



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 or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.



WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

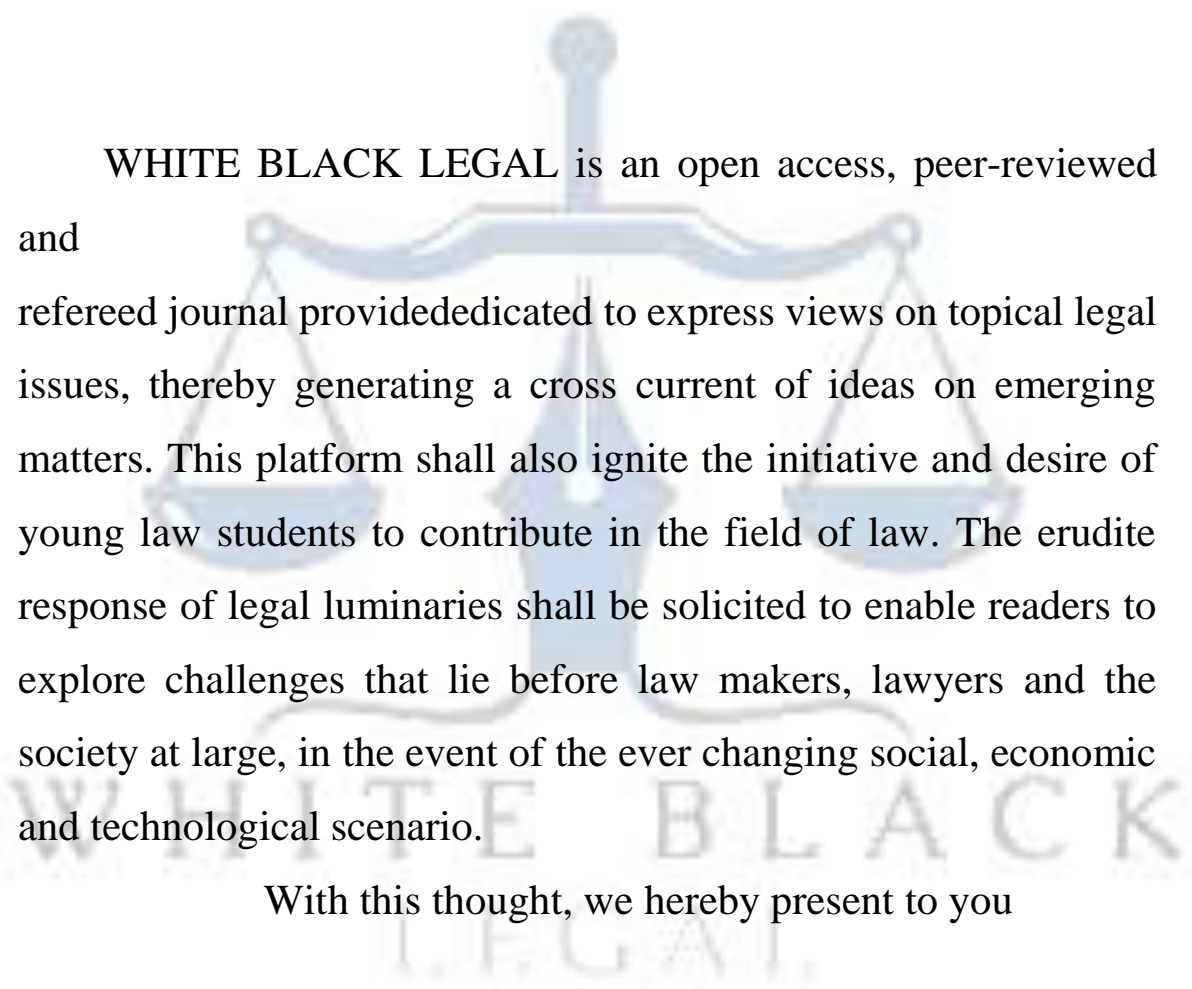


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

BALANCING HERITAGE AND CITIZENSHIP: **AN ANALYSIS OF SECTION 6A AND THE** **ASSAM ACCORD**

AUTHORED BY - HIMANSHI DAS

INTRODUCTION:

