over 2011 to 1991 is
24 substantially higher in Assam than in India. In comparison to India, the percentage of urban
25 population is nearly half in Assam and the infant and adult mortality rates higher. Percentage
26 share of Muslim population has been increasing from 25.37% in 1951 to 34.23% in 2011.
27 Among eight undivided districts of Assam in 1951, five districts experienced a sharp increase
28 in Muslim population. Assam and India have a similar literacy rate. In Assam, demographic
29 indicators vary widely by religion, caste, and district. Population density varies widely and is
30 higher in Muslim dominated districts. Muslims have a higher fertility and mortality rate than
31 Hindus in Assam. Next, please go to page 2961.

32 My Lords, I was requesting the Court to turn to page 2961. Page 2961. Chapter 3. Correct?

33

34 **JUSTICE SURYA KANT:** Yes.

35

36 **SHYAM DIVAN:** Trends in Immigration in Assam, 1951 to 2001 - Evidence of Direct and
37 Indirect Demographic Estimation. Now, their key findings are - both direct and indirect

1 estimates reveal that Assam is the destination for the migrants mainly from East Pakistan,
2 Bangladesh, Nepal, and Myanmar before and after India's Independence. On average, 90% of
3 the immigrants in Assam are of Bangladeshi or East Pakistani origin. Census Report on
4 immigrants has been substantially underreported in post Assam Movement period. Indirect
5 estimates show, assuming 1951 as the reference period, the number of Ever Immigrants... My
6 Lords, these are people who came in after 1951... Ever immigrants and their descendants in
7 Assam as high as 4235124 in 2001. In 2001, every 6th individual in Assam is either an
8 immigrant who entered in Assam after 1951 or their descendants. They constitute
9 approximately 15.88% of the total population of Assam in 2001. So, this is the effect and
10 impact, which this is happening. And of course, it's disproportionate in different districts. Your
11 Lordships have already noted that. Particularly, concentrated in the border districts. And if we
12 are Scheduled Tribes or even non Scheduled Tribes individuals residing in these border
13 districts, the impact is immense. Now, may I request you to go to page 2985. Chapter 4.
14 Demographic and Socio-economic Differentials Among Natives, Old Settlers, Mixed and
15 Immigrant Populations - Analysis of the Primary Survey. Key findings of Chapter 4. Immigrant
16 and old settler villages have a younger age structure than native villages. Immigrant villages
17 have a higher share of young population. Thus, young age dependency is more amongst
18 immigrants. Native villages have a higher share of older population. Old age dependency is
19 more amongst natives. Immigrants have more children Ever born than natives. Only 44% of
20 the immigrant women have fewer than two children. But, over 75% of the native women have
21 fewer than two children. Also, the perceived ideal number of children is higher amongst
22 immigrants than natives. 65.9 versus 42.7. Similarly, average perceived age at marriage is
23 lower amongst immigrants, immigrant origin women and native women. Over 96% of the
24 native families report Assamese or other native language as their mother tongue against 60%
25 of the immigrant families. Over 89% of the natives are Hindus, whereas 97% of the immigrants
26 are Muslims. Among all settlers, 20% are Hindus, and 80% are Muslims. Only 31% of the
27 natives, but 99% of the immigrants are of general castes. Over 9% of old settlers are SC. Over
28 7% of natives have government jobs against 2% of immigrants. Out migration is higher
29 amongst immigrants, 3.3% than among natives, where it is 1.6%.

30

31 The next set of conclusions for Chapter 5, you will find at page 3010. This chapter is titled
32 'Magnitude and Dimension of Intergroup Inequalities between Migrants and Natives' and the
33 key findings. In general, all households in surveyed area have inadequate access to basic
34 amenities. For example, only 20.7% of the households have access to a flush toilet. Only 33.7%
35 have *pucca* or houses made of solid material, and only 20.3% of the households have clean
36 fuel for cooking. However, relative position of immigrant households was bad. Say only 7.3%
37 of the immigrants household have a flush toilet, 13.4% have brick houses, and 9.3% use clean

