

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

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Writ Petition (C) No.274/2009

IN RE SECTION 6A OF THE CITIZENSHIP ACT 1955

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1 **CHIEF JUSTICE DY CHANDRACHUD:** Before we call upon the Solicitor General, as you
2 know, that 2023 is commemorates 50 years of the judgment in *Kesavananda Bharati*. On
3 24th April 2023, we had designed a web page putting together the relevant documents,
4 introduction, the key legal issues, arguments and the essence of the judgment in
5 *Kesavananda Bharati*. I thought, that to reach out to a wider section of our society, we
6 should translate it into Indian languages. So.... because language barriers prevent people from
7 really understanding the work of the Court. So, now this video has been translated into ten
8 Indian languages, you have them all before you. Of course English, Hindi, Telugu, Tamil, Odia,
9 Malayalam, Gujarati, Kannada, Bengali, Assamese and Marathi.

10

11 **VIJAY HANSARIA:** He was waiting for Assamese, My Lord.

12

13 **KAMAL NAYAN CHOUDHURY:** I was waiting for that.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** So, just a part of... and this is similar to our effort
16 to translate our judgments into...

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18 **VIJAY HANSARIA:** This must be historic.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** We've got about 30,000 judgments of the
21 Supreme Court from independence until now, which have been translated now into Hindi.
22 20,000 have been uploaded in the ESCR. So district courts across India, where work is
23 predominantly carried on in Hindi, can cite and refer to our judgements in Hindi, and this is
24 been done in all the scheduled languages. But Hindi, obviously, was faster because we had
25 some...

26

27 **VIJAY HANSARIA:** It will reach much larger section of the society, My Lord.

28

29 **TUSHAR MEHTA:** Yes, people otherwise used to know about the *Kesavananda Bharati*
30 case, even laymen, but without knowing that there was a big case, that's all..

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** Students you know otherwise... students for
33 instance, who are not in the very highly resourced colleges, they can't even access our
34 judgments. So now a student who wants to read a judgment in ESCR... In fact, I would request
35 the members of the bar who would like to just spend 5 minutes... You can Google search for

1 ESCR and Hindi and see. You have the same free text search facility in the ESCR Hindi as you
2 have in English. So, if you want to say 'land acquisition Justice Suryakant', it'll give you the
3 latest judgments or whatever, which you are doing as in English...

4

5 **TUSHAR MEHTA:** India must be the first country to have started. ..

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** No other country... We were talking to the Chief
8 Justices who had come before us to, for the NALSA event, and they were also saying that they
9 will do this in their jurisdictions. So we'll start with your side.

10

11 **KAMAL NAYAN CHOUDHURY:** Yes, I filed my case law compilation. in the morning.
12 That's about 6 odd page . I told Your Lordship. I just prepared that. And only 2 more pages,
13 Your Lordship of my notes, my written submissions of my learned friend, Mr. Somiran
14 Sharma, which is in Volume 1, Page 183.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Sharma's submissions are in Volume 1?

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18 **KAMAL NAYAN CHOUDHURY:** Volume 1, Page 183.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Thanks.

21

22 **KAMAL NAYAN CHOUDHURY:** My Lord, 180 is the submission of 3 pages of a junior
23 colleague of mine, My Lord [UNCLEAR].

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Page 180 of... ?

26

27 **KAMAL NAYAN CHOUDHURY:** Volume 1. My Lord.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Whose colleague, name?

30

31 **KAMAL NAYAN CHOUDHURY:** [UNCLEAR].

32

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

34

35 **SOMIRAN SHARMA:** A small note, additional note which I'll circulate today. Where, the
36 Expulsion Act which they submitted, which I'll... today... on Article 29. Just brief case.

37

1 **TUSHAR MEHTA:** My Lord, I would respectfully begin my assistance with two very
2 preliminary factual clarifications, My Lord.

3

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

5

6 **TUSHAR MEHTA:** Your Lordships are examining a limited question of Constitutional
7 validity of Section 6A, which by itself, confined to very few individuals between a particular
8 period of time. This examination has nothing to do with any other amendments in the
9 Citizenship Act, so that there may not be any misunderstanding, deliberate or otherwise, and
10 any further consequences. This is a very, very limited issue being examined.

11

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

13

14 **TUSHAR MEHTA:** My Lord, second. So far as the ground realities which are pointed out by
15 the Petitioners are concerned, that this influx of immigrants from foreign countries, they eat
16 away, to borrow their words, My Lord, the 'resources' which were otherwise available to them,
17 there are less opportunities, less job opportunities, there is demographic change, etc. My Lord,
18 all their concerns are true. The submission is, declaring Section 6A to be unconstitutional is
19 not the solution. There is a problem. There is a serious problem. There is an ongoing problem.
20 But 6A is confined to a particular period of time, and declaring it to be unconstitutional, would
21 not be the solution of this problem. Now, My Lord, I would first My Lord, start with Section
22 6A. Your Lordships have read and reread. But I would respectfully urge Your Lordships to go
23 through it the way I am inviting Your Lordships' attention to from that dimension, because
24 some of the very important phrases, My Lord, possibly were missed. Please see the title of the
25 section. Special... Your Lordships have that?

26

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

28

29 **TUSHAR MEHTA:** Special provisions as to citizenship of persons covered by the Assam
30 Accord. My Lord, this is only for the purpose of one state, and I'll point out when I deal with
31 Article 11 argument, that there can be a special provision, either dealing with particular set of
32 circumstances, the situation prevailing, the peculiar situation in a particular state, etc. etc. So
33 there is no gain saying, that you have applied only to one state. It is intended for one state.
34 Now please see the definitions My Lord, which are of very relevance, when Your Lordship goes
35 through how this section operated. My Lord, first definition in Section 6A is Assam. 'Assam
36 means the territories included in the state of Assam, immediately before the commencement
37 of the Citizenship Amendment Act, 1985'. So, whenever Your Lordships sees the word 'Assam'

1 in 6A, it would be without those parts who were earlier in Assam, like Mizoram, Meghalaya,
2 etc. etc. So, now we have a very limited geographical entity to deal with. Then second is,
3 'detected to be a foreigner'. There was some confusion on our side, that 'detected' would mean
4 ultimately declared by the Tribunal. My Lord, kindly see the definition? 'Detected to be a
5 foreigner means, detected to be a foreigner in accordance with the provisions of the Foreigners
6 Act, 1946 and the Foreigners (Tribunal) Order, 1964, by a Tribunal constituted under the said
7 order'. So whenever Your Lordship sees the definition of the expression 'detected to be a
8 foreigner', it would mean a judicial adjudication after giving an opportunity, that you are a
9 foreigner. That is number two. Number three, and this is... (c) and (d) are more relevant.
10 Definition is specified territory. 'Specified territory means, the territories included in
11 Bangladesh immediately before the commencement of the Citizenship Amendment Act, 1985'.
12 So it doesn't talk of the entire Pakistan, what was Bangladesh as on '85. So again, we have a
13 limited geographical unit, which is the subject matter of 6A. My Lord, (d) again restricts... I'm
14 sorry.

15

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

17

18 **TUSHAR MEHTA:** The definition in (d) again restricts the application of 6A a to very few
19 individuals who will be qualified to take benefit of 6A. Please see My Lords, 'Person shall be
20 deemed to be Indian origin if he, or either of his parents, or any of his grandparents, was born
21 in undivided India'. As Your Lordship goes through further, Your Lordships would find, that
22 6A applies only to people who can fulfil this condition. So for getting advantage or benefit
23 under 6A, I'll have to show that either, I was born in undivided India, or my father, or my
24 grandfather. So, Your Lordships have three categories. First the category in which it applies,
25 Assam, a very limited geographical area. The category from which the persons are permitted,
26 only Bangladesh, a very limited area. And, the persons who would be getting the benefit under
27 6A have to fulfil these conditions, and therefore, very less number of peoples; it may be in
28 thousands.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Now, how did the government... Undivided India
31 means, undivided India as defined in the Government of India Act of 1935.

32

33 **TUSHAR MEHTA:** That was defined under 2(b).

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** 2(b), but now under the Government of India
36 Act, undivided India comprised the...

37

1 **TUSHAR MEHTA:** Pakistan.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Pakistan. Bangladesh also.

4

5 **TUSHAR MEHTA:** Bangladesh was not there.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Of course, it was east...

8

9 **TUSHAR MEHTA:** It was part of Pakistan. Yes.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. Today's Bangladesh.

12

13 **TUSHAR MEHTA:** Yes, it was. Today's Bangladesh was a part of undivided India. But
14 undivided India is defined in the Citizenship Act itself.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** It is. I think 2(b)... Sorry, 2(h)

17

18 **TUSHAR MEHTA:** I'm sorry, 2(h). To mean undivided India as defined under the
19 Government of India Act. 1935.

20

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

22

23 **TUSHAR MEHTA:** Then (e), 'A person shall be deemed to have been detected to be a
24 foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunal) Order,
25 1964, submits its opinion to the effect that he is a foreigner to the officer or authority
26 concerned'. So there would be a judicial adjudication by a quasi-judicial Tribunal after giving
27 an opportunity of hearing. Meaning thereby, due process will be followed, and the person will
28 have to now... My Lord, this is a case where I want to be declared a foreigner. 6A are not the
29 cases where people would be arguing, "I am not a foreigner". People would be arguing, "I am
30 a foreigner, and therefore I fulfil these conditions and therefore entitled to be a citizen". That's
31 the distinction. This is a separate class by itself, because I get benefit of 6A only if I'm declared
32 to be a foreigner falling within the parameters of 6A.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Under the Foreigners (Tribunal) Order, 1964,
35 could an individual go to the Tribunal and say that, Well, now, in view of this 85 amendment,
36 declare me to be a foreigner"?

37

1 **TUSHAR MEHTA:** Yes, My Lord.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Or, does the show cause notice had to be issued
4 to him and...

5

6 **TUSHAR MEHTA:** Both ways. Both ways. Suppose somebody is... there is an apprehension
7 that he is a foreigner, then show cause notice would go that you are an illegal immigrant. He
8 will go to the Foreigners Tribunal and say that I fulfil 6A condition, and therefore I am a
9 foreigner. But I am entitled to the protection under 6A. If he is not...

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Before 1985, nobody would have gone to the
12 Foreigners Tribunal and say, "Please declare me as a foreigner."

13

14 **TUSHAR MEHTA:** Correct.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Because the consequence would be deportation.

17

18 **TUSHAR MEHTA:** Correct. Nobody would..

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** So before the '85 Act, there is no question of any
21 individual going.

22

23 **TUSHAR MEHTA:** Correct.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** But after the '85 Act, it becomes not a cause for
26 deportation, but it becomes a cause for protection, grant of Citizenship.

27

28 **TUSHAR MEHTA:** Your Lordships are right.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** So, is there a provision by which an individual
31 can go to the Tribunal and then say, "Okay, please declare me to be a foreigner" ? Or... how
32 does it work actually?

33

34 **TUSHAR MEHTA:** I'll show that. But, there are provisions under the Foreigner Act, he can
35 go. But that was the root cause of the agitation which started, because nobody was going for
36 being declared as a foreigner because the result would be deportation, and therefore, the influx
37 created... genuine concerns with the ethnic people, and that started. And the government was

1 faced with a situation whether to accept the entire demand of the people of Assam, or to permit
2 everyone to come. And I'll show, the government somehow brought the issue down to a middle
3 way. What they were saying was, that whoever has entered after '51, should be deported. That
4 was the demand of Asom Gana Parishad, Assam Students' Union, etc. That was the demand
5 when the government was negotiating. And therefore, this '67... '66 deadline came into being.
6 I'll show the history.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** We would also like to know, you might go about
9 it in your own way... what is... how are those dates taken? What is the logical basis for the
10 dates? 01-01-66 and 20-3-...

11

12 **TUSHAR MEHTA:** I will immediately answer it. My Lord, I'll immediately answered it. The
13 first date is, My Lord, '66. '66 is taken to be the date, because on that date an electoral roll was
14 prepared containing names of everyone, whether disputed or undisputed, natives or illegal
15 immigrants. And the elections took place in '67.

16

17 **JUSTICE M.M. SUNDRESH:** Is there any third category other than this? One is of Indian
18 origin, one is... other category is a foreigner. Could there be a third category?

19

20 **TUSHAR MEHTA:** My Lord, in the context of this matter there is none. Otherwise, there is
21 a category of OCI, Overseas Citizens of India, My Lord. But we are not concerned with that.

22

23 **JUSTICE M.M. SUNDRESH:** In that case, supposing if a show cause notice is issued, to
24 issue a show cause notice, you have authority, that's number 1. It should be followed by a final
25 order. There should be some element of adjudication, though not by a Tribunal, by the
26 government... the government machinery. Suppose he doesn't go. He doesn't choose to go
27 through the Tribunal. What is his step? What is to be done for the person.

28

29 **TUSHAR MEHTA:** No, My Lord...Then we will have to...

30

31 **JUSTICE M.M. SUNDRESH:** Even after show cause notices or after the decision arrived at
32 by the decision arrived at by the instrument of the State, if that person continues to be there...
33 or what do you do with that...

34

35 **TUSHAR MEHTA:** Deportation. Deportation.

36

37 **JUSTICE M.M. SUNDRESH:** Then what did you do?

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TUSHAR MEHTA: Detention and deportation, that's the statutory provisions. Unless he proclaims protection under 6A...

JUSTICE M.M. SUNDRESH: Now, he would acquire the status of foreigner.

TUSHAR MEHTA: Illegal immigrant.

JUSTICE M.M. SUNDRESH: hat is what I am asking you.

TUSHAR MEHTA: Yes. My Lord.

JUSTICE M.M. SUNDRESH: Could there be a third category there?

TUSHAR MEHTA: No, My Lord. He would be an illegal immigrant.

JUSTICE M.M. SUNDRESH: If he's a foreigner, then he will go before the Tribunal,

TUSHAR MEHTA: No, no illegal immigrant also can go in. This is how it works. I can be a foreigner, My Lord, if I go to US; I am going with a valid visa.

JUSTICE M.M. SUNDRESH: Therefore, there is another category called illegal immigrant.

TUSHAR MEHTA: That's the only category.

JUSTICE M.M. SUNDRESH: Now, that illegal immigrant will be declared as a foreigner...

TUSHAR MEHTA: Foreigner.

JUSTICE M.M. SUNDRESH: ... by the Tribunal.

TUSHAR MEHTA: By the Tribunal, who deserves to be or who is required to be deported.

JUSTICE M.M. SUNDRESH: Thereafter, the scheme of Act would come. 10 years and everything, it continues there.

TUSHAR MEHTA: Yes

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JUSTICE M.M. SUNDRESH: Now, supposing he says, "Yes, I'm a foreigner". Where is the need for determination by Tribunal in that case?

TUSHAR MEHTA: If he says My Lord...

JUSTICE M.M. SUNDRESH: We are also saying he is a foreigner, the Tribunal will, after adjudication holds he's a foreigner, then he will get the benefit.

TUSHAR MEHTA: There are other conditions. For 6A there are conditions. If, My Lord, suppose I am coming from Bangladesh and I admit that I am a foreigner... To answer that question, My Lord, there would be three contingencies, I'll not say category of individuals. Three contingencies. A person comes with a valid visa. Valid visa would be a time period specific visa, that 6 months. We all go with a particular time visa. If person overstays, then he is an illegal immigrant as per the definition. Second. He comes without any travel document or any valid visa, then he would be an illegal immigrant. Third would be, normal citizens, who have come... citizens from Bangladesh who have come, but who claim benefit under 6A. For 6A, even if they are illegal immigrants at the time of entry, they have to fulfil certain conditions. So this is the third category. We are concerned only with that third category.

JUSTICE M.M. SUNDRESH: This exactly appears to be their grievance. Now once you decide, once you hold, then after you issue [UNCLEAR] is that if you decide to status of a person, there has to be a follow-up mechanism on that. Now that is missing now.

TUSHAR MEHTA: No, My Lord, follow up mechanism under 6A is, conferment of citizen.

JUSTICE M.M. SUNDRESH: Now, question is, how many of those persons you deported now? Let us see how many of them are deported now? None. May be negligible or none. Now, they're neither here nor there, but they are enjoying the status of a citizen, now. That is exactly their grievance.

TUSHAR MEHTA: It's not with 6A. For 6A, that question doesn't arise.

JUSTICE M.M. SUNDRESH: That is actually the fault of 6A, because there appears to be a huge gap between an action taken by an instrument of the State and the proceedings before the Tribunal. There appears to be a huge gap. Actually, it facilitates. One is, on the challenge made by them. As we could understand from the argument is, on the effect of it, on what they

1 are saying. Now, what the situation has on ground is facilitated by the lacuna under the Act,
2 because neither you push them to the Tribunal, nor they are willing to go the Tribunal. This
3 appears to be the case for a maximum number of the persons.

4

5 **TUSHAR MEHTA:** Possibly Your Lordships are...

6

7 **JUSTICE M.M. SUNDRESH:** And they have been allowed to continue.

8

9 **TUSHAR MEHTA:** Your Lordships have, in contemplation, post '71 influx. Post '71 influx.

10

11 **JUSTICE M.M. SUNDRESH:** That is a different category.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Even pre '71. What my learned brother is saying
14 is, that there were people who benefited from the grant of citizenship by Section 6A, whether
15 section 6A(2) or 6A(3). Now, what happens to those who are not granted the benefit of
16 citizenship, but they are illegal immigrants and they continue to remain in Indian territory
17 without the grant of citizenship, and nothing was done about them at all?

18

19 **TUSHAR MEHTA:** That is post '71 entrance.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Actually you know Mr. Solicitor, there are two
22 categories which 6A covers. One, people who came before 01-01-66. Second, people who came
23 between 01-01-66 and 25-03-71. For those who came before 01-01-66, there were two
24 conditions. One, you must have come from the specified territory, namely, that the specified
25 territory means present Bangladesh. Second, you must be of an Indian origin. Indian origin,
26 as defined in the provisions of 6A(1)(d). Namely, both your parents or any of your
27 grandparents must have been born in undivided India. That's a second. And third, that you
28 have continued to be an ordinary resident of Assam since you came before 1966. So 6A(2)
29 contain these three provisions, right? 6A(3) covers the period 01-01-66 to 25-03-71. That
30 incorporates all these three conditions, plus a fourth condition, and the condition of detection.
31 The requirement of detection was not imposed on those who came into India... into Assam
32 prior to 01-01-66. That was imposed for this group of people who came in between 01-01-66
33 and 25 March '71. So the only difference between Sub-Section 2 and Sub-Section 3 is, that Sub-
34 Section 3 imposes one more condition, namely, the conditional of being detected by the
35 Tribunal.

36

1 **TUSHAR MEHTA:** So the people who came between '51 and '66, remained without any
2 adjudication.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** They remained without adjudication.

5

6 **TUSHAR MEHTA:** That's the section, My Lord....

7

8 **JUSTICE M.M. SUNDRESH:** To elaborate further, the second category of persons from '66
9 to '71, what the Act actually contemplates, is that, all of them should be made to go for the
10 Tribunal, or a machinery should have been developed by the government, to make sure all of
11 them shall get [UNCLEAR].

12

13 **TUSHAR MEHTA:** Your Lordships is right. I cannot dispute that. I cannot dispute that.

14

15 **JUSTICE M.M. SUNDRESH:** That appears to be the objective. That is missing. That only
16 triggered everything now.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** In that sense, you have a larger group of people.
19 What my brother is trying to point out is, I think...

20

21 **TUSHAR MEHTA:** ...other than 6A.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Exactly. You have a larger group of people who
24 came from the specified territory. In that larger group, a smaller group of persons who got the
25 benefit of 6A by actually becoming citizens.

26

27 **TUSHAR MEHTA:** My Lord, that was a part of the settlement which resulted into My Lord,
28 a Legislative enactment. That's the position. But, Foreigner Tribunals are functioning. Maybe
29 number of Foreigner Tribunals are required to be increased, the space requires to be increased.
30 And for post '71 influx, these steps need to be taken, I'm not shying away from it.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** Though the analogy is not exactly correct in this
33 phase, in *Ram Manohar Lohia*, Chief Justice Hidayatullah gave the example of concentric
34 circles. Concentric circles. You know, the bigger circle, the smaller circle.