The Assam Accord and section Section 6A of the citizenship Amendment Act has a prominent role in the complex issue of citizenship in Assam. In 1985 the Indian government along with the All Assam Students Union and the All Assam Gana Sangram Parishad had drafted the Assam Accord. The Assam Accord demanded the identification and the deportation of the illegal immigrants. The main aim of the Accord was to protect the cultural heritage of the Assamese people whereas Section 6 A was later added to the Citizenship Act of 1955 in December 1985. The section provides a cut off date based on which the people would be granted citizenship of India or expelled. The petitioners contended the provision to be violative of the principles of equality and fairness. The article gives insights into the provision of Section 6A, the background of Assam Accord and an analysis of the issue contended by the petitions and the verdict delivered by the Constitutional bench.

UNDERSTANDING THE ASSAM ACCORD AND SECTION 6A OF THE **CITIZENSHIP ACT 1955:**

The Assam Accord signed in 1985 is a Tripartite accord that was signed between the Government of India, state government and the leaders of the Assam Movement. The six year old conflict that was initiated by the All Assam Students union (AASU) in 1979 that demanded the identification and deportation of the illegal immigrants from Assam came to an end after the signing of this accord.

Clause 6 of the assam accord states that constitutional, legislative and administrative safeguards would be provided to the protect the heritage and culture of the Assamese people. The committee that was headed by Biplab Kumar Sarma was constituted to define “Assamese people” and the methods to provide them safeguards. There were several recommendations by the committee among which were that the definition of Assamese people according to the report of the committee is that January 1951 as the cut off date for any citizen residing in Assam to

be defined as an Assamese according clause 6. The recommendations also include quotas in government jobs. The report includes regulation of entry of people from other states into Assam that involves Inner Line Permit (ILP) in the state. The inner line permit is basically a permit that is necessary by the people from other parts of India for visiting the state. This is prevalent in Manipur, Arunachal Pradesh, Nagaland and Mizoram. There were several issues involved that included that people who migrated between 1951 and 1971 also including post partition refugees would be accorded the status of Indian Citizens under this Accord and also in the National Register of Citizens, 1951. Also the migrants from East Bengal that entered in Assam before 1951 would also be considered Assamese. But there is no provision to verify that person was in Assam before 1951.

The constitution of India consists of section 6 that deals with the citizenship of those who have migrated from Pakistan to India during the partition. According to this provision anyone who migrates to India before 19th July 1948 would become an Indian Citizen automatically provided that either of their parents or grandparents was born in India. Section 6A provided a special provision for Assam that allowed persons of Indian origin that came from Bangladesh that is before 1st January 1966 and 25th March 1971 and people who were found as foreigners, it was necessary to register themselves which would grant them citizenship after 10 years of residence but in accordance with certain conditions. The provision related to Section 6 is deemed as discriminatory as it levels up the issue of equal treatment if compared to other states that are facing similar immigration issues. This also raised the issue of cultural impact as it gives benefits to the cross border migrants that entered India between 1966-1971, this affects the cultural identity of Assam due to demographic change.

COMPREHENSIVE ANALYSIS OF THE LEGAL ISSUE AND THE SUPREME COURT'S RULING:

The Assam Public Works President and the Assam Sanmilita Mahasangha and others acted as the petitioners and challenges the said section 6A as it persuades mass immigration and impacts the demography of Assam. This provision was challenged by the petitioners in 2012 as they contended that it is discriminatory as there are different cut off dates that allows the illegal migrants in India. According to Article 6 of the constitution, any person would be granted citizenship who migrated from Pakistan before 19 July 1948. It was contended that the said provision of section 6A of the Act amended Section 6 as at that time Bangladesh was still a part of Pakistan as on 1st January 1966. This insertion of a new cut off date for granting

citizenship would violate the already existing cut off date for immigrants from Pakistan to India.