1 fuel for cooking. Despite immigrants less educated than the rest, registration of births are
2 highest amongst them. The reason of higher birth registration may be the motivation to
3 establish their legality in the current place of residence. So when Your Lordship examines the
4 effect test, which is a standard manner in which Your Lordships examines whether a statutory
5 provision is constitutional, not constitutional or test the validity. This is perhaps a factor which
6 Your Lordships may also keep in mind. In terms of receiving the government subsidies or
7 government benefits, there exists only marginal differences between native and immigrant
8 households. Say the percentage of households receiving the benefit from government is 34.7%
9 for natives and 31.9% for immigrants. Government beneficiaries were the highest in mixed
10 type of villages, 44.7%, followed by old settlers 37%. The reproductive span of women
11 belonging to immigrant villages is longer than the rest of women. Knowledge of family
12 planning method is the lowest amongst them. Permanent method of family planning is more
13 popular amongst native women, whereas temporary method appears to be popular amongst
14 immigrant women. When it comes to visiting health workers, a larger percentage of native
15 women visited doctors than immigrant women. 85.3% versus 66.9%, whereas a larger
16 percentage of immigrant women visited LHV's, Ladies Health Visitor or ASHAs. Proxy
17 indicators of quality of service suggestions received by health workers on healthcare by health
18 workers shows that the quality of service are better in immigrant villages than the native
19 villages. Then would Your Lordships please turn to page?
20

21 **JUSTICE M.M. SUNDRESH:** Mr. Divan, it's a general factor.

22

23 **SHYAM DIVAN:** Yes, I'm sorry.

24

25 **JUSTICE M.M. SUNDRESH:** Anything which is salient would become invasive. Anything
26 which is invasive will have a far reaching impact on the native species.

27

28 **SHYAM DIVAN:** I think you're right.

29

30 **JUSTICE M.M. SUNDRESH:** This is a universal frame law. The question is one of extent.
31 You take plant, you take bird, you take animal. This is a universal phenomenon. The question
32 is one of impact we have to see. Some will be less invasive, some will be more invasive. You
33 look it on a broader scale. It is bound to be there.

34

35 **SHYAM DIVAN:** It is...?

36

1 **JUSTICE M.M. SUNDRESH:** It is bound to be there. The question is one of impact. We
2 have to look at it now, what extent we can....

3

4 **SHYAM DIVAN:** It may or may not be there. For example, we have an Eastern border, and
5 we have a Western border. I am not suggesting that there are no problems on the Western
6 border, but I don't think this issue is arising on our Western border. Just keep it.... I'm
7 responding only to the observation made by the court. So I don't think there's an inevitability,
8 particularly having regard to the fact that at the end of the day, what Section 6A does...

9

10 **JUSTICE M.M. SUNDRESH:** Trying to say something from another point of view. A
11 stricter scrutiny maybe required at times. There is a need for stricter scrutiny. We have to look
12 in a larger perspective.

13

14 **SHYAM DIVAN:** I commend a strict scrutiny test over here. A very strict scrutiny test for a
15 variety of reasons. First, because what we are receiving at the end of it, which is citizenship.
16 Secondly, the fact that I mean, I'm not using the word discrimination at this point, but I'm just
17 suggesting to the court that there is certainly differential treatment between Assam and other
18 States. I've given that example of the same individual crossing into 2 States, etc. So we'll come
19 to that those will be important issues, but just responding to Your Lordship's point, I think
20 there are a likelihood of a range of responses from the state with regard to what can be done if
21 there is a large migrant population which goes across an international border. Our objection,
22 which is confined in this writ petition, is whether this statutory response by the Legislature
23 can really withstand constitutional scrutiny. Yes, there are many dimensions, including, of
24 course, elements of proportionality, etc. which will come in. But that's basically, I'm not for a
25 moment suggesting that we want to change or turn the clock back, etc. Can you grant
26 citizenship? Ultimately, that's the, and are you going to allow? I see what the Chief Justice has
27 observed that, look, maybe the fix really which is needed, is not assailing a constitutional
28 provision, but ensuring that there is better implementation of the Assam Accord. I'm not for a
29 moment suggesting that that ought not to be done, but ultimately at least for our purposes,
30 whether this type of a statutory scheme is really valid and sustainable. Having regard to look
31 at the impacts My Lords on this community and on the citizens who have been residing, lawful
32 citizens residing within the State. I mean, the impacts are just completely cutting across
33 economics, politics, culture. And now please go to page... Chapter 6, Conclusions on page
34 3032. This is the last set of conclusions. Please see, Chapter 6, 3032. Now this is landowning
35 pattern, use and transaction of natives and immigrants. Key findings: 94.95% of people
36 belonging to immigrant villages own land although size of holdings is relatively smaller than
37 natives. The total amount of land possessed by Assamese, exclusively speakers, was less than