35

36 **TUSHAR MEHTA:** Yes, yes.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Now, in this case, the bigger circle... to use
2 Justice Hidayatullah's analogy, the bigger concentric circle consists of people who came into
3 India from Bangladesh between '66 to '71. The smaller concentric circle within that larger
4 concentric circle, is people who get the benefit of citizenship under 6A. The area between the
5 larger and the smaller circle, is of people who came in between '66 and '71, but never got the
6 benefit of citizenship.

7

8 **TUSHAR MEHTA:** No, they would get. '66 to '71, they would get.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Everybody didn't get citizenship.

11

12 **TUSHAR MEHTA:** They would, My Lord.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** No. Everybody qualified to get citizenship, but
15 everybody didn't get citizenship, as a matter of fact. Unless there was a Detection Order, you
16 wouldn't get citizenship.

17

18 **TUSHAR MEHTA:** Correct, the detection. I understand the point.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Therefore, between that smaller circle and the
21 bigger circle, there was a group of persons who had come, who are still in India, but never got
22 citizenship.

23

24 **TUSHAR MEHTA:** I'll add one more.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** What happened to those people?

27

28 **TUSHAR MEHTA:** No, I'll just say. Everyone who came between '66 to '71, will have to be
29 given citizenship if declared to be foreigner by the Tribunal. The problem is, the problem is, if
30 the Tribunal takes a little longer decision for declaration or either way, the Tribunal decides
31 whether you are a foreigner or you are not a foreigner and there is a challenge, challenge to
32 the High Court, to this court, remand, etc., then that period, they are not getting the
33 citizenship, because it has to be dependent upon a final adjudication that you are a foreigner.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Because the difference between Sub-Section 2
36 and Sub-Section 3 is, under Sub-Section 2, Parliament decides that anybody who came before

1 01-01-66, would become a citizen, subject to fulfilling three conditions - Indian origin,
2 specified territory and ordinary residents.

3

4 **TUSHAR MEHTA:** Correct, My Lords.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** All right. Once you satisfy this, there is a deemed
7 confirmed into citizenship. He does not do it for those who came in between '66 and '71. He
8 says, detection by a Tribunal is necessary.

9

10 **TUSHAR MEHTA:** Correct, My Lords.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Now, whether it is a detection by the Tribunal,
13 those people would be conferred citizens under... citizenship under 6A(3), they get citizenship.
14 What happens with those who never got the benefit, because then they, their state is...

15

16 **TUSHAR MEHTA:** 'Who never got' may not be correct.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** So tell us broadly...

19

20 **TUSHAR MEHTA:** Can I take Your Lordships the way 6A, I read.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** The figures, the figures. How many people got
23 the benefit of 6A(2)? How many people got the benefit of 6A(3)? And third, to complete the
24 trajectory, how many people actually came into India between 1950 and 1970s? It's '71 from
25 the specified territory.

26

27 **TUSHAR MEHTA:** Some figures are available.

28

29 **JUSTICE M.M. SUNDRESH:** This appears to be the problem. Now, even for those who
30 have come before January 1966, how do you determine? Now, this adjudication by the
31 Tribunal, declaring them the foreigner, this is again one job of the Tribunal. See now, Tribunal
32 has got ample power to say, this person has come and settled here before 01-01-66. Therefore,
33 I am confirming the deeming provision.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** No, they don't do that now.

36

1 **TUSHAR MEHTA:** There is no adjudication. My Lord, the Chief Justice is right. There is no
2 adjudication.

3

4 **JUSTICE M.M. SUNDRESH:** They have not done that exercise. There must be
5 adjudication on that. Everybody would claim I have come before 01-01-66. How do you
6 determine this? Now all of them are immigrants and different periods, you have given a cutoff
7 period. Now, unless there is a mechanism to deal with this, it creates total confusion. That is
8 exactly what is happening. I would say that [NO AUDIO] ...if he has come before 01-01-66,
9 then he becomes the citizen.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Actually conceivably Mr. Solicitor, there may
12 have been one, because... there may have been one... you may be having the files and you may
13 also guide us on that. People who came in between... we are now talking about the conferment
14 of citizenship by an Act of 1985. Right? This all comes in in 1985.

15

16 **TUSHAR MEHTA:** Correct, My Lord.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Those who came in say, between 1951 onwards,
19 '51 to '66, the last of those immigrants had come in 19 years before the Act was enacted. The
20 first of those immigrants had come in 35 years before the Act was enacted. So possibly,
21 possibly, at that stage, Parliament felt that those who had come in that far back in terms of
22 antiquity, somebody who came in, in 1951, to ask that person to prove XYZ, was perhaps
23 humanly impossible. Therefore, Parliament possibly, made a classification, that people who
24 came in before 1966... because '66 is a very watershed... it is a watershed moment. '66 is a
25 watershed moment, because the electoral roll is prepared and '66 containing both illegal
26 immigrants as well as our..

27

28 **TUSHAR MEHTA:** Presuming that he was ordinarily residing there.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Therefore, they said after '66 you must
31 demonstrate that you are detected to be a foreigner. Before '66 Parliament made... really, we
32 must put it at that level, it was a policy...

33

34 **TUSHAR MEHTA:** It was a legislative policy based on the Assam Accord.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** It was a legislative policy that before '66, in 1985,
37 to tell a person that you show us what were your documents in 1955, would be humanly

1 impossible. 35 years later who would have any documentation to say that he was in
2 Bangladesh. Many of those people may have died, their children may have been involved, or
3 those people... the grandchildren, may have been involved. So possibly this was sort of... we
4 are trying to assess what was the reason for...

5

6 **TUSHAR MEHTA:** Possibly My Lord..

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** That's why the distinction between (2), because
9 before '66, possibly Parliament thought it's impossible to go into these...

10

11 **TUSHAR MEHTA:** Possibly My Lord, the person's name being included in the voters' list
12 was taken to be a *prima facie* evidence that he has been ordinarily residing in India. And based
13 upon which, Assam Accord was made. That alright, '51 to '66, since your names are there, don't
14 give any proof. You will be conferred with citizenship. But '66 onwards... '66 onwards, you will
15 have to establish that you came here... came from Bangladesh, and you are entitled to the
16 citizenship, for which three conditions are laid down. And dates are taken from the Assam
17 Accord, and the relevance of the date I'll just point out. My Lord, first is the date of '66. 1st of
18 January '66. The reason is, on that day, the electoral roll for the election of '67 was published.
19 So, whoever is there in the electoral roll, was possibly presumed to be ordinarily residing, and
20 must have come prior to '66, that is number one. Number two, second date is 25th March '71.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** That is the date on which... 26th is when
23 Bangladesh declares independence.

24

25 **TUSHAR MEHTA:** No. Bangladesh declared independence on 26th.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** That's what I'm saying.

28

29 **TUSHAR MEHTA:** But, our date is 25th.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Right, that is the eve of the declaration.

32

33 **TUSHAR MEHTA:** No, there is a reason.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** What is the reason for that. Tell us.

36

1 **TUSHAR MEHTA:** Yesterday we tried and found out. On that... there was a communique by
2 the then Honourable Prime Minister of Bangladesh, Sheikh Mujibur Rahman, to the
3 Government of India.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** Just one second, we'll take it down. To the
6 Government of India...

7

8 **TUSHAR MEHTA:** Yes, My Lord. It's *communiqué*,

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** This is 8th February '70. This is 8th February,
11 '72?

12

13 **TUSHAR MEHTA:** '72, but there is an undertaking given, My Lord, which is mentioned by
14 him in this. Please come to the second page of this document.

15

16 **KAPIL SIBAL:** Page 9398 at Volume 4A. This communication.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** What is the page, Mr Sibal?

19

20 **KAPIL SIBAL:** Page 9398, Volume 4A.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Can any of the juniors just check the page.. any
23 junior on the both sides can check it for a moment, in case there is some error.

24

25 **KAPIL SIBAL:** It's a joint *communiqué*, based on the end of the

26

27 **TUSHAR MEHTA:** This is the one.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** It appears, that the refugees started coming
30 around the 25th of March into India. This is all history. What happened? What is the trigger
31 for 25th of March?

32

33 **TUSHAR MEHTA:** That is mentioned My Lord..

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** I saw that. "The Prime Minister of Bangladesh
36 solemnly affirmed his resolve to ensure, by every means, the return of all the refugees who had

1 taken shelter in India since 25 March 1971, and to strive by the means to safeguard the safety,
2 human dignity and means of livelihood'.
3

4 **TUSHAR MEHTA:** Yes.
5

6 **CHIEF JUSTICE DY CHANDRACHUD:** What was the trigger? You just find out. You can
7 do a little [UNCLEAR] in history. What was the trigger in Bangladesh on 25 March 1971?
8 Something would have happened in history. There must have been some incident. There must
9 have been...
10

11 **TUSHAR MEHTA:** This is not on record, but I must assist Your Lordships correctly, the
12 way I am instructed. My Lord, there was a direction by General Yahya Khan, that on 25 March
13 '71, there would be Operation Searchlight. So meaning thereby, an invasion or attack on the
14 Bangladeshis. That was the date. That date is confirmed. That date is in public domain. And
15 therefore, possibly the Prime Minister... the Honourable Prime Minister,
16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Operation Searchlight.
18

19 **TUSHAR MEHTA:** Operation Searchlight. And therefore, the Honourable Prime Minister
20 of Bangladesh said that, on 25th thereafter, we'll take everyone back. It was a solemn assurance
21 given by the sovereign of one country to sovereign of another country.
22

23 **KAPIL SIBAL:** Sorry to interrupt. If my learned friend permits me. There's a Bangladesh
24 Citizenship (Temporary Provisions) Order, 1972, which is 617, Volume 4, which says, that it
25 shall come into force on the 26th of March 1971, and in terms of this, all those whose father,
26 grandfather was born in the territory is now [UNCLEAR] Bangladesh and who were the
27 permanent residents of such territories on the 25th of March 1971.
28

29 **TUSHAR MEHTA:** That's the sequel of *communiqué*. I was coming to that. That's correct.
30 That's because of the sovereign assurance given by one sovereign to another. And that is how
31 My Lord, the Bangladesh declared.. I mean passed this order. So that is 25th March. But, the
32 25th March is historical, not on record or official stand.
33

34 **CHIEF JUSTICE DY CHANDRACHUD:** I was just doing a Google search right now. It
35 appears that Operation Searchlight by Gen. Yahya Khan was, 25th March, 1971.
36

1 **TUSHAR MEHTA:** As a matter of fact, this was mentioned in the CIA's confidential report,
2 which they declassified after 30 years, and that's available even as a CIA report. Not that CIA's
3 report is to be taken by the courts as a gospel truth, but there also Your Lordship would find.
4 That is the relevance. Otherwise, it's an odd date. It can be 1st January or something. But, 25th
5 March had a significance, it had relevance.

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

8
9 **TUSHAR MEHTA:** My Lord, now please come to Sub-Section 2. I am re-reading Section 6A,
10 only to point out that now... of course, this would have relevance on the statute book, but it
11 has outlived its utility, because nobody would be alive who can take benefit, except the
12 progeny. But that is Section 3 which Your Lordships would be dealing with separately. Please
13 see 2. 'Subject to the provisions of Sub-Sections 6 and 7... 'not very relevant subsections... 'all
14 persons of Indian origin...' So first condition. '...who came before the first day of entry or
15 January '66', so my entry should be before that.

16
17 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

18
19 **TUSHAR MEHTA:** '...to Assam'. Meaning thereby, the present day Assam. Even if somebody
20 comes to Meghalaya, would not get the benefit. '... from the specified territory'. So not from
21 anywhere in Pakistan, only from the Bangladesh part of the Pakistan. '...including such of
22 those whose names are included in the electoral rolls used for the purpose of general elections
23 to the House of People held in 1967, and who have been ordinarily resident in Assam, since
24 dates of their entry into Assam shall be deemed to be citizens of India as from the first day of
25 January '66'. Now '85, and we are 40 years down the line. So first difficulty is, we are also not
26 getting much about factual record, what was the reason, but it appears to be logically, that if
27 my name is in the voters' list at least one fact is established, that I was an ordinary resident of
28 the region. Whether i am originally Indian or I have come from that part of Pakistan, which is
29 now under 6A, has to be Bangladesh.

30
31 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

32
33 **TUSHAR MEHTA:** Then 3, 'Subject to provisions of Sub-Section 6 and 7, every person of
34 Indian origin...' again the same definition, '...who came to Assam.' So entry will have to be
35 established. '...on or after 1st day of January '66.' So after the voters list was over... post voters'
36 list period, '...but before 25th day of March '71 from specified territory.' So not from Pakistan,
37 from Bangladesh. '...and', it is and, not or, '...and has since the date of his entry into Assam,

1 been ordinarily resident in Assam.' So from the entry till the date of decision. So not few days
2 stay, continuous stay would be necessary. '...and has been detected to be a foreigner.' To avoid
3 arbitrariness, judicial intervention, findings by a quasi-judicial body, etc, '...shall register
4 himself.' He's not directly entitled. '... shall register himself in accordance with the rules made
5 by the Central Government in this behalf under Section 18, with such authority, hereinafter in
6 this Section, Sub-Section referred to as the Registering Authority, as may be specified in such
7 rules and...' Now the 2nd... 3rd... rather I'm sorry 4th embargo. '...and if his name is included
8 in any electoral roll for any Assembly or Parliamentary constituency, in force on the date of
9 such detection, his name shall be deleted therefrom.' So... because he was disenfranchised.
10 Those who came after '66, they were permitted to stay without any right to participate in the
11 electoral process. That they got only after 10 years of this decision. Then explanation. 'In the
12 case of every person seeking registration under this Sub-Section, the opinion of the Tribunal
13 constituted under the Foreigners (Tribunal) Order, holding such person to be a foreigner, shall
14 be deemed to be sufficient proof of the requirement under Clause (c) of this Sub-Section, and
15 if any question arises as to whether such person complies with any other requirement...' please
16 note this, any other requirement. My Lord, 'any other requirement' means (a) and (b), because
17 Tribunal would declare only (c). The registering authority shall.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** (a) and (b) and also whether he is of Indian
20 origin.

21

22 **TUSHAR MEHTA:** Exactly. I'm grateful.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** The third, because that is before (a) and (b).

25

26 **TUSHAR MEHTA:** Yes. If such opinion i.e. Tribunal's opinion... 'If such opinion contains a
27 finding with respect to such other requirement, decide the question in conformity with such
28 finding'. Tribunal had the option to give that finding, then it binds the authority. But (2), 'If
29 such opinion does not contain a finding with respect to such other requirement, refer the
30 question to a Tribunal constituted under the said Order having jurisdiction'. My book also had
31 typographical, printing error, everyone... we have this problem of... bare act contains several
32 printing errors. Your Lordships bare act also must be...

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, yes, it is like that.

35

36 **TUSHAR MEHTA:** ... having this printing error. 'Order having jurisdiction in accordance
37 with such rules as the Central Government may make in this behalf under Section 18, and

1 decide the question in conformity with the opinion'. Then registering authority, who is an
2 executive, will not decide. He will refer it to the Tribunal, that sir, you have not dealt with this
3 other two conditions. Please deal with it and My Lord, will act accordingly. 'A person registered
4 under Sub-Section 3 shall have, as from the date on which he has been detected to be a
5 foreigner, and till expiry of a period of 10 years from that date, the same rights and obligations
6 as a citizen of India.'

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** I'll tell you something very interesting. Even the
9 India Code, I just did a search here right now. India Code, which is the authorized repository
10 of Indian statutes, that also says hanged jurisdiction. So it's not the private printers... the
11 private publishers...

12

13 **TUSHAR MEHTA:** They have taken it from this official.

14

15 **UNKNOWN:** The Professional's has the correct, My Lord.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** The Professional has the...

18

19 **TUSHAR MEHTA:** He is right. My Lord. Universal has the... I didn't want to name the
20 publisher, but Universal has this mistake.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** The repository in India.

23

24 **TUSHAR MEHTA:** So My Lord, the political solution of a problem... Sometimes Executive
25 is confronted with some problem which needs to be resolved by using Legislative means, that
26 was... that alright, your argument that from '51 onwards everyone should not get citizenship,
27 you come down to '66, which they agree. And from '66, the contention was, that this large
28 number of influx... and when I show the figures.... The figures, the time at which the figures
29 are shown, the population of Assam was, say, one crore, and the influx was 10 lakhs. So 10%
30 influx changes right of political participation and right of political decision making, right of
31 jobs. All of them didn't... After 71, at least, nobody came alone because of any war situation
32 there. Up to '71 it can be understood, because of economic beneficial position in this part of
33 India. In India, the land holdings were very wide, very huge land holdings, the population
34 density was very less, the job opportunities were less. So they came for economic reasons.

35

1 **CHIEF JUSTICE DY CHANDRACHUD:** They challenged both Sub-Section 2 and Sub-
2 Section 3, right? They're challenging the entirety. Their argument seems to have been more
3 focused on 3 by Mr. Divan. They challenged the entirety.

4

5 **TUSHAR MEHTA:** Yes, they have challenged both. But I'm just justifying this was
6 possibly... because what My Lord transpired in the meeting between the Prime Minister and
7 the AASU Leaders... because I have read the Honourable Prime Minister travelled to Assam
8 and held meetings. So, this appears to be a *via media*, which is found out, that you don't insist
9 on '51, you come down to '66. Then '66 onwards, we will restrict it up to '71, because 6A says
10 whoever comes after '71, would be an illegal immigrant. No benefit, no nothing. Only
11 Foreigners Tribunal would decide and he will be deported. But their contention that they are
12 changing the political scenario, political representation, etc. Therefore, this *via media* was
13 founded for 10 years, namely, till the decision of Foreigners Tribunal is taken, you will not
14 have a right of participating in the election. And that right came only after 10 years of the
15 declaration.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** What is the date of the surrender of the Pakistani
18 army, actually, when Lt. General Niazi...

19

20 **TUSHAR MEHTA:** December 1971. General Niazi and Jagjit Singh Aurora on our side. And
21 one Mr... Gen. Jacon. Yes, he was also instrumental.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** He was Major General.

24

25 **TUSHAR MEHTA:** Yes. No. Major General was Jagjit Singh Aurora, but Mr. Jacob was, I
26 think... I'm sorry

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Lt. General Jagjit Singh Aurora, and if I'm not
29 mistaken Major General Jacob. Jacob was a Major General.

30

31 **TUSHAR MEHTA:** Jacob... Jagjit Singh Aurora was General Officer in Command of Eastern
32 Command. GOC in command, as they say.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** So interestingly, I mean it may or may not have
35 any bearing on Constitutional validity, the cutoff date, which was chosen, 25th March, 1971,
36 excludes all those who came in during that period of flux in Bangladesh, because the cutoff
37 date is not 16th December 1971, it's 25th March 1971. So, anybody who came in... that's right,

1 that's what he just said. But therefore, anybody who came in after Operation Searchlight, has
2 been excluded from the benefit of such citizenship. So the Bangladeshi influx which took place,
3 is a result of the genocide in Bangladesh, they have been excluded by this...

4

5 **TUSHAR MEHTA:** Because the Prime Minister of Bangladesh said that we will take them
6 back .

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** They had a cutoff of 25th March 1971.

9

10 **TUSHAR MEHTA:** Because the Honourable Prime Minister of Bangladesh, said that we'll
11 take everyone who came after 25th March '71, back into our country. My Lord, rest about 6
12 and 7. I'll just orally say. Somebody can say that I don't want to get benefit of this, that's all.
13 Nobody is questioning 6 and 7. And My Lord, it is very clear from the Section, that after '71, all
14 are illegal immigrants subject to being so declared by the...

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Now we've got the statutory scheme. Now you
17 can go straight to their argument and address the submission.

18

19 **TUSHAR MEHTA:** If Your Lordships... there was a question My Lord about Rule 19, which
20 came into force in 2013. I wanted to answer that question, so that I can complete the
21 chronology. Your Lordships have seen, that 6A will be operated as per the rules framed under
22 Section 18. Because, the first impression of everyone was that, what happened till 2013? Even
23 the rules are 2009. So there was no vacuum. That's all I wanted to say; nothing maple or
24 possibly turn on that. But just to complete the history and the chronology. My Lord, Section
25 6A says that this process will be done as per the rules made under 18(e)(e), that is confined to
26 6A. 8(e)(e), if Your Lordships can see. It says 18, but (e)(e) My Lord I have found. It's not entire
27 18, but 18 (e)(e) was also amended .

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** And that came in by the same amending act.

30

31 **TUSHAR MEHTA:** Yes. Now, immediately thereafter, citizenship rules were framed in
32 1956... were amended, I'm sorry. Citizenship rules were already in existence since 1956, but
33 they were amended to bring it in conformity with newly inserted section 6A. If Your Lordships
34 would like to have the date, they were amended on 15th of January 1987 to give effect to Section
35 6A. That Your Lordships would find, Volume IV-C. Volume IV-C, page 3. It starts at page 3.
36 None of us either side, are required to go through... IV-C (Roman). Please come to internal
37 page 8... PDF page 8. PDF page 8. 16D was inserted.

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CHIEF JUSTICE DY CHANDRACHUD: Just a second.

TUSHAR MEHTA: Your Lordships, may allow me to read, My Lord, so that it would give some assistance why 2013 amendment was required to be brought in. 'Reference to Tribunals. Where in the case of a person...' Your Lordships... My Lord, Justice Pardiwala?

CHIEF JUSTICE DY CHANDRACHUD: **Where** are you reading? What are your reading? From that Volume IV-C you are reading?

TUSHAR MEHTA: IV-C, page 8. These are the rules of '56, amended in '87, to deal with 6A situation. 'Wherein case of a person seeking registration under Sub-Section 3 of Section 6A...' I may not read. There is a reference provision, because nothing turns on that. Then 16(e) is jurisdiction of the Tribunal, which says, that it would decide the reference under Sub-Section 3 of Section 6A. Last line, My Lord, of page 8. Now please see 16(f). 'Registering authority for the purpose of section 6A(3), and form of application for registration'. Please come to 2, Sub-Rule 2. 'An application for registration under Sub-Section 3 of Section 6A of the Act shall be filed, in Form 23 by the person with the registering authority for the district in which is ordinarily resident, within 30 days from the date of his detection as a foreigner, where such detection takes place after commencement of the rules, or within 30 days of the appointment of registering authority for the district concerned, where such detection has taken place before the commencement of the rules 1986.' There was a time limit prescribed for registration. If I am declared a foreigner, and therefore entitled to the benefit of 6A, I'll have to get it registered within 30 days. The government, from the file it appears... and I have those documents also, that there were concerns that it is not possible to do it within 30 days. So, though we are declared, we have an order of the Tribunal, we are unable to get ourselves registered.

CHIEF JUSTICE DY CHANDRACHUD: So therefore, then they brought in the 2013 amendment to Rule 19, and said, now, 30 days after we issue this notification of these...

TUSHAR MEHTA: That's the reason. Just to complete this is, the note of the then Home Secretary, giving the justification for amendment in 2013. Nothing may turn on that . But just to complete.

CHIEF JUSTICE DY CHANDRACHUD: See, now we get some data. 'It is pointed out that as on July 2012...'

1 **TUSHAR MEHTA:** My Lord, I'll read. 'It is pointed out that as on July 2012, 32,537 number
2 of persons were declared illegal immigrants, pertaining to '66-'71'. There are other data also in
3 my affidavit, I'll show, My Lord. '...stream by the Foreigners Tribunal Of this 12,914 number
4 of persons have registered themselves with the registering authority. Remaining persons,
5 could not register with the registering authority due to variety of reasons, including expiration
6 of limit of period of 30 days for registration. As a result, a number of cases have been filed
7 before the Guwahati High Court indicating reasons, as to how they could not register with the
8 registering authority, and praying that limit of the days for registration be relaxed. It would be
9 difficult to repatriate or deport these category of persons to Bangladesh, in view of the
10 understanding between the two countries, that persons who came to India up to 24th March,
11 '71 would not be repatriated to Bangladesh. Eventually, these persons will become stateless
12 persons, if they are not allowed to register with the registering authorities. This is a genuine
13 difficulty being faced, not only by the State Government, but also by the identified persons. In
14 view of, the above stated positions it is proposed, that rules may be relaxed, as suggested in
15 para 5, of the notes on page 1920...' 'n' is note section, Your Lordship knows.... so and so'. So
16 this is how the amendment came. First, 2009 Rules came, and thereafter they were amended
17 in 2013.

18
19 **CHIEF JUSTICE DY CHANDRACHUD:** One very important circumstance which this
20 note of the Home Secretary indicates is that, as we found from the joint *communiqué*, which
21 was issued in February 8, 1972, Bangladesh assumed unconditional responsibility to take back
22 those who had come into India after 25th March 1971. Implicitly meaning, therefore, that
23 people who had come into India prior to 25 March 1971, there was no question of deporting
24 these people, because Bangladesh would not be willing to take them back. If they were not
25 conferred citizenship, they would be rendered stateless, because they would not be going back
26 to Bangladesh, and therefore, it was, in that sense, a solemn obligation which was undertaken
27 by India in terms of an understanding with Bangladesh, that pre 25 March 2071 would
28 remain... and then you must also read it in the context of Entry 10 of List 1, which says 'Foreign.
29 Affairs'. All matters which bring the Union into relationship with a foreign country.

30
31 **TUSHAR MEHTA:** Correct.

32
33 **CHIEF JUSTICE DY CHANDRACHUD:** And therefore the power under Article 72, the
34 Executive power would also extend to Entry 10. In that sense, and international understanding
35 between the then Prime Minister of India and the Prime Minister of Bangladesh, that they
36 would take back post 25 March 1971. Now what would you do? These were not illegal. They
37 couldn't be pushed out of Indian territories as illegal immigrants,

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TUSHAR MEHTA: So extend the time and give them more time to get themselves registered.

CHIEF JUSTICE DY CHANDRACHUD: So, therefore the tacit understanding was, that they would remain in India. You couldn't push them out back to Bangladesh, because that was not the obligation which was assumed by Bangladesh. Therefore, instead of maintaining them as stateless persons in India, at least bring them into the mainstream by conferring the citizenship or not.

TUSHAR MEHTA: Just My Lord, as a proposition of law, that does not arise here. That doesn't arise here, My Lord.

CHIEF JUSTICE DY CHANDRACHUD: '71. Post 1971 there is no question of... 6A doesn't...

TUSHAR MEHTA: Bangladesh agreeing to take them back , not agreeing to take them back...

CHIEF JUSTICE DY CHANDRACHUD: They don't have...

JUSTICE M.M. SUNDRESH: They agreed to take them back... post '71

CHIEF JUSTICE DY CHANDRACHUD: [UNCLEAR] into the zone of citizenship.

TUSHAR MEHTA: So they are illegal immigrants.

JUSTICE M.M. SUNDRESH: That's correct.

CHIEF JUSTICE DY CHANDRACHUD: And therefore, at some point we'd like to know from the government, what is the government doing in respect of those persons? Because their grievance, with regard to those...

TUSHAR MEHTA: That is something really serious issue. We have said what we are doing, but something more is required to be done. Because, there is demographic change and there are several problems. Therefore, I started by saying, that their concerns, their problems... their problems are not being... I'm not trivializing. I'm saying they are correct problems. I am only defending 6A, That's all.

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JUSTICE M.M. SUNDRESH: The communication by the Honourable Prime Minister of Bangladesh also acknowledges that. There are scores of others who entered illegally thereafter. [UNCLEAR] taken back

TUSHAR MEHTA: Whenever they say... whenever Bangladesh... the sovereign of Bangladesh says that before 25th March '71 we will 'take them back', it implicitly, implicitly gives an assurance, that after that nobody will be permitted to cross over. That's how, My Lord, the international relations operate.

CHIEF JUSTICE DY CHANDRACHUD: Also, Mr. Solicitor, there's one other dimension, that pre 25 March 1971 would comprise of two groups - people who have been granted citizenship. Everybody before '66 becomes a citizen, right? After 01-01-66 everybody qualifies for being considered for the grant of citizenship provided conditions [UNCLEAR]. Those who are granted citizenships, would become part of our mainstream. Those who are not granted citizenship, you can't push them out anyway, because Bangladesh is not going to take them back.

TUSHAR MEHTA: Then, it's not necessary for them. Their agreement is not necessary. If they are not granted citizenship, it would not be possible. That contingency may not arise, because if he's unable to show that he is a foreigner, then he is a citizen of India. If suppose, somebody suspects that so and so is a Bangladeshi. I go to the Foreigners Tribunal and say, "No, you are not a foreigner". That means, I am a citizen. If I am a foreigner before '71, I'll get the protection of 6A and if I am declared a foreigner after 25th March '71, then I'll have to be, as per law, pushed back to Bangladesh. My Lord, please now come to some facts and figures, Volume 3. Affidavit filed by State of Assam. It starts at page 969. There are several affidavits filed. This is the affidavit dated 5th December 2014, page 969, Volume 3. There are several affidavits filed by both Assam, State of Assam and the Central Government, but I'm not troubling Your Lordships with other contents which are not... 969, affidavit dated 5th December, 2014. 969. My Lord, the relevant part would be page 982. I'm not going to read anything. I am just giving the details which were placed before Your Lordships, and whatever is relevant for the present purpose and whatever may answer My Lords' very pertinent queries, I'll show. Because affidavits are very long affidavits, etc. Now, please see page 982. Your Lordship gets page 982. Number of cases... My Lord the Chief Justice? 'Number of cases before the Foreigners Tribunal and their disposals. The details of cases pertaining to January 1, '66 to March 24, '71, referred to the Foreigners Tribunal between '86 to 31st July 2014', because this affidavit is filed in December 14. The figures are as on that date. 'Total number of...'

1 Volume 3, I'm sorry. PDF page is 982. There is a chart. There is a hazy chart. It's scanning of
2 a Xerox possibly, that's why it's hazy. 'Total number of inquiries initiated for period relating
3 to January '66 to March '71 - 5,20,438. Number of inquiries completed - 5,22,326. Number of
4 cases referred to the Foreigners Tribunal - 42,000. Number of cases disposed of by the
5 Tribunals - 31,105. Number of persons declared foreigners for period relating to January 1,
6 '66 to March 24 - 32,969. Number of persons whose names were sent for deletion from the
7 electoral rolls, the same number'. Your Lordship knows they are disenfranchised from the date
8 of the declaration. 'Total number of persons registered with the registering authorities - 13,914.
9 Total number of persons declared as *bona fide* Indian citizens for periods relating to January
10 1, '66 to March 24, '71 - 27,078. Total number of...'

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** ... who got citizenship as of the date of this
13 affidavit, is about 27,000?

14

15 **TUSHAR MEHTA:** Yes.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** And, 11,000 cases are pending.

18

19 **TUSHAR MEHTA:** 11,000 cases are pending. And details of cases pertaining to... the
20 difficulty is...

21

22 **JUSTICE M.M. SUNDRESH:** What about... [NO AUDIO]

23

24 **TUSHAR MEHTA:** That is next. That is next. That is alarming and...Next chart is not covered
25 by 6A.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Date on which it was inserted and came into
28 force?

29

30 **TUSHAR MEHTA:** 7-12-1985, My Lords.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** The chart from '86 onwards?

33

34 **TUSHAR MEHTA:** Yes, My Lord. Now, My Lord, the second chart is alarming. Details of
35 cases pertaining to the period from March 25, '71 referred to the IMD Tribunal'. There were
36 earlier...

37

1 **JUSTICE J.B. PARDIWALA:** There were Tribunals. Some Tribunals were there...

2

3 **TUSHAR MEHTA:** Earlier there was IMD Tribunal, which was set aside in *Sonowal*
4 judgment, with which Your Lordships are not concerned, but there was a Tribunal. '... to IMD
5 Tribunal and subsequently transferred to Foreigners Tribunal, after scrapping of IMDT Act.'
6 Scrapping means it was declared unconstitutional. '...between '83 to July 31, 2014. Total
7 number of inquiries initiated on or after March 25, '71 - 7,67,927. Then (2), Number of
8 inquiries completed under IMD Act and total - 7,44,820. Number of cases referred to IMD
9 Tribunal or Foreigners Tribunal - 4,19,258. Number of cases disposed of by the IMD Tribunal
10 or Foreigners Tribunal - 1,87,294. Number of persons declared foreigners, illegal immigrants
11 on or after March 25, '71 - 35,000. Number of persons whose names were sent for deletion
12 from electoral rolls - 35,969. Then total number of persons declared as *bona fide* Indian
13 citizens on or after March 25, 1971 - 64,594'. I'll just clarify this. My Lord, they may be falling
14 within 6A, but their decision comes late. Foreigners Tribunal took decision late, or there may
15 be a challenge before the High Court, Supreme Court, remand, etc. etc. 'The total number of
16 cases where alleged persons are not traceable, i.e., 53,000', because they enter from Assam
17 and spread overall. Mr. Divan was, that's why pointing out, that they have settled in Delhi,
18 some of them have gone as far as Jammu and Kashmir, etc. 'Then total number of persons
19 deported - 2447. Total number of cases pending before the Tribunals - 2,31,000'. This needs
20 to be... now subsequent affidavit says that we have increased the number of Tribunals, etc. But
21 something more definitely needs to be done. I'll not defend the undefendable. Now Your
22 Lordships, may come to the Centre's affidavit dated 5th December '14.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** This affidavit of Joydeep Shukla's is of what
25 date?

26

27 **TUSHAR MEHTA:** 5th December 2014.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Earlier one which you showed us, right? Earlier
30 one, the previous one.

31

32 **TUSHAR MEHTA:** Both are of the same date. 5th December 2014, and Centre's affidavit is
33 5th December 2014.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Where do we get that?

36

1 **TUSHAR MEHTA:** Same volume, 1182. PDF page 1182. I'll just glance. Take Your Lordships
2 through, just glancing. Just see the heading, that's all. 'Action plan for detection and
3 deportation of illegal migrants in Assam and effective guarding of India-Bangladesh border'.
4 Then detection of illegal migrants. 'Procedure for detection of pre '71'. It's substantially the
5 same, we have pointed out procedure for detect. I'm going fast. It is not necessary, therefore.
6 'Procedure for detection post '71', what is the procedure put in place. 'Then deportation of
7 declared illegal migrants. Then strengthening of Foreign Tribunals'. That Your Lordships
8 would find at 1185. My Lord Justice Sundresh? Then next page, 'Detection of names of
9 declared illegal migrants from the... I'm sorry, deletion of names of declared illegal migrants
10 from electoral rolls. Then National Register of Citizenship in Assam. Then effective border
11 guarding for check and control of illegal immigration'. It's a porous border. Now fencing is
12 done, there is guarding, there is light shade so that infiltration.... it still continues, which is we
13 sought to be prevented. Rest, is the steps which we have taken, My Lord, to ensure that there
14 is less infiltration.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** This data is of 2014. What is the present
17 situation? How many matters are pending before the Foreigners Tribunals? We need that
18 from the State of Assam. The Advocate General can give us up to date data. Because, that will
19 indicate... 2,13,000 cases are pending and 2,31,000 in 2014. What is the progress? How many
20 have been disposed of? What is the action which we are taking? Because now, post '71, 6A
21 Constitutional validity is one aspect,

22

23 **TUSHAR MEHTA:** Yes.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** But, Mr. Solicitor, as you also say, what Mr.
26 Divan has argued, what Mr. K. N. Choudhury has argued and Mr. Hansaria, you also not
27 denying the gravity of the problem, as it exists.

28

29 **TUSHAR MEHTA:** It is a serious problem.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** So, we want to know from the Government of
32 India, what are we doing now? Because, this is not just about changing the demographics of
33 Assam. That's one aspect; the cultural aspect which Mr. Divan highlighted, but also the burden
34 on the existing resources.

35

36 **TUSHAR MEHTA:** Resources. Those who should go to Indian citizens, are now being
37 unauthorizedly shared by someone who comes only to share the resources.

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CHIEF JUSTICE DY CHANDRACHUD: People go from here to Mumbai.

JUSTICE M.M. SUNDRESH: Because affidavit says it is to be complete...

TUSHAR MEHTA: There is one affidavit of 2018, but latest...

CHIEF JUSTICE DY CHANDRACHUD: People got citizenship in the pre-01-01-66 category. How many people have got citizenship, say, with the cutoff date is 01-01-66. How many people have got citizenship 01-01-66 to 25-03-71? And the third period is post 25- 03-71?

TUSHAR MEHTA: The question of citizenship...

CHIEF JUSTICE DY CHANDRACHUD: That doesn't arise at all. Because post 25-03-71, the government has to be extremely serious about what is happening on the ground. They may succeed on their Constitutional challenge, They may not succeed. But, what they are saying is a great deal of substance, not only in relation to Assam, but for the rest of the country as well.

TUSHAR MEHTA: Because, they are not coming here because they are persecuted or there is some problems.

CHIEF JUSTICE DY CHANDRACHUD: How many people have entered post 25 March, 1971, approximately? Because, do we have any estimate of that in India? How many matters are pending that we post to the Advocate General? How many matters are pending before the Tribunal? How many Tribunals do we have? Because frankly, we will deal with the issue of Constitutional validity, which is something which we have to consider. I mean, that's a very weighty argument. But assuming everything that we affirm for the validity of 6A, what are we doing post 1971?

TUSHAR MEHTA: As a matter of fact...

SHYAM DIVAN: There is one other aspect which you may consider. See, our point also is that the very problems with the solicitor general is projecting, also happened in the context of Bengal, West Bengal.

1 **CHIEF JUSTICE DY CHANDRACHUD:** We are going to come there. Also, when you're
2 answering now, I think we've understood the broad lay of the matter. What we now like to
3 know from you is, the Article 14 argument. The cultural impact, etc., we'll hear you very briefly.
4 But your point really will be that look, this was basically political policy, and therefore, this is
5 something which is factored in. But we'd like to hear you on that. But, most important, most
6 important, why did you single out Assam, when we found yesterday, that West Bengal shares
7 a much larger border with Bangladesh? And therefore, presumably, the extent of illegal
8 migration into West Bengal would be as or even more significant? Or, did you have any... did
9 we have any cogent data to indicate, that the extent of illegal migration into West Bengal was
10 minimal as compared to this, therefore it left it alone.

11

12 **TUSHAR MEHTA:** No, we don't have. And this is the answer, which I'm going to give My
13 Lord.

14

15 **JUSTICE M.M. SUNDRESH:** What I'm saying is that, now after Assam, this illegally
16 immigrant will get into more... more and more they'll get into West Bengal now . What is going
17 to.... see therefore, we want to know, how do you propose to deal with this? At least after '71.
18 After '71.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** And Mr. Solicitor, there are a couple of... You
21 have to look at it at different layers. First, there's a layer of legality, that we deal with these
22 illegal immigrants who are here with due process of law, because we're not some authoritarian
23 country that you just pick them up and treat them and use them... show the power of ...

24

25 **TUSHAR MEHTA:** And the due process is the Tribunal.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** We have to follow process of law, because we are
28 a democratic country governed by the rule of law, and there is a grave danger that we might
29 actually pick up... And if we don't follow the rule of law, genuine people may be picked up and
30 thrown out. That's something we must also... But more important than also, what are we doing
31 from here onwards for the future? What is the Government of India doing in terms of ensuring
32 that you have an impermeable border? How much investment is Government of India taking
33 into ensuring that the border becomes, in that sense, impermeable? What are the Executive
34 steps which the Government of India is taking? To what extent is the border being fenced? We
35 understand that parts around the terrain is impossible to be fenced also. But what are the
36 steps, we want to know. Because this is a crucial problem, independent of 6A.

37

1 **TUSHAR MEHTA:** 1126, My Lord, may give some answer. This is again as of 2014. This is
2 regarding border fencing to My Lord, Justice Surya Kant's query, My Lord.

3

4 **JUSTICE M. M. SUNDRESH:** [NO AUDIO]

5

6 *apropos*, My Lord... Yes, that is given in the affidavit. Yes. What is the process, what is the
7 procedure followed. That is undertaken... that is undertaken, My Lord. They are being
8 subjected to the Foreigners Tribunal, jurisdiction data, My Lord, we will provide.

9

10 **JUSTICE M. M. SUNDRESH:** [NO AUDIO]

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Has Government of India... does Government of
13 India, have data? And Mr. Solicitor, we understand the problems of all this as well, because,
14 culturally you know, you are dealing with people, who look exactly like you, they speak the
15 same language, they dress the same way. So what ... what is the data with the government?
16 What is the extent of the illegal immigration post '71?

17

18 **TUSHAR MEHTA:** I'll just point out.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Do we have that data?

21

22 **TUSHAR MEHTA:** This is my answer, not the government's answer, My Lord, because I
23 could not get it from the record. So far as Bengal is concerned, the general discussion, which I
24 have with the officials is, that Assam faced the problem and raised it at a level, for the simple
25 reason, that culturally, Bangladeshis and Assamese, were so different that it was easy to
26 identify. In case of Bangladesh, their language, their food habits, their dressing, everything,
27 they mingle very easily, number one. Number two, because of that, maybe there is no uproar,
28 or something. But that does not justify the government not taking steps, I must admit.

29

30 **KAMAL NAYAN CHOUDHURY:** With great respect to my learned friend, regarding races,
31 there's lot of differences, one can make out.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Between?

34

35 **COUNSEL:** Predominantly Assam is a

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** No, he is agreeing with you. He is talking about
2 Bengal, not Assam.

3

4 **TUSHAR MEHTA:** I am talking about Bengal.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** That is why, I thought I will clarify it. I got your
7 point. We realized what is in your mind. He was talking about Bengal. But tell us now what
8 have we...

9

10 **TUSHAR MEHTA:** What I'll do is, My Lord...

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** One way, Mr. Solicitor, their argument is, strike
13 it down under 14. You didn't do to West Bengal what you have done to Assam. You have an
14 equal illegal immigration into West Bengal, you have just let it be. Let it be in the sense, they
15 are liable to be deported. You are granting them legality in Assam. One, is the 14 argument.
16 But beyond that now, we are going beyond the validity argument.

17

18 **TUSHAR MEHTA:** Correct, My Lord.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** What are we doing? Why? First, we want to
21 know, why did we... What was the reason which prompted parliament to exclude West Bengal
22 from the grant of citizenship? We are not saying that they should have granted it. But, what is
23 it that led us to believe, that this problem was peculiar to Assam and not to... Argument could
24 not have been from the Indian perspective that there was an agitation in Assam.

25

26 **TUSHAR MEHTA:** Cannot, cannot.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** The argument from the Indian perspective is, we
29 have to do what is good for the nation, right?

30

31 **TUSHAR MEHTA:** Yes, My Lord.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Why did you... Why did we leave West Bengal
34 alone? Second, what is the extent of illegal migrations between 1971 onwards, and what is the
35 position as West Bengal, and what is the government doing in West Bengal now?

36

1 **TUSHAR MEHTA:** My Lord, I must admit. Right now, My Lord, my preparation was on the
2 validity part and legal part, but matter may not end today. So we'd like undertake to file an
3 affidavit of the authorized officer latest by tomorrow or day after, on all questions because...

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** We would like an updated, an updated statement
6 from Government of India. Let the Home Secretary also apply his mind to this.

7

8 **TUSHAR MEHTA:** Yes.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** What is the Government of India doing in terms
11 of safeguarding the border, in terms of border fencing? What is the updated position? How far
12 is the border fencing risen? Because it's also crucial in the sense of... we get all these matters
13 which come up before us every day about the....

14

15 **TUSHAR MEHTA:** Foreigners Tribunals...

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** No, no. About the people seeking bail, because
18 when they have been caught cattle smuggling, so called cattle smuggling, involvement with
19 the... we have also had cases, you will recall, of our own paramilitary forces officers being
20 involved with that.

21

22 **TUSHAR MEHTA:** Yes.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Those people have been proceeded again. So all
25 this is a very serious problem.

26

27 **TUSHAR MEHTA:** Now My Lord, I undertake that Home Secretary will file an affidavit.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Is Bengal a party to these proceedings?

30

31 **TUSHAR MEHTA:** I think all states are parties.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** All States are , right.

34

35 **KAMAL NAYAN CHOUDHURY:** State of Tripura also has detailed the same problem. In
36 fact Tripura...

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** One second. We will come to Tripura in a
2 moment. Who is appearing for the State of West Bengal?

3

4 **VIJAY HANSARIA:** State is a party, My Lord.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Have you filed an affidavit?

7

8 **TUSHAR MEHTA:** All states are parties.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Divan, Mr, Choudhury has West Bengal filed
11 an affidavit in this proceeding?

12

13 **SHYAM DIVAN:** I will just check.

14

15 **VIJAY HANSARIA:** I will just check.

16

17 **TUSHAR MEHTA:** My Lord, state is a party My Lord. But I assure Your Lordships, the
18 Home Secretary will file an affidavit on all these concerns.

19

20 **JUSTICE M.M. SUNDRESH:** We would like to have an affidavit from them also. From the
21 State of West Bengal also, their official stand we want.

22

23 **TUSHAR MEHTA:** Certainly. The reason is this, forget anything else. Your Lordships are a
24 Constitutional Court protecting fundamental rights of every citizen. My Lord, this would be a
25 part of fundamental rights of large section of citizens, in large... in several states where their
26 natural resources, their other resources are being shared only on economic grounds.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Now, Mr. Solicitor, let's do rapid fire now on your
29 argument to your response to Constitutional validity. You've shown us the statutory scheme,
30 right? Just tell us now, what is your answer to the Constitutional challenge?

31

32 **TUSHAR MEHTA:** Yes. Please come to my written submissions, Volume 2A

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 2A?

35

36 **TUSHAR MEHTA:** 2A and as Your Lordships have said rapid fire, I'll skip a lot what is...
37 they may be treated as a read, My Lord. But... to page 8. I am skipping whatever is not relevant,

1 immediately. Enactment of section 6A, the history, the background behind it. There was a
2 debate in Parliament. Your Lordship may not get much on that, except that (a)... I'll just
3 paraphrase it so that Your Lordships may not have to read. (a) Assam Accord provided and
4 the government has agreed, that is one. Number two, at the relevant point of time, the war,
5 and therefore people have come. And most important, Your Lordships would get at page 10,
6 because there was an argument of Article 11, that this amendment is virtually amending Article
7 4 and 5... 5 and 6. That was dealt with. When 6A was being framed by the then Home Minister.
8 Please see on page 9. Shri. S.B. Chavan, the then Home Minister, page 10, page 10. Your
9 Lordship gets? Justice Pardiwala? I am also referring to Article 11 of the Constitution, which
10 clearly lays down that, 'Government is within its own powers to enact legislation conferring or
11 terminating the citizenship, any of the rights which a citizen can possibly have. So this is a very
12 wide power which has been provided for. There is no question of any infirmity under the
13 Constitution or any other law for the time being in force'. Then Your Lordships can skip the
14 rest, and come to page 11.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** That little part PDF 2, that part in the middle.
17 We have made a commitment.

18

19 **TUSHAR MEHTA:** Yes, that's what I say.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** That is a little important.

22

23 **TUSHAR MEHTA:** 'We have made a commitment to stop a large number of infiltrators who
24 have been crossing over. The average rate comes to about 2,400 per month. All these people
25 have been trying to cross, and we have been trying to push them across the border. There is no
26 denying the fact that the people have come. Whatever Bangladesh Government might say, I
27 can say without any fear of contradiction, that in fact, a large number of people have come, but
28 they had come in a very peculiar circumstances, and that is why we could not possibly afford
29 to take very harsh attitude, and that is why conciliatory attitude had to be taken, and that is why
30 legislation is there'. This says about post... pre '71. But, admitting the position that this position
31 has continued even after '71.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** What does the Statement of Objects and Reasons
34 of the bill introducing Section 6A? What did the Statement of Objects and Reasons say?

35

36 **TUSHAR MEHTA:** To give effect to the Assam Accord. I tried. Your Lordships might not
37 get any assistance from there. Therefore, we tried and searched the debates of Parliament.

1 Then, at the foot of page 10, the bold part, Shri Bhadra Pratap Singh. 'This unprecedented
2 situation was not contemplated by 1955 Act. Therefore, this present amendment is trying to
3 solve that situation, and Parliament is competent under Article 11 to enact this kind of a
4 legislation'. Then My Lord, Mr. P.S. Sangma is relevant at page 11. He was MoS in Department
5 of States. 'Members from this side and the other side, including I think Mr. Babu Reddy
6 himself, have pointed out that Parliament is competent to decide on all matters relating to
7 citizenship, and this has been very clearly, very expressly, unambiguously put forward in
8 Article 11 of the Constitution. Therefore, the Constitutionality of this bill cannot be doubted.
9 The power of Parliament to enact such a bill cannot be challenged at all'. On 11, let me not
10 complete my submissions in five minutes. a)... There is an interesting Constituent assembly
11 debates when 11 was being framed. They say that we have to leave it to the Parliament how...
12 Article 4... Article 5 is...

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Why don't you formulate it?

15

16 **TUSHAR MEHTA:** It is there. It is there. But I'll just orally point out and then show Your
17 Lordships. Article 5 and 6 talks of deemed citizenship, that, if you are born or if you have come
18 before a particular date... Article 6 and 7, I stand corrected... then you are deemed to be a
19 citizen of India.

20

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

22

23 **TUSHAR MEHTA:** That was when the constitution was framed. Subsequent to the
24 constitution, there may be situations where the nation needs to confer citizenship on various
25 other grounds, or take away somebody's citizenship on certain grounds, and therefore, Article
26 11.

27

28 **JUSTICE SURYA KANT:** Acquisition and Termination.

29

30 **TUSHAR MEHTA:** Yes. So, 6 and 7 are deemed citizenship when Constitution came. 11 is
31 for future contingencies. Second... this is on textual reading only. If 6 and 7 were to be frozen
32 in time, as argued by the Petitioner, then why have 11 at all? Then 6 and 7 is complete code.
33 There cannot be any additional reasons for conferment of citizenship, or there is no provision
34 for taking away citizenship.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** To which their answer would be that, Article 6
37 and 7 is Pakistan specific, that it basically deals only with Pakistan, right?

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TUSHAR MEHTA: Correct, My Lords.

CHIEF JUSTICE DY CHANDRACHUD: So the purpose of 11 is broader. 11 covers... Article 11 would not cover only Pakistan, it would cover the entirety of the...

TUSHAR MEHTA: Entirety of the world. There may be several citizens. For example...

CHIEF JUSTICE DY CHANDRACHUD: The argument was that once... which you have to deal with. Which is that, once the date of 19th July 1948 is chosen in Article 6 for a conferment of deemed citizenship, then the argument was that you can't, by the exercise of an ordinary legislative power, breach that day the 19th July, 1948. Because Bangladesh, 25 March, 1971 and prior there too, Bangladesh was a part of Pakistan. The area of Bangladesh now, specified territory, is a part of Pakistan, that'll be East Pakistan. Now, therefore the argument is that, you can't, in respect of a period covered, when the specified territory was in fact a part of Pakistan, you can't confer by deeming citizenship, by deeming an act of citizenship, because 6A also is deeming citizenship.

TUSHAR MEHTA: Confer but not deemed.

CHIEF JUSTICE DY CHANDRACHUD: You can't, yes, you can't, because you are making a deeming fiction. And that deeming fiction can't transgress the limitation which has been prescribed since Article 6. That's the argument.

TUSHAR MEHTA: The answer Your Lordships would get from the Constituent Assembly debates, which I have quoted, relevant part of only Article 11. Because, the theme is...

CHIEF JUSTICE DY CHANDRACHUD: One answer to that, which we put to them was, that Article 6 deals with the position as of the date of the adoption of the Constitution.

TUSHAR MEHTA: That's what...

CHIEF JUSTICE DY CHANDRACHUD: It basically dealt with the historical context of partition. Article 6... the answer probably would be that Article 6 does not tie down the hands of a future Parliament to decide to confer citizenship...

TUSHAR MEHTA: The contingencies is not contemplating...

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CHIEF JUSTICE DY CHANDRACHUD: ... in Article 6. Article 6 can't be regarded as an exhaustive universe. That would be the simple answer.

TUSHAR MEHTA: Your Lordship would see Article 6. They say at the commencement of the Constitution. So... And they , say very categorically while drafting the Constitution... Article 11, that we may not be able to conceive of situations which might arise in future.

JUSTICE M.M. SUNDRESH: That's a declaration of citizenship for a group of people under the Constitution. That's all.

TUSHAR MEHTA: At that point in time, under those circumstances.

JUSTICE M.M. SUNDRESH: That's all. That's all.

CHIEF JUSTICE DY CHANDRACHUD: To accept their argument would mean, that Article 11, the ambit would be to all countries other than Pakistan.

TUSHAR MEHTA: Yes.

CHIEF JUSTICE DY CHANDRACHUD: Because that would be, perhaps a narrow, reading of the power which is conferred on the Parliament in Article...

TUSHAR MEHTA: Another thing, My Lord. Apart from the fact, that Article 11 starts with nothing in the foregoing provisions...

CHIEF JUSTICE DY CHANDRACHUD: It's a *non obstante* clause.

TUSHAR MEHTA: Initially, when it was introduced as a draft, it said 'further provision governing citizenship', which was deleted consciously. Just give me 5-10 minutes. Please come to page 12... 14 of my written submissions. 13 starts with 'drafting history of part 2'. Entire part 2, but we are more concerned with Article 11. Para 37. Does Your Lordships get me? 37. 'On 29th April '47, while moving Clause 3, Sardar Patel requested that the following should be added to Clause 3, thereby empowering the Union. Further provision governing Union citizenship may be made by laws of the nation'. This was, the beginning of Article 11. This was conceived by Sardar Patel. Thereafter, Your Lordships may directly come to... it was referred

1 to a committee. Please come to para 44. And the redrafted clause by the committee is at para
2 44. It went before three different committees, this Article 11 issue. Thereafter Shri B. N. Rao.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** The Constitution of the committee, it had
5 Vardhacharya.

6

7 **TUSHAR MEHTA:** All were eminent, My Lord please see.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** It had Mittal, Alladi Krishna.

10

11 **TUSHAR MEHTA:** Kanhaiyalal Munshi came.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Munshi and Dr. Ambedkar.

14

15 **TUSHAR MEHTA:** And, Dr. Ambedkar himself. We were fortunate to have this
16 Constitution, because of people of this eminence and intellect. Then what they suggested was,
17 'Every person born in India Union, in the Union and subject to its jurisdiction, every person
18 either of whose parents was at the time of such person's birth, a citizen of Union, and every
19 person naturalized in the Union, shall be a citizen of Union. Further provision regarding the
20 acquisition and termination of Union citizenship may be made by the law of the Nation'. Still
21 'further' word remained. Thereafter, it was redrafted, and Your Lordships would find at page
22 44 Para 3 only. 'Further provisions governing the acquisition and termination of Union
23 citizenship may be made by Union law', that is Parliamentary law. Then 45. 'Meanwhile, the
24 Union and Provincial Constitution Committee at their joint sitting on June 5, appointed a sub-
25 committee to consider in detail, the effect of June 3 plan'. That is Mountbatten plan; it's
26 referred to as June 3 plan. 'The joint sub-committee met on June 8 and decided that the
27 question of nationality and citizenship in the Union should be re-examined by the ad hoc
28 committee in light of the plan. In the report submitted by the Assembly on July 4, the Union
29 Constitution Committee incorporated that citizenship provisions contained in the
30 memorandum without any change, except that the word Union was replaced by the word
31 Federation'. Your Lordships can skip that and please see, the committees is quoted, 'in this
32 connection' Page 16 top. 'In this connection, the committee quoted with approval the view of
33 Calcutta Law Journal. It is not possible to define exhaustively the conditions of nationality,
34 whether by birth or naturalization by the Constitution. If certain conditions are laid down by
35 the Constitution, difficulties may arise regarding the interpretation of future legislation which
36 may appear to be contrary to or to depart in any way from them'. The exact argument which is
37 made. 'It would, in our opinion, therefore, be better, to specify who would be citizens of India,

1 Indian Union at the date when the Constitution comes into force, as in the Constitution of the
2 Irish Free State, and leave the law regarding nationality to be provided for by the legislation
3 by the Indian Union in accordance with accepted principles of private international law'. But
4 this gave birth to Article 11. It is now in the evolution process. Please see para 48. 'When the
5 draft was presented', but I'll not read. There were 140 amendments to the Constitution. Dr.
6 Rajendra Prasad was pleased to say, that you have it as a composite thing, don't go one by one,
7 but not relevant. Please come to para 50. Am I with you My Lord?

8

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

10

11 **TUSHAR MEHTA:** Para. 50. 'The Constituent Assembly debates with regard to citizenship,
12 and especially Article. 11'. It was Draft Article 6. So somewhere there would be a reference of
13 Article 6, but that is present 11. '...is illustrative and clearly points towards an overarching
14 power being available to the Parliament. The following are the debates. Dr. Ambedkar: Mr.
15 President, sir, except one other Article in the Draft Constitution, I do not think that any other
16 article has given the Drafting Committee such a headache, as this particular Article. I do not
17 know how many drafts were prepared and how many were destroyed, as being inadequate to
18 cover all the cases which it was thought necessary and desirable to cover. It is not the object of
19 this particular Article to lay down a permanent law of citizenship for this Country'. He is very
20 categorical. 'The business of laying down a permanent law of citizenship has been left to
21 Parliament, and as members will see from the wording of Article 6', which is present earlier
22 avatar of 11. '...as I have moved, the entire matter regarding citizenship has been left to
23 Parliament to determine by law that it may deem fit. The effect of Article 6 is this, that
24 Parliament may not only take away citizenship from those who are declared to be citizens on
25 the date of commencement of this Constitution by the provisions of Article 5 and those that
26 follow, but Parliament may make altogether a new law embodying new principles. They must
27 not understand that the provisions that we are making for citizenship on the date of
28 commencement of this Constitution, are going to be permanent or unalterable. All that we are
29 doing, is to decide ad hoc, for the time'. I don't think, with respect, there can be anything more
30 clear than this. Next, Dr. Rajendra Prasad only highlighted part I may read. "I would therefore
31 suggest, that amendments of this nature might also be left over to be dealt with by Parliament
32 at a later stage, and we might confine ourselves to the limited question of laying down the
33 qualification of citizenship on the day of Constitution came into force", as my Lord the Chief
34 Justice, My Lord, may see. Then My Lords, Your Lordships may kindly come to page 19. There
35 are other honourable members saying the same thing. But page 19 is Dr. Alladi Krishna Swami
36 Iyengar. At page in 19,

37

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

2

3 **TUSHAR MEHTA:** Shri Alladi Krishna Swami Iyengar. 'The articles dealing with citizenship
4 are, therefore, subject to any future nationality or citizenship law that may be passed by
5 Parliament. Parliament has absolutely a free hand in enacting any law as to nationality or
6 citizenship suited to the conditions of our country. It is not to be imagined that in a
7 Constitution dealing with several subjects, it is possible to deal with all the complicated
8 problems that arise out of citizenship'. Then My Lord, Hridya Nath Kunzru also, only the
9 highlighted part. 'There is nothing permanent about the qualifications laid down in Article 5
10 to 5C', I'm sorry.

11

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

13

14 **TUSHAR MEHTA:** 5 to 5C. Article 6 i.e. 11 present, with slight modification that further
15 becomes nothing contained. 'Article 6 makes it absolutely clear, that notwithstanding the
16 provisions of this Articles, Parliament will have power to make any provision with respect to
17 the acquisition and termination of citizenship and all other matters relating to citizenship. Any
18 defects that experience may disclose, can therefore be easily rectified'. The Parliament gets
19 experience, they need more qualifications, they need to take away citizenships. Not concerned
20 in this case, but generally.

21

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

23

24 **TUSHAR MEHTA:** Now My Lords, Your Lordships... On the last day, when my learned
25 friend was distinguishing the judgment which I was to cite... have seen at page 21.
26 Implementation of Article 11 i.e. *Izhar Ahmad Khan versus Union of India*. My Lord,
27 this is the judgment by five Honorable Judges. I'll read the highlighted part. It's authored by
28 My Lord Justice Gajendragadkar. At page 21 bottom, highlighted part. 'Article 11 confers and
29 recognizes the power of Parliament to make any provision with respect to, not only acquisition,
30 but also termination of citizenship, as well as all matters relating to citizenship. Thus, it would
31 be open to the Parliament to affect the rights of citizenship and provisions made by the
32 Parliamentary statute, in that behalf cannot be impeached on the ground that they are
33 inconsistent with provisions contained in Article 5 to 10 of Part 2'. It's clear that 11 is an
34 independent power, and it can add to....

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36 **CHIEF JUSTICE DY CHANDRACHUD:** Just read the next sentence also, 'in this
37 connection'.

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TUSHAR MEHTA: Yes, I'll just. 'In this connection, 246, it is important to bear in mind that Article 11 has been included in Part 2, in order to make it clear that the sovereign right of Parliament to deal with citizenship and all questions connected with it, is not impaired by the rest of the provisions of the said part. Therefore, the sovereign legislative competence of the Parliament to deal with the topic of citizenship, which is part of Entry 17, List 1 of the 7th Schedule, is very wide and not fettered by the provisions of Article 5 to 10 of Part 2 of the Constitution. This aspect of the matter may have relevance in dealing with the contention raised by the petitioners that their right under Article 19 are affected by the impugned provisions, etc.' So, My Lord, this is the only judgment on Article 11, but even textually and keeping in mind the drafting history, the only inevitable conclusion is, that they say we cannot conceive of many future situations; we leave it to Parliament. So this distinction between deeming or conferring, My Lord, may pale into insignificance. Page 24, Your Lordships may not read, I've just given My Lord. The words which are used in the Article 11 which starts with, 'nothing in the foregoing provisions', are used only in these articles. So it is elevated to that level. That's all. Nothing beyond turns upon that. Article 324, my learned friends have not also seriously pressed, so I'll not trouble Your Lordships with that. Please directly come to page 29. **Sarbananda Sonowal** judgment, I've just said. **Sarbananda Sonowal** judgment was concerned with one act.

CHIEF JUSTICE DY CHANDRACHUD: IMDT Act.

TUSHAR MEHTA: And the argument was, that look at the serious situation on ground. This Act does not fulfil the object it seeks to achieve. And on that ground, **Sarbananda Sonowal** was declared... was pronounced and that act was declared unconstitutional. It in fact, supports that this is a huge problem. But Your Lordships are not right now concerned with right... correctness or otherwise of this judgment. Then, 'Scope of judicial review in relation to treatment of foreigners', I may not trouble Your Lordships with. Please treat this as read, because Your Lordships are aware of the settled propositions of law on this. Please come to page 34, 'Challenge concerning Article 14', where I'll read only one or two judgments. At page 35 this is a judgment by seven honourable judges **Special Court Bill**. Only '71. 'There are numerous cases which deal with different facets of problems arising under Article 14, and which set out principles applicable to questions which commonly arise under that Article. Among those may be mentioned the decisions of so and so and so'. Then the highlighted part. 'But as observed by Justice Matthew in the last mentioned case, it would be an idle parade of familiar learning, to review the multitudinous cases, in which the Constitutional assurance of equality before the law has been applied'. But thereafter at page 36, the Honorable Court,

1 Seven Judge Bench earmarks what are the contours Your Lordships would consider while
2 examining the challenge and the Article 14. And relevant... all are relevant, of course. But
3 please come to 5 just at the foot, on the classification. My learned friend's argument was, there
4 is a classification. I'm dealing with that submission, My Lord. By the process of.... Your
5 Lordship gets that? 'By the process of classification, the State has the power of determining
6 who should be regarded as a class for the purposes of legislation, and in relation to a law
7 enacted on a particular subject. This power, no doubt, in some degree, is likely to produce
8 some inequality. But if a law deals with the liberties of a number of well-defined classes, it is
9 not open to the charge of denial of equal protection on the ground that it has no application to
10 other persons. Classification thus means, segregation in classes which have a systematic
11 relation usually found in common properties and characteristics. It postulates a rational basis
12 and does not mean herding together of certain persons and classes arbitrarily. The law can
13 make and set apart the classes according to the needs and exigencies of the society, and as
14 suggested by experience, it can recognize even degree of evil. But the classification should
15 never be arbitrary, artificial or evasive. The classification must not be arbitrary, must be
16 rational, etc.'. Your Lordships are well aware of the propositions, so I'll not trouble Your
17 Lordships with that. Please, come to the case of **Ajaib Singh** which is at page 38 at the foot,
18 para 111. That lays down substantially the same taste. I may even skip that. Please come to
19 page 40, under classification. I am duty bound to answer on facts on the question of Bengal,
20 but my legal proposition is this, and I will do that within a day or two, by way of an affidavit
21 filed by the Home Secretary. But the argument is instead of one, you should have done it for
22 five. So argument is of under classification. That may require law to be made for others, but
23 would not be a ground to declare the law already made *ultra vires*. First judgment is **N**
24 **Venugopala Ravi Varma Rajah versus Union of India**, and please at page 41, see the
25 highlighted part. Under classification is always not a ground of a successful challenge on
26 Article 14. But
27 the mere fact that the law could have been extended to another class of persons who have
28 certain characteristics similar to a section of Hindus, but have not been so included, is not a
29 ground for striking down the law. In treating a Hindu Undivided Family as a unit of taxation
30 under the Expenditure Tax Act and not a non- Hindu Undivided Family, the Parliament has
31 not attempted an obvious inequality. Then **Ajoy Kumar Banerjee**, only highlighted part.
32 'We may reiterate that Article 14 does not prevent legislature from introducing a reform, i.e.
33 by applying the legislation to some institutions or objects or areas, only in according to
34 exigency of the situation, and further classification of selection can be sustained, on historical
35 reasons or reasons of administrative exigency, or piecemeal method of introducing reforms'.
36 Maybe for other states, law may come, but that would not make 6A *ultra vires*. So, special
37 provision for one state, historically because of Assam Accord, etc.

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CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: Kindly, *Ambika Mills* is a settlement. I'll not read that. Then territorial classification, Your Lordships would get 43, page 43. Territorial classification is justifiable. This is my submission in law, factually, since it has fallen from the Court, and the Court, which is a Constitutional Court, taking care of fundamental rights of everyone present here or otherwise. I must answer the question regarding territorial classification. Why not Bengal? Why only one state? Why not Tripura, etc. Odia, Your Lordships are aware. I'll just read the highlighted part. 'Historical considerations and compulsions do justify inequality and special treatment'. Then next para highlighted part, '...and if, after reorganization of states and integration of the PEPSU union in the state of Punjab, different laws applied to different parts of the state i.e. due to historical reasons, and that has always been recognized as a proper basis of classification under Article 14'. Then *State of MP versus Bhopal Sugar Mills*. Your Lordships may come to next page directly at page 44. 'The Legislature...' I'm reading the highlighted part. 'The Legislature has always the power to make special laws to attain particular objects, and for that purpose has authority to select or classify persons, objects or transactions upon which the law is intended to operate. Differential treatment becomes unlawful only when it is arbitrary or not supported by a rational relation with the object of the statute. This Court has held in several cases, that where application of unequal laws is reasonably justified for historical reasons, a geographical classification founded on those historical reasons would be upheld'. The same thing is... the rest are settled propositions. If Your Lordship permits, I may skip, because just Your Lordships gets our side of judgments on one... in one submission. I have... Yes. One last point, page 49.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: On classification where the law is made only for Assam. I'll just paraphrase my submission, I'm not going into it. There are several provisions under the Constitution of India which applies only to particular states, including the State of Assam. So there can be a law applicable only to one state. Page 49, I have pointed out the provisions which are applicable only to Assam. This is on the classification based on territory.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: These are my respectful submissions. Only one thing, as a last thing, as I have some kind of an apprehension. I would request the interveners to keep in mind, that

1 they are here to protect 6. Meaning thereby, they represent people from '51 to '71, and not post
2 '71. So their submission may not be such that, though we are on the same side, I have to give
3 rejoinder to them. That's all.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** ... the validity of 6A.

6

7 **TUSHAR MEHTA:** Only validity of 6A.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Attorney General, should we hear you right
10 after lunch, we are almost at stroke of lunch?

11

12 **TUSHAR MEHTA:** After lunch, whatever details I could get, I would submit before Your
13 Lordships in two minutes. During lunch hours, we'll do that. And it would also be a part of my
14 affidavit, which I file latest by day after tomorrow.

15

16 **KAPIL SIBAL:** In the event Your Lordships don't finish today, what is Your Lordship's
17 planning to do?

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** How long would you take, Mr...

20

21 **KAPIL SIBAL:** Not very long, My Lord, I think my learned brother has covered.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Attorney General, how long would you take,
24 because I think this has been covered substantially.

25

26 **KINJAL:** About 15-20 minutes.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Sibal also same?

29

30 **KAPIL SIBAL:** Less than that. There's no problem. I won't take very long.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** Ms. Jaising, about the same time, I think?

33

34 **INDIRA JAISING:** About the same time as Mr...

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** All right. And then we can ask them to complete
37 the rejoinder today then.

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INDIRA JAISING: [INAUDIBLE] I have that one pager that My Lords had said.

CHIEF JUSTICE DY CHANDRACHUD: Fair enough. You can give your one page. So once...

INDIRA JAISING: Just summarise.

CHIEF JUSTICE DY CHANDRACHUD: So what we can do is, suggest is this. We start at 02:00. We request all of you to be... Mr. Attorney General. Mr. Sibal, Ms. Jaising, if you can conclude by, say... by 03:00.

INDIRA JAISING: Not possible.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Attorney General is saying 15 minutes.

ATTORNEY GENERAL R. VENKATARAMANI: I have a brief note, which I'll read.

CHIEF JUSTICE DY CHANDRACHUD: Say 10 minutes for the Attorney General, say 10-15 minutes....

KAPIL SIBAL: Whatever Your Lordship says..

CHIEF JUSTICE DY CHANDRACHUD: So if we finish by 03:00, then we can give them an hour for rejoinder and then conclude the matter thereafter... Anyway, we'll see how it goes. We'll see how it goes.

INDIRA JAISING: May I take your permission to file list of dates, reference to the compilation.

CHIEF JUSTICE DY CHANDRACHUD: Absolutely.

INDIRA JAISING: It'll speed up everything because no one has really filed a list of it.

CHIEF JUSTICE DY CHANDRACHUD: Is it already...? I just saw a list of dates in the Attorney's written submission.

1 **TUSHAR MEHTA:** In my note there is, but I skipped this because that was argued before.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Ms. Jaising, is your list of dates part of what you
4 have filed in the soft form?

5

6 **INDIRA JAISING:** No, it's reference to the compilation already filed. All the dates available
7 in the compilation...

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Are your list of dates already in the electronic
10 record which is made available to us?

11

12 **INDIRA JAISING:** No, not in the electronic record, but it's culled out from the electronic
13 record.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Then why don't you do this? Maybe over lunch,
16 just a list of days you can email it to the court master. So you can then tag it as a volume so all
17 five of us will have it.

18

19 **INDIRA JAISING:** We can do that.

20

21 **VIJAY HANSARIA:** And copy to all of us.

22

23 **KAPIL SIBAL:** In response to my learned friend's argument, just made a five pager, My
24 Lords, that can be uploaded.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** All right, then. Mr. Sibal and Ms. Jaising's brief
27 note. And anybody else who has that one pager, please, over lunch... over lunch, give it to the
28 Nodal council. There is a Nodal counsel in this matter. Nodal counsel will upload it and give
29 it to the court master.

30

31 **INDIRA JAISING:** If I may be permitted to upload the one pager, not today, but tomorrow,
32 because I have longer than one page, which I would like to edit down to one page.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** That's a very fair situation.

35

36 **R. VENKATARAMANI:** There's a brief note of over three pages which...

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Just to reduce the sense of stress of lawyers on
2 both sides, because I believe in keeping my Court stress free, if your side can finish by the end
3 of the day today, I'd said 15 minutes whatever... between you, all of you, you can divide the
4 time. No time for the Attorney General.

5

6 **R. VENKATARAMANI:** I'm not going to take much time.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** We don't set a time limit for the Attorney General
9 in deference to your position. But if this side can finish today, I think that should be convenient
10 for all of you. Your side, we'll give you half a day on Tuesday. So by Tuesday lunch, we'll wrap
11 up on this side, so that you also don't have to.... you have enough time to reflect on your
12 rejoinder over the weekend. No problem. Is that all right? I think we can then...

13

14 **INDIRA JAISING:** Entirely possible.

15

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

17

18 **R. VENKATARAMANI:** I have a two or three page note. I don't propose to trouble Your
19 Lordships going to Section 6A reading and all that.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Yeah.

22

23 **R. VENKATARAMANI:** The entire case will, in a nutshell, will turn on how we construe
24 Article 11. So, once you have a proper comprehensive Article 11, everything falls in place.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** You can have a seat for two minutes.

27

28 **R. VENKATARAMANI:** Yes.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** We'll dictate a small order right now. Of course,
31 the arguments are continuing because you said you'll file an affidavit of the Home Secretary
32 on Saturday, but the specific aspects on which we want some... to the extent to which you have
33 data, because obviously this is not an affidavit of submission. We want something based on
34 data. Factual, that's all.

35 The provisions of Section 6A of the Citizenship Act 1955 can broadly be bifurcated in three
36 time periods:

37 1) the period prior to 01 January 1966;

1 2) the period between 01 January 1966 and 25 March 1971;

2 3) the period after 25... the period from 26 March 1971.

3 The above statutory provision has provided for the grant of citizenship to persons coming
4 from, persons of Indian origin, originating in the specified territory; who have entered India
5 between the relevant statutory time periods and who have been ordinary residents of Assam
6 after the date of entry. The distinction between Subsection 2 and Subsection 3 of Section 6A is
7 that the grant of citizenship under Subsection 3 is contingent on an additional condition,
8 namely detection by the Foreigners Tribunal under the Foreigners Act or Order... under the
9 Foreigners Order, I think... under the Foreigners Tribunal's Order 1964. Upon being detected
10 as a foreigner, Subsection 3... I'm just going to say that. Upon being detected as a foreigner
11 from a Subsection 3 contemplated that such an individual must first to be registered in
12 accordance with the rules made by the Central Government (under Section 18). Subsection 4
13 of Section 6A stipulated that such an individual would be entitled to the same rights and
14 obligations as a citizen of India but would not be entitled to entry in the Electoral Roll for a
15 period of ten years upon the expiry of which the person registered under Subsection 3 would
16 be deemed to be a citizen of India for all purposes. This Court is in the process of considering
17 the arguments challenging the constitutional validity of Section 6A. The third time period is
18 after 26th March 1971. The provision of Section 6A make it abundantly clear that the
19 conferment of deemed citizenship does not extend to such persons.

20

21 This process... this Court is in the course of, is in the process of hearing the constitutional
22 challenge to the validity... the challenge to the validity... constitutional validity of Section 6A
23 of the Citizenship Act 1955. While the arguments raising the constitutional challenge from the
24 core of the controversy, submissions have been urged before this Court in regard to the impact
25 of illegal immigration into Assam both on the demographics and the cultural fabric of the state.
26 At this stage, where the considered... *inter alia*. There are other submissions which have been
27 urged, including the validity of the provision on the anvil of Article 14, Article 21, Article 29
28 and Article 355 of the Constitution.

29

30 At this stage, we are of the considered view that it would be necessary for the Court to have
31 certain data based disclosures by the Union Government in the Ministry of Home Affairs. We
32 accordingly direct that an affidavit be filed before this Court by... *Monday ko rakhate hain*.
33 We'll say Monday because we are going to hear it on Tuesday, so that you'll have enough time.

34

35 **TUSHAR MEHTA:** Your Lordship may say, before Monday.

36

37 **CHIEF JUSTICE DY CHANDRACHUD:** On or before Monday, on the following aspects:

1 (1) The number of persons to whom citizenship has been granted under the provisions of
2 Section 6A(2) namely, with reference to the time period of persons who came into Assam
3 between 01 January 1966 and 25 March 1971;

4 (2) How many persons have been detected to be foreigners by an order of the Foreigners
5 Tribunal under the Foreigners Tribunal's Order 1964 with reference to the above period of
6 1966-'71,

7 (3) The estimated inflow of illegal migrants into India, including but not confined to the State
8 of Assam after 26 March 1971, 25... after 26. 25 goes up to midnight. So you say it has to be 26.
9 26 March 1971. All right. 25 March 1971.

10 (4) In respect of persons who are alleged to have entered India including the State of Assam
11 after 25 March 1971:

12 (a) The total number of Foreigners Tribunals which have been set up by the Union
13 Government;

14 (b) The total number of cases which have been disposed of

15 (c) The number of cases which are pending as of date

16 (e) The average take time taken for the disposal of cases and

17 (f) The number of cases which are pending before the Guwahati High Court.

18 5) The steps which have been taken by the Union Government at an administrative level to
19 ensure, to deal with illegal immigration into the territory of India from the northeastern states
20 particularly the State of Assam. Details shall be furnished in regard to the extent of border
21 fencing which has been carried out and the steps which the Union Government intends to take
22 with estimated timelines to complete the exercise of border fencing. The affidavit, copies of
23 the affidavit, soft copies of the affidavit shall be served on the Counsel for the contesting
24 parties. Anything else, apart from this?

25

26 **COUNSEL:** How many are functioning today also.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** So, we have a then clear picture of what
29 infrastructure we have.

30

31 **TUSHAR MEHTA:** Whenever Your Lordships have said Union Government, Your
32 Lordships may consider / State Government because some functions have State Government.
33 I'm applying for both, but...

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** All right. Where specific aspects of the data
36 which has been sought by this order require a disclosure, require... implicate the functions of
37 the state government, the affidavits shall be suppl...The data shall be shared by the

1 Government of Assam. However, it is understood that a common affidavit shall be filed both
2 on behalf of the Union of India and the State of Assam, which are being represented by the
3 Solicitor General. Right. Now also when we... Do we put the total number of persons who have
4 been detected to be foreigners?

5

6 **KAMAL NAYAN CHOUDHURY:** Would Your Lords also like to include Tripura also? That
7 is another state which has been...

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** We have said all northeastern states, including
10 Assam. We have just said including Assam, which makes it very clear. Yes, Mr. Attorney
11 General.

12

13 **COUNSEL:** Neighbouring 5 states of...

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** We have said all northeastern states. We have
16 said all northeastern states, including Assam.

17

18 **KAPIL SIBAL:** [UNCLEAR] My Lords have said enough otherwise, we'll have another
19 dialogue started.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** This will go far beyond 6A then. Yes, Mr.
22 Attorney General.

23

24 **R. VENKATARAMANI:** I don't propose to take Your Lordship's time too much. I have
25 prepared a note, to see... I don't know whether... there's a separate note. You got it?

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. It is also on your screens by the way. It's all
28 on the screens in front of you also. The Attorney's note, it's there as well. Yes.

29

30 **R. VENKATARAMANI:** I'll only invite Your Lord's attention to make note of couple of
31 paragraphs in this note but broadly, the thrust of the submissions is this: what do we do? How
32 do we read Article 11 of the Constitution? It's not proper to say that Article 6 will control Article
33 11. The plenary power of dealing with citizenship is in Article 11 and courts will always see that
34 the plenary power is not cached. Circumstances which may come from time to time to deal
35 with a question of citizenship, we have this whole eastern European scene, Bosnia, Croatia,
36 Serbia. Very difficult, complex situations and dealing with migrations of people and therefore,
37 this Article 11 has been contemplated. I don't propose to read again. Those very important

1 observations made with Dr. Ambedkar and it's a bit of a headache for us to go, plough through
2 all these provisions and Article 11 is such a plenary power and Courts will certainly give due
3 deference to that the way the plenary power has been exercised. I just make a note of that in
4 paragraphs 13 to 16. On that aspect, we have paragraph 13 and 16, and... Therefore, have this
5 understanding of Article 11. Any reading of Section 6A will fall within its scope. Any analysis
6 of 6A. Also, just make a note of few more paragraphs. Your Lordships have passed an order.
7 Now trying to look at the other questions and that will address various concerns. So, just make
8 a note of paragraph 1, 2 and 3 in my note.

9

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

11

12 **R. VENKATARAMANI:** So, we're concerned with the question of addressing here a state
13 specific resolution at a given point of time. So, we have state specific resolution. The
14 Parliament as a state did not probably at that point of time address some of the larger question.
15 Would not address, render that state specific resolution as defective or illegal. So, Assam
16 Accord was a state specific resolution necessitated by certain set of events over a period of
17 time.

18

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

20

21 **R. VENKATARAMANI:** And therefore, the question of comparison with other states at
22 point of time did not arise.

23

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

25

26 **R. VENKATARAMANI:** Then, just make a note of another paragraph in my... paragraph 5.
27 Though this question has been referred to this bench on the question of delay and latches. So,
28 we will not address the arguments on that, but just make a note of it in paragraph 5. The Chief
29 Justice yesterday made an observation about in 1985, what happened? You're looking '71 to
30 '85. Look at a passage of time.

31

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

33

34 **R. VENKATARAMANI:** Then paragraph 8. The other argument, that the law became bad
35 in due course of time. That principle was laid down in *Motor General Traders* in the
36 context of a Rent Control Law.

37

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

2

3 **R. VENKATARAMANI:** I am not sure whether that principle can be applied in the facts of
4 this case. It is not that 6A became bad in due course of time. And also next in paragraph 10.
5 The only difference between Article 5 and 6 is... just make a note of it in paragraph 10. The use
6 of the words 'deemed' is only to connote that those who fall under 6, 7 and much later under
7 11 shall also be become citizens of India. Deeming is only used in this particular sense... shall
8 also become citizens. The difference in 5 and 6 is from being citizens of India, the
9 commencement of the constitution and those who come later for becoming citizens of India.
10 That's the only difference. Therefore, nothing much turns on use of the word 'deeming' and
11 how 6A tries to bring an amendment in Articles and all that. So, if I am here right in addressing
12 the Court on the question that Article 11 is comprehensive to take care of any situation. And 11
13 says, make any provision. So, making any provision is wise. I don't think I'd trouble Your
14 Lordships reading 6A and all that. It has been read. And if this reading of 11 is correct, then
15 6A is not only amply protected, but what Parliament can otherwise do under Article 11 is
16 properly stated. And that will be my full submission.

17

18 **KAPIL SIBAL:** I won't take much of Your Lordship's time. My learned friends have argued
19 on 2-3 counts. Number one, they say that their cultural rights under 21 have been impacted by
20 this demographic change. That's one. Number two, that Article 14 has been violated for the
21 reason that while this protection is given to migrated people in Assam, it's not given to others
22 and number 3, they say that Section 5 and 6 are frozen in time in the constitution. Article 5
23 and 6 are frozen in time and therefore, 6A cannot in fact have been enacted. Broadly speaking,
24 these are the three broad submissions. There's a fallacy in each one of them, and I demonstrate
25 it right away. Migration of peoples and populations is embedded in history. It cannot be
26 mapped. No migration can ever be mapped. And if you look at the history of Assam, you'll
27 realize that it's impossible to figure out who came when. Assam originally was a part of
28 Myanmar and it was way back in 1824 after the British conquered a part of it that a treaty was
29 entered into, by which Assam was handed over to the British. And I'm talking about 1826...
30 1824, 1826. You can imagine the kind of movements of peoples that must have taken place in
31 the context of the then British Empire. And if you jump to 1905, you will have the partition of
32 Bengal. And in the partition of Bengal, East Bengal and Assam became one. In at that point in
33 time, Bengali language was forced to be taught in school. There was a huge opposition to that.
34 So, this interaction between the Ahom people, who are the original inhabitants of that part of
35 Assam that was taken away from Myanmar, integrated with non-Ahom people. And therefore,
36 the interaction and the absorption of the Bengali population in Assam has a historical context.
37 In 1911, it was reversed. The partition of Bengal was reversed. But they belong to the same

1 area. The ethnicity was different, the language was different. And all these problems were
2 created by the British, because when the independence of India took place, East Pakistan
3 which is now Bangladesh, was carved into a separate country and the exodus happened
4 because of the fact that the ethnic minorities, linguistic minorities, as well as the majority
5 community in East Pakistan was not willing to stay there. The problem in the west coast was
6 entirely different. On the western border was entirely different, because in the western border,
7 it was the Hindus who were coming into India, not the Muslims. The Muslims were given the
8 choice to go there. That's why the date 19th of July. If you have not come on the 16th of
9 August... My Lords, we are people who have been displaced from Lahore. My maternal
10 grandparents were killed. So, we came here immediately on the 16th of August. But there are
11 many people, who came here afterwards and they had to be given refuge. So therefore, the 19th
12 of July date. Therefore, the mechanism. That would never have happened in Assam. From East
13 Pakistan there was no such... all the minorities would... wanted to come into India because it
14 was originally a part of India, part of the British Empire. So when these partitions took place,
15 naturally, naturally, people of Indian ethnicity, Bengali ethnicity, their language would want
16 to come. So, to try and argue a constitutional point, which is the point I'm getting at, to say
17 that this has changed the cultural ambience of Assam is constitutionally invalid because you
18 cannot attribute to one event. Just the one event. Nor is the Court has the wherewithal to do
19 so. You shouldn't even start this exercise. More important, I have a fundamental right to move
20 from one place of the country to another. So, immigration or migration from one place to
21 another is a fundamental right. Can somebody...

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Within the country, of course.

24

25 **KAPIL SIBAL:** It doesn't matter, My Lords.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** No, but within the country. This right really
28 doesn't extend to people who are not Indians to enter India.

29

30 **KAPIL SIBAL:** My Lords, but they were Indian. That's the point. They were Indians. On that
31 particular day, they were Indians. My Lords, please in 1971, when this happened, the war
32 happened My Lords, and Bangladesh was created. They were Indians before that.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Who is Indians? They were... What's the
35 argument like?

36

37 **KAPIL SIBAL:** My Lord, Pakistan was created.

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CHIEF JUSTICE DY CHANDRACHUD: They were all part of undivided India.

KAPIL SIBAL: Correct. But they were...

CHIEF JUSTICE DY CHANDRACHUD: The Government of India had.

KAPIL SIBAL: Correct. When Pakistan was created naturally, people would like to come, My Lord in 1951. People would like to come. Bengalis would like to come, Hindus would like to come. That's the point I'm making. A constitutional argument can't be made because it happened in 1951 that they came here, therefore, it changes the cultural environment of Assam. That's not a good argument constitutionally. For the simple reason, the argument has to be applied in the context of demographic change. Demographic change can never be the basis of saying that my culture has been impacted. Can never be, as a matter of constitutional law. Why? Because Part 3 of the Constitution is enforcement of rights. Article 21 is the preservation of rights. 29 is the preservation of rights. There's a constitutional distinction between the two. They are people of different cultures, different traditions, maybe different language. They are entitled to preserve it. Nobody has infringed that. Their argument is, it has been infringed demographically. An argument that has no basis in the constitution. They have to show violation.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Sibal, there may be some problem with this because an argument about demographic change as affecting culture can never be made within the territory of India. For instance, somebody in a particular state. Take for instance, there is huge migration which is now taking place in our IT centres. People can't say, we are not... our culture is being changed because of this huge migration.

KAPIL SIBAL: In Maharashtra, about coming from the ...

CHIEF JUSTICE DY CHANDRACHUD: Because for the purpose of citizenship law, as Attorney General has very beautifully put it in his submission, India is one entity. So, no one state or no people in one state can say that look, by virtue of the fact that we are having an influx from other states, that our culture is being affected. Too bad. That's what the Constitution presupposes by postulating, Article 19(1)(d). You rightly said that, there's free movement. But this applies within the nation.

KAPIL SIBAL: I agree. My Lord. Kindly see 29 now.

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CHIEF JUSTICE DY CHANDRACHUD: Can the people of a state not say, suppose the Union were to say that we are going to resettle, say, 20,000 refugees or 25,000 refugees in a particular state. There may be substance in the argument. We may not accept it, but they can certainly found a constitutional challenge [UNCLEAR].

KAPIL SIBAL: My Lord, I'll answer that. See 29.

CHIEF JUSTICE DY CHANDRACHUD: To say that you cannot have a challenge at all, I'm not sure. 29.

KAPIL SIBAL: Just look at 29. Just have a look at 29. If I may read it? 'Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same'. No problem. Which part of their petition says that their right to language, script or culture has been impacted? It's not even their case. So, how do you bring 29 into it? The submission that I am making is, this demographic changed happened because of historic reasons. And these historic reasons don't relate only to 1947... after 1947. These historic reasons are etched in history right from 1824. And it would be difficult for the Court to identify as a matter of fact that this happened only after 1947.

CHIEF JUSTICE DY CHANDRACHUD: According to this, flux was happening much before that.

KAPIL SIBAL: Much before. It's part of history. And My Lords, actually what happened in 1975... '71, was the second partition of India. In the sense that Pakistan... East Pakistan was obliterated from the back. Bangladesh was created. And those people, those Hindus and...

CHIEF JUSTICE DY CHANDRACHUD: That's not a second partition.

KAPIL SIBAL: Second partition of Pakistan. So therefore, because of that, these people came across. It's that second partition of Pakistan that resulted in part of this influx. And Parliament debated it, and I don't want to trouble Your Lordships, when Parliament debated it, Parliament said - we don't want to. And this literature we have put in the compilation, in our compilation. I'll not trouble Your Lordships with it. The point I am making is, this second partition of Pakistan resulted partly in this influx. But the influx was happening all along. But in any event, as a matter of constitutional law, they have to show as to what part of their

1 language, what part of their script, what part of their cultural tradition is being impacted. And
2 ultimately, what I heard the other side saying and that's a political argument... what I heard
3 the other side saying was they have been even given the right to vote. There's nothing to do
4 with 29. So My Lords, what happened... now let's come nearer home. Then what happened?
5 In 1978, The Janata party came to power. There was a Janata Dal Chief Minister. And as Your
6 Lordship knows, that Government failed in 1979. Mrs. Gandhi then came to power. Now, what
7 had been happening between '78 and '79? There were huge agitations in Assam by the student
8 community and if I miss... Just note it My Lords, there's a book called Modern Assam, which
9 is part of the compilation.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Where is that book?

12

13 **KAPIL SIBAL:** Yes. Kindly, just at your leisure, reach chapter 12 of that book which is titled
14 'Waves of Popular Protest'. 'Waves of Popular Protest'. Just get the page, please, the PDF. It
15 will give you the historical context of how this whole protest started. There was price rise, there
16 was unemployment and then part of it was attributed to the fact that there were people who
17 had settled there since 1951, and there were protests against that. That look, these are
18 outsiders. So these are the others. And the agitation reached such a crescendo that it led to
19 huge violence. I mean, the Delhi, the Delhi massacre in 1983 was as bad as any massacres that
20 have happened since. In fact, the agitationers said, 'we would rather give our blood, but we
21 will not give our oil'. Why? Because production of oil was in Assam and they stopped the
22 production of oil. Production of oil fell. Only three places they produced oil - Gujarat, Bombay
23 High and Assam. Transportation was stopped. Killings took place. Children were killed. In
24 1983, Mrs. Gandhi decided to have an election. It was opposed. 2% of the people voted in that
25 election and a person with 17% won the election. There was again a huge protest. I'm talking
26 about '83. Why this '85 happened? Then Mrs. Gandhi was assassinated in October. Their
27 demand was that 1951 onwards everybody who was a non-Assamese, who had come in, should
28 be thrown out. This was not agreed to. Mrs. Gandhi got assassinated in October 1984. Rajiv
29 Gandhi then said, let's try and compromise this issue. In the meantime, Prafulla Mahanta
30 became the Chief Minister. And in the two years, '83 to '85, they got discredited. The
31 movement became weak and the '85 Accord. Mrs. Gandhi always said, let's keep 1967 as a cut-
32 off date. The learned Solicitor rightly said, because of the '66 electoral roll and '67 was the
33 election. They did not agree at that point in time. But in 1985, when Rajiv came to power, he
34 said, no, there should be give and take, and therefore this cut-off date was agreed to. And
35 therefore, the 1966 to 1971 period was dealt with separately and the other period was dealt
36 with separately. That's the genesis.

37

1 Now My Lords, the first submission that my learned friend gave... he gave you population
2 figures. Those figures cannot possibly be relied upon one way or the other. Because you don't
3 know the genesis of the migration. And even their figure shows that after '71, the Muslim
4 population has been reduced. Therefore My Lords... yes, yes. The rate of growth has been
5 reduced. The point I'm making is, I'm on the first point My Lords of the Article 29 point. That
6 has no constitutional basis. We're not talking about people coming from outside or coming
7 from inside. We're saying that in any event, in terms of 29, you'll have to show infringement
8 and their infringement is only change of demographics. That's why they show the population
9 figures. Change in demographics cannot be the basis of an infringement of Article 29. Cannot
10 ever be unless... My Lords it's very interesting, in fact, if you ask me, Assam perhaps, is the
11 most multicultural, multilinguistic, the most diverse state, perhaps in the country. And
12 culture. Diverse culture. My Lords, of the ten or eleven petitioners at my learned friend pointed
13 out, each of them represents a separate culture. Nobody says that that's been infringed. That's
14 not their case. So, it's a very slippery slope to address this issue on the basis of demographic
15 change. This is the march of history, you can't stop this. And at that point in time, Parliament
16 said, why should we stop it? These are our own people. For those who... Muslims who left India
17 and went to Pakistan and they wanted to return India, there was a whole different process.
18 That's included in Section 5 and 6. In Article 6. Whole different process because we did not
19 want them back. Here we were welcoming in them because these are people of our own
20 ethnicity. So, this was an act that was recognized by the then Government and allowed to
21 happen. But, they did not realize the kind of opposition that will emerge as it did in Assam.
22 Didn't happen in other states, but it happened in Assam.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** So essentially, the Assam Accord was that '71
25 onwards nobody will be protected. So, '51 to '66 and '66 to... '66 to '71 people who came in
26 would be protected, basically.

27

28 **KAPIL SIBAL:** That's right.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** So '51 to '66, no questions asked. '66 to '71, you
31 have to satisfy the...

32

33 **KAPIL SIBAL:** That's correct. Now, if you look at My Lord, really migrations this way. For
34 example, when the Vietnam war took place, kind of see the Vietnamese people that were
35 settled. These are all foreigners. Look at the Germans, the Turks, who have now been given
36 citizenship. When the Germanies tweaked its constitution, it tweaked its constitution. It never
37 allowed this to happen before. So My Lords... Mexicans. There's a special provision of the

1 Mexicans in the US. So the point that I am making is, that's the decision of the political process
2 which allows this to happen, and then makes a provision for it under the law. And there's no
3 basis for challenging it other than... other than the ground that it is discriminatory. But this
4 was a non-discriminatory recognition. Not based on sex, not based on race, not based on caste,
5 not based on religion, not based on ethnicity. No prohibitive...

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Place of residence. Yes.

8

9 **KAPIL SIBAL:** Sorry.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Based on place of residence.

12

13 **KAPIL SIBAL:** No.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** You have to be an ordinary resident of Assam.

16

17 **KAPIL SIBAL:** No, but that's the test. That's the test, My Lords, I'm sorry. That is the test.
18 That test was applied between '66 and '71. And Your Lordship looks at the entry in List 1. It's
19 entry 17 of List 1.

20

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

22

23 **KAPIL SIBAL:** Which is citizenship, naturalization and aliens.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** There's no doubt that Parliament has a power.
26 There's no doubt about it. Entry 17 confirms when read with 245, Article 245, Parliament
27 undoubtedly has the power to legislate.

28

29 **KAPIL SIBAL:** Correct. But they were not discriminating on the basis of residence. They
30 were not discriminating anybody on the basis of residence. They were saying, only if you are
31 resident will you get this through the process of naturalization. So, they are under no
32 prohibited category. And there's another very interesting feature as far as Assam is concerned.
33 Assam has five hill areas, scheduled areas that were created and they are autonomous councils.
34 A lot of the minorities never went to those scheduled areas. You can't buy land there. So they
35 remained where they asked for. The Muslim population percentage showed it had increased.
36 So, all these are very complex issues. How is this Court going to determine all this and come
37 to a conclusion that this is violative of 29? There is a place called Darrang. A part of Darrang

1 was created as tribal area. So, the Muslim population only stayed in the other part. So, that...
2 if you took Darrang in its original state, the Muslim population would be less. But when the
3 tribal area was considered, the Muslim population would be more. The point that I'm making
4 is, there are no judicial standards to determine all this. It will be a hazardous task, judicial
5 task, for you to come to a constitutional conclusion that because of this, their cultural rights
6 under 29... because 29 is preservation of rights. Preservation of rights assumes that there is a
7 violation and because of which I have a constitutional entitlement to say, issue a writ of
8 prohibition, issue a mandamus not to allow them to violate. That's nobody's case. And it is
9 therefore, not solely attributable to migration. So that's, that's on the 29. Now, it's absolutely
10 tenuous connection, as my learned Attorney says, absolutely tenuous connection. One has
11 nothing to do with the other. Very, very, very... Now, let's kindly come to now the Article 14
12 argument. That's even more interesting. Now, I'll assume that 6A is struck down. Now, if 6A
13 is struck down, what happens? Bangladesh will not
14 take them.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** As we said, this will result in a group of stateless
17 citizens.

18

19 **KAPIL SIBAL:** Total stateless.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** The joint communique which was issued by
22 Sheikh Mujibur Rahman, the then Prime Minister, clearly says that Bangladesh will take back
23 people who had come in after 25th of March 1971.

24

25 **KAPIL SIBAL:** That's correct. That's correct. So My Lord, you cannot, as a matter of
26 constitutional law My Lords... again if you go to...

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** So you will have people in India, who have been
29 otherwise recognised as foreigners by the Foreigners Tribunal's Order, who cannot be granted
30 Indian citizenship and yet, who cannot be deported though they are aliens.

31

32 **KAPIL SIBAL:** That's correct. And if you go to my submissions My Lord, just give me...
33 Power of Judicial Review. I have dealt with it in 2-3 minutes. I will just finish on this aspect.
34 Kindly come My Lords, to Volume 2. My submissions.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, we have got your submissions. The ones...
37 yes, we have got your... Volume 2?

1
2 **KAPIL SIBAL:** Volume 2. My submissions start at page 19 but scope of judicial review is at
3 PDF 23. In fact, may I tell Your Lordships another thing? While this agitation was taking place
4 in Assam, many of the people, whether Bengalis or others, moved out of Assam. Because they
5 were fearing that they might be killed or hurt. Many families actually migrated to other states.
6 So in fact, the migration to some of the other states is also attributable to what the
7 uncertainties that prevailed in the State of Assam from 1978 right till '85. And then as Your
8 Lordship knows, Meghalaya, Mizoram and others. So therefore, the Muslims, the minorities
9 would not have gone to Mizoram, Meghalaya and other places. So it seemed that the
10 population here increased in terms of percentages. So, these are all very difficult aspects My
11 Lords, to analyse and come to a judicial verdict. So now, if you look at PDF 23. If you just look
12 at what Hannah Arendt said, 'Right To Have Rights'. That's the right to citizenship is the right
13 to have rights. And I've quoted the quote at a page. I won't go to it, My Lords. And then Your
14 Lordships will see - 'Laws should be interpreted. Paragraph 17. a) Law should be interpreted
15 in a manner that avoids rendering people or groups of people stateless. The international law
16 norm against statelessness is to be found in foundational legal instruments both see the
17 Universal Declaration and the International Covenant of Civil and Political Rights and Article
18 20 of the American Convention and Human Rights..' and My Lords, I have given some
19 references there. Your Lordships may have look at it. 'And the idea is that courts should
20 attempt to harmonize domestic law with international law.' That's Bisaka... **Vishaka** has set
21 that out. 'And lean towards upholding laws in cases where striking down would result in
22 statelessness. And then citizenship laws should not discriminate on prohibited grounds. That
23 citizenship is the right to have rights, and deprivation of citizenship renders individuals
24 particularly marginalized or vulnerable. For reasons advanced above, courts should subject
25 facially discriminated citizen laws discreet scrutiny is to protect individuals'. So this take, and
26 then somebody else in West Bengal and other states can say, you give me the same rights. But
27 they cannot say, now you declare this as illegal and therefore, where will they go? And the
28 commitment to fence Bangladesh was made in 1985 itself. So, 15 years and 23 years, 38 years
29 have passed. The fencing has not happened. Should have happened. And this creates more
30 problems for India, as Your Lordship said, because after 1971, what will happen, children
31 would have been born here. Can Your Lordships imagine the enormity of the problem? Those
32 children born here would seek protection of 3. Where will they go? So that... I don't want to
33 enter into that. That's another area altogether. So, that takes care...

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** No, there is substance in this grievance that on
36 the one hand, we don't have an open border. We do not say that anybody from Bangladesh can

1 come and settle down wherever they want to in India. At the same time, if we don't take
2 action...

3

4 **KAPIL SIBAL:** Correct.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** ...to curb illegal migration, then it causes all
7 these problems in India. They're feeling in India that look, the infrastructure is limited,
8 education is limited.

9

10 **KAPIL SIBAL:** Absolutely.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Public hospitals are limited. We can't allow for
13 an unlimited influx.

14

15 **KAPIL SIBAL:** Absolutely. No. No. You're right. This is the problem.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** If we pass that order, which we did this
18 afternoon. what are you doing today?

19

20 **KAPIL SIBAL:** It's the executive that is to blame, My Lords. There's no doubt about it. And
21 right from '85. And we create problems for ourselves. And then what happens is, it becomes
22 the Other versus Us. This is the heart of the problem. It is no longer a cultural issue. It's a
23 political issue. Others versus Us. Who gets power? Why do you give them electoral rights? This
24 is the problem. Don't give them the right to vote. So therefore, you, in the process, are creating
25 divisions in society, whereas your preamble talks about fraternity. What is fraternity? 'Live
26 and let live' is Article 21. 'Be and let be' is secularism. That's what it is. And that's fraternity.
27 And the entire argument on the other side is countering the concept of fraternity in the
28 preamble.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Sibal How do you... I mean this is not a
31 question in the sense to tell you that you are wrong on this point. But just a little assistance.
32 How do we sort of conceptualize Subsection 2 of Section 6A and Subsection 3?

33

34 **KAPIL SIBAL:** All right.

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36 **CHIEF JUSTICE DY CHANDRACHUD:** Subsection 2 deals with people who are in the
37 electoral roll as on 01-01-1966.

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KAPIL SIBAL: Right.

CHIEF JUSTICE DY CHANDRACHUD: They're all post 1951 people, but who are in the electoral roll as a 01-01-66. That is why Subsection 2 refers to the electoral roll of 01-01-66. '66 electoral roll. The Subsection 3 covers people who are not in the electoral roll of 1966. They came in later until '71.

KAPIL SIBAL: Correct.

CHIEF JUSTICE DY CHANDRACHUD: So, what was the reason for protecting those whom they protected first in Subsection 2? Was it that Parliament wanted to protect people who are... now they have come on the electoral roll as on 01-01-66, so we say, all right, you have now been assimilated. We have already, whether you are legal, illegal we sort of make a blanket conferment of citizenship. What was the... why these two bifurcations into Subsection 2 and Subsection 3?

KAPIL SIBAL: I will try and answer that. There are two reasons for it. Number one, even those whose names were in the electoral roll, people objected to them. People objected to them saying they are actually... they got themselves into the electoral roll. They did not come here prior to 1966. That's why the whole NRC exercise has taken place. And the end of the NRC exercise, you know what the result is? Your Lordship, asked that question. They should have told you the answer. The answer is today there are 19.06 lakh people who are left out of the and whose appeals are pending. That's all and the majority of them are Hindus. So, it's not as if nothing happened after '71. This exercise has been done and done in eight years. My Lords that's why Justice Gogoi said, everybody will have to produce the legacy tree, legacy data. Who was your great grandfather? Even those whose names were on the electoral roll. So in the NRC, every citizen, every person in Assam had to face the test. So, in fact, from a statutory standpoint, what My Lord is saying is right. From the actual standpoint, it's just the other way around, because there were thousands of objections My Lords. Somebody didn't have a school certificate. Who gave a school certificate at that point in time? Then you had to show, no, no my great grandfather lived in that village. Then there had to be a linkage document. Then you had to produce somebody from a nearby village or the village in which you lived and he came and made a statement, no, no, his grandfather was living there. So it may be as a matter of law for you to say that's not factually correct. Were the whole NRC exercise was that, that all this may be wrong. And it was monitored by this Court. And it ultimately found the majority of the 19 lakhs were Hindus. 1600 crores were spent in that exercise. So the point that I am making

1 is, while Your Lordships ask me that question, the factual situation is, in fact is just the
2 opposite. Because... I don't want to bring any politics into it, because everybody objected to a
3 particular, that he doesn't belong here. Of course, that exercise is still going on. But My Lord
4 therefore, it would be dangerous, this is my respectful submission, to move into areas where
5 it's difficult to come to a judicial determination. That's why 6A was a matter of policy. It was
6 legislative policy pursuant to a political accord which taught to maintain a status quo subject
7 to processes for those who came between '66 and '71. And if they do not formulate how 29 has
8 been violated, why would Your Lordship go into it? So, that's really the answer to the
9 Lordship's question, that nobody...everybody was questioned. It just so happened that once
10 you are in the electoral roll, then you have a leg to stand on. But that was not the end of the
11 story. It's not as if anybody... everybody who's on the elected roll was accepted as a citizen.
12 And then that argument, that they owe allegiance to Pakistan... I don't understand that
13 argument at all. When I am born, do I have an oath of allegiance to give or if somebody is
14 granted citizenship? People don't give oath of allegiance... when people came...

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** You see the upheaval actually, as a matter of
17 history, when did the upheaval start taking place in East Pakistan?

18

19 **KAPIL SIBAL:** Upheaval started taking place in East Pakistan...

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** No, no, no. The '66. I am talking about the
22 leading up to [UNCLEAR].

23

24 **KAPIL SIBAL:** Your Lordship knows, after the Bhutto election in particular. But the fact of
25 the matter is that those belonged to an entirely different cultural tradition. This was all part of
26 Bengal. This East Bengal and West Bengal. So all this is the oppressive policies of Western
27 Pakistan, so to say. Or now Pakistan, right? And what is happening there to the Hindus today
28 was sought to be done to the Bengalis. It's as simple as that. Who would want to stay there?
29 But, the impact of it, because they came this side, the impact of it was what happened in Assam
30 later. It's bound to limit resources. They were claiming that their education should be free.
31 And then what happened? The tea plant... see, the tea planters came here much before 1951.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** You know that Operation Searchlight is initiated
34 by General Yahya Khan on the 25th of March. Now, interestingly, Section 6 A, 25th of March
35 1971 is not the commencement of the provision. It's the end of the provision.

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37 **KAPIL SIBAL:** End of the provision.

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CHIEF JUSTICE DY CHANDRACHUD: Right? So, if at all one would anticipate that the influx would take place around or after 25th of March 1971...

KAPIL SIBAL: It didn't.

CHIEF JUSTICE DY CHANDRACHUD: What the statute does is to go back five years to '66. 01-01-66.

KAPIL SIBAL: Yes.

CHIEF JUSTICE DY CHANDRACHUD: What is the reason for that 01-01-66?

KAPIL SIBAL: As I told you by '66, because of the electoral roll. After that electoral roll...

CHIEF JUSTICE DY CHANDRACHUD: The electoral roll of 01-01-66, which was used for conducting the elections of '67, covered all those people who had entered India prior to 01-01-66. Right?

KAPIL SIBAL: Yes.

CHIEF JUSTICE DY CHANDRACHUD: That is covered by 6 A(2).

KAPIL SIBAL: Yes.

CHIEF JUSTICE DY CHANDRACHUD: Just see how it is. I'll just tell you how 6A is worded. 6 A(2). 'All persons of Indian origin who came before the 1st of January '66 to Assam from the specified territory'. Now bracket, very important, '(including such of those whose names were included in the electoral rolls for the purpose of the general election to the House of the People held in 1967)'. That is to say, the 1967 election was held on the basis of the electoral roll of 01-01-66.

KAPIL SIBAL: Correct.

CHIEF JUSTICE DY CHANDRACHUD: That covered people who covered... who had come in prior to 01-01-66.

1 **KAPIL SIBAL:** People may have come prior, but they may not be in the electoral roll.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** You're right. I'm not talking the exclusion but 6
4 A(2) covers people post 01-01-66.

5

6 **KAPIL SIBAL:** Yes.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Right. I can understand 6 A(2). 6 A(2) says,
9 'whoever now we have included in our electoral roll, we give them citizenship'. Therefore,
10 anybody whose name was in the electoral roll of 01-01-66 got the benefit of citizenship. But
11 under which provision? Under 6 A(2). Now, what is the logic for 6A(3)?

12

13 **KAPIL SIBAL:** What I'm saying My Lords, many people who had come in even earlier, but
14 they had no evidence to show. There are many people who came in earlier.

15

16 **UNKNOWN SPEAKER:** That's because of war.

17

18 **KAPIL SIBAL:** No, no, no, war is later. War is not then. It's '70. '65 war happened...

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** 6 A(2) you cannot justify on the ground of the
21 Bangladesh liberation.

22

23 **KAPIL SIBAL:** No, I'm not. There is Pakistan war. India Pak war of '65.

24

25 **INDIRA JAISING:** In 1965, there was a war.

26

27 **RESPONDENT COUNSEL:** There is a Indira Gandhi pact. Which Indira Gandhi agreed.
28 Right. Those... [NO AUDIO]

29

30 **KAPIL SIBAL:** Election took place in Bangla... in East Pakistan. Mujibur Rahman won.
31 There was unleashing of violence. He was not allowed to be sworn in. That's what happened.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** In '70?

34

35 **KAPIL SIBAL:** Yes, in '70. December '70. That's the violence that happened. He was not
36 allowed to be sworn in.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** That is 3 Months before our cutoff.

2

3 **KAPIL SIBAL:** That's why, My Lords. That's precisely why I'm saying, My Lords. That 3
4 months has been also excluded as Your Lordships see now, from March onwards. Therefore,
5 it has nothing to do... this exodus didn't happen from East Pakistan or Bangladesh at that point
6 in time. This is all prior.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** I mean, there's one way of dealing with it, which
9 is that Parliament has legislative domain over what cut-off date to adopt.

10

11 **KAPIL SIBAL:** That of course...

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** There is cutoff date unless the cutoff date is
14 palpably arbitrary...

15

16 **KAPIL SIBAL:** That's correct.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** ...we normally allow Parliament...

19

20 **KAPIL SIBAL:** But apart from that, My Lords...

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** I mean, that can always be a judicial mantra. But
23 we are trying to figure out what is the logic.

24

25 **KAPIL SIBAL:** It's not just a cutoff date. It is to prove, if you prove your residence.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Sorry?

28

29 **KAPIL SIBAL:** That's all right. My Lords, a person who got 17% or the 2% vote won the
30 election. So that was rejected by the people. So it was... but My Lords, the '66 onwards you had
31 a... you have... you had to show evidence that you were resident for ten years.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** All right, Mr. Sibal...

34

35 **KAPIL SIBAL:** So that... therefore. Therefore, that's over.

36

37 **CHIEF JUSTICE DY CHANDRACHUD:** Anything else?

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KAPIL SIBAL: No, I don't think so. Just want to... No. No. One second. I don't want to waste the Court's time. Anything else? And therefore... therefore, there are only two aspects. The date and the territory. No, I don't think so. Also note My Lords, the tea plantations, the traders came much earlier. So, the date and the territory are the two aspects which are considerable. I am deeply obliged.

CHIEF JUSTICE DY CHANDRACHUD: Thank you, Mr. Sibal? Yes, Ms. Jaising?

KAPIL SIBAL: No, no. My Lord is only confining to 6A. Why are you worried? They're all worried they'll go beyond 6A. Of course not. We haven't argued that.

CHIEF JUSTICE DY CHANDRACHUD: No, no. We are very clear in our mind. We have not heard... Mr. Divan has not argued that. Mr. Solicitor has not argued anything beyond 6A.

KAPIL SIBAL: Because 2024 is down the corner My Lords. Nothing should [UNCLEAR]

TUSHAR MEHTA: I don't think...

KAPIL SIBAL: No ,no. I'm saying...

TUSHAR MEHTA: 2024 has no relevance. It's a constitutional thing.

KAPIL SIBAL: See, nothing should be said...

CHIEF JUSTICE DY CHANDRACHUD: But Mr. Sibal, equally we must make it clear. You've probably all... You've got the drift of it, irrespective of what happens to 6A. And our minds are open until the last word is said by Mr. Divan and the others. Irrespective of that we intend, because this is a Constitutional Court, on what is being done to take care of the problem of illegal migration. That's something which I think we have to address in this judgement. We do propose to address it because irrespective of what happens to their plea on 6A, the cause of the petition... there is a great deal of substance in what they are... their grievance. I mean, look, what are you doing to our state.

TUSHAR MEHTA: That is why My Lord, I very categorically and candidly said that I am not trivializing their problem.

1 **KAPIL SIBAL:** Neither am I.

2

3 **TUSHAR MEHTA:** I am answering only the constitutional question. This is a serious
4 question and as a custodian of fundamental rights of all citizens, Your Lordships [UNCLEAR].

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** We have to address that in any case.

7

8 **KAPIL SIBAL:** We must. All of us must. No doubt about it.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Ms. Jaising.

11

12 **INDIRA JAISING:** My Lord, I would like to take off from where Mr. Sibal left off. I think the
13 question of plenary powers has been adequately addressed. I will not address that except to
14 say...

15

16 **SHYAM DIVAN:** Request Mr. Sibal and Ms. Jaising to just indicate who they are appearing
17 for? That the rest of us...

18

19 **INDIRA JAISING:** Yes, I will do precisely that.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** I didn't ask you your writ petition number.

22

23 **INDIRA JAISING:** Yes I will give you my writ petition...

24

25 **KAPIL SIBAL:** It is in my note, who I'm appearing for.

26

27 **INDIRA JAISING:** My Lord, let me give you my writ petition numbers. It's the very first one
28 on board. 274 of 2009 which was originally titled, 'Assam Public Works', now called In
29 Resection 6A. I'm appearing as an impleaded Respondent in the first writ petition. It's now
30 called In Re-6A.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** What fell from Ms. Jaising a moment ago, as we
33 have done in the case of the marriage equality RB 370, can we call the judgment In Re-6A of
34 the Citizenship Act?

35

36 **INDIRA JAISING:** I would agree with that. Respectfully agree. Yes.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Divan, I think that's already there. That's
2 already there.

3

4 **INDIRA JAISING:** Yes, it's already showing on the board, as In Re-6A. It's showing on the
5 board as In Re-6A. But My Lords, since the question has been asked who I'm appearing for,
6 I'm appearing for an impleaded Respondent in writ petition number 274 of 2009, which is the
7 first item 501 on board today.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** You are appearing for impleaded Respondent?

10

11 **INDIRA JAISING:** Impleaded Respondent in, 'All Assam Minority Students Union' is the
12 name of the Respondent. I am also appearing, My Lord, for an impleaded Respondent in writ
13 petition number 562 of 2012. This is the petition in which the order of reference has been made
14 to this Court.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Writ petition number?

17

18 **INDIRA JAISING:** 562 of 2012.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** There again you're appearing for another
21 Respondent?

22

23 **INDIRA JAISING:** For an impleaded Respondent. Impleaded by an order dated 23-08-
24 2013.

25

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

27

28 **INDIRA JAISING:** And the latter, My Lord, is the one in which the reference has been made.
29 Now, as I said let me begin with where Mr. Sibal has left off. It has been said by academics the
30 world over that the 21st century is a century of refugees and migrants. If you shifted one
31 century back, then the 19th century also was a century of refugees and migrants insofar as
32 India is concerned. My first submission is that the Constitution of India bears the birthmarks
33 of partition, and you cannot understand either the Constitution of India or the Citizenship Act
34 without understanding what happened for almost a century before the partition occurred, and
35 what led up to this partition, and the birth marks are there in the Constitution. Article 5
36 confines itself to the commencement, as has already been said. 6 and 7 deal with migration to
37 and from Pakistan, and the Citizenship Act deals with acquisition of citizenship after the

1 Constitution comes into force. My submission is going to be Section 6A is a sui generis
2 provision and that's why, it's called special provision. So it cannot be slotted either into the
3 Constitution or into Section 4 and 5. Possibly, it can be slotted into Section 7 of Article 7, a
4 proviso because my submission is the proviso to Article 7 leaves the door open for further
5 migration and does not freeze the cutoff date at 19th March 1948. There's no freeze to
6 migration or there's no freeze to granting citizenship to people who enter India after 17th
7 March 1948, and that is obvious from a reading of the proviso to Article 7. I'll make good that
8 submission. Then I'll address a few issues on Article 29, because 14 has been adequately
9 addressed. 11 has been adequately addressed. I will not cover the same ground. In my opinion
10 29 has not been adequately addressed, and I'll attempt to do so. In fact, the Attorney General
11 did not address 29 at all. I'm sorry, the Solicitor General made no submissions on Article 29.
12 And from what I understood by the opening arguments of Mr. Divan, his major focus was on
13 29, and that major focus was confined to demographic changes. Nothing more, nothing less.
14 It was not his case that the script, the language or the culture of Assam has been impacted. If
15 it was, I have not understood in what manner and may I explain, I would like to invite your
16 attention to certain provisions of the Constitution of India. Assamese continues to be in the
17 schedule of official languages of India. Point number one.

18

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

20

21 **INDIRA JAISING:** Under the Constitution adequately, completely protected. No
22 questionable of destruction of the language. Number two, Assamese continues to be the official
23 language of the State of Assam. Remember My Lord, at one time Mr. Sibal informed you that
24 Bengali was forcibly made the language of. Assam. That was reversed and Assamese continues
25 to be the official language of the State of Assam. Therefore, there's complete protection of
26 language script.

27

28 **KAMAL NAYAN CHOUDHURY:** Assamese is the official language of the state. Bengali is
29 also the official language of the state.

30

31 **INDIRA JAISING:** Yes.

32

33 **KAMAL NAYAN CHOUDHURY:** And Bodo is also an official language.

34

35 **INDIRA JAISING:** Yes, My Lord, I'm grateful for that information My Lord. I'm very
36 grateful for that information because we are talking about a state which is bilingual and
37 therefore, what is the point of producing data to show the number of Assamese speaking

1 people as against the number of Bengali speaking people in the State of Assam. It makes no
2 sense. It's. A bilingual state, a multilingual state. And as Mr. Sibal submitted, it is one of the
3 most diverse states in the country because of the mass migrations that have taken place over
4 the centuries, My Lord, long before the Ahoms came to India, long before that. There has been
5 migration into Assam and this has led to the creation of a syncretic culture. No submissions
6 were advanced on how the culture of Assam has been impacted. Now, a few more provisions
7 of the Constitution of India need to be pointed out to see the special protection given to the
8 State of Assam. First of all, under Article 342, the President of the... Parliament passes laws
9 naming scheduled castes and scheduled tribes in different states and I will share it with you
10 because it's in the public domain, there is a law of Parliament in 1976 which gives you the
11 names of the tribes who have been put in the Presidential Schedule. The intention being to
12 protect their culture. These are constitutional provisions for protection of culture which are in
13 place. Then, Your Lordship will turn to Article 244 of the Constitution of India. I'm going
14 through the list of constitutional provisions which are intended to protect the State of Assam
15 and in particular, the tribals. My learned friend, Mr. Divan said, each of his petitioners
16 represent a certain tribe. And I presume, it was his case that it was tribal culture which is being
17 destroyed. Now we turn to 244 of the Constitution.

18
19 Yes. 'Administration of scheduled areas and tribal areas. The provisions of the 5th Schedule
20 shall apply to the administration and control of scheduled areas and scheduled tribes in any
21 state other than the States of Assam Meghalaya, Tripura and Mizoram.' Special provisions
22 have been made for these states, given their history. Now, 'The provisions of the 6th Schedule
23 shall apply to the administration of the tribal areas of the States of Assam, Meghalaya, Tripura
24 and Mizoram.'

25 Then come to Article 244A - 'Formation of autonomous states comprising certain tribal areas
26 in Assam and creation of local legislative and council of ministers of both thereof.' There again
27 My Lords, there's a special dispensation for self-governance of tribal areas. One of the
28 submissions made was self-governance is governed by Article 21. No attempt was made to
29 justify that submission. But I'm giving you the answer. If self-governance is a right, yes, it is
30 protected insofar as Assam is concerned in relation to tribals under Article 244A. Tribal areas
31 have been put in a separate schedule, which gives them autonomy of administration. Now,
32 these are the provisions which conserve customs and if custom and culture are synonymous
33 with each other than their culture is protected. Please don't understand me to say custom and
34 culture are synonymous. They are not. But nevertheless, assuming for a moment that culture
35 and custom are synonymous, they are adequately protected by the Constitution of India and
36 no case has been made out for violation of rights under 29, which was the major argument

1 addressed by the opening argument. Now this being said, please turn to Article 247. I'm sorry.
2 It's not 247. It's 2... Yes, he has. I'll read those Articles.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Ms. Jaising, is it at page 49 of the [UNCLEAR].

5

6 **INDIRA JAISING:** Yes. There is a list. There is a list. But I would like you to see the
7 provisions of those Articles. 275. 275. My Lords, Your Lordships talked about development.
8 Here is the answer to development.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** It's already there. It's grants from the Union to
11 certain states.

12

13 **INDIRA JAISING:** Mandatory grants for Assam, My Lords. Not for the rest of the country.

14

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

16

17 **INDIRA JAISING:** Please have a look. It is for what, for development. 'Mandatory. Whereas
18 the others are at the discretion of the Union of India, when it comes to Assam the word is
19 'shall'. Provided that they shall be paid out of the Consolidated Fund of India a grant and aid
20 of revenue for the State of Assam. Sums capital and recurring equivalent to a, b, c, d, e.'
21 Therefore, the brief submission that I'm making is that the Constitution adequately protects
22 the right to culture of the residents of Assam. Now My Lord, I want to move to another issue.
23 My learned friend used the expression throughout his arguments 'indigenous people'. Please
24 note that the Constitution of India does not use the word 'indigenous' anywhere. It uses 'tribes'.
25 I, for one My Lords, do not know who is an indigenous person of Assam. I don't know because
26 there is no legal definition of indigenous person in the Constitution of India. There is a
27 definition of scheduled caste, scheduled tribes and the rest of us who are citizens of India. So,
28 kindly be a bit cautious about the use of the word 'indigenous'. Instead we can use the word
29 'tribes'. The question then will be, is the culture of tribes endangered in any manner, and if so,
30 by whom? Now, let's see the plain reading, plain wording of Article 29. Just the straight
31 forward reading and it certainly surprised me. I don't know whether this Court will be
32 surprised but in the last 75 years of the functioning of this Court, I have been unable to find a
33 judgment which defines what is culture.

34

35 Or... I was looking very hard, My Lord, to see if I could find a judgment which I could present
36 to you, which would precisely give you the content of the meaning of the word culture so that
37 it would enable us to decide, when is it undermined. But there is none, to the best of my

1 knowledge. My Lord, my research could be limited, but this is my submission before you. Now,
2 let's read Article 29 and see what we can make out of it on our own without reference to any
3 guidance from precedents. 'Protection of the Interests of Minorities', interestingly, the title of
4 29 differs from its content. Although it refers to interest of minorities in its title, in its content
5 it refers to all citizens. Any section of persons. So, the right to culture can be conserved by
6 minority and majority citizens. So if you read it, 'any section of the citizens residing in the
7 territory of India'. It doesn't say any minority citizens. 'Any section of the citizens residing in
8 the territory of India or any part thereof, having distinct language, script, culture of its own
9 shall have the right to conserve the same'. The next one will not be not concerned. It's about
10 preserving educational institutions. It's nobody's case that any educational institution has
11 been destroyed. So, now I would ask myself the question, how does one understand the word'
12 culture' in Article 29? As I said, finding no guidance from the Court, I try to present something
13 in my written submissions culling out information from several authors around the world. And
14 what we found is that it is an expression which is notoriously vague. So if Your Lordship, turns
15 to Volume 2, page 74 under the heading, 'Submissions to the Challenge Based on Culture'. It
16 is submitted that Indian culture, including Assamese culture, is syncretic in nature. For want
17 of a better word, I use the word syncretic. Freedom of movement and residence and settlement
18 throughout the territory of India effectuate and comprise part of India's syncretic culture and
19 unity. My Lord, why do we have this freedom of movement across the country? In order to
20 preserve our syncretic culture. We are allowed to go anywhere, do anything, and all our
21 fundamental rights. Tomorrow I can migrate, I don't know. Indian law does not recognize
22 citizenship of a state. Let's be clear about that. We are citizens of India and My Lord, in answer
23 to the question, why is ordinary residence so important in our citizenship laws? Wait, I'll be
24 reading this further. I want to point to one thing. If you see Article 5 of the Constitution of
25 India, it uses the word, 'domicile'. At the commencement of the Constitution, every person
26 who has his domicile in the territory of India... This is the significance of ordinary residence.
27 Permanent... intention to permanently settle. My Lord, even domicile is not a very well defined
28 concept, but taken from private international law we know that domicile means the place
29 where you reside with the intention of making it your home. That's the definition of domicile.
30 And domicile, in fact, in this country has caused a lot of problems given the federal nature of
31 the country. When it comes to things like admission to medical colleges, and states make
32 reservations for people who are domiciled in their states, all those disputes have landed up in
33 Court. Whether any such preference can be given to domicile, and it remains, I think, an
34 unresolved issue. But the reason I'm pointing to domicile is there are two running threads in
35 the Constitution Part 2 and the Citizenship Act. One is the concept of permanent residence, an
36 intention to settle and the other is persons of Indian origin... and here I would say Indian
37 origin necessarily has to refer to undivided India, because Article 6 and 7 give them citizenship.

1 So, there's a running thread in the constitution to give citizenship to persons of Indian origin.
2 In fact, the demand, as Your Lordship knows now, is that NRIs and overseas citizens should
3 be given citizenship and the Late Mr. L.M. Singhvi had agreed to this after which we got the
4 concept of long term visas and overseas citizens, where the government now issues those
5 cards. And currently, there are petitions pending before you which talk about why we should
6 not be allowed to have dual citizenship of different countries. Now, of course I don't want to
7 get into that issue, but what I want to emphasize, My Lord, is that these are the two running
8 threads. So three running threads. One, the birthmark of partition. Two, the concept of giving
9 citizenship to those who make that domicile in India and three, persons of Indian origin. Now,
10 My Lord, Article 6A satisfies all these three conditionalities, in principle. Procedure, etc., is a
11 different issue. But all these three conditionalities are satisfied by Article 6A.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** These are the three conditionalities?

14

15 **INDIRA JAISING:** Section 6A of the Citizenship Act My Lord, and therefore, its
16 constitutionality must be viewed in that context.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Which are the three conditionalities?

19

20 **INDIRA JAISING:** One is the relevance of the birthmark of partition in this country. The
21 second is the intention to reside permanently in India. And the third is a person of Indian
22 origin, India being defined as undivided. These are the three guiding principles for
23 determining the constitutional validity of 6A. Has parliament gone beyond these principles?

24

25 **JUSTICE SURYA KANT:** What is second one madam?

26

27 **INDIRA JAISING:** The second one? The second one is the intention to reside permanently
28 or resettle... settle or resettle within the territory of India.

29

30 **UNKNOWN SPEAKER:** What is the third, brother?

31

32 **INDIRA JAISING:** So My Lord, when it comes to culture, I'll just conclude by saying... I'll
33 just take you back to my written submissions to show you how notoriously vague the concept
34 is. Now...

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** Actually if you really look at that culture is such
37 an amorphous concept. Culture is ... you can say in so many ways, a product...I was just

1 identifying what goes into culture. You say Indian culture. Is there an Indian culture? All of us
2 believe there is an Indian culture because we belong to this syncretic culture of the nation. But
3 what is it? What goes into it? You can say language?

4

5 **INDIRA JAISING:** Yes.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Not that your language is culture, but our
8 relationship to our language is in equally part of your culture.

9

10 **INDIRA JAISING:** Finding your identity.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** You have your affirmism, you have your
13 colloquiums, they go to sort of making up your culture.

14

15 **UNKNOWN SPEAKER:** Art, belief.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Language, customs. See, I have identified a few
18 things. Language, customs, social institutions, religion. Your religion, practices, food...

19

20 **INDIRA JAISING:** Yes, all of that. So...

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Food, apparel, geographical conditions...

23

24 **INDIRA JAISING:** Yes.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Relationship with nature. When you go up to
27 Ladakh, you go to Zanskar, you realize that the culture is the product of your relationship with
28 nature, when you travel to those areas. You go down to say, the West Coast of Maharashtra,
29 you see so much of the use of coconut. Why? Because of the fact that coconuts grow there. You
30 go down to Kerala. So, even that's all... it all goes into the generation of a cultural tradition. So,
31 culture is not specific to any of these items but is a unique, is an interplay of all this, that
32 produces a culture. Music. Music is a very important bearing on the production of culture.

33

34 **CLAIMANT'S COUNSEL:** Respect to law and order...

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** A way of living. Absolutely.

37

1 **CLAIMANT'S COUNSEL:** Respect towards law. That's why in certain persons you see
2 people are more into My Lords.

3

4 **INDIRA JAISING:** Well, with respect, I agree. All these elements make up culture, and it's
5 an aspect of our identity but Your Lordship will also bear in mind, that we self-identify with
6 the particular culture. It's a self-identity with a particular culture. Nobody is forcing it on us
7 and My Lord, we cannot forget that this country was reorganized on linguistic lines by the
8 States Reorganization Act. At the end of the day, My Lords, the country... entire country was
9 reorganized on linguistic lines because language is an important element of identity of a
10 human being. This is the reason why it was reorganized on linguistic lines and this is why
11 language is protected, specially under Article 29, under the right to culture. There have been
12 so many language disputes in this country. Your Lordship knows... whether the three language
13 formulas should be adopted, whether Hindi should be enforced on non Hindi speaking states.
14 The disputes are endless. But it's because there is so much identity with language. An
15 individual identifies to such an extent with language that it's a separately protected right under
16 the Constitution. So, I've gone on to explain that it's notoriously amorphous, and it's a
17 notoriously overbroad concept. And I have finally come to the conclusion that, judicially, Your
18 Lordship can only accept constitutional culture, constitutional morality as the culture of every
19 citizen of India, in addition to any other culture that they may have. Why has this Court taken
20 such pains to emphasize the issue of constitutional morality in this country? Because we are a
21 secular country, and because every section of the citizens have their right separately
22 guaranteed. And insofar as religion is concerned, My Lords raised religion as part of culture.
23 It is separately protected under Article 25.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** But everything that obvious is separately
26 protected. The right to food is protected by 14. Language is protected independently. But
27 culture is what emerges from the interplay between all these. It's a way of living as brother
28 Sundresh said.

29

30 **INDIRA JAISING:** But it's self... self-identity with the culture. Nobody can tell me you
31 identify with somebody else's culture. We create our own cultural communities and we identify
32 with them.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** And there are subcultures as well. We all say that
35 we have a culture as Indians. But we then also have culture... we have also culture as belonging
36 to the state where you come from, the area of the state where you come from.

37

1 **INDIRA JAISING:** So My Lord, my conclusion, and I won't bother you with it, is that when
2 this Court is venturing to answer the question, if at all, what is culture, My Lord, kindly bear
3 in mind that we already have a constitutional culture in this country, built up through
4 precedents of this Court and through the very document that we are reading today. And I
5 would say, that it is that constitutional culture which cannot be endangered.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** We'll make a note of that. Thank you Ms. Jaising.

8

9 **INDIRA JAISING:** Yes. My Lord, one more... there are some questions that I need to answer.
10 In the list of dates I've given... in fact, a very famous senior Counsel of this Court has migrated
11 to India... in his autobiography, records that he has migrated from Burma to this country. So,
12 who is Indian? Who is not? Who is Assamese? There is no definition of Assamese at all. We
13 are only...

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Walked from Burma to India. To Assam.

16

17 **INDIRA JAISING:** And Assam was part of Burma, actually, and then ceded to India under
18 a treaty with the Burmese. So My Lords, as Mr. Sibal had indicated, the cross migration that
19 has taken place in Assam includes Hindu, Muslim, Christian. A lot of the tribals are Christian
20 in the State of Assam. Those who have gone into the autonomous areas. Therefore, My Lord
21 to present demography... my point is only this. I'll just read out one small paragraph, that - 'To
22 offer demographic data as evidence of impacting culture is not constitutionally acceptable.'
23 And I'll read it out. I'll just give you the three reasons why. Because My Lord, the statistics
24 don't tell you what were the causes of this demographic change. Now, what could be the causes
25 of demographic change? I'll spell them out to the best of my knowledge. It could be at the basic
26 level, the argument expresses... moves on the assumption that demographic profile has
27 changed primarily on account of cross border illegal migration. That's the argument. Why? An
28 increase or decrease in demography may be on account of various factors like fertility rates,
29 interstate migration, illegal migration, etc. The petitioners have not been able to demonstrate
30 through any reliable data as to the cause of the alleged demographic change and the quantum
31 of demographic change due to immigration. The only data that has been provided is the
32 increased proportion of Muslims as compared to the average rate of growth of population in
33 the State of Assam. But the data shows that the growth rate of Muslims is lesser than that of
34 scheduled castes and scheduled tribes in those states. Also, growth rate on Muslims in Assam
35 is lesser than an MP, Maharashtra, Haryana. That's merely because of average growth rate of
36 the state does not... My Lord, there's just one other issue, if I may seek your indulgence, which
37 I need to address. References have been made to the fact that immigration is external

1 aggression. This is, to say the least, an argument of alarm. Migration could be on account of
2 distress.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Sarbananda Sonowal said that.

5

6 **INDIRA JAISING:** I am arguing that that judgment requires to be overruled. Do it or don't
7 do it, that's your option. But I...Yes, it is not an issue. Fine, but I just want to put it on the...
8 My Lord, please. Now, please. Now, please. It's in the very order of reference. No My Lord.
9 Sonowal says that. Now, what are my reasons for not saying it? Article 352 of the Constitution
10 of India which talks about declaration of an emergency uses of the expression, 'war, external
11 aggression or armed rebellion'. Therefore My Lord, the word, 'external aggression' must be
12 read *Ejusdem Generis* with war...

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** But suppose a cyber-attack is launched on one
15 of our states, Government of India can say we are duty bound under Article 355.

16

17 **INDIRA JAISING:** Of course, I don't deny that.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** So, external aggression today is a very broad... It
20 could be a cyber-attack for instance.

21

22 **INDIRA JAISING:** But internal... I'm not... 1 minute. I'm not talking about internal
23 disturbance. Internal disturbance, obviously, the Union has a duty to protect every state from
24 internal disturbance. I'm saying, can you refer to migration as external aggression? My answer
25 is no. In that very judgment, the criteria of whether it is external aggression or not, is
26 dependent on what is the *animus belligerendi*. What is the animus of the person who is being
27 aggressive? Is the touchstone to decide whether it's external expression or not. If it's a
28 belligerent intent, it is external aggression. Now, migration that has taken place, especially
29 from the subcontinent, the undivided subcontinent, is a distress migration. It's a migration
30 which has taken place My Lord, with the intention of finding safe harbour in India. You may
31 not want them. In your sovereign right you may want to get rid of them, but to describe them
32 as external... as aggressive...

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** We get your point. What you are saying is, that
35 people who have migrated have at the least come in search of a safe harbour or they are fleeing
36 external conditions of atrocities, of violence and therefore, the attempt is not to have to destroy
37 the Indian social fabric, but to protect their own way of living.

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INDIRA JAISING: That is the touchstone, deciding whether it's external and, excuse me, it is in a black and white judgment of this Court, and that's why it's my duty to address it.

CHIEF JUSTICE DY CHANDRACHUD: We got your point.

INDIRA JAISING: And my learned friend read it out specifically, these are the arguments of alarm and My Lord it is my respectful request to you to revisit that passage. In that very judgment, you will find the touchstone of *animus belligerendi* as the touchstone for deciding whether it is, and My Lords, reference has been.... they have referred to a judgment of 1883 of the United States Supreme Court, where Chinese immigrants were turned back. Now My Lord, those statutes of the Supreme Court of United States have been revealed, precisely because you cannot look at an immigrant as an aggressor. And finally, the judgments of the Supreme Court which have been relied on in that judgment were overturned in ***Trump versus Hawaii*** in 2018. Therefore, there is a case made out by me for you to revisit that passage. I don't say don't address the question of illegal immigration. That's not my case. All I'm saying is they cannot be described as aggressors, as it cannot be the... The migration cannot be described as a form of external aggression. There may be so many remedies. And last, to answer the question raised by Justice Sundresh. In the list of dates, there is an extant statute, which was enacted in 1950, which talks about expelling people from Assam. Even that statute, it's at entry number 01-03-1950. It's known as the Immigrant's Expulsion from Assam Act 1950 and it gives to the Union the power to expel an immigrant from Assam, but my learned friend has also pointed it out, it makes an exception.

TUSHAR MEHTA: That's a reappeal.

INDIRA JAISING: If it's reappeal, then I stand corrected. I stand corrected. All right, I won't refer to it, but at the relevant time, My Lord, the exempted people who came due to civil disturbance. That question was asked. How do you describe these people? That's why I'm addressing it.

CHIEF JUSTICE DY CHANDRACHUD: We are almost concluded on this side. Almost, I said. Who else, Mr. Hegde is there, Malvika is there.

RESPONDENT COUNSEL: 5 minutes. I will just take 3-4 minutes. I am from Asom Gana Parishad. I am supporting the learned Solicitor General. Just 3-4 minutes.

1 **INDIRA JAISING:** My Lord, just one note of thing.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Can we suggest one thing? Just one second, Ms.
4 Jaising. Can we just suggest this? Let's get the order cleared. Sanjay, just take it down. We'll
5 first hear Mr. Sanjay Hegde.

6

7 **COUNSEL:** Written submissions are filed in a sequence. They are in Volume [UNCLEAR]

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** But tell us, you tell us. We will just put it down.
10 See, everybody knows who is first and who is next.

11

12 **COUNSEL:** I would have finished today itself. I won't take very long.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** All right, then Mr. Sanjay Hegde, Mr. Anupam
15 Lal Das, then Mr. C. U. Singh.

16

17 **DR. VIVEK SHARMA:** Sir, myself, Dr. Vivek Sharma.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** And then...

20

21 **COUNSEL:** I will take only five minutes because I have comprehensive written submissions.
22 I will just point at the headings, so in five minutes, I will be done.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** So, all of you are now going to follow have filed
25 the written submissions?

26

27 **COUNSELS:** Yes.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Can we suggest just one thing? Can we just
30 suggest one thing? Who's the nodal Counsel?

31

32 **COUNSELS:** Mr. Ayuvi and Nisha Rai [UNCLEAR].

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** What we'll do is, everyone, please put down
35 your... whatever you want to say in not more than one page. Bullet points. Give it to Diksha.
36 So we will... Diksha, you put it in the order in which we have now mentioned. We will look at
37 those... that one page bullet points. Just take us through that in rapid fire so that we'll finish

1 about, at the outer limits, say, half an hour. So, 11 o' clock, we will hand it over to Mr. Divan,
2 Mr. Chaudhury and Mr. Hansaria to make the rejoinder. We'll wrap up by lunch. But do make
3 sure that all of you have that one page bullet points so that we know exactly... while dictating
4 the judgement, it becomes very complex otherwise. We know then what exactly has been
5 stressed by those who follow it from the main Counsel.

6

7 **COUNSEL:** President Roosevelt used to say, 'if it's important enough, only one page'.
8

8

9 **RAKESH DWIVEDI:** With Your Lordships permission, just wanted to know Your Lordships
10 measures regarding that Asia resurfacing. Is it to follow or not?
11

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Dwivedi, we are definitely taking Asia
13 resurfacing because it's a matter which is causing quite some concern in the... in our district
14 judiciaries because...
15

15

16 **RAKESH DWIVEDI:** So, tomorrow Your Lordship will take it up?.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** If we follow the order of the High Court, or the
19 fact that there's an order of the Supreme Court.
20

20

21 **RAKESH DWIVEDI:** That's right, Your Lordships will take it up tomorrow, My Lords?
22

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** [UNCLEAR] all stays will be deemed to be
24 vacated after six months. So, what we will do is, that's a different combination because I think
25 Justice Oka and Justice Mittal are joining.
26

26

27 **RAKESH DWIVEDI:** Yes.
28

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Perhaps if we finish this on Tuesday by lunch, or
30 ideally let's begin after this get so instead of keeping it for Tuesday after lunch. Suppose, this
31 spills over by 15 minutes. We can then keep it on Wednesday morning. I think that's much
32 better. I don't think the whole matter should not take more than half between you and the...
33

33

34 **TUSHAR MEHTA:** I appear for the state of UP. It can't take more than half an hour.
35

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Dwivedi, how long will you take?
37

37

1 **RAKESH DWIVEDI:** My Lord, half an hour.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** All right. So, Wednesday morning we will keep
4 it.

5

6 **RAKESH DWIVEDI:** It can be taken also on Friday, if Your Lordship so... whenever you
7 find convenient.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Friday will be miscellaneous, you know.

10

11 **RAKESH DWIVEDI:** Yes.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Let's do it on Wednesday. So that 1 hour, we'd be
14 done.

15

16 **INDIRA JAISING:** I want to point out, writ petition 274 is before the bench.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Dwivedi's submissions have come. Mr.
19 Solicitor, if you are giving something by virtual...

20

21 **TUSHAR MEHTA:** I shall file it by Monday.

22

23 **INDIRA JAISING:** My Lord, this first writ petition is actually being monitored by a different
24 bench. So I just want to say, the judgement in this case we hope will be confined only to this
25 constitutional validity. Because it covers a wide range of issues beyond constitutional validity.
26 This writ petition 274. The judgement will not dispose of 274.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** 6A. And whatever we have passed an order, short
29 order where we want the disclosure by the Home Secretary.

30

31

32

END OF THIS PROCEEDING