The constitutional Bench upheld the validity of Section 6A of the citizenship Act by a majority of 4:1 that grants Indian Citizenship to illegal immigrants in Assam. The validity provided to the provision of Section 6A means that the cut off date will still be the basis of granting citizenships to people coming from Bangladesh and also other nations to Assam. The Cutoff date according to section 6A is of a much later date and works differently from the constitutional provisions. According to the verdict the cutoff date that was 24th March 1971 is justified. The operation Searchlight was initiated by the Pakistani Army to defeat the Bangladeshi Nationalist movement in East Pakistan. The petitioners in the represent case could not prove that 6A harmed the culture of the Assamese people and their ability to safeguard their culture. It was stated that the already existing constitutional provisions protect the cultural and linguistic interests of Assamese people.

The section 6A was enacted under Article 246 and Entry 17 of the Union List that relates to naturalization and citizenship. The issue of the section being discriminatory and violative of Article 14 was reasoned by stating that the migration from Bangladesh and the overall migrant situation was different from the rest of the country. Also it was the Government's responsibility to execute the detection and deportation of the post 1971 immigrants from Bangladesh. The provision itself cannot be blamed as there exists inadequacy of tribunals and mechanisms for the immigrants. During the upholding of the validity of the section the court also asked the CJI to constitute a bench for the supervision and the implementation of the laws of Assam.

The Article 6 does not take into its ambit the persons who migrated from East Pakistan to Assam after 19 July 1948 and did not apply to register as citizens, the section 6A confers the citizenship on such persons as there are different time frames but the provisions remain the same. Further this provision does not confer citizenship to those who have entered India after 25th March 1971. The cutoff date is practical and logical. There is a distinction between "migrants of partition" and those who have entered after the initiation of the "operation Searchlight" on 25th March 1971. People entering post the cut off date were recognized as illegal.

The claim under Article 29 was also rejected as to claim the violation the this provision cannot be proved due to the presence of certain different ethnic groups in Assam. But there are other constitutional and statutory provisions that exist for the safeguard of the cultural and ethnic heritage. Certain directions were also provided by the bench that includes that the immigrants who have entered india after the cutoff date that is 25th march 1971 are illegal and should be

deported. The section 6A shall be read with the Immigrants Act 1950 to identify the illegal immigrants. The machinery is not sufficient for the effective implementation of Section 6A. There should be supervision of the Supreme Court on the implementation of the laws related to the immigration and citizenship.

DISSENTING OPINION OF JUSTICE J.B. PARDIWALA:

With the upholding of the constitutional validity there was the Dissenting Opinion of Justice Pardiwala which mainly related to the Section 6A (3) that is for the citizens that entered in India between 1 January 1966 and March 1971. There were several foreigners detected in this time line but these were far lower than the actual number of immigrants that arrived in India at that time. He is of the view that there is no time limit to the provision that is there is no end date after which the citizenship under the said section cannot be availed that is because the burden of detecting foreigners and deleting them from the electoral rolls is not there on the state. In his opinion the verdict would not affect any immigrant including those who arrived before January 1966 and also those who were detected as foreigners between the time line of 1966-1971 and were later granted citizenship.

CONCLUSION: A PATH FORWARD

After the constitutional validation of the Section 6A of the citizenship amendment act the main focus falls on the challenges in the implementation of this provision as there are inadequate mechanisms for identifying and deporting the illegal immigrants. The Assam Accord was signed to protect the identity of the Assamese people and balance had to be created between the local population and the migrants that have come to Assam. The critics though argue that the different cut off dates to grant citizenship in Assam defeats the principle of equality and fairness that is engraved in the constitution. Though the provision is granted a constitutional validation but the debates around its social and political consequences still remains an important point to discuss. There needs to be an intricate balance and a level of harmony between the ethnic and cultural practices of the immigrants and the Assamese local people. Along with it it requires adequate legal bodies and supervision for its harmonious and effective implementation.