1 that owned by speakers of Bengali and other native languages. 263 *bighas* versus 489 *bighas*.
2 Other native language speakers have highest amount of land 2203 *bighas*. The average size of
3 holdings are small among Muslims because of bigger population size. The total land possessed
4 by Hindu and Muslim communities is almost equal. Selling land is common amongst native
5 people compared to immigrant or immigrant origin people. Reasons for selling land amongst
6 native includes religious and cultural ceremonies and out of pocket expenditure in health.
7 People from immigrant origin offer several times higher prices for land purchase, financial
8 source for land buying are deposit, I think pooling money amongst relatives, remittance from
9 out migrants. So these are My Lords our essential... sorry? May I just request the Court to turn
10 to page 3047? Para 6.5. Now this is on the aspect of land. Please see discussion and conclusion
11 at 3047. The process of illegal immigration poses a particularly high risk to the state of Assam.
12 It may be possible that immigrants and descendants of immigrants will outnumber the
13 Indigenous population and in the next 30 years, and even the local Assamese population will
14 be reduced to a minority. This has created a fear among the indigenous people that they will
15 lose their identity in their own land, writes Kumar in 2016. The fear is twofold. One, with
16 accelerated immigration and their natural expansion, land is becoming scarce and two, lack of
17 vigilance against illegal occupation of government land, forest reserves, deforestation, grazing
18 and Tribal land encroachments and so on. Scarcity, in turn, is instrumental enough to raise
19 land price manifold. This, coupled with a simultaneous becoming poor of the natives and rich
20 of the immigrants, is tilting the purchasing power towards the latter. As the process matures,
21 it leads to accumulation on the part of immigrants and dispossession on those of natives. Land,
22 which is intrinsic to a community and an individual's identity, and it is something that holds
23 most dear to oneself and fears the loss of. However, when the loss expands to the level of a
24 community, one can apprehend dangers of cultural loss as well. Assam is undergoing a
25 situation where the natives are on verge of losing out on their native lands so much so that
26 they are deciding to leave the state. These spell fears of complete replacement of a societal level
27 and drain of Indigenous culture. The problems are thus, extremely grave and need immediate
28 attention. Land requires immediate constitutional protection. If controlling immigration is
29 not an immediate possibility, also, it is instantly important to take note of an action against
30 the illegal land dealings. It is also important to understand the reasons behind compulsions
31 that are making natives leave their homes. This is because native out migration is directly
32 making more space for immigrants in Assam.

33 And then there are other My Lords. So, this is it. This is as far as the present writ petitioner is
34 concerned, there's a couple of tables, I'll just take you to, but as far as the present writ
35 petitioner is concerned, this is the material we have placed. My Lords my learned friends have
36 other material also which they'll place, culled out from census reports, etc. If Your Lordships
37 could just have a look, if Your Lordship just goes to page 2949.

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CHIEF JUSTICE DY CHANDRACHUD: Page?

SHYAM DIVAN: 2949.

CHIEF JUSTICE DY CHANDRACHUD: What document is this?

SHYAM DIVAN: Same document My Lord. Your Lordships are on page 2949. There is a Table 2.1. Towards the foot. Population Trend of Assam and India, 1901 to 2011. Sorry... 1951. If Your Lordships sees the right hand side, the exponential growth rate.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Solicitor, if you can tell us not right now, you'll require official data. How many people actually got the benefit?

TUSHAR MEHTA: I have already....We are working on. During '66 to '71.

CHIEF JUSTICE DY CHANDRACHUD: Actually, it was up to 2013. If you see the rule, Rule 19, which was made under the Citizenship Rules 2009. If you have the same book Part 4 at page 25. Just see page 25.

TUSHAR MEHTA: Yes My Lord Rule 19 Your Lordship?

CHIEF JUSTICE DY CHANDRACHUD: Rule 19 or the Citizenships Rule 2009.

TUSHAR MEHTA: Yes, I have Rule 19 My Lord.

CHIEF JUSTICE DY CHANDRACHUD: The Central Government. Just read that.

TUSHAR MEHTA: The Central Government may for the purpose of subsection three of Section 6A, appoint an officer not below the rank of Additional District Magistrate as the registering authority for every district of the State of Assam. An application for registration under subsection 3, now this seems to have come in 13. Subsection 3 of Section 6A, shall be made in form number so and so by the person to the Registering Authority for the district in which that person is ordinarily, a resident, within a period of 30 days from the date of receipt of Order of the Foreigners Tribunal, declaring such person as a foreigner, provided that the Registering authority may for reasons to be recorded in writing, extend the same period to such further period as may be justified in each case by not exceeding 60 days. Then 2(a).

1 Inserted My Lord again, 13. A person who has been declared as a foreigner by the Foreigners
2 Tribunal prior to 16th July 2013 and has not been registered under Subsection 3 of Section 6A
3 for the reason of non-receipt of Order of Foreigners Tribunal or refusal by registering authority
4 to register such person as a foreigner on account of delay, may within a period of 30 days from
5 the date of receipt of the order passed by the Tribunal or from the date of publication of this
6 notification make an application for registration in form number so and so to the registering
7 authority of the district in which such person is ordinarily a resident provided that the
8 registering authority may for reasons to be recorded in writing, extend the same period My
9 Lord up to the, it is not exceeding...

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** It was basically the outer limit was 16th July
12 2013, plus 180 days.

13

14 **TUSHAR MEHTA:** Correct My Lords.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Right? So how many people were really, how
17 many people took citizenship in pursuance of this provision?

18

19 **TUSHAR MEHTA:** During this period but applying Rule 19.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** When 6A was in practical operations. 6A is still
22 in force.

23

24 **TUSHAR MEHTA:** Correct.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** But the practical operation of 6A comes to an
27 end, as we read it around 16th July 2013.

28

29 **TUSHAR MEHTA:** Correct.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** How many people got the benefit of it actually?

32

33 **TUSHAR MEHTA:** That path My Lord, we will immediately start working on.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Because if very few people got it, it's a clear
36 indicator that the rest are all illegal immigrants.

37

1 **SHYAM DIVAN:** Yes, it's all. Nothing is happening.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** How many people actually got the benefit of this?

4

5 **TUSHAR MEHTA:** My Lord, I'll give...We'll be able to My Lord get the details. My Lords,
6 may not be by tomorrow. We'll try our best. But maybe by day after.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Just check with the officers, how are they
9 interpreting this. Has 6A now come to an end completely, in the sense can somebody make an
10 application today and say that, look, give me the benefit of Section 6A or has that period come
11 to an end on the 16th July 2013?

12

13 **TUSHAR MEHTA:** I think My Lord it was a... my reading is it was a transition provision.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** And that's why that Rule 19 (2), says, 6A says
16 that, 'shall make an application to the registering authority in the manner prescribed'.
17 Prescribed is prescribed by the rules. And rule takes the cutoff date as the 16th July, 2013. For
18 those who did not receive the order detecting them to be a foreigner, it just gave them a period
19 of 30 days from the date of that notification dated 16th July, 2013. So, do we take it now? You
20 may have to look at it carefully. Right? Is it that now 6A, nobody can take the benefit of Section
21 6A today. Today means after 2013.

22

23 **KAPIL SIBAL:** Nobody can.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Nobody can, right. That's what our reading is
26 also. But, let the authorities who were implementing the provisions of Act tell us here. What
27 happens... suppose... Exactly. Suppose... my learned brother Surya Kant is asking, what
28 happens when the order of the Tribunal detecting a person to be a foreigner is after July 2013?

29

30 **JUSTICE SURYA KANT:** What would be the status of that person?

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** Can he say that, look...

33

34 **TUSHAR MEHTA:** He would be liable to be deported.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** No, he may say, I am entitled to the benefit of
37 6A.

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TUSHAR MEHTA: Provided he has established because...

CHIEF JUSTICE DY CHANDRACHUD: Provided other conditions are fulfilled. Provided other conditions are fulfilled. Because, if you see Section 6A... let's go to 6A again.

TUSHAR MEHTA: The operative date would be My Lord, his date of entry.

CHIEF JUSTICE DY CHANDRACHUD: No.

TUSHAR MEHTA: Between '66 to '71. Not date of detection.

CHIEF JUSTICE DY CHANDRACHUD: No, no, you see. Subject to the provisions of Sub-Section 6 and 7, 'every person of Indian origin'. So first thing, you have to be a person of Indian origin.

TUSHAR MEHTA: Your Lordships are on 6A?

CHIEF JUSTICE DY CHANDRACHUD: A3.

TUSHAR MEHTA: Yes.

CHIEF JUSTICE DY CHANDRACHUD: 'Every person of Indian origin, who A) came to Assam on or before 1st of January, 1966, but before 25th of March, 1971 from the specified territory. B) has since the date of his entry into Assam been ordinarily resident in Assam, and C) has been detected to be a foreigner'. So, if you are not detected to be a foreigner, you can't... 'then he shall register himself in accordance with the rules made by the Central Government in this behalf under Section 18, with such authority as may be specified, and if his name is included in any Electoral Roll or any assembly of parliamentary constituency enforced on the date of such detection, his name shall be deleted therefrom'. Then...

TUSHAR MEHTA: This is subject to 6 and 7. Of course.

CHIEF JUSTICE DY CHANDRACHUD: Now see 4. 4 says, 'a person registered shall have as from the date on which he has been detected to be a foreigner till the expiry of a period of ten years, the same rights and obligations as a citizen of India, including the right to obtain a passport and the obligations connected, but shall not be entitled to have his name included in

1 any Electoral Roll for any assembly or Parliamentary Constituency at any time before the
2 expiry of the period of ten years'. So, ten years you are struck off the Electoral Roll but
3 otherwise gets all the rights of an Indian citizen. Then what happens after ten years?

4 5. 'A person registered under Sub Section 3 shall be deemed to be a citizen of India for all
5 purposes as from the date of expiry of a period of ten years, from the date on which he has
6 been detected to be a foreigner'.

7

8 **TUSHAR MEHTA:** So, that is... My Lord, but he must have entered during that period.

9

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

11

12 **TUSHAR MEHTA:** '66 to '71.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Suppose, a person has entered between '66 to
15 '71, but is now detected to be a foreigner today, he can take the benefit of Section 6A then. But
16 then what is the meaning of that rule 19(2)?

17

18 **TUSHAR MEHTA:** Let me My Lord...

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** 19(2) operates in a different context. See, 19(2)
21 is a different rule. It says, 'as a person who has been declared as a foreigner by the Foreigner's
22 Tribunal prior to 16th July'. So, he has been declared to be a foreigner by a Tribunal prior to
23 16th July. but has not been registered for the reason of non-receipt of order of the Foreigner's
24 Tribunal or refusal by the registering authority to register such person as a foreigner on
25 account of delay, may within 30 days, from the date the receipt of the order passed by the
26 Foreigner's Tribunal or from the date of publication of this notification, make an application
27 for registration. So, what Rule 19(2) did was, if there was an order of the Tribunal declaring...
28 detecting a person to be a foreigner...

29

30 **TUSHAR MEHTA:** Who was not aware...

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** ...prior to 16 July, but you are not aware, it gave
33 a period of 30 days, from the date of this notification, to make an application for registration.
34 But this does not cover a situation where a person was not detected to be a foreigner before
35 16th June 2013 at all. Then see Subsection 6 of the Rule. Then 6A. Then 6A(6).

36

37 **KAPIL SIBAL:** 6A(3) applies when he is detected to be a foreigner.

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CHIEF JUSTICE DY CHANDRACHUD: 6(A) 6.

KAPIL SIBAL: 6A(3) applies when he is detected to be a foreigner.

CHIEF JUSTICE DY CHANDRACHUD: If he is detected. Yeah, that's a condition.

KAPIL SIBAL: That's the condition. There it's declared to be a foreigner. There is a difference between detection and declaration. The Commissioner will say, I don't think he...

JUSTICE SURYA KANT: The only effect will be the person who is detected as a foreigner, say after 16th July '23, he will have to apply for registration within the time limit given under Rule 19 (2).

KAPIL SIBAL: That's correct.

JUSTICE SURYA KANT: The benefit of extended time will be available under 2(A) only if he has declared before 19th June 2013.

CHIEF JUSTICE DY CHANDRACHUD: Yes, 19th June 2013.

KAPIL SIBAL: That seems to be the difference.

TUSHAR MEHTA: My Lord detection is different. Declaration is by the Tribunal.

CHIEF JUSTICE DY CHANDRACHUD: So, basically we have to now find out from the authorities how many people were detected to be foreigners before 19th June 2013.

TUSHAR MEHTA: And I would also like to see Your Lordships, why this '13 Amendment came, 2013?

CHIEF JUSTICE DY CHANDRACHUD: Why did it come. Exactly?

TUSHAR MEHTA: That's the object followed off. There must be something followed in the file. Why did this come? Maybe because there were people who were declared by the Foreigner's tribunal. But they were evading the service of order.

1 **CHIEF JUSTICE DY CHANDRACHUD:** Or was it the idea that 16th July 2013 is now the
2 cut off. Assam, you've given 15 plus 13, 28 years to implement the Assam Accord. Now no
3 further, no further...

4

5 **TUSHAR MEHTA:** No benefit of 6A. I'll call for the files today itself. Your Lordships, very
6 pertinent. We must answer.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Yes Mr. Divan.

9

10 **SHYAM DIVAN:** I just wanted to point out a page. And then we'll go. I'll go straight to the
11 Constitution and then the statute. I was pointing out Table 2.1 at page 2949. 2.1.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** That would be 2947.

14

15 **SHYAM DIVAN:** Yes. This just may have a few...

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** The fertility rate?

18

19 **SHYAM DIVAN:** Population trend in Assam and India. 1901-2011. Is that what Your
20 Lordships have? This is Volume 4, which I was on.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Population Trend of Assam in India.

23

24 **SHYAM DIVAN:** Yes. So this is from the Dr. Nandita Saikia and Dr. William Joe Report and
25 this may have some figures because it has '51, '61, '71, '91, 2001 and 2011 with regard to the
26 Assam population as well as the India population. The decadal variation and under the
27 heading Exponential Growth Rate of Assam and India where...

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Actually, if you see the last, which is two
30 columns, the last two columns. '61 to '71. The Assam population grew at the rate of 3.0% and
31 2.997%. That's right. The Indian rate of growth was 1.959 and 2.215%.

32

33 **SHYAM DIVAN:** Yes.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** So during that decade, 1961 to '71, the rate of
36 growth of population as Assam, was much higher than the Indian population rate of growth.
37 But then it dips. It comes to 2.1, then 1.73, 1.57.

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SHYAM DIVAN: So yes, you'll have noticed there is a gap that in 1981, there is nothing but of no census '81. So that is 20 years that they've taken.

CHIEF JUSTICE DY CHANDRACHUD: But now the Assam rate of growth is much lower than the national rate of growth.

SHYAM DIVAN: Yes, it is, relatively... You're right. Exponential growth..... It is lower than the national rate of growth at this point of time

CHIEF JUSTICE DY CHANDRACHUD: Before '61 also, the Assam rate of growth was much higher than the Indian rate of growth. 1.8% whereas the Indian rate of growth was 1.31, 1.2, -0.31.

KAPIL SIBAL: North East States which Your Lordships are not taking into account. Some was much bigger.

CHIEF JUSTICE DY CHANDRACHUD: Oh, it was much bigger.

KAPIL SIBAL: Yeah. It was divided then. That's why these figures My Lord.

SHYAM DIVAN: So this is the, I thought this table might just be of some assistance because Your Lordships had asked the question.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Advocate General when did the actual reconstitution of Assam take place?

DEVAJIT SAIKIA: 1971

CHIEF JUSTICE DY CHANDRACHUD: '71 was, what happened in '71-'72?

DEVAJIT SAIKIA: Two states were created. Meghalaya went out.

CHIEF JUSTICE DY CHANDRACHUD: Meghalaya went out.

DEVAJIT SAIKIA: Then Mizoram, Arunachal also went out. New states were created. Reorganization of the States, between that two years period.

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CHIEF JUSTICE DY CHANDRACHUD: '71 to....

DEVAJIT SAIKIA: Yes and Nagaland was earlier.

CHIEF JUSTICE DY CHANDRACHUD: When did happen? Oh, Nagaland was earlier.

DEVAJIT SAIKIA: Earlier. 1964 was Nagaland.

CHIEF JUSTICE DY CHANDRACHUD: First, it broke away from Assam. I mean, in the sense a new state was created. First a UT I think and then a state.

DEVAJIT SAIKIA: Arunachal was a Union Territory, then Mizoram was a Union Territory. But they were all bifurcated. They were earlier districts of Assam. Like Mizoram was Lushai district.

CHIEF JUSTICE DY CHANDRACHUD: They were districts. So Mizoram was a district of Assam.

DEVAJIT SAIKIA: District of Assam.

CHIEF JUSTICE DY CHANDRACHUD: And then what about Arunachal?

DEVAJIT SAIKIA: Arunachal was NEFA.

CHIEF JUSTICE DY CHANDRACHUD: NEFA. That's right.

DEVAJIT SAIKIA: So that became an Union Territory. Now in 85 they became a full-fledged state.

CHIEF JUSTICE DY CHANDRACHUD: Right.

DEVAJIT SAIKIA: 73, Tripura went out.

CHIEF JUSTICE DY CHANDRACHUD: Tripura went out.

DEVAJIT SAIKIA: Identically. Now the High Courts are also getting [UNCLEAR]

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SHYAM DIVAN: So may I request you now to just take up the Constitution.

CHIEF JUSTICE DY CHANDRACHUD: Yes. And kept on handing over these copies of this Constitution to us when the Article 370 hearings were taking place. Yesterday I was dictating something and I found on page 3, Gopal Sankaranarayanan, it's actually edited by him. That explained why he was very keen to...

SHYAM DIVAN: So My Lords we're just on the preamble for a moment. So "We the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic Republic and to secure to all its citizens". So I want to just emphasize this notion. Sorry. Justice Sundresh, has the Constitution.

JUSTICE M.M. SUNDRESH: What are you reading?

SHYAM DIVAN: No, I'm just reading the preamble.

JUSTICE M.M. SUNDRESH: Preamble. Very well.

SHYAM DIVAN: So in the opening phrase I want to just emphasize to secure to all its citizens. So even before we get into the definition of citizenship, etc., the preamble itself recognizes citizens, justice, social, economic and political liberty of thought expression, belief, faith and worship, equality of status and opportunity. Then this next phrase is important. "And to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation." So here I want to just emphasize the expression and to promote among them all fraternity. So I would respectfully submit that this fraternity, which we are speaking of, or which the Constitution speaks of in its preamble is really among the citizens. It's not some sort of a global notion of fraternity or fraternity, of humankind or mankind. Promote among them all, which is the citizens, fraternity. And then the next part is also very important. "Assuring the dignity of the individual and the unity and integrity of the nation." And this will, of course, take us to that other *Sonowal* case, etc. which we do. But these are so important values in terms of fraternity among citizens and keeping that in the context of unity and integrity of India. Now, please take up part two, Article 5. "Citizenship at the commencement of the Constitution". At the commencement of this Constitution, every person who has his domicile in the Territory of India, and (a), who was born in the territory of India or either of whose parent was born in the territory of India or (c), who has been ordinarily resident in the territory of India for not less than five years immediately preceding such

1 commencement, shall be a citizen of India. So Article 5, was brought in to effect under Article
2 394 or rather by Article 394 on 26th of November 1949. So, this is at the commencement of
3 this Constitution. The expression at the commencement of this Constitution in Article 5, would
4 relate, according to us, to 26 November 1949. And, then it provides that, 'every person who
5 has his domicile in the territory of India, born in the territory of India, either of whose parents
6 are in the territory of India, who was ordinarily resident, etc. shall be a citizen of India'. Now,
7 please see Section 6... Article 6, I'm sorry. Rights of Citizenship of Certain Persons who have
8 migrated to India from Pakistan. Notwithstanding anything in Article 5, 'A) person who has
9 migrated to the territory of India from the territory now included in Pakistan, shall be deemed
10 to be a citizen of India at the commencement of this Constitution if he or either of his parents
11 or any of his grandparents, was born in India, as defined in the Government of India Act 1935,
12 as originally enacted, and B) (1) in case where such person has so migrated before the 19th day
13 of July, 1948, he has been ordinarily resident in the territory of India since the date of his
14 migration or in the case where such person has so migrated on or after the 19th day of July,
15 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the
16 Government of the Dominion of India on an application made by him, therefore, to such officer
17 before the commencement of this Constitution in the form and manner prescribed by that
18 Government, provided that no person shall be so registered unless he has been a resident in
19 the territory of India for at least six months immediately preceding the date of his application'.
20 So in Article 6, at this point I want to emphasize, that there is a date which is prescribed in
21 terms of persons who have migrated to India, and that date under the constitutional mandate
22 as we read it is 19th July, 1948. Then Article 7 is rights of certain migrants to Pakistan. So with
23 your permission, I'm skipping that. Article 8 is, Rights of Citizenship of Certain Persons of
24 Indian Origin Residing Outside India. Then please see Article 9. Persons Voluntarily Acquiring
25 Citizenship of a Foreign State Not to be Citizens. 'No person shall be a citizen of India by virtue
26 of Article 5, or be deemed to be a citizen of India by virtue of Article 6 or Article 8, if he has
27 voluntarily acquired the citizenship of any foreign state'. And in this context, you may recall
28 that one of the questions which was also framed in terms of... by Justice Nariman was in the
29 context that, look, we don't recognize dual citizenship at all. But over here, without anybody
30 renouncing any citizenship, we are coming over here and conferring citizenship.

31

32 Article 10: Continuance of Rights of Citizenship. 'Every person who is or is deemed to be a
33 citizen of India under any of the foregoing provisions of this part, shall subject to the
34 provisions of any law that may be made by Parliament, continue to be such citizen'. Article 11.
35 Parliament to Regulate the Right of Citizenship by Law. 'Nothing in the foregoing provisions
36 of this part shall derogate from the power of Parliament to make any provision with respect to

1 the acquisition and termination of citizenship and all other matters relating to citizenship'. So
2 the... sorry.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** [UNCLEAR] of List 1 gives Parliament their...
5 that's the subject of power. Entry is 17, list plan of the 7th Schedule.

6

7 **SHYAM DIVAN:** Citizenship, Naturalization and Aliens. List 1 of the Union List.

8

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

10

11 **SHYAM DIVAN:** And also... apart from that, there is this power in Article 11 as well. So,
12 that's what we, as far as the Citizenship Act main provision is concerned. Now, I'll come back
13 to this. May I... I want to now go into part 3. May I do so tomorrow?

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** We'll do that tomorrow.

16

17 **SHYAM DIVAN:** Grateful.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** I think Mr. Divan, you have covered now the...

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21 **SHYAM DIVAN:** So, I'll just tell you My Lord. There are no surprises. So, I want to now just
22 go through a few articles, fundamental rights and Article 29 etc. Then I want to show Your
23 Lordships the provisions as far as political rights in terms of voting rights are concerned under
24 the Constitution. Then, I will take up the Citizenship Act. I will very briefly explain the
25 statutory provisions, the scheme of the Citizenship Act. We have also in an appendix, I might
26 just indicate because you will find... then I will of course focus on 6A. I might just indicate that
27 there are several cognate statutes that Your Lordships have seen. There is the Passport's Act,
28 Foreigner's Tribunal, then there are various Orders etc. For that we have actually prepared...
29 it is an appendix to the written submissions which are already filed. So, I will take Your
30 Lordships through this. And then we will try and give you a sharp focus. Just one permission
31 that I need. As far as fraternity is concerned, there are two or three decisions including some
32 discussion by Dr. Ambedkar etc. Your Lordship permits us, we will just file that additional
33 Volume. I have it physically of course. It will just be quicker.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** But email it to the...

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37 **SHYAM DIVAN:** No, we have done that already. But...

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CHIEF JUSTICE DY CHANDRACHUD: Oh, you have done that. Then, it is okay. Then it will be with us.

SHYAM DIVAN: Yes, yes.

CHIEF JUSTICE DY CHANDRACHUD: It is already with us. No difficulties. No problem. Just make sure that you give the replaced Volume 5(d), to the other side also by another 15 minutes. At least they can work on it in the evening.

SHYAM DIVAN: We'll do that.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Divan if you can please come and conclude by 12:00, tomorrow.

SHYAM DIVAN: Alright, I'll complete by 12:00.

CHIEF JUSTICE DY CHANDRACHUD: Then between 12:00 and 1:00, Mr. Choudhary and Mr. Hansaria ..

SHYAM DIVAN: My Lords it's very complex. I've seen this....

CHIEF JUSTICE DY CHANDRACHUD: What we'll do.... Of course. No doubt about it. We'll read your submissions today. We'll read your submission, but we have to have some time limit. So by 01:00, we'll conclude this side. We have to I mean. We don't want this matter to spill over beyond the vacation because once we are in the matter, we must conclude it because otherwise we lose the freshness of the matter.

INDIRA JAISINGH: May we know whether the last week could be miscellaneous, whether Your Lordship will continue with it?

CHIEF JUSTICE DY CHANDRACHUD: I am still collecting data about how many fresh matters there are. My problem is on Monday we had, I think 15 or 16 Benches. They were 204 adjournment slips on Monday. I'm constantly telling the Bar, please don't move these adjournments slips because you create the Benches and then 200 matters, just letters only. Ms. Jaisingh to answer your question. I'm just looking at how many fresh matters there are.

1 If we don't have enough fresh matters, because with the number of Benches we have now, the
2 disposal has been very high. So if we don't have too many fresh Benches we may just continue.

3

4 **INDIRA JAISINGH:** We continue with this and finish it before the vacation.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** By this evening I'll know how, what is the...

7

8 **TUSHAR MEHTA:** Realistically if our turn comes day after then it may perhaps not be
9 possible to conclude within a day. All of us.

10

11 **INDIRA JAISINGH:** Not all of us.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** But today is Wednesday... Tuesday. So
14 tomorrow. No. Tomorrow. Your turn will come in the afternoon tomorrow. We've given them
15 a deadline of 01:00.

16

17 **TUSHAR MEHTA:** Speaking realistically My Lord, I am speaking realistically.

18

19 **KAPIL SIBAL:** It all depends.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** I know you are not very confident of your own
22 abilities, but we are very confident about your ability.

23

24 **KAPIL SIBAL:** It all depends whether your optimism prevails or their optimism prevails.

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26 **CHIEF JUSTICE DY CHANDRACHUD:** We'll put you in at 01:00 tomorrow or 02:00.

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END OF THIS PROCEEDING