



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

ASLAM KHAN V FAZAL HAQUE KHAN AND ORS.

AUTHORED BY - ADARSH A S

National Law School of India University

Court: High Court of Allahabad

Citation: MANU/UP/0028/1959; AIR 1959 All 79; (1958) 28 AWR 774

Bench: Vashishtha Bhargava & Jawahar Nath Takru

Date of Judgement: 21 July 1958

SUMMARY

Aslam Khan had contested in Uttar Pradesh (UP) assembly elections, which he won. His candidature was challenged under the allegation of him not being citizen of India violation section 173 and 191(1)(d) of the constitution. He had briefly gone to Pakistan for a period of six months after partition. This excluded his right to citizenship under Article 5 as per Article 7 which excluded migrants to Pakistan from the ambit of citizens. Later, he obtained citizenship by registration under Section 5(1)(a) of the Citizenship Act, 1955. The court on the challenges raised by the respondent held that the appellant met all the condition under Section 5(1)(a), and Section 5(1)(e), reason being the respondents could not satisfy the requirement to prove Aslam acquired Pakistan citizenship under Section 2(1)(c) of the Citizenship Act of 1955. Therefore, the registration certificate issued by the collector was valid hence Aslam was a citizen of India while conducting elections.

FACTS

The appellant Aslam Khan and the respondents Fazal Haque, Abdul Hadi Khan, Sita Ram and Tribeni Sahai Misra were candidates for U.P. Legislative Assembly election conducted in February and March 1957 from Rampur constituency of U.P. They nomination on 31-01-1957 and nominated on 01-02-1957. Tribeni Sahai Misra withdrew the candidature within the withdrawal window. The election was conducted on 22-02-1957 and results declared on 01-03-1957 based on which Aslam Khan was declared elected. Before contesting in the election Aslam Khan had applied for citizenship certificate under Section 5(1)(a) of Citizenship Act, 1955 before the collector of Rampur, UP. The collector granted the certificate on 31-08-1956.

The respondent No.1 challenged the election before the Election Commission on the grounds:

1. The appellant was not a citizen of India therefore under Article 173 and Article 191(1)(d) was not eligible to contest elections.
2. There were corrupt practices by the appellant which violated Section 123 of the Representation of the People Act, 1951

The election Commission sent the case for trial before the Election tribunal Rampur. During the partition as government officials of British India was given choice of India or Pakistan. Aslam chose Pakistan and migrated there. It is to be noted that Aslam and his parents were born in India. Later in February 1948 he resigned and returned to India. Due to this his migration, he was deemed non-citizen under Article 7 of the Constitution of India and not under Article 5, even though he was born in India. After the enactment of Citizenship Act,1955 the appellant applied for citizenship for registration under Section 5(1)(a) on 31 August 1956 and got his registration certificate from the collector of Rampur. The Election Tribunal held there was no corruption but Aslam Khan was not a citizen of India which invalidated the election. Therefore, the appellant raised this appeal before the High Court.

ISSUES

1. Whether Aslam Khan was a citizen of India on the date of election and hence qualified under Article 173 and 191?
2. Whether his application for citizenship was governed by section 5(1)(1) or 5(1)(e) of the Citizenship Act,1955?
3. Whether Aslam Khan had earlier renounced, been deprived of or had his citizenship terminated therefore section 5(3) applicable?
4. Whether the registration certificate issued by the Collector under Section 5(1)(a) valid?
5. Whether the Election Tribunal was justified in setting aside his election for lack of citizenship?

LAWS APPLICABLE

- A) Constitution of India- Article 5,7,173 and 191
- B) Citizenship Act, 1955- Section 5(1)(a), 5(1)(e), 5(3), 6
- C) Representation of the People Act, 1951- Section 123

DECISION OF THE COURT

The court analyzed all the contention and interpreted the statutory provision to determine that Aslam Khan was indeed a citizen of India and thus the election was valid. The court held that as Aslam had migrated after 1 March 1947 to Pakistan therefore Article 7 is applied over Article 5. As per article 7 Aslam was never and Indian citizen from the day of commencement of the constitution therefore Section 5(3) of the Citizenship Act, 1955 which deals with person who renounced, deprived or lost citizenship apply. After this court went on to decide about the application of Section 5(1)(a) or Section 5(1)(e). The court found that Aslam satisfied all the essentials of Section 5(1)(a) as Aslam and his parents were of Indian origin, he had been a resident of India throughout his life except for the six month he had been working for Pakistan government and had resided in India for six months preceding his application. The argument that 5(1)(e) is applicable failed because as per Section 2(1)(b) and 2(1)(c) of the Citizenship Act, 1955 which defined the terms “citizen” and “citizenship or nationality law”, both of which was repealed by the Citizenship (Amendment) Act, 2003. The court reasoned that to be considered citizen of Pakistan which was part of first schedule, the person should be considered as citizen within the citizenship of nationality law of Pakistan. The court by interpreting the term “citizenship or nationality law” stated that to consider the Pakistan Citizenship Act, 1951 as the citizenship or nationality law of Pakistan, the central government of Pakistan should recognize the Pakistan Citizenship Act through notification in the official gazette to be the citizenship or nationality law. The respondents were unable to prove this therefore the court held that Aslam Khan is not a citizen of Pakistan therefore would not come under the ambit of Section 5(1)(e) which related to citizens of nation falling under first schedule. Therefore, as Aslam was interpreted not to be a citizen of Pakistan Section 5(1)(e) does not apply. Thus, the certificate of registration given under Section 5(1)(a) was valid. The respondents were unable to satisfy the court in regard to any other allegation of corruption against the appellant. Hence, the court held that Aslam Khan was a citizen of India at the time of election and had not violated Article 173 and 191. The court overturned the decision of the decision of the Election Tribunal.

ANALYSIS

The court in the case of Aslam Khan was liberal in interpreting the Article 7 of COI which have been followed through multiple cases. The courts have largely considered only about the movement from India to Pakistan and the intention of the journey was not considered. The

judgement of Aslam Khan forms the basis which was reiterated in other judgements such as Central Bank v Ram Narain , Kulathil Mamu v State of Kerala. According to these judgements Article 7 should be interpreted such that migration to include mere movement from one country to the other. To the contrary the Supreme Court in 1964 through Shanno Devi v. Mangal Sain again went back and narrowly interpreted “migrated” under article to include intention of permanent residence to be the underlying factor for consideration. This was overturned by Kulathil Mamu again going back to the strict interpretation stating migration only needs mere movement and the intention of the parties was not to be considered.

The courts have mostly followed stricter interpretation supporting the central governments view and uplifting the legislative intent to oust the people who do not satisfy the criteria given under the provision of various provisions of citizenship.

Looking into the decision made by the Judge in the case of Aslam Khan v Fazal Haque Khan and Ors seems to have been a creative interpretation of the term “Citizenship and Nationality law”. If the judges were ready to accept the argument made by the respondent that Pakistan Citizenship Act, 1951 to be the law determining citizenship within Pakistan, it would have led to the election declared invalid. This decision by the judges used strict interpretation to make a creative choice thereby prevent a citizen from being stateless.

TABLE OF AUTHORITIES

Aslam Khan V Fazal Haque Khan and Ors. AIR 1959 All 79

Central Bank v Ram Narain 1955 AIR 36

Kulathil Mamu v State of Kerala 1966 AIR 1614

Shanno Devi v. Mangal Sain 1961 AIR 58

Citizenship Act, 1955

Constitution of India:

- Article 173
- Article 191

The Representation of the People Act, 1951

- Section